

2A:34-23

LEGISLATIVE HISTORY CHECKLIST

Compiled by the NJ State Law Library

LAWS OF: 2014 **CHAPTER:** 42

NJSA: 2A:34-23 (Establishes durational limits and enumerates certain factors concerning modification and termination of alimony; establishes "open durational" alimony)

BILL NO: A845/971/1649 (Substituted for S488/1808)

SPONSOR(S) Mainor and others

DATE INTRODUCED: January 16, 2014

COMMITTEE: **ASSEMBLY:** Judiciary

SENATE: Judiciary

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** June 26, 2014

SENATE: June 30, 2014

DATE OF APPROVAL: September 10, 2014

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Assembly Committee Substitute enacted)

A845/971/1649

SPONSOR'S STATEMENT A845: (Begins on page 10 of introduced bill): Yes

SPONSOR'S STATEMENT A971: (Begins on page 9 of introduced bill): Yes

SPONSOR'S STATEMENT A1649: (Begins on page 9 of introduced bill): Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

S488/1808

SPONSOR'S STATEMENT S488: (Begins on page 10 of introduced bill) Yes

SPONSOR'S STATEMENT S1808: (Begins on page 9 of introduced bill) Yes

(continued)

COMMITTEE STATEMENT:	ASSEMBLY:	No
	SENATE:	Yes
FLOOR AMENDMENT STATEMENT:		No
LEGISLATIVE FISCAL ESTIMATE:		No
VETO MESSAGE:		No
GOVERNOR'S PRESS RELEASE ON SIGNING:		No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS:	No
HEARINGS:	No
NEWSPAPER ARTICLES:	Yes

"Christie signs bill overhauling alimony," Associated Press State Wire: New Jersey, 9-10-14

"Christie signs bill easing N.J.'s alimony laws," The Star-Ledger, 9-11-14

"N.J. Gets New Rules on Alimony," The Wall Street Journal, 9-11-14

"Christie Approves Law Ending Lifetime Alimony in New Jersey," Bloomberg Press, 9-12-14

"Christie vetoes smoking ban, signs alimony reform," Burlington County Times, 9-12-14

LAW/RWH

P.L.2014, CHAPTER 42, *approved September 10, 2014*
Assembly Committee Substitute for
Assembly, Nos. 845, 971, and 1649

1 AN ACT concerning alimony and amending N.J.S.2A:34-23.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

5

6 1. N.J.S.2A:34-23 is amended to read as follows:

7 2A:34-23. Alimony, maintenance.

8 Pending any matrimonial action or action for dissolution of a
9 civil union brought in this State or elsewhere, or after judgment of
10 divorce or dissolution or maintenance, whether obtained in this
11 State or elsewhere, the court may make such order as to the alimony
12 or maintenance of the parties, and also as to the care, custody,
13 education and maintenance of the children, or any of them, as the
14 circumstances of the parties and the nature of the case shall render
15 fit, reasonable and just, and require reasonable security for the due
16 observance of such orders, including, but not limited to, the creation
17 of trusts or other security devices, to assure payment of reasonably
18 foreseeable medical and educational expenses. Upon neglect or
19 refusal to give such reasonable security, as shall be required, or
20 upon default in complying with any such order, the court may
21 award and issue process for the immediate sequestration of the
22 personal estate, and the rents and profits of the real estate of the
23 party so charged, and appoint a receiver thereof, and cause such
24 personal estate and the rents and profits of such real estate, or so
25 much thereof as shall be necessary, to be applied toward such
26 alimony and maintenance as to the said court shall from time to
27 time seem reasonable and just; or the performance of the said orders
28 may be enforced by other ways according to the practice of the
29 court. Orders so made may be revised and altered by the court from
30 time to time as circumstances may require.

31 The court may order one party to pay a retainer on behalf of the
32 other for expert and legal services when the respective financial
33 circumstances of the parties make the award reasonable and just. In
34 considering an application, the court shall review the financial
35 capacity of each party to conduct the litigation and the criteria for
36 award of counsel fees that are then pertinent as set forth by court
37 rule. Whenever any other application is made to a court which
38 includes an application for pendente lite or final award of counsel
39 fees, the court shall determine the appropriate award for counsel
40 fees, if any, at the same time that a decision is rendered on the other
41 issue then before the court and shall consider the factors set forth in

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 the court rule on counsel fees, the financial circumstances of the
2 parties, and the good or bad faith of either party. The court may not
3 order a retainer or counsel fee of a party convicted of an attempt or
4 conspiracy to murder the other party to be paid by the party who
5 was the intended victim of the attempt or conspiracy.

6 a. In determining the amount to be paid by a parent for support
7 of the child and the period during which the duty of support is
8 owed, the court in those cases not governed by court rule shall
9 consider, but not be limited to, the following factors:

10 (1) Needs of the child;

11 (2) Standard of living and economic circumstances of each
12 parent;

13 (3) All sources of income and assets of each parent;

14 (4) Earning ability of each parent, including educational
15 background, training, employment skills, work experience,
16 custodial responsibility for children including the cost of providing
17 child care and the length of time and cost of each parent to obtain
18 training or experience for appropriate employment;

19 (5) Need and capacity of the child for education, including
20 higher education;

21 (6) Age and health of the child and each parent;

22 (7) Income, assets and earning ability of the child;

23 (8) Responsibility of the parents for the court-ordered support of
24 others;

25 (9) Reasonable debts and liabilities of each child and parent; and

26 (10) Any other factors the court may deem relevant.

27 The obligation to pay support for a child who has not been
28 emancipated by the court shall not terminate solely on the basis of
29 the child's age if the child suffers from a severe mental or physical
30 incapacity that causes the child to be financially dependent on a
31 parent. The obligation to pay support for that child shall continue
32 until the court finds that the child is relieved of the incapacity or is
33 no longer financially dependent on the parent. However, in
34 assessing the financial obligation of the parent, the court shall
35 consider, in addition to the factors enumerated in this section, the
36 child's eligibility for public benefits and services for people with
37 disabilities and may make such orders, including an order involving
38 the creation of a trust, as are necessary to promote the well-being of
39 the child.

40 As used in this section "severe mental or physical incapacity"
41 shall not include a child's abuse of, or addiction to, alcohol or
42 controlled substances.

43 b. In all actions brought for divorce, dissolution of a civil
44 union, divorce from bed and board, legal separation from a partner
45 in a civil union couple or nullity the court may award one or more
46 of the following types of alimony: **[permanent]** open durational
47 alimony; rehabilitative alimony; limited duration alimony or

1 reimbursement alimony to either party. In so doing the court shall
2 consider, but not be limited to, the following factors:

- 3 (1) The actual need and ability of the parties to pay;
- 4 (2) The duration of the marriage or civil union;
- 5 (3) The age, physical and emotional health of the parties;
- 6 (4) The standard of living established in the marriage or civil
7 union and the likelihood that each party can maintain a reasonably
8 comparable standard of living, with neither party having a greater
9 entitlement to that standard of living than the other;
- 10 (5) The earning capacities, educational levels, vocational skills,
11 and employability of the parties;
- 12 (6) The length of absence from the job market of the party
13 seeking maintenance;
- 14 (7) The parental responsibilities for the children;
- 15 (8) The time and expense necessary to acquire sufficient
16 education or training to enable the party seeking maintenance to
17 find appropriate employment, the availability of the training and
18 employment, and the opportunity for future acquisitions of capital
19 assets and income;
- 20 (9) The history of the financial or non-financial contributions to
21 the marriage or civil union by each party including contributions to
22 the care and education of the children and interruption of personal
23 careers or educational opportunities;
- 24 (10) The equitable distribution of property ordered and any
25 payouts on equitable distribution, directly or indirectly, out of
26 current income, to the extent this consideration is reasonable, just
27 and fair;
- 28 (11) The income available to either party through investment of
29 any assets held by that party;
- 30 (12) The tax treatment and consequences to both parties of any
31 alimony award, including the designation of all or a portion of the
32 payment as a non-taxable payment;
- 33 (13) The nature, amount, and length of pendente lite support
34 paid, if any; and

35 **[(13)]** (14) Any other factors which the court may deem
36 relevant.

37 In each case where the court is asked to make an award of
38 alimony, the court shall consider and assess evidence with respect
39 to all relevant statutory factors. If the court determines that certain
40 factors are more or less relevant than others, the court shall make
41 specific written findings of fact and conclusions of law on the
42 reasons why the court reached that conclusion. No factor shall be
43 elevated in importance over any other factor unless the court finds
44 otherwise, in which case the court shall make specific written
45 findings of fact and conclusions of law in that regard.

46 When a share of a retirement benefit is treated as an asset for
47 purposes of equitable distribution, the court shall not consider

1 income generated thereafter by that share for purposes of
2 determining alimony.

3 c. In any case in which there is a request for an award of
4 **【permanent】** alimony, the court shall consider and make specific
5 findings on the evidence about all of the statutory factors set forth
6 in subsection b. of this section **【above factors. If the court**
7 **determines that an award of permanent alimony is not warranted,**
8 **the court shall make specific findings on the evidence setting out**
9 **the reasons therefor. The court shall then consider whether alimony**
10 **is appropriate for any or all of the following: (1) limited duration;**
11 **(2) rehabilitative; (3) reimbursement. In so doing, the court shall**
12 **consider and make specific findings on the evidence about factors**
13 **set forth above. The court shall not award limited duration alimony**
14 **as a substitute for permanent alimony in those cases where**
15 **permanent alimony would otherwise be awarded】.**

16 For any marriage or civil union less than 20 years in duration,
17 the total duration of alimony shall not, except in exceptional
18 circumstances, exceed the length of the marriage or civil union.
19 Determination of the length and amount of alimony shall be made
20 by the court pursuant to consideration of all of the statutory factors
21 set forth in subsection b. of this section. In addition to those
22 factors, the court shall also consider the practical impact of the
23 parties' need for separate residences and the attendant increase in
24 living expenses on the ability of both parties to maintain a standard
25 of living reasonably comparable to the standard of living
26 established in the marriage or civil union, to which both parties are
27 entitled, with neither party having a greater entitlement thereto.

28 Exceptional circumstances which may require an adjustment to
29 the duration of alimony include:

30 (1) The ages of the parties at the time of the marriage or civil
31 union and at the time of the alimony award;

32 (2) The degree and duration of the dependency of one party on
33 the other party during the marriage or civil union;

34 (3) Whether a spouse or partner has a chronic illness or unusual
35 health circumstance;

36 (4) Whether a spouse or partner has given up a career or a career
37 opportunity or otherwise supported the career of the other spouse or
38 partner;

39 (5) Whether a spouse or partner has received a disproportionate
40 share of equitable distribution;

41 (6) The impact of the marriage or civil union on either party's
42 ability to become self-supporting, including but not limited to either
43 party's responsibility as primary caretaker of a child;

44 (7) Tax considerations of either party;

45 (8) Any other factors or circumstances that the court deems
46 equitable, relevant and material.

1 An award of alimony for a limited duration may be modified
2 based either upon changed circumstances, or upon the
3 nonoccurrence of circumstances that the court found would occur at
4 the time of the award. The court may modify the amount of such an
5 award, but shall not modify the length of the term except in unusual
6 circumstances.

7 In determining the length of the term, the court shall consider the
8 length of time it would reasonably take for the recipient to improve
9 his or her earning capacity to a level where limited duration
10 alimony is no longer appropriate.

11 d. Rehabilitative alimony shall be awarded based upon a plan
12 in which the payee shows the scope of rehabilitation, the steps to be
13 taken, and the time frame, including a period of employment during
14 which rehabilitation will occur. An award of rehabilitative alimony
15 may be modified based either upon changed circumstances, or upon
16 the nonoccurrence of circumstances that the court found would
17 occur at the time of the rehabilitative award.

18 This section is not intended to preclude a court from modifying
19 **【permanent】** alimony awards based upon the law.

20 e. Reimbursement alimony may be awarded under
21 circumstances in which one party supported the other through an
22 advanced education, anticipating participation in the fruits of the
23 earning capacity generated by that education. An award of
24 reimbursement alimony shall not be modified for any reason.

