

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**

**ONE HUNDRED AND NINETEENTH LEGISLATURE**

**SECOND REGULAR SESSION**  
**January 5, 2000 to May 12, 2000**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**AUGUST 11, 2000**

**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**  
**2000**

suffering the damage, but the damages recoverable in respect thereof ~~shall~~ must be reduced to such extent as the jury thinks just and equitable having regard to the claimant's share in the responsibility for the damage.

~~Where~~ When damages are recoverable by any person by virtue of this section, subject to such reduction as is mentioned, the court shall instruct the jury to find and record the total damages ~~which~~ that would have been recoverable if the claimant had not been at fault, and further instruct the jury to reduce the total damages by dollars and cents, and not by percentage, to the extent ~~deemed~~ considered just and equitable, having regard to the claimant's share in the responsibility for the damages, and instruct the jury to return both amounts with the knowledge that the lesser figure is the final verdict in the case.

Fault means negligence, breach of statutory duty or other act or omission ~~which~~ that gives rise to a liability in tort or would, apart from this section, give rise to the defense of contributory negligence.

If such claimant is found by the jury to be equally at fault, the claimant ~~shall~~ may not recover.

In a case involving ~~multi-party~~ multiparty defendants, each defendant ~~shall be~~ is jointly and severally liable to the plaintiff for the full amount of the plaintiff's damages. However, any defendant ~~shall have~~ has the right through the use of special interrogatories to request of the jury the percentage of fault contributed by each defendant. If a defendant is released by the plaintiff under an agreement that precludes the plaintiff from collecting against remaining parties that portion of any damages attributable to the released defendant's share of responsibility, then the following rules apply.

**1. General rule.** The released defendant is entitled to be dismissed with prejudice from the case. The dismissal bars all related claims for contribution assertable by remaining parties against the released defendant.

**2. Post-dismissal procedures.** The trial court must preserve for the remaining parties a fair opportunity to adjudicate the liability of the released and dismissed defendant. Remaining parties may conduct discovery against a released and dismissed defendant and invoke evidentiary rules at trial as if the released and dismissed defendant were still a party.

**3. Binding effect.** To apportion responsibility in the pending action for claims that were included in the settlement and presented at trial, a finding on the issue of the released and dismissed defendant's liability binds all parties to the suit, but such a finding has no binding effect in other actions relating to other damage claims.

**Sec. 2. 14 MRSA §163**, as enacted by PL 1969, c. 19, is amended to read:

**§163. Release of joint tortfeasors**

Whenever a person seeks recovery for a personal injury or property damage caused by 2 or more persons, the settlement with or release of one or more of the persons causing the injury ~~shall~~ is not be a bar to a subsequent action against the other person or persons also causing the injury.

Evidence of settlement with a release of one or more persons causing the injury ~~shall~~ is not be admissible at a subsequent trial against the other person or persons also causing the injury. After the jury has returned its verdict, the trial judge shall inquire of the attorneys for the parties whether such a settlement or release has occurred. If such settlement or release has occurred, the trial judge shall reduce the verdict by an amount equal to the settlement with or the consideration for the release of the other persons. With regard to a settlement in which the plaintiff has entered into an agreement that precludes the plaintiff from collecting against remaining parties that portion of any damages attributable to the settling defendant's share of responsibility, the judge shall reduce the plaintiff's judgment by either the amount determined at trial to be attributable to the settling defendant's share of responsibility, if any was found, or, if no such finding is made, by the value of the consideration given to the plaintiff for the settlement.

**Sec. 3. Application.** This Act applies to all settlements entered into after the effective date of this Act.

See title page for effective date.

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**CHAPTER 634**

**H.P. 1629 - L.D. 2276**

**An Act to Revise the Spousal Support Statute**

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

**Sec. 1. 19-A MRSA §851, sub-§9, ¶¶A and F**, as enacted by PL 1997, c. 224, §4 and affected by §5, are amended to read:

A. Order spousal support, which must be determined in accordance with the factors set forth in section ~~954~~ 951-A;

F. At any time, alter or amend an order for spousal support or a specific sum when it appears that justice requires it, except that a court may

not increase the spousal support if the original decree prohibits an increase. In making an alteration or amendment, the court shall consider the factors set forth in section ~~954~~ 951-A; and

**Sec. 2. 19-A MRSA §951**, as amended by PL 1997, c. 629, §1, is repealed.

**Sec. 3. 19-A MRSA §951-A** is enacted to read:

**§951-A. Spousal support**

**1. Statement by court.** An order granting, denying or modifying spousal support must state:

A. The type or types of support, if support is awarded;

B. The method or methods of payment, and the term and limitations imposed, if support is awarded;

C. If the support awarded is not, in whole or in part, subject to future modification; and

D. The factors relied upon by the court in arriving at its decision to award or deny spousal support, if the proceeding was contested.