25 f. Except as provided in subsection i., nothing in this section
26 shall be construed to limit the court's authority to award
27 **【permanent】** open durational alimony, limited duration alimony,
28 rehabilitative alimony or reimbursement alimony, separately or in
29 any combination, as warranted by the circumstances of the parties
30 and the nature of the case.

31 g. In all actions for divorce or dissolution other than those
32 where judgment is granted solely on the ground of separation the
33 court may consider also the proofs made in establishing such
34 ground in determining an amount of alimony or maintenance that is
35 fit, reasonable and just. In all actions for divorce, dissolution of
36 civil union, divorce from bed and board, or legal separation from a
37 partner in a civil union couple where judgment is granted on the
38 ground of institutionalization for mental illness the court may
39 consider the possible burden upon the taxpayers of the State as well
40 as the ability of the party to pay in determining an amount of
41 maintenance to be awarded.

42 h. Except as provided in this subsection, in all actions where a
43 judgment of divorce, dissolution of civil union, divorce from bed
44 and board or legal separation from a partner in a civil union couple
45 is entered the court may make such award or awards to the parties,
46 in addition to alimony and maintenance, to effectuate an equitable
47 distribution of the property, both real and personal, which was

1 legally and beneficially acquired by them or either of them during
2 the marriage or civil union. However, all such property, real,
3 personal or otherwise, legally or beneficially acquired during the
4 marriage or civil union by either party by way of gift, devise, or
5 intestate succession shall not be subject to equitable distribution,
6 except that interspousal gifts or gifts between partners in a civil
7 union couple shall be subject to equitable distribution. The court
8 may not make an award concerning the equitable distribution of
9 property on behalf of a party convicted of an attempt or conspiracy
10 to murder the other party.

11 i. No person convicted of Murder, N.J.S.2C:11-3;
12 Manslaughter, N.J.S.2C:11-4; Criminal Homicide, N.J.S.2C:11-2;
13 Aggravated Assault, under subsection b. of N.J.S.2C:12-1; or a
14 substantially similar offense under the laws of another jurisdiction,
15 may receive alimony if: (1) the crime results in death or serious
16 bodily injury, as defined in subsection b. of N.J.S.2C:11-1, to a
17 family member of a divorcing party; and (2) the crime was
18 committed after the marriage or civil union. A person convicted of
19 an attempt or conspiracy to commit murder may not receive
20 alimony from the person who was the intended victim of the
21 attempt or conspiracy. Nothing in this subsection shall be
22 construed to limit the authority of the court to deny alimony for
23 other bad acts.

24 As used in this subsection:

25 "Family member" means a spouse, child, parent, sibling, aunt,
26 uncle, niece, nephew, first cousin, grandparent, grandchild, father-
27 in-law, mother-in-law, son-in-law, daughter-in-law, stepparent,
28 stepchild, stepbrother, stepsister, half brother, or half sister, whether
29 the individual is related by blood, marriage or civil union, or
30 adoption.

31 j. Alimony may be modified or terminated upon the
32 prospective or actual retirement of the obligor.

33 (1) There shall be a rebuttable presumption that alimony shall
34 terminate upon the obligor spouse or partner attaining full
35 retirement age, except that any arrearages that have accrued prior to
36 the termination date shall not be vacated or annulled. The court may
37 set a different alimony termination date for good cause shown based
38 on specific written findings of fact and conclusions of law.

39 The rebuttable presumption may be overcome if, upon
40 consideration of the following factors and for good cause shown,
41 the court determines that alimony should continue:

42 (a) The ages of the parties at the time of the application for
43 retirement;

44 (b) The ages of the parties at the time of the marriage or civil
45 union and their ages at the time of entry of the alimony award;

46 (c) The degree and duration of the economic dependency of the
47 recipient upon the payor during the marriage or civil union;

1 (d) Whether the recipient has foregone or relinquished or
2 otherwise sacrificed claims, rights or property in exchange for a
3 more substantial or longer alimony award;

4 (e) The duration or amount of alimony already paid;

5 (f) The health of the parties at the time of the retirement
6 application;

7 (g) Assets of the parties at the time of the retirement
8 application;

9 (h) Whether the recipient has reached full retirement age as
10 defined in this section;

11 (i) Sources of income, both earned and unearned, of the parties;

12 (j) The ability of the recipient to have saved adequately for
13 retirement; and

14 (k) Any other factors that the court may deem relevant.

15 If the court determines, for good cause shown based on specific
16 written findings of fact and conclusions of law, that the
17 presumption has been overcome, then the court shall apply the
18 alimony factors as set forth in subsection b. of this section to the
19 parties' current circumstances in order to determine whether
20 modification or termination of alimony is appropriate. If the obligor
21 intends to retire but has not yet retired, the court shall establish the
22 conditions under which the modification or termination of alimony
23 will be effective.

24 (2) Where the obligor seeks to retire prior to attaining the full
25 retirement age as defined in this section, the obligor shall have the
26 burden of demonstrating by a preponderance of the evidence that
27 the prospective or actual retirement is reasonable and made in good
28 faith. Both the obligor's application to the court for modification or
29 termination of alimony and the obligee's response to the application
30 shall be accompanied by current Case Information Statements or
31 other relevant documents as required by the Rules of Court, as well
32 as the Case Information Statements or other documents from the
33 date of entry of the original alimony award and from the date of any
34 subsequent modification.

35 In order to determine whether the obligor has met the burden of
36 demonstrating that the obligor's prospective or actual retirement is
37 reasonable and made in good faith, the court shall consider the
38 following factors:

39 (a) The age and health of the parties at the time of the
40 application;

41 (b) The obligor's field of employment and the generally
42 accepted age of retirement for those in that field;

43 (c) The age when the obligor becomes eligible for retirement at
44 the obligor's place of employment, including mandatory retirement
45 dates or the dates upon which continued employment would no
46 longer increase retirement benefits;

1 (d) The obligor's motives in retiring, including any pressures to
2 retire applied by the obligor's employer or incentive plans offered
3 by the obligor's employer;

4 (e) The reasonable expectations of the parties regarding
5 retirement during the marriage or civil union and at the time of the
6 divorce or dissolution;

7 (f) The ability of the obligor to maintain support payments
8 following retirement, including whether the obligor will continue to
9 be employed part-time or work reduced hours;

10 (g) The obligee's level of financial independence and the
11 financial impact of the obligor's retirement upon the obligee; and

12 (h) Any other relevant factors affecting the obligor's decision to
13 retire and the parties' respective financial positions.

14 If the obligor intends to retire but has not yet retired, the court
15 shall establish the conditions under which the modification or
16 termination of alimony will be effective.

17 (3) When a retirement application is filed in cases in which
18 there is an existing final alimony order or enforceable written
19 agreement established prior to the effective date of this act, the
20 obligor's reaching full retirement age as defined in this section shall
21 be deemed a good faith retirement age. Upon application by the
22 obligor to modify or terminate alimony, both the obligor's
23 application to the court for modification or termination of alimony
24 and the obligee's response to the application shall be accompanied
25 by current Case Information Statements or other relevant documents
26 as required by the Rules of Court, as well as the Case Information
27 Statements or other documents from the date of entry of the original
28 alimony award and from the date of any subsequent modification.
29 In making its determination, the court shall consider the ability of
30 the obligee to have saved adequately for retirement as well as the
31 following factors in order to determine whether the obligor, by a
32 preponderance of the evidence, has demonstrated that modification
33 or termination of alimony is appropriate:

34 (a) The age and health of the parties at the time of the
35 application;

36 (b) The obligor's field of employment and the generally
37 accepted age of retirement for those in that field;

38 (c) The age when the obligor becomes eligible for retirement at
39 the obligor's place of employment, including mandatory retirement
40 dates or the dates upon which continued employment would no
41 longer increase retirement benefits;

42 (d) The obligor's motives in retiring, including any pressures to
43 retire applied by the obligor's employer or incentive plans offered
44 by the obligor's employer;

45 (e) The reasonable expectations of the parties regarding
46 retirement during the marriage or civil union and at the time of the
47 divorce or dissolution;

1 (f) The ability of the obligor to maintain support payments
2 following retirement, including whether the obligor will continue to
3 be employed part-time or work reduced hours;

4 (g) The obligee's level of financial independence and the
5 financial impact of the obligor's retirement upon the obligee; and

6 (h) Any other relevant factors affecting the parties' respective
7 financial positions.

8 (4) The assets distributed between the parties at the time of the
9 entry of a final order of divorce or dissolution of a civil union shall
10 not be considered by the court for purposes of determining the
11 obligor's ability to pay alimony following retirement.

12 k. When a non-self-employed party seeks modification of
13 alimony, the court shall consider the following factors:

14 (1) The reasons for any loss of income;

15 (2) Under circumstances where there has been a loss of
16 employment, the obligor's documented efforts to obtain
17 replacement employment or to pursue an alternative occupation;

18 (3) Under circumstances where there has been a loss of
19 employment, whether the obligor is making a good faith effort to
20 find remunerative employment at any level and in any field;

21 (4) The income of the obligee; the obligee's circumstances; and
22 the obligee's reasonable efforts to obtain employment in view of
23 those circumstances and existing opportunities;

24 (5) The impact of the parties' health on their ability to obtain
25 employment;

26 (6) Any severance compensation or award made in connection
27 with any loss of employment;

28 (7) Any changes in the respective financial circumstances of the
29 parties that have occurred since the date of the order from which
30 modification is sought;

31 (8) The reasons for any change in either party's financial
32 circumstances since the date of the order from which modification
33 is sought, including, but not limited to, assessment of the extent to
34 which either party's financial circumstances at the time of the
35 application are attributable to enhanced earnings or financial
36 benefits received from any source since the date of the order;

37 (9) Whether a temporary remedy should be fashioned to provide
38 adjustment of the support award from which modification is sought,
39 and the terms of any such adjustment, pending continuing
40 employment investigations by the unemployed spouse or partner;
41 and

42 (10) Any other factor the court deems relevant to fairly and
43 equitably decide the application.

44 Under circumstances where the changed circumstances arise
45 from the loss of employment, the length of time a party has been
46 involuntarily unemployed or has had an involuntary reduction in
47 income shall not be the only factor considered by the court when an

1 application is filed by a non-self-employed party to reduce alimony
2 because of involuntary loss of employment. The court shall
3 determine the application based upon all of the enumerated factors,
4 however, no application shall be filed until a party has been
5 unemployed, or has not been able to return to or attain employment
6 at prior income levels, or both, for a period of 90 days. The court
7 shall have discretion to make any relief granted retroactive to the
8 date of the loss of employment or reduction of income.

9 l. When a self-employed party seeks modification of alimony
10 because of an involuntary reduction in income since the date of the
11 order from which modification is sought, then that party's
12 application for relief must include an analysis that sets forth the
13 economic and non-economic benefits the party receives from the
14 business, and which compares these economic and non-economic
15 benefits to those that were in existence at the time of the entry of
16 the order.

17 m. When assessing a temporary remedy, the court may
18 temporarily suspend support, or reduce support on terms; direct that
19 support be paid in some amount from assets pending further
20 proceedings; direct a periodic review; or enter any other order the
21 court finds appropriate to assure fairness and equity to both parties.

22 n. Alimony may be suspended or terminated if the payee
23 cohabits with another person. Cohabitation involves a mutually
24 supportive, intimate personal relationship in which a couple has
25 undertaken duties and privileges that are commonly associated with
26 marriage or civil union but does not necessarily maintain a single
27 common household.

28 When assessing whether cohabitation is occurring, the court shall
29 consider the following:

30 (1) Intertwined finances such as joint bank accounts and other
31 joint holdings or liabilities;

32 (2) Sharing or joint responsibility for living expenses;

33 (3) Recognition of the relationship in the couple's social and
34 family circle;

35 (4) Living together, the frequency of contact, the duration of the
36 relationship, and other indicia of a mutually supportive intimate
37 personal relationship;

38 (5) Sharing household chores;

39 (6) Whether the recipient of alimony has received an
40 enforceable promise of support from another person within the
41 meaning of subsection h. of R.S.25:1-5; and

42 (7) All other relevant evidence.

43 In evaluating whether cohabitation is occurring and whether
44 alimony should be suspended or terminated, the court shall also
45 consider the length of the relationship. A court may not find an
46 absence of cohabitation solely on grounds that the couple does not
47 live together on a full-time basis.

1 As used in this section:

2 “Full retirement age” shall mean the age at which a person is
3 eligible to receive full retirement for full retirement benefits under
4 section 216 of the federal Social Security Act (42 U.S.C. s.416).

5 (cf: P.L.2009, c.43, s.1)

6

7 2. This act shall take effect immediately and shall not be
8 construed either to modify the duration of alimony ordered or
9 agreed upon or other specifically bargained for contractual
10 provisions that have been incorporated into:

- 11 a. a final judgment of divorce or dissolution;
12 b. a final order that has concluded post-judgment litigation; or
13 c. any enforceable written agreement between the parties.

14

15

16

17

18 Establishes durational limits and enumerates certain factors
19 concerning modification and termination of alimony; establishes
20 “open durational” alimony.

ASSEMBLY, No. 845

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Assemblyman CHARLES MAINOR

District 31 (Hudson)

Assemblyman SEAN T. KEAN

District 30 (Monmouth and Ocean)

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Assemblywoman ANGELICA M. JIMENEZ

District 32 (Bergen and Hudson)

Assemblyman CRAIG J. COUGHLIN

District 19 (Middlesex)

Co-Sponsored by:

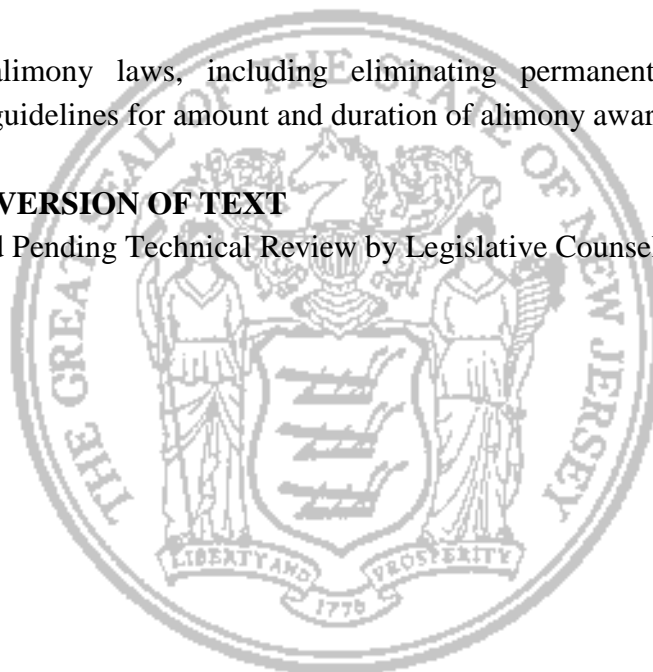
**Assemblywoman Tucker, Assemblymen Wolfe, Prieto, Gusciora, Wilson,
Eustace, O'Scanlon, Space and Assemblywoman McHose**

SYNOPSIS

Revises alimony laws, including eliminating permanent alimony and establishing guidelines for amount and duration of alimony awards.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 2/21/2014)

1 AN ACT concerning alimony, amending N.J.S.2A:34-23 and
2 N.J.S.2A:34-25, and supplementing Title 2A of the New Jersey
3 Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. N.J.A.2A:34-23 is amended to read as follows:
9 2A:34-23. Alimony, maintenance.

10 Pending any matrimonial action or action for dissolution of a
11 civil union brought in this State or elsewhere, or after judgment of
12 divorce or dissolution or maintenance, whether obtained in this
13 State or elsewhere, the court may make such order as to the alimony
14 or maintenance of the parties, and also as to the care, custody,
15 education and maintenance of the children, or any of them, as the
16 circumstances of the parties and the nature of the case shall render
17 fit, reasonable and just, and require reasonable security for the due
18 observance of such orders, including, but not limited to, the creation
19 of trusts or other security devices, to assure payment of reasonably
20 foreseeable medical and educational expenses. Upon neglect or
21 refusal to give such reasonable security, as shall be required, or
22 upon default in complying with any such order, the court may
23 award and issue process for the immediate sequestration of the
24 personal estate, and the rents and profits of the real estate of the
25 party so charged, and appoint a receiver thereof, and cause such
26 personal estate and the rents and profits of such real estate, or so
27 much thereof as shall be necessary, to be applied toward such
28 alimony and maintenance as to the said court shall from time to
29 time seem reasonable and just; or the performance of the said orders
30 may be enforced by other ways according to the practice of the
31 court. Orders so made may be revised and altered by the court from
32 time to time as circumstances may require.

33 The court may order one party to pay a retainer on behalf of the
34 other for expert and legal services when the respective financial
35 circumstances of the parties make the award reasonable and just. In
36 considering an application, the court shall review the financial
37 capacity of each party to conduct the litigation and the criteria for
38 award of counsel fees that are then pertinent as set forth by court
39 rule. Whenever any other application is made to a court which
40 includes an application for pendente lite or final award of counsel
41 fees, the court shall determine the appropriate award for counsel
42 fees, if any, at the same time that a decision is rendered on the other
43 issue then before the court and shall consider the factors set forth in
44 the court rule on counsel fees, the financial circumstances of the
45 parties, and the good or bad faith of either party. The court may not

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 order a retainer or counsel fee of a party convicted of an attempt or
2 conspiracy to murder the other party to be paid by the party who
3 was the intended victim of the attempt or conspiracy.

4 a. In determining the amount to be paid by a parent for support
5 of the child and the period during which the duty of support is
6 owed, the court in those cases not governed by court rule shall
7 consider, but not be limited to, the following factors:

8 (1) Needs of the child;

9 (2) Standard of living and economic circumstances of each
10 parent;

11 (3) All sources of income and assets of each parent;

12 (4) Earning ability of each parent, including educational
13 background, training, employment skills, work experience,
14 custodial responsibility for children including the cost of providing
15 child care and the length of time and cost of each parent to obtain
16 training or experience for appropriate employment;

17 (5) Need and capacity of the child for education, including
18 higher education;

19 (6) Age and health of the child and each parent;

20 (7) Income, assets and earning ability of the child;

21 (8) Responsibility of the parents for the court-ordered support of
22 others;

23 (9) Reasonable debts and liabilities of each child and parent; and

24 (10) Any other factors the court may deem relevant.

25 The obligation to pay support for a child who has not been
26 emancipated by the court shall not terminate solely on the basis of
27 the child's age if the child suffers from a severe mental or physical
28 incapacity that causes the child to be financially dependent on a
29 parent. The obligation to pay support for that child shall continue
30 until the court finds that the child is relieved of the incapacity or is
31 no longer financially dependent on the parent. However, in
32 assessing the financial obligation of the parent, the court shall
33 consider, in addition to the factors enumerated in this section, the
34 child's eligibility for public benefits and services for people with
35 disabilities and may make such orders, including an order involving
36 the creation of a trust, as are necessary to promote the well-being of
37 the child.

38 As used in this section "severe mental or physical incapacity"
39 shall not include a child's abuse of, or addiction to, alcohol or
40 controlled substances.

41 b. In all actions brought for divorce, dissolution of a civil
42 union, divorce from bed and board, legal separation from a partner
43 in a civil union couple or nullity the court may award one or more
44 of the following types of alimony: **[permanent alimony;]**
45 **rehabilitative alimony; limited duration alimony or reimbursement**
46 **alimony to either party. In so doing the court shall consider, but not**
47 **be limited to, the following factors:**

- 1 (1) The actual need and ability of the parties to pay;
- 2 (2) The duration of the marriage or civil union;
- 3 (3) The age, physical and emotional health of the parties;
- 4 (4) The standard of living established in the marriage or civil
5 union and the likelihood that each party can maintain a reasonably
6 comparable standard of living;
- 7 (5) The earning capacities, educational levels, vocational skills,
8 and employability of the parties;
- 9 (6) The length of absence from the job market of the party
10 seeking maintenance;
- 11 (7) The parental responsibilities for the children;
- 12 (8) The time and expense necessary to acquire sufficient
13 education or training to enable the party seeking maintenance to
14 find appropriate employment, the availability of the training and
15 employment, and the opportunity for future acquisitions of capital
16 assets and income;
- 17 (9) The history of the financial or non-financial contributions to
18 the marriage or civil union by each party including contributions to
19 the care and education of the children and interruption of personal
20 careers or educational opportunities;
- 21 (10) The equitable distribution of property ordered and any
22 payouts on equitable distribution, directly or indirectly, out of
23 current income, to the extent this consideration is reasonable, just
24 and fair;
- 25 (11) The income available to either party through investment of
26 any assets held by that party;
- 27 (12) The tax treatment and consequences to both parties of any
28 alimony award, including the designation of all or a portion of the
29 payment as a non-taxable payment; and
- 30 (13) Any other factors which the court may deem relevant.

31 The court may attribute income to a party upon finding that the
32 party is voluntarily unemployed or underemployed based on that
33 party's age, physical and emotional health, earning capacity,
34 educational level, vocational skills, and employability.

35 When a share of a retirement benefit is treated as an asset for
36 purposes of equitable distribution, the court shall not consider
37 income generated thereafter by that share for purposes of
38 determining alimony.

39 c. **【**In any case in which there is a request for an award of
40 permanent alimony, the court shall consider and make specific
41 findings on the evidence about the above factors. If the court
42 determines that an award of permanent alimony is not warranted,
43 the court shall make specific findings on the evidence setting out
44 the reasons therefor.**】** The court shall **【**then**】** consider whether
45 alimony is appropriate for any or all of the following: (1) limited
46 duration; (2) rehabilitative; (3) reimbursement. In so doing, the
47 court shall consider and make specific findings on the evidence

1 about factors set forth above. **【The court shall not award limited**
2 **duration alimony as a substitute for permanent alimony in those**
3 **cases where permanent alimony would otherwise be awarded.】**

4 The court shall determine the length of the term of limited
5 duration alimony as provided in subsection j. The amount of
6 limited duration alimony should generally not exceed the recipient's
7 need or 30 to 35 percent of the difference between the parties' gross
8 incomes established at the time of the initial award. The court may
9 deviate from the amount limit upon written findings that deviation
10 is necessary. Grounds for deviation may include: advanced age,
11 chronic illness, or unusual health circumstances of either party; tax
12 considerations for either party; whether the payer is providing or
13 has been ordered to provide health insurance or the cost of health
14 insurance to the payee; sources and amounts of unearned income
15 not allocated in equitable distribution; the payee's inability to
16 become self-supporting because of physical or mental abuse by the
17 payer; either party's inability to provide for that party's own
18 support because of a deficiency of property, maintenance, or
19 employment opportunity; and any other factors the court deems
20 relevant and material.

21 An award of alimony for a limited duration may be modified
22 based either upon changed circumstances, or upon the
23 nonoccurrence of circumstances that the court found would occur at
24 the time of the award. The court may modify the amount of such an
25 award, but shall not modify the length of the term except in unusual
26 circumstances.

27 Additionally, the court may modify, suspend, or terminate an
28 award of limited duration alimony when the payer spouse or partner
29 shows the payee has maintained a cohabitation relationship with
30 another person for a continuous period of at least three months.
31 The award may be reinstated upon termination of the cohabitation
32 relationship; however, if reinstated the duration of the award shall
33 not extend beyond the termination date of the original order.
34 Limited duration alimony may not be modified, suspended, or
35 terminated unless the court finds the cohabitation relationship is
36 characterized by stability, permanency, and mutual
37 interdependence, and if the economic benefit inuring to the payee is
38 sufficiently material to constitute a change of circumstances. In
39 determining whether to modify, suspend, or terminate limited
40 duration alimony, the court shall consider whether the parties have
41 intertwined finances including, but not limited to, a joint bank
42 account; whether they share living expenses and household chores;
43 and any other relevant and material factors.