**2. Types of spousal support.** The court may, after consideration of all factors set forth in subsection 5, award or modify spousal support for one or more of the following reasons.

A. General support may be awarded to provide financial assistance to a spouse with substantially less income potential than the other spouse so that both spouses can maintain a reasonable standard of living after the divorce.

(1) There is a rebuttable presumption that general support may not be awarded if the parties were married for less than 10 years as of the date of the filing of the action for divorce. There is also a rebuttable presumption that general support may not be awarded for a term exceeding 1/2 the length of the marriage if the parties were married for at least 10 years but not more than 20 years as of the date of the filing of the action for divorce.

(2) If the court finds that a spousal support award based upon a presumption established by this paragraph would be inequitable or unjust, that finding is sufficient to rebut the applicable presumption.

B. Transitional support may be awarded to provide for a spouse's transitional needs, including, but not limited to:

(1) Short-term needs resulting from financial dislocations associated with the dissolution of the marriage; or

(2) Reentry or advancement in the work force, including, but not limited to, physical or emotional rehabilitation services, vocational training and education.

C. Reimbursement support may be awarded to achieve an equitable result in the overall dissolution of the parties' financial relationship in response to exceptional circumstances. Exceptional circumstances include, but are not limited to:

(1) Economic misconduct by a spouse; and

(2) Substantial contributions a spouse made towards the educational or occupational advancement of the other spouse during the marriage.

Reimbursement support may be awarded only if the court determines that the parties' financial circumstances do not permit the court to fully address equitable considerations through its distributive order pursuant to section 953.

D. Nominal support may be awarded to preserve the court's authority to grant spousal support in the future.

E. Interim support may be awarded to provide for a spouse's separate support during the pendency of an action for divorce or judicial separation.

**3. Methods of payment; term and limitations.**

The order must state the method or methods of payment that the court determines just, including, but not limited to, lump-sum and installment payments. The order must also state the term of and any limitations on the award that the court determines just, including, but not limited to:

A. A limit on any increases or decreases in the amount of support;

B. A limit on any increases or decreases in the term of support;

C. A limit on the method or methods of payment of support;

D. A limit on the payment of support related to the remarriage of the payee; and

E. A limit on the payment of support related to cohabitation by the payee.

**4. Modification.** An award of spousal support is subject to modification when it appears that justice requires unless and to the extent the order awarding or modifying spousal support expressly states that the award, in whole or in part, is not subject to future modification.

**5. Factors.** The court shall consider the following factors when determining an award of spousal support:

- A. The length of the marriage;
- B. The ability of each party to pay;
- C. The age of each party;
- D. The employment history and employment potential of each party;
- E. The income history and income potential of each party;
- F. The education and training of each party;
- G. The provisions for retirement and health insurance benefits of each party;
- H. The tax consequences of the division of marital property, including the tax consequences of the sale of the marital home, if applicable;
- I. The health and disabilities of each party;
- J. The tax consequences of a spousal support award;
- K. The contributions of either party as homemaker;
- L. The contributions of either party to the education or earning potential of the other party;
- M. Economic misconduct by either party resulting in the diminution of marital property or income;
- N. The standard of living of the parties during the marriage;
- O. The ability of the party seeking support to become self-supporting within a reasonable period of time;
- P. The effect of the following on a party's need for spousal support or a party's ability to pay spousal support:

(1) Actual or potential income from marital or nonmarital property awarded or set apart to each party as part of the court's distributive order pursuant to section 953; and

(2) Child support for the support of a minor child or children of the marriage pursuant to chapter 63; and

Q. Any other factors the court considers appropriate.

**6. Enforcement.** The court may use all necessary legal provisions to enforce its decrees.

**7. Real estate and other property; life insurance and other security.** The court may order part of the obligated party's real estate or other property, as well as the rents, profits or income from real estate or other property, to be assigned and set out to the other party for life or for such other period determined to be just. The court may also order the obligated party to maintain life insurance or to otherwise provide security for the payment of spousal support in the event the obligation may survive the obligated party's death.

**8. Cessation upon death of payee or payor.** An order awarding, denying or modifying spousal support may provide that the award survives the death of the payee or payor, or both. Unless otherwise stated in the order awarding spousal support, the obligation to make any payment pursuant to this section ceases upon the death of either the payee or the payor with respect to any payment not yet due and owing as of the date of death.

**9. Effect of no award or termination of spousal support.** A final judgment that does not award spousal support forever precludes such an award in that action. The complete termination of a spousal support award pursuant to the terms of the award or a final post-judgment order forever precludes the reinstatement of spousal support in that action.

**10. Application.** This section applies to:

A. Orders granting or denying spousal support entered on or after September 1, 2000; and

B. The modification, termination and enforcement of orders granting spousal support entered on or after September 1, 2000.

See title page for effective date.

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## CHAPTER 635

S.P. 927 - L.D. 2377

### An Act to Prevent Contamination from Home Heating Oil Tanks

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