44 **【In determining the length of the term, the court shall consider**
45 **the length of time it would reasonably take for the recipient to**
46 **improve his or her earning capacity to a level where limited**
47 **duration alimony is no longer appropriate.】**

1 d. Rehabilitative alimony shall be awarded based upon a plan
2 in which the payee shows the scope of rehabilitation, the steps to be
3 taken, and the time frame, including a period of employment during
4 which rehabilitation will occur. An award of rehabilitative alimony
5 may be modified based either upon changed circumstances, or upon
6 the nonoccurrence of circumstances that the court found would
7 occur at the time of the rehabilitative award. Rehabilitative
8 alimony shall not exceed a term of five years, except that the court
9 in its discretion may extend rehabilitative alimony upon a finding
10 that: (1) unforeseen events prevent the payee from being self-
11 supporting at the end of the term; (2) the payee endeavored to
12 become self-supporting; and (3) extending rehabilitative alimony
13 would not constitute an undue burden on the payer.

14 **【This section is not intended to preclude a court from modifying**
15 **permanent alimony awards based upon the law.】**

16 e. Reimbursement alimony may be awarded under
17 circumstances in which one party supported the other through an
18 advanced education, anticipating participation in the fruits of the
19 earning capacity generated by that education. Reimbursement
20 alimony may not be modified.

21 f. Except as provided in subsection i., nothing in this section
22 shall be construed to limit the court's authority to award **【permanent**
23 **alimony,】** limited duration alimony, rehabilitative alimony or
24 reimbursement alimony, separately or in any combination, as
25 warranted by the circumstances of the parties and the nature of the
26 case.

27 g. In all actions for divorce or dissolution other than those
28 where judgment is granted solely on the ground of separation the
29 court may consider also the proofs made in establishing such
30 ground in determining an amount of alimony or maintenance that is
31 fit, reasonable and just. In all actions for divorce, dissolution of
32 civil union, divorce from bed and board, or legal separation from a
33 partner in a civil union couple where judgment is granted on the
34 ground of institutionalization for mental illness the court may
35 consider the possible burden upon the taxpayers of the State as well
36 as the ability of the party to pay in determining an amount of
37 maintenance to be awarded.

38 h. Except as provided in this subsection, in all actions where a
39 judgment of divorce, dissolution of civil union, divorce from bed
40 and board or legal separation from a partner in a civil union couple
41 is entered the court may make such award or awards to the parties,
42 in addition to alimony and maintenance, to effectuate an equitable
43 distribution of the property, both real and personal, which was
44 legally and beneficially acquired by them or either of them during
45 the marriage or civil union. However, all such property, real,
46 personal or otherwise, legally or beneficially acquired during the
47 marriage or civil union by either party by way of gift, devise, or

1 intestate succession shall not be subject to equitable distribution,
2 except that interspousal gifts or gifts between partners in a civil
3 union couple shall be subject to equitable distribution. The court
4 may not make an award concerning the equitable distribution of
5 property on behalf of a party convicted of an attempt or conspiracy
6 to murder the other party.

7 i. No person convicted of Murder, N.J.S.2C:11-3;
8 Manslaughter, N.J.S.2C:11-4; Criminal Homicide, N.J.S.2C:11-2;
9 Aggravated Assault, under subsection b. of N.J.S.2C:12-1; or a
10 substantially similar offense under the laws of another jurisdiction,
11 may receive alimony if: (1) the crime results in death or serious
12 bodily injury, as defined in subsection b. of N.J.S.2C:11-1, to a
13 family member of a divorcing party; and (2) the crime was
14 committed after the marriage or civil union. A person convicted of
15 an attempt or conspiracy to commit murder may not receive
16 alimony from the person who was the intended victim of the
17 attempt or conspiracy. Nothing in this subsection shall be
18 construed to limit the authority of the court to deny alimony for
19 other bad acts.

20 As used in this subsection:

21 "Family member" means a spouse, child, parent, sibling, aunt,
22 uncle, niece, nephew, first cousin, grandparent, grandchild, father-
23 in-law, mother-in-law, son-in-law, daughter-in-law, stepparent,
24 stepchild, stepbrother, stepsister, half brother, or half sister, whether
25 the individual is related by blood, marriage, or adoption.

26 j. The term of limited duration alimony shall be established as
27 follows:

28 (1) If the duration of the marriage or civil union is five years or
29 less, the term of alimony shall not be greater than one-half the
30 number of months of the marriage or civil union;

31 (2) If the duration of the marriage or civil union is 10 years or
32 less but greater than five years, the term of alimony shall not be
33 greater than 60 percent of the number of months of the marriage or
34 civil union;

35 (3) If the duration of the marriage or civil union is 15 years or
36 less but greater than 10 years, the term of alimony shall not be
37 greater than 70 percent of the number of months of the marriage or
38 civil union;

39 (4) If the duration of the marriage or civil union is 20 years or
40 less but greater than 15 years, the term of alimony shall not be
41 greater than 80 percent of the number of months of the marriage or
42 civil union;

43 (5) If the duration of the marriage or civil union is greater than
44 20 years, the court shall have discretion to award alimony for an
45 indefinite length of time.

46 The court may deviate from the durational limits set forth in this
47 subsection in the interests of justice. In deviating from these limits,

1 the court shall make specific findings on the evidence setting out
2 the reasons therefor.

3 (cf: P.L.2009, c.43, s.1)

4
5 2. N.J.S.2A:34-25 is amended to read as follows:

6 2A:34-25. a. If after the judgment of divorce or dissolution a
7 former spouse shall remarry or a former partner shall enter into a
8 new civil union, **[permanent and]** limited duration alimony shall
9 terminate as of the date of remarriage or new civil union except that
10 any arrearages that have accrued prior to the date of remarriage or
11 new civil union shall not be vacated or annulled. A former spouse
12 or former partner in a civil union couple who remarries or enters
13 into a new civil union shall promptly so inform the spouse or
14 partner paying **[permanent or]** limited duration alimony as well as
15 the collecting agency, if any. The court may order such alimony
16 recipient who fails to comply with the notification provision of this
17 act to pay any reasonable attorney fees and court costs incurred by
18 the recipient's former spouse or partner as a result of such non-
19 compliance.

20 The remarriage or establishment of a new civil union of a former
21 spouse or partner receiving rehabilitative or reimbursement alimony
22 shall not be cause for termination of such alimony by the court
23 unless the court finds that the circumstances upon which the award
24 was based have not occurred or unless the payer spouse or partner
25 demonstrates an agreement or good cause to the contrary.

26 b. Alimony shall terminate upon the death of the payer spouse
27 or partner, except that any arrearages that have accrued prior to the
28 date of the payer spouse's or partner's death shall not be vacated or
29 annulled.

30 c. Alimony shall terminate upon the payer spouse or partner
31 attaining full retirement age when the payer is eligible for the old-
32 age retirement benefit under the federal Social Security act, except
33 that any arrearages that have accrued prior to the termination date
34 shall not be vacated or annulled. The payer's ability to work or
35 decision to continue working beyond such date shall not constitute
36 grounds to extend alimony, except that:

37 (1) When making an initial alimony award the court may set a
38 different alimony termination date for good cause shown. In
39 establishing a different termination date, the court shall make
40 specific findings on the evidence setting out the reasons therefor.

41 (2) The court may extend an existing alimony award for good
42 cause shown based on specific findings of a material change in
43 circumstances supported by clear and convincing evidence.

44 d. Nothing in this act shall be construed to prohibit a court
45 from ordering either spouse or partner to maintain life insurance for
46 the protection of the former spouse, partner, or the children of the

1 marriage or civil union in the event of the payer spouse's or
2 partner's death.

3 (cf: P.L.2006, c.103, s.82)

4

5 3. (New section) a. Every action to modify an existing
6 alimony award pursuant to this section shall be commenced within
7 two years of the effective date of P.L. , c. (C.) (pending
8 before the Legislature as this bill). Nothing in this section shall be
9 deemed to affect the right to modification of any alimony award
10 based on a change of circumstances.

11 b. Upon motion by either party to the award, a permanent
12 alimony award existing on the effective date of P.L. ,
13 c. (C.) (pending before the Legislature as this bill) shall be
14 converted to limited duration alimony and may be modified to
15 conform to the provisions of P.L. , c. (C.) (pending
16 before the Legislature as this bill), including but not limited to the
17 durational limits set forth in subsection j. of N.J.S.2A:34-23, unless
18 the court finds deviation from such provisions is warranted. The
19 moving party need not prove a change of circumstances for the
20 purposes of such modification.

21 c. Upon motion by either party to the award a limited duration
22 alimony award existing on the effective date of P.L. ,
23 c. (C.) (pending before the Legislature as this bill) that
24 exceeds the durational limits set forth in subsection j. of
25 N.J.S.2A:34-23 may be modified to conform to the provisions of
26 that subsection unless the court finds that deviation from such
27 durational limits is warranted. The moving party need not prove a
28 change of circumstances for the purposes of such modification.

29 d. Upon motion by either party to the award a rehabilitative
30 alimony award existing on the effective date of P.L. ,
31 c. (C.) (pending before the Legislature as this bill) may be
32 modified to conform to the provisions of subsection d. of
33 N.J.S.2A:34-23.

34 e. The enactment of P.L. , c. (C.) (pending before
35 the Legislature as this bill) shall not constitute a material change of
36 circumstances for the purposes of modifying the amount of an
37 existing alimony award.

38 f. Nothing in P.L. , c. (C.) (pending before the
39 Legislature as this bill) shall provide a right to seek or receive
40 modification of an alimony award in which the parties have agreed
41 that alimony is not modifiable.

42

43 4. This act shall take effect October 1, 2013, and sections 1 and
44 2 of this act shall apply to judgments for alimony entered on or after
45 the effective date.

STATEMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

This bill would revise the laws concerning alimony by eliminating permanent alimony and establishing guidelines concerning the amount and duration of other types of alimony.

Under current law, a court may award four types of alimony: permanent, limited duration, rehabilitative, and reimbursement. The four types of alimony are designed to address different types of considerations that arise during the dissolution of a marriage or civil union. For example, rehabilitative alimony is intended to permit a former spouse or civil union partner to obtain the training and education necessary to return to the workforce and enhance and improve their earning capacity. Reimbursement alimony is awarded to reimburse one spouse or civil union partner for financial contributions made to the other spouse or civil union partner's education or professional training. Permanent alimony is awarded following a lengthy marriage or civil union marked by prolonged economic dependence and sustained contribution to the marriage or civil union. Limited duration alimony is awarded for a set period of time and may not be awarded as a substitute for permanent alimony. There are no guidelines in the current law concerning the duration or amount of an alimony award.

This bill would eliminate permanent alimony awards and establish guidelines for the term of limited duration alimony based on the length of the marriage:

- (1) If the duration of the marriage or civil union is five years or less, the term of alimony would be a maximum of one-half the number of months of the marriage or civil union;
- (2) If the duration of the marriage or civil union is 10 years or less but greater than five years, the term of alimony would be a maximum of 60 percent of the number of months of the marriage or civil union;
- (3) If the duration of the marriage or civil union is 15 years or less but greater than 10 years, the term of alimony would be a maximum of 70 percent of the number of months of the marriage or civil union;
- (4) If the duration of the marriage or civil union is 20 years or less but greater than 15 years, the term of alimony would be a maximum of 80 percent of the number of months of the marriage or civil union;
- (5) If the duration of the marriage or civil union is greater than 20 years, the court would have discretion to award alimony for an indefinite length of time.

The court would be permitted to deviate from these durational limits in the interests of justice and would be required to make specific findings on the evidence setting out the reasons for deviation.

1 The bill would also provide that the amount of a limited duration
2 alimony award should generally not exceed the recipient's need or
3 30 to 35 percent of the difference between the parties' gross
4 incomes. A court would be permitted to deviate from this guideline
5 upon a written finding that deviation is necessary. Additionally, the
6 court would be permitted to attribute income to either party when it
7 finds that party is voluntarily underemployed or unemployed.

8 Under current law, limited duration alimony may be modified
9 based on changed circumstances or upon the nonoccurrence of
10 circumstances that the court found would occur at the time of the
11 award. The court may modify the amount of the award but not the
12 length of the term except in unusual circumstances.

13 The bill would additionally permit suspension, modification, or
14 termination of a limited duration alimony award in the event the
15 recipient establishes a cohabitation relationship with another person
16 for a continuous period of at least three months. The original
17 alimony award could be reinstated upon termination of the
18 cohabitation relationship but would not extend beyond the
19 termination date of the original order. The bill would provide that
20 limited duration alimony may be modified, suspended, or
21 terminated only if the court finds the cohabitation relationship is
22 characterized by stability, permanency, and mutual
23 interdependence, and if the economic benefit inuring to the payee is
24 sufficiently material to constitute a change of circumstances. In
25 determining whether to modify, suspend, or terminate limited
26 duration alimony, the court would consider whether the parties have
27 intertwined finances including, but not limited to, a joint bank
28 account; whether they share living expenses and household chores;
29 and any other relevant and material factors.

30 Under current law, alimony terminates upon the death of either
31 party and both permanent and limited duration alimony terminate
32 upon the recipient remarrying or establishing a new civil union; any
33 arrearages that have accrued as of the date of death, remarriage, or
34 establishing a new civil union may not be vacated or annulled.

35 The bill would provide that alimony would also terminate upon
36 the payer spouse or partner attaining full retirement age when the
37 payer is eligible for the old-age retirement benefit under the federal
38 Social Security act; however, any arrearages that accrued prior to
39 the termination date would not be vacated or annulled. The payer's
40 ability to work beyond such date would not constitute grounds to
41 extend alimony, but the court would have discretion to extend an
42 alimony award beyond the termination date for good cause shown
43 either when making the initial alimony award or upon a finding of a
44 material change in circumstances supported by clear and convincing
45 evidence.

46 Additionally, the bill would provide that rehabilitative alimony
47 would not exceed a term of five years. The court would have

1 discretion to extend the term of rehabilitative alimony upon finding
2 that: (1) unforeseen events prevent the payee from being self-
3 supporting at the end of the term; (2) the payee endeavored to
4 become self-supporting; and (3) extending rehabilitative alimony
5 would not constitute an undue burden on the payer.

6 The bill would also provide that reimbursement alimony could
7 not be modified.

8 Finally, the bill would permit modification of alimony awards
9 existing on the effective date to conform to the provisions of the
10 bill. Limited duration and rehabilitative alimony awards could be
11 modified to conform to the durational guidelines provided in the
12 bill, and permanent alimony awards could be converted to limited
13 duration alimony awards and modified to conform to the durational
14 guidelines for limited duration alimony. A motion for modification
15 could be brought by either party to the award and the moving party
16 would not need to show a change of circumstances to receive a
17 modification. The bill additionally provides that its enactment
18 would not constitute a change of circumstances for the purposes of
19 modifying the amount of an existing alimony award and it would
20 not permit modification of an award that the parties previously
21 agreed could not be modified. The bill would require that all
22 petitions for modifications in connection with its enactment be
23 brought within two years of the effective date. However, nothing in
24 the bill would be deemed to affect the right to modification of any
25 alimony award based on a change of circumstances.

26 The bill would take effect on October 1, 2013 and sections 1 and
27 2 of the bill would apply to judgments for alimony entered on or
28 after that date.

29 This bill is modeled on the Massachusetts “Alimony Reform
30 Law of 2011.”

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 845, 971, and 1649**

STATE OF NEW JERSEY

DATED: JUNE 26, 2014

The Assembly Judiciary Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 845, 971 and 1649.

This committee substitute amends N.J.S.2A:34-23 to modify the types of alimony that may be awarded, establish durational limits for alimony awards, and to enumerate certain factors concerning modification and termination of alimony.

The committee substitute provides specific grounds for modification and termination when the obligor retires, loses a job or otherwise has a reduction in income, or when the obligee cohabits with another person. The substitute also eliminates the phrase “permanent alimony” from the statutes and establishes the term “open durational alimony.”

The committee substitute modifies the factors to be considered by the court in determining an alimony award by clarifying that when considering the standard of living established in the marriage or civil union and the likelihood that each party can maintain a reasonably comparable standard of living, neither party shall have a greater entitlement to that standard of living than the other. In addition to the factors set forth in the current statute, the court shall consider the nature, amount, and length of pendente lite support paid, if any.

TYPES OF ALIMONY AND DURATIONAL LIMITS

Under current law, the court may award the following types of alimony: permanent, limited duration, rehabilitative, and reimbursement. Permanent alimony is awarded when the parties have had a lengthy marriage or civil union marked by economic dependence and contribution to the marriage or civil union. Limited duration alimony is awarded for a set period of time when it is determined that an award of permanent alimony is not warranted. Rehabilitative alimony is awarded to permit a spouse or partner to obtain the training and education necessary to return to the workforce and enhance their earning capacity. Reimbursement alimony is awarded to one spouse or partner for financial contributions made to the other spouse or partner’s education or professional training.

The committee substitute amends the statute to eliminate the requirement that the court must first determine that an award of

permanent alimony is not warranted prior to awarding limited duration and other types of alimony.

The durational limits established by the committee substitute provide that for any marriage or civil union less than 20 years in duration, the total duration of alimony shall not, except in exceptional circumstances, exceed the length of the marriage or civil union. The committee substitute clarifies that a determination of the length and amount of alimony is to be made by the court pursuant to consideration of all of the statutory factors set forth in subsection b. of section 1 of the committee substitute, amending N.J.S.2A:34-23. In addition, the court must consider the practical impact of the parties' need for separate residences and the attendant increase in living expenses on the ability of both parties to maintain a standard of living reasonably comparable to the standard of living established in the marriage or civil union, with neither party having a greater entitlement to that standard of living. It is the committee's understanding that the length of the marriage is determined based on the date of the marriage or civil union and the date of the filing of the complaint for divorce or dissolution of a civil union.

Exceptional circumstances which may warrant deviation from the durational limits include:

- (1) The ages of the parties at the time of the marriage or civil union and at the time of the alimony award;
- (2) The degree and duration of the dependency of one party on the other party during the marriage or civil union;
- (3) Whether a spouse or partner has a chronic illness or unusual health circumstance;
- (4) Whether a spouse or partner has given up a career or a career opportunity or otherwise supported the career of the other spouse or partner;
- (5) Whether a spouse or partner has received a disproportionate share of the marital estate;
- (6) The impact of the marriage or civil union on either party's ability to become self-supporting, including but not limited to either party's responsibility as primary caretaker of a child;
- (7) Tax considerations of either party;
- (8) Any other factors or circumstances that the court deems equitable, relevant and material.

RETIREMENT

The committee substitute specifies that alimony may be modified or terminated upon the prospective or actual retirement of the obligor. Under the substitute, there shall be a rebuttable presumption that alimony shall terminate upon the obligor reaching full retirement age, except that any arrearages that have accrued prior to the termination date shall not be vacated or annulled. "Full retirement age" is defined as the age at which a person is eligible to receive full retirement for full retirement benefits under section 216 of the federal Social Security

Act (42 U.S.C. s.416). The court may set a different alimony termination date for good cause based on specific findings of fact and conclusions of law. The rebuttable presumption may be overcome if the court determines that alimony should continue after consideration of the following factors:

- (a) The ages of the parties at the time of the application for retirement;
- (b) The ages of the parties at the time of the marriage or civil union and their ages at the time of the alimony award;
- (c) The degree and duration of the economic dependency of the recipient upon the payor during the marriage or civil union;
- (d) Whether the recipient has foregone or relinquished or otherwise sacrificed claims, rights or property in exchange for a more substantial or longer alimony award;
- (e) The duration or amount of alimony already paid;
- (f) The health of the parties at the time of the retirement application;
- (g) Assets of the parties at the time of the retirement application;
- (h) Whether the recipient has reached full retirement age as defined in this section;
- (i) Sources of income, both earned and unearned, of the parties;
- (j) The ability of the recipient to have saved adequately for retirement; and
- (k) Any other factors that the court may deem relevant.

If the court determines that the presumption has been overcome, then the court would apply the alimony factors set forth in subsection b. of section 1 of the committee substitute in order to determine whether modification or termination of alimony is appropriate. If the obligor intends to retire but has not yet retired, the court would establish the conditions under which the modification or termination of alimony will be effective.

If an obligor seeks to retire prior to reaching full retirement age, the obligor would have the burden of demonstrating, by a preponderance of the evidence, that the prospective or actual retirement is reasonable and made in good faith. Both the obligor's application to the court and the obligee's response to the application shall be accompanied by current Case Information Statements or other relevant documents as required by the Rules of Court, as well as the Case Information Statements or other documents from the date of entry of the original alimony award and from the date of any subsequent modification.

In determining whether the obligor demonstrated that the prospective or actual retirement is reasonable and made in good faith, the court shall consider the following factors:

- (a) The age and health of the parties at the time of the application;
- (b) The obligor's field of employment and the generally accepted age of retirement for those in that field;

(c) The age when the obligor becomes eligible for retirement at the obligor's place of employment, including mandatory retirement dates or the dates upon which continued employment would no longer increase retirement benefits;

(d) The obligor's motives in retiring, including any pressures to retire applied by the obligor's employer or incentive plans offered by the obligor's employer;

(e) The reasonable expectations of the parties regarding retirement during the marriage or civil union and at the time of the divorce or dissolution;

(f) The ability of the obligor to maintain support payments following retirement, including whether the obligor will continue to be employed part-time or work reduced hours;

(g) The obligee's level of financial independence and the financial impact of the retirement by the obligor upon the obligee; and

(h) Any other relevant factors affecting the obligor's decision to retire and the parties' respective financial positions.

If the obligor intends to retire but has not yet retired, the court shall establish the conditions under which the modification or termination of alimony will be effective.

When an obligor filed an application for modification or termination based on retirement in which the existing final alimony order or enforceable written agreement was established prior to the effective date of the enactment, the obligor's reaching full retirement age as defined in the committee substitute shall be deemed a good faith retirement age. Both the obligor's application to the court and the obligee's response to the application must be accompanied by current Case Information Statements or other relevant documents as required by the Rules of Court, as well as the Case Information Statements or other documents from the date of entry of the original alimony award and from the date of any subsequent modification. In making its determination, the court shall consider the ability of the recipient to have saved adequately for retirement as well as the following factors in order to determine whether the obligor, by a preponderance of the evidence, has demonstrated that modification or termination of alimony is appropriate:

(a) The age and health of the parties at the time of the application;

(b) The obligor's field of employment and the generally accepted age of retirement for those in that field;

(c) The age when the obligor becomes eligible for retirement at the obligor's place of employment, including mandatory retirement dates or the dates upon which continued employment would no longer increase retirement benefits;

(d) The obligor's motives in retiring, including any pressures to retire applied by the obligor's employer or incentive plans offered by the obligor's employer;

(e) The reasonable expectations of the parties regarding retirement during the marriage or civil union and at the time of the divorce or dissolution;

(f) The ability of the obligor to maintain support payments following retirement, including whether the obligor will continue to be employed part-time or work reduced hours;

(g) The obligee's level of financial independence and the financial impact of the retirement by the obligor upon the obligee; and

(h) Any other relevant factors affecting the parties' respective financial positions.

The committee substitute provides that the assets distributed between the parties at the time of the entry of a final order of divorce or dissolution of a civil union shall not be considered by the court for purposes of determining the obligor's ability to pay alimony following retirement.

LOSS OF INCOME

When an obligor who is not self-employed seeks modification of alimony, the court shall consider the following factors:

- (1) The reasons for any loss of income;
- (2) Under circumstances where there has been a loss of employment, the obligor's documented efforts to obtain replacement employment or to pursue an alternative occupation;
- (3) Under circumstances where there has been a loss of employment, whether the obligor is making a good faith effort to find remunerative employment at any level and in any field;
- (4) The income of the obligee; the obligee's circumstances; and the obligee's reasonable efforts to obtain employment in view of those circumstances and existing opportunities;
- (5) The impact of the parties' health on their ability to obtain employment;
- (6) Any severance compensation or award made in connection with any loss of employment;
- (7) Any changes in the respective financial circumstances of the parties that have occurred since the date of the order from which modification is sought;
- (8) The reasons for any change in either party's financial circumstances since the date of the order from which modification is sought, including, but not limited to, assessment of the extent to which either party's financial circumstances at the time of the application are attributable to enhanced earnings or financial benefits received from any source since the date of the order;
- (9) Whether a temporary remedy should be fashioned to provide adjustment of the support award from which modification is sought, and the terms of any such adjustment, pending continuing employment investigations by the unemployed spouse or partner; and
- (10) Any other factor the court deems relevant to fairly and equitably decide the application.

If the changed circumstances arise from the loss of employment, the length of time a party has been involuntarily unemployed or has had an involuntary reduction in income shall not be the only factor considered by the court, but rather the court shall determine the application based upon all of the enumerated factors, however, no application shall be filed until a party has been unemployed, or has not been able to return to or attain employment at prior income levels, or both, for a period of 90 days. The court shall have discretion to make any relief granted retroactive to the date of the loss of employment or reduction of income.

When a self-employed party seeks modification of alimony because of an involuntary reduction in income since the date of the order from which modification is sought, then that party's application for relief must include an analysis that sets forth the economic and non-economic benefits the party receives from the business, and which compares these economic and non-economic benefits to those that were in existence at the time of the entry of the order.

The court may establish a temporary remedy which may include: temporarily suspending or reducing support on terms established by the court; directing that support be paid in some amount from assets pending further proceedings; directing a periodic review; or entering any other order the court finds appropriate to assure fairness and equity to both parties.

COHABITATION

Under the substitute, the court may suspend or terminate alimony if a payee cohabits with another person. Pursuant to the committee substitute, cohabitation involves a mutually supportive, intimate personal relationship in which a couple has undertaken duties and privileges that are commonly associated with marriage or civil union but does not necessarily maintain a single common household.

When assessing whether cohabitation is occurring, the court shall consider the following:

- (1) Intertwined finances such as joint bank accounts and other joint holdings or liabilities;
- (2) Sharing or joint responsibility for living expenses;
- (3) Recognition of the relationship in the couple's social and family circle;
- (4) Living together, the frequency of contact, the duration of the relationship, and other indicia of a mutually supportive intimate personal relationship;
- (5) Sharing household chores;
- (6) Whether the recipient of alimony has received an enforceable promise of support from another person within the meaning of subsection h. of R.S.25:1-5 ("palimony"); and
- (7) All other relevant evidence.

In evaluating whether cohabitation is occurring and whether alimony should be suspended or terminated, the court shall also

consider the length of the relationship. A court may not find an absence of cohabitation solely on grounds that the couple does not live together on a full-time basis.

EFFECTIVE DATE:

The substitute would take effect immediately and shall not be construed either to modify the duration of alimony ordered or agreed upon or other specifically bargained for contractual provisions that have been incorporated into:

- a. a final judgment of divorce or dissolution;
- b. a final order that has concluded post-judgment litigation; or
- c. or any enforceable written agreement between the parties.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, Nos. 845, 971, and 1649

STATE OF NEW JERSEY

DATED: JUNE 30, 2014

The Senate Judiciary Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 845, 971, and 1649.

This committee substitute amends N.J.S.2A:34-23 to modify the types of alimony that may be awarded, establish durational limits for alimony awards, and to enumerate certain factors concerning modification and termination of alimony.

The committee substitute provides specific grounds for modification and termination when the obligor retires, loses a job or otherwise has a reduction in income, or when the obligee cohabits with another person. The substitute also eliminates the phrase “permanent alimony” from the statutes and establishes the term “open durational alimony.”

The committee substitute modifies the factors to be considered by the court in determining an alimony award by clarifying that when considering the standard of living established in the marriage or civil union and the likelihood that each party can maintain a reasonably comparable standard of living, neither party shall have a greater entitlement to that standard of living than the other. In addition to the factors set forth in the current statute, the court shall consider the nature, amount, and length of pendente lite support paid, if any.

TYPES OF ALIMONY AND DURATIONAL LIMITS

Under current law, the court may award the following types of alimony: permanent, limited duration, rehabilitative, and reimbursement. Permanent alimony is awarded when the parties have had a lengthy marriage or civil union marked by economic dependence and contribution to the marriage or civil union. Limited duration alimony is awarded for a set period of time when it is determined that an award of permanent alimony is not warranted. Rehabilitative alimony is awarded to permit a spouse or partner to obtain the training and education necessary to return to the workforce and enhance their earning capacity. Reimbursement alimony is awarded to one spouse or partner for financial contributions made to the other spouse or partner’s education or professional training.

The committee substitute amends the statute to eliminate the requirement that the court must first determine that an award of

permanent alimony is not warranted prior to awarding limited duration and other types of alimony.

The durational limits established by the committee substitute provide that for any marriage or civil union less than 20 years in duration, the total duration of alimony shall not, except in exceptional circumstances, exceed the length of the marriage or civil union. The committee substitute clarifies that a determination of the length and amount of alimony is to be made by the court pursuant to consideration of all of the statutory factors set forth in subsection b. of section 1 of the committee substitute, amending N.J.S.2A:34-23. In addition, the court must consider the practical impact of the parties' need for separate residences and the attendant increase in living expenses on the ability of both parties to maintain a standard of living reasonably comparable to the standard of living established in the marriage or civil union, with neither party having a greater entitlement to that standard of living.

Exceptional circumstances which may warrant deviation from the durational limits include:

(1) The ages of the parties at the time of the marriage or civil union and at the time of the alimony award;

(2) The degree and duration of the dependency of one party on the other party during the marriage or civil union;

(3) Whether a spouse or partner has a chronic illness or unusual health circumstance;

(4) Whether a spouse or partner has given up a career or a career opportunity or otherwise supported the career of the other spouse or partner;

(5) Whether a spouse or partner has received a disproportionate share of the marital estate;

(6) The impact of the marriage or civil union on either party's ability to become self-supporting, including but not limited to either party's responsibility as primary caretaker of a child;

(7) Tax considerations of either party; and

(8) Any other factors or circumstances that the court deems equitable, relevant and material.

RETIREMENT

The committee substitute specifies that alimony may be modified or terminated upon the prospective or actual retirement of the obligor. Under the substitute, there shall be a rebuttable presumption that alimony shall terminate upon the obligor reaching full retirement age, except that any arrearages that have accrued prior to the termination date shall not be vacated or annulled. "Full retirement age" is defined as the age at which a person is eligible to receive full retirement for full retirement benefits under section 216 of the federal Social Security Act (42 U.S.C. s.416). The court may set a different alimony termination date for good cause based on specific findings of fact and conclusions of law. The rebuttable presumption may be overcome if

the court determines that alimony should continue after consideration of the following factors:

- (1) The ages of the parties at the time of the application for retirement;
- (2) The ages of the parties at the time of the marriage or civil union and their ages at the time of the alimony award;
- (3) The degree and duration of the economic dependency of the recipient upon the payor during the marriage or civil union;
- (4) Whether the recipient has foregone or relinquished or otherwise sacrificed claims, rights or property in exchange for a more substantial or longer alimony award;
- (5) The duration or amount of alimony already paid;
- (6) The health of the parties at the time of the retirement application;
- (7) Assets of the parties at the time of the retirement application;
- (8) Whether the recipient has reached full retirement age as defined in the committee substitute;
- (9) Sources of income, both earned and unearned, of the parties;
- (10) The ability of the recipient to have saved adequately for retirement; and
- (11) Any other factors that the court may deem relevant.

If the court determines that the presumption has been overcome, then the court would apply the alimony factors set forth in subsection b. of section 1 of the committee substitute in order to determine whether modification or termination of alimony is appropriate. If the obligor intends to retire but has not yet retired, the court would establish the conditions under which the modification or termination of alimony will be effective.

If an obligor seeks to retire prior to reaching full retirement age, the obligor would have the burden of demonstrating, by a preponderance of the evidence, that the prospective or actual retirement is reasonable and made in good faith. Both the obligor's application to the court and the obligee's response to the application shall be accompanied by current Case Information Statements or other relevant documents as required by the Rules of Court, as well as the Case Information Statements or other documents from the date of entry of the original alimony award and from the date of any subsequent modification.

In determining whether the obligor demonstrated that the prospective or actual retirement is reasonable and made in good faith, the court shall consider the following factors:

- (1) The age and health of the parties at the time of the application;
- (2) The obligor's field of employment and the generally accepted age of retirement for those in that field;
- (3) The age when the obligor becomes eligible for retirement at the obligor's place of employment, including mandatory retirement dates

or the dates upon which continued employment would no longer increase retirement benefits;

(4) The obligor's motives in retiring, including any pressures to retire applied by the obligor's employer or incentive plans offered by the obligor's employer;

(5) The reasonable expectations of the parties regarding retirement during the marriage or civil union and at the time of the divorce or dissolution;

(6) The ability of the obligor to maintain support payments following retirement, including whether the obligor will continue to be employed part-time or work reduced hours;

(7) The obligee's level of financial independence and the financial impact of the retirement by the obligor upon the obligee; and

(8) Any other relevant factors affecting the obligor's decision to retire and the parties' respective financial positions.

If the obligor intends to retire but has not yet retired, the court shall establish the conditions under which the modification or termination of alimony will be effective.

When an obligor filed an application for modification or termination based on retirement in which the existing final alimony order or enforceable written agreement was established prior to the effective date of the enactment, the obligor's reaching full retirement age as defined in the committee substitute shall be deemed a good faith retirement age. Both the obligor's application to the court and the obligee's response to the application must be accompanied by current Case Information Statements or other relevant documents as required by the Rules of Court, as well as the Case Information Statements or other documents from the date of entry of the original alimony award and from the date of any subsequent modification. In making its determination, the court shall consider the ability of the recipient to have saved adequately for retirement as well as the following factors in order to determine whether the obligor, by a preponderance of the evidence, has demonstrated that modification or termination of alimony is appropriate:

(1) The age and health of the parties at the time of the application;

(2) The obligor's field of employment and the generally accepted age of retirement for those in that field;

(3) The age when the obligor becomes eligible for retirement at the obligor's place of employment, including mandatory retirement dates or the dates upon which continued employment would no longer increase retirement benefits;

(4) The obligor's motives in retiring, including any pressures to retire applied by the obligor's employer or incentive plans offered by the obligor's employer;

(5) The reasonable expectations of the parties regarding retirement during the marriage or civil union and at the time of the divorce or dissolution;

(6) The ability of the obligor to maintain support payments following retirement, including whether the obligor will continue to be employed part-time or work reduced hours;

(7) The obligee's level of financial independence and the financial impact of the retirement by the obligor upon the obligee; and

(8) Any other relevant factors affecting the parties' respective financial positions.

The committee substitute provides that the assets distributed between the parties at the time of the entry of a final order of divorce or dissolution of a civil union shall not be considered by the court for purposes of determining the obligor's ability to pay alimony following retirement.

LOSS OF INCOME

When an obligor who is not self-employed seeks modification of alimony, the court shall consider the following factors:

(1) The reasons for any loss of income;

(2) Under circumstances where there has been a loss of employment, the obligor's documented efforts to obtain replacement employment or to pursue an alternative occupation;

(3) Under circumstances where there has been a loss of employment, whether the obligor is making a good faith effort to find remunerative employment at any level and in any field;

(4) The income of the obligee; the obligee's circumstances; and the obligee's reasonable efforts to obtain employment in view of those circumstances and existing opportunities;

(5) The impact of the parties' health on their ability to obtain employment;

(6) Any severance compensation or award made in connection with any loss of employment;

(7) Any changes in the respective financial circumstances of the parties that have occurred since the date of the order from which modification is sought;

(8) The reasons for any change in either party's financial circumstances since the date of the order from which modification is sought, including, but not limited to, assessment of the extent to which either party's financial circumstances at the time of the application are attributable to enhanced earnings or financial benefits received from any source since the date of the order;

(9) Whether a temporary remedy should be fashioned to provide adjustment of the support award from which modification is sought, and the terms of any such adjustment, pending continuing employment investigations by the unemployed spouse or partner; and

(10) Any other factor the court deems relevant to fairly and equitably decide the application.

If the changed circumstances arise from the loss of employment, the length of time a party has been involuntarily unemployed or has had an involuntary reduction in income shall not be the only factor

considered by the court, but rather the court shall determine the application based upon all of the enumerated factors, however, no application shall be filed until a party has been unemployed, or has not been able to return to or attain employment at prior income levels, or both, for a period of 90 days. The court shall have discretion to make any relief granted retroactive to the date of the loss of employment or reduction of income.

When a self-employed party seeks modification of alimony because of an involuntary reduction in income since the date of the order from which modification is sought, then that party's application for relief must include an analysis that sets forth the economic and non-economic benefits the party receives from the business, and which compares these economic and non-economic benefits to those that were in existence at the time of the entry of the order.

The court may establish a temporary remedy which may include: temporarily suspending or reducing support on terms established by the court; directing that support be paid in some amount from assets pending further proceedings; directing a periodic review; or entering any other order the court finds appropriate to assure fairness and equity to both parties.

COHABITATION

Under the substitute, the court may suspend or terminate alimony if a payee cohabits with another person. Pursuant to the committee substitute, cohabitation involves a mutually supportive, intimate personal relationship in which a couple has undertaken duties and privileges that are commonly associated with marriage or civil union but does not necessarily maintain a single common household.

When assessing whether cohabitation is occurring, the court shall consider the following:

- (1) Intertwined finances such as joint bank accounts and other joint holdings or liabilities;
- (2) Sharing or joint responsibility for living expenses;
- (3) Recognition of the relationship in the couple's social and family circle;
- (4) Living together, the frequency of contact, the duration of the relationship, and other indicia of a mutually supportive intimate personal relationship;
- (5) Sharing household chores;
- (6) Whether the recipient of alimony has received an enforceable promise of support from another person within the meaning of subsection h. of R.S.25:1-5 ("palimony"); and
- (7) All other relevant evidence.

In evaluating whether cohabitation is occurring and whether alimony should be suspended or terminated, the court shall also consider the length of the relationship. A court may not find an absence of cohabitation solely on grounds that the couple does not live together on a full-time basis.

EFFECTIVE DATE:

The substitute would take effect immediately and shall not be construed either to modify the duration of alimony ordered or agreed upon or other specifically bargained for contractual provisions that have been incorporated into:

- a. a final judgment of divorce or dissolution;
- b. a final order that has concluded post-judgment litigation; or
- c. any enforceable written agreement between the parties.

COMMITTEE ACTION

As reported, this substitute is identical to the Senate Committee Substitute for Senate Bill Nos. 488 and 1808, also reported by the committee today.

ASSEMBLY, No. 971

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Assemblyman TROY SINGLETON

District 7 (Burlington)

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

SYNOPSIS

Eliminates permanent alimony and revises certain standards for alimony awards.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 2/25/2014)

A971 SINGLETON, WIMBERLY

2

1 AN ACT concerning alimony, amending N.J.S.2A:34-23 and
2 N.J.S.2A:34-25 and supplementing chapter 34 of Title 2A of the
3 New Jersey Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. N.J.S.2A:34-23 is amended to read as follows:
9 2A:34-23. Alimony, maintenance.

10 Pending any matrimonial action or action for dissolution of a
11 civil union brought in this State or elsewhere, or after judgment of
12 divorce or dissolution or maintenance, whether obtained in this
13 State or elsewhere, the court may make such order as to the alimony
14 or maintenance of the parties, and also as to the care, custody,
15 education and maintenance of the children, or any of them, as the
16 circumstances of the parties and the nature of the case shall render
17 fit, reasonable and just, and require reasonable security for the due
18 observance of such orders, including, but not limited to, the creation
19 of trusts or other security devices, to assure payment of reasonably
20 foreseeable medical and educational expenses. Upon neglect or
21 refusal to give such reasonable security, as shall be required, or
22 upon default in complying with any such order, the court may
23 award and issue process for the immediate sequestration of the
24 personal estate, and the rents and profits of the real estate of the
25 party so charged, and appoint a receiver thereof, and cause such
26 personal estate and the rents and profits of such real estate, or so
27 much thereof as shall be necessary, to be applied toward such
28 alimony and maintenance as to the said court shall from time to
29 time seem reasonable and just; or the performance of the said orders
30 may be enforced by other ways according to the practice of the
31 court. Orders so made may be revised and altered by the court from
32 time to time as circumstances may require.

33 The court may order one party to pay a retainer on behalf of the
34 other for expert and legal services when the respective financial
35 circumstances of the parties make the award reasonable and just. In
36 considering an application, the court shall review the financial
37 capacity of each party to conduct the litigation and the criteria for
38 award of counsel fees that are then pertinent as set forth by court
39 rule. Whenever any other application is made to a court which
40 includes an application for pendente lite or final award of counsel
41 fees, the court shall determine the appropriate award for counsel
42 fees, if any, at the same time that a decision is rendered on the other
43 issue then before the court and shall consider the factors set forth in
44 the court rule on counsel fees, the financial circumstances of the
45 parties, and the good or bad faith of either party. The court may not

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 order a retainer or counsel fee of a party convicted of an attempt or
2 conspiracy to murder the other party to be paid by the party who
3 was the intended victim of the attempt or conspiracy.

4 a. In determining the amount to be paid by a parent for support
5 of the child and the period during which the duty of support is
6 owed, the court in those cases not governed by court rule shall
7 consider, but not be limited to, the following factors:

8 (1) Needs of the child;

9 (2) Standard of living and economic circumstances of each
10 parent;

11 (3) All sources of income and assets of each parent;

12 (4) Earning ability of each parent, including educational
13 background, training, employment skills, work experience,
14 custodial responsibility for children including the cost of providing
15 child care and the length of time and cost of each parent to obtain
16 training or experience for appropriate employment;

17 (5) Need and capacity of the child for education, including
18 higher education;

19 (6) Age and health of the child and each parent;

20 (7) Income, assets and earning ability of the child;

21 (8) Responsibility of the parents for the court-ordered support of
22 others;

23 (9) Reasonable debts and liabilities of each child and parent; and

24 (10) Any other factors the court may deem relevant.

25 The obligation to pay support for a child who has not been
26 emancipated by the court shall not terminate solely on the basis of
27 the child's age if the child suffers from a severe mental or physical
28 incapacity that causes the child to be financially dependent on a
29 parent. The obligation to pay support for that child shall continue
30 until the court finds that the child is relieved of the incapacity or is
31 no longer financially dependent on the parent. However, in
32 assessing the financial obligation of the parent, the court shall
33 consider, in addition to the factors enumerated in this section, the
34 child's eligibility for public benefits and services for people with
35 disabilities and may make such orders, including an order involving
36 the creation of a trust, as are necessary to promote the well-being of
37 the child.

38 As used in this section "severe mental or physical incapacity"
39 shall not include a child's abuse of, or addiction to, alcohol or
40 controlled substances.

41 b. In all actions brought for divorce, dissolution of a civil
42 union, divorce from bed and board, legal separation from a partner
43 in a civil union couple or nullity the court may award one or more
44 of the following types of alimony: **【permanent alimony;】**
45 rehabilitative alimony; limited duration alimony or reimbursement
46 alimony to either party. In **【so doing】** determining the amount of

1 alimony the court shall consider, but not be limited to, the following
2 factors:

- 3 (1) The actual need and ability of the parties to pay;
- 4 (2) The duration of the marriage or civil union;
- 5 (3) The age, physical and emotional health of the parties;
- 6 (4) The standard of living established in the marriage or civil
7 union and the likelihood that each party can maintain a reasonably
8 comparable standard of living;
- 9 (5) The earning capacities, educational levels, vocational skills,
10 and employability of the parties. The court may attribute income to
11 a party upon finding that the party is voluntarily unemployed or
12 underemployed based on that party's age, physical and emotional
13 health, earning capacity, educational level, vocational skills, and
14 employability;
- 15 (6) The length of absence from the job market of the party
16 seeking maintenance;
- 17 (7) The parental responsibilities for the children;
- 18 (8) The time and expense necessary to acquire sufficient
19 education or training to enable the party seeking maintenance to
20 find appropriate employment, the availability of the training and
21 employment, and the opportunity for future acquisitions of capital
22 assets and income;
- 23 (9) The history of the financial or non-financial contributions to
24 the marriage or civil union by each party including contributions to
25 the care and education of the children and interruption of personal
26 careers or educational opportunities;
- 27 (10) The equitable distribution of property ordered and any
28 payouts on equitable distribution, directly or indirectly, out of
29 current income, to the extent this consideration is reasonable, just
30 and fair;
- 31 (11) The income available to either party through investment of
32 any assets held by that party;
- 33 (12) The tax treatment and consequences to both parties of any
34 alimony or maintenance award, including the designation of all or a
35 portion of the payment as a non-taxable payment; and
- 36 (13) Any other factors which the court may deem relevant.

37 When a share of a retirement benefit is treated as an asset for
38 purposes of equitable distribution, the court shall not consider
39 income generated thereafter by that share for purposes of
40 determining alimony.

41 c. **【**In any case in which there is a request for an award of
42 permanent alimony, the court shall consider and make specific
43 findings on the evidence about the above factors. If the court
44 determines that an award of permanent alimony is not warranted,
45 the court shall make specific findings on the evidence setting out
46 the reasons therefor.**】** The court shall **【then】** consider whether
47 alimony is appropriate for any or all of the following: **【(1)】** limited

1 duration; ~~[(2)]~~ rehabilitative; ~~[(3)]~~ or reimbursement. In so doing,
2 the court shall consider and make specific findings on the evidence
3 about factors set forth above. ~~【The court shall not award limited~~
4 ~~duration alimony as a substitute for permanent alimony in those~~
5 ~~cases where permanent alimony would otherwise be awarded.】~~

6 (1) (a) The term of limited duration alimony shall be established
7 as follows:

8 (i) If the duration of the marriage or civil union is less than five
9 years, the term of alimony shall not be greater than one-half the
10 number of months of the marriage or civil union;

11 (ii) If the duration of the marriage or civil union is five years or
12 more but less than 10 years, the term of alimony shall not be greater
13 than 60 percent of the number of months of the marriage or civil
14 union;

15 (iii) If the duration of the marriage or civil union is 10 years or
16 more but less than 15 years, the term of alimony shall not be greater
17 than 70 percent of the number of months of the marriage or civil
18 union;

19 (iv) If the duration of the marriage or civil union is 15 years or
20 more but less than 20 years, the term of alimony shall not be greater
21 than 80 percent of the number of months of the marriage or civil
22 union;

23 (v) If the duration of the marriage or civil union is 20 years or
24 more, the court shall have discretion to award alimony for an
25 indefinite length of time.

26 (b) The court may deviate from the durational limits set forth in
27 this subsection. In deviating from these limits, the court shall make
28 specific findings.

29 (c) Any and all pendente lite alimony payments made prior to the
30 final judgment shall be fully credited against alimony obligations of
31 the payor spouse as to duration.

32 (2) An award of alimony for a limited duration may be modified
33 based either upon changed circumstances, or upon the
34 nonoccurrence of circumstances that the court found would occur at
35 the time of the award. The court may modify the amount of such an
36 award, but shall not modify the length of the term except in unusual
37 circumstances.

38 Additionally, the court may modify, suspend, or terminate an
39 award of limited duration alimony when the payer spouse or partner
40 shows the payee has maintained a cohabitation relationship with
41 another person for a continuous period of at least three months.
42 The award may be reinstated upon termination of the cohabitation
43 relationship; however, if reinstated the duration of the award shall
44 not extend beyond the termination date of the original order.
45 Limited duration alimony may not be modified, suspended, or
46 terminated unless the court finds the cohabitation relationship is
47 characterized by stability, permanency, and mutual

1 interdependence, and if the economic benefit inuring to the payee is
2 sufficiently material to constitute a change of circumstances. In
3 determining whether to modify, suspend, or terminate limited
4 duration alimony, the court shall consider whether the cohabiting
5 parties are living together, whether they have intertwined finances
6 and any other relevant and material factors.

7 **【In determining the length of the term, the court shall consider**
8 **the length of time it would reasonably take for the recipient to**
9 **improve his or her earning capacity to a level where limited**
10 **duration alimony is no longer appropriate.】**

11 d. Rehabilitative alimony shall be awarded based upon a plan
12 in which the payee shows the scope of rehabilitation, the steps to be
13 taken, and the time frame, including a period of employment during
14 which rehabilitation will occur. An award of rehabilitative alimony
15 may be modified based either upon changed circumstances, or upon
16 the nonoccurrence of circumstances that the court found would
17 occur at the time of the rehabilitative award. Rehabilitative alimony
18 shall not exceed a term of seven years. If the recipient fails to meet
19 the requirements of the rehabilitative plan, the payer may petition
20 the court for a review to determine if rehabilitative alimony shall
21 continue or be modified.

22 **【This section is not intended to preclude a court from modifying**
23 **permanent alimony awards based upon the law.】**

24 e. Reimbursement alimony may be awarded under
25 circumstances in which one party supported the other through an
26 advanced education, anticipating participation in the fruits of the
27 earning capacity generated by that education. Reimbursement
28 alimony may not be modified.

29 f. Except as provided in subsection i., nothing in this section
30 shall be construed to limit the court's authority to award **【permanent**
31 **alimony,】** limited duration alimony, rehabilitative alimony or
32 reimbursement alimony, separately or in any combination, as
33 warranted by the circumstances of the parties and the nature of the
34 case.

35 g. In all actions for divorce or dissolution other than those
36 where judgment is granted solely on the ground of separation the
37 court may consider also the proofs made in establishing such
38 ground in determining an amount of alimony or maintenance that is
39 fit, reasonable and just. In all actions for divorce, dissolution of
40 civil union, divorce from bed and board, or legal separation from a
41 partner in a civil union couple where judgment is granted on the
42 ground of institutionalization for mental illness the court may
43 consider the possible burden upon the taxpayers of the State as well
44 as the ability of the party to pay in determining an amount of
45 maintenance to be awarded.

46 h. Except as provided in this subsection, in all actions where a
47 judgment of divorce, dissolution of civil union, divorce from bed

1 and board or legal separation from a partner in a civil union couple
2 is entered the court may make such award or awards to the parties,
3 in addition to alimony and maintenance, to effectuate an equitable
4 distribution of the property, both real and personal, which was
5 legally and beneficially acquired by them or either of them during
6 the marriage or civil union. However, all such property, real,
7 personal or otherwise, legally or beneficially acquired during the
8 marriage or civil union by either party by way of gift, devise, or
9 intestate succession shall not be subject to equitable distribution,
10 except that interspousal gifts or gifts between partners in a civil
11 union couple shall be subject to equitable distribution. The court
12 may not make an award concerning the equitable distribution of
13 property on behalf of a party convicted of an attempt or conspiracy
14 to murder the other party.

15 i. No person convicted of Murder, N.J.S.2C:11-3;
16 Manslaughter, N.J.S.2C:11-4; Criminal Homicide, N.J.S.2C:11-2;
17 Aggravated Assault, under subsection b. of N.J.S.2C:12-1; or a
18 substantially similar offense under the laws of another jurisdiction,
19 may receive alimony or maintenance from the victim of the crime.
20 It shall be within the court's discretion whether to award alimony or
21 maintenance in cases in which a person is convicted of any other
22 crime or offense involving domestic violence as defined in section
23 3 of P.L.1991, c.261 (C.2C:25-19) if: (1) the crime results in death
24 or serious bodily injury, as defined in subsection b. of N.J.S.2C:11-
25 1, to a family member of a divorcing party; and (2) the crime was
26 committed during or after the marriage or civil union. A person
27 convicted of an attempt or conspiracy to commit murder,
28 manslaughter or criminal homicide may not receive alimony from
29 the person who was the intended victim of the attempt or
30 conspiracy. Nothing in this subsection shall be construed to limit
31 the authority of the court to deny alimony for other bad acts.

32 As used in this subsection:

33 "Family member" means a spouse, child, parent, sibling, aunt,
34 uncle, niece, nephew, first cousin, grandparent, grandchild, father-
35 in-law, mother-in-law, son-in-law, daughter-in-law, stepparent,
36 stepchild, stepbrother, stepsister, half brother, or half sister, whether
37 the individual is related by blood, marriage, or adoption.

38 (cf: P.L.2009, c.43, s.1)

39

40 2. N.J.S.2A:34-25 is amended as follows:

41 2A:34-25. a. If after the judgment of divorce or dissolution a
42 former spouse shall remarry or a former partner shall enter into a
43 new civil union, **permanent and** limited duration alimony shall
44 terminate as of the date of remarriage or new civil union except that
45 any arrearages that have accrued prior to the date of remarriage or
46 new civil union shall not be vacated or annulled. A former spouse
47 or former partner in a civil union couple who remarries or enters

1 into a new civil union shall promptly so inform the spouse or
2 partner paying **【permanent or】** limited duration alimony as well as
3 the collecting agency, if any. The court may order such alimony
4 recipient who fails to comply with the notification provision of this
5 act to pay any reasonable attorney fees and court costs incurred by
6 the recipient's former spouse or partner as a result of such non-
7 compliance.

8 The remarriage or establishment of a new civil union of a former
9 spouse or partner receiving rehabilitative or reimbursement alimony
10 shall not be cause for termination of such alimony by the court
11 unless the court finds that the circumstances upon which the award
12 was based have not occurred or unless the payer spouse or partner
13 demonstrates an agreement or good cause to the contrary.

14 b. Alimony shall terminate upon the death of the payer spouse or
15 partner, except that any arrearages that have accrued prior to the
16 date of the payer spouse's or partner's death shall not be vacated or
17 annulled.

18 c. There shall be a rebuttable presumption that alimony shall
19 terminate upon the payer spouse or partner attaining full retirement
20 age when the payer is eligible for the old-age retirement benefit
21 under the federal Social Security act, except that any arrearages that
22 have accrued prior to the termination date shall not be vacated or
23 annulled. The court may set a different alimony termination date for
24 good cause shown based on specific findings of fact and
25 conclusions of law.

26 d. Nothing in this act shall be construed to prohibit a court from
27 ordering either spouse or partner to maintain life insurance for the
28 protection of the former spouse, partner, or the children of the
29 marriage or civil union in the event of the payer spouse's or
30 partner's death.

31 (cf: P.L.2006, c.103, s.82)

32

33 3. (New section) a. If an alimony payee or alimony payor
34 undergoes a substantial change in financial circumstances after the
35 enactment of P.L. , c. (C.) (pending before the Legislature
36 as this bill), the court shall consider all of the relevant material
37 factors and in making its determination shall provide written
38 findings of fact and conclusions of law.

39 b. The length of time a person has undergone a significant
40 change in financial circumstances shall not be dispositive of the
41 application, except that no application in cases of loss of
42 employment shall be filed until a person has been unemployed, or
43 not been able to return to employment at prior income levels, or a
44 combination of both circumstances for a period of 90 days. The
45 court shall have discretion to make any relief granted retroactive to
46 the date of the loss of employment or reduction of income.

1 order. Limited duration alimony may not be modified, suspended,
2 or terminated unless the court finds the cohabitation relationship is
3 characterized by stability, permanency, and mutual
4 interdependence, and if the economic benefit inuring to the payee is
5 sufficiently material to constitute a change of circumstances. In
6 determining whether to modify, suspend, or terminate limited
7 duration alimony, the court would consider whether the parties have
8 intertwined finances including, but not limited to, a joint bank
9 account; whether they share living expenses and household chores;
10 and any other relevant and material factors.

11 Under the provisions of the bill rehabilitative alimony could not
12 exceed a term of seven years. The bill would also provide that
13 reimbursement alimony could not be modified.

14 Currently, under the provisions of N.J.S.2A:34-25, permanent
15 and limited duration alimony terminates upon the death of the payer
16 spouse or if the former spouse or partner remarries or enters into a
17 new civil union, except any arrearages that have accrued as of the
18 date of the remarriage or new civil union may not be vacated or
19 annulled. Alimony does not terminate if a person receives
20 rehabilitative or reimbursement alimony, unless the court finds that
21 the circumstances upon which the award was based have not
22 occurred or unless the payer spouse or partner demonstrates an
23 agreement or good cause to the contrary. The bill amends
24 N.J.S.2A:34-25 to provide that alimony may also terminate upon
25 the payer spouse or partner attaining full retirement age when the
26 payer is eligible for the old-age retirement benefit under the federal
27 Social Security act; however, any arrearages that accrued prior to
28 the termination date would not be vacated or annulled. The payer's
29 ability to work beyond such date may not constitute grounds to
30 extend alimony, but the court would have discretion to extend an
31 alimony award beyond the termination date for good cause shown
32 either when making the initial alimony award or upon a finding of a
33 material change in circumstances supported by clear and convincing
34 evidence.

35 The bill also provides that if an alimony payee or payor
36 undergoes a substantial change in financial circumstances after the
37 enactment of the bill, the court would consider all of the relevant
38 material factors and in making its determination provide written
39 findings of fact and conclusion of law. Under the bill, the length of
40 time a person has undergone a significant change in financial
41 circumstances would not be dispositive of the application, except
42 that no application in cases of loss of employment could be filed
43 until a person has been unemployed, or not been able to return to
44 employment at prior income levels, or a combination of both
45 circumstances for a period of 90 days. The court would have
46 discretion to make any relief granted retroactive to the date of the
47 loss of employment or reduction of income.

A971 SINGLETON, WIMBERLY

11

- 1 The bill would take effect on 60th day after enactment and apply
- 2 to judgments for alimony entered on or after that date.
- 3 Several provisions of the bill are modeled on the Massachusetts
- 4 “Alimony Reform Law of 2011.”

ASSEMBLY, No. 1649

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Assemblyman THOMAS P. GIBLIN

District 34 (Essex and Passaic)

Assemblywoman PAMELA R. LAMPITT

District 6 (Burlington and Camden)

SYNOPSIS

Clarifies certain factors concerning modification and termination of alimony; eliminates the term “permanent alimony” from the statutes.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning alimony and amending N.J.S.2A:34-23.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

5

6 1. N.J.S.2A:34-23 is amended to read as follows:

7 2A:34-23. Alimony, maintenance.

8 Pending any matrimonial action or action for dissolution of a
9 civil union brought in this State or elsewhere, or after judgment of
10 divorce or dissolution or maintenance, whether obtained in this
11 State or elsewhere, the court may make such order as to the alimony
12 or maintenance of the parties, and also as to the care, custody,
13 education and maintenance of the children, or any of them, as the
14 circumstances of the parties and the nature of the case shall render
15 fit, reasonable and just, and require reasonable security for the due
16 observance of such orders, including, but not limited to, the creation
17 of trusts or other security devices, to assure payment of reasonably
18 foreseeable medical and educational expenses. Upon neglect or
19 refusal to give such reasonable security, as shall be required, or
20 upon default in complying with any such order, the court may
21 award and issue process for the immediate sequestration of the
22 personal estate, and the rents and profits of the real estate of the
23 party so charged, and appoint a receiver thereof, and cause such
24 personal estate and the rents and profits of such real estate, or so
25 much thereof as shall be necessary, to be applied toward such
26 alimony and maintenance as to the said court shall from time to
27 time seem reasonable and just; or the performance of the said orders
28 may be enforced by other ways according to the practice of the
29 court. Orders so made may be revised and altered by the court from
30 time to time as circumstances may require.

31 The court may order one party to pay a retainer on behalf of the
32 other for expert and legal services when the respective financial
33 circumstances of the parties make the award reasonable and just. In
34 considering an application, the court shall review the financial
35 capacity of each party to conduct the litigation and the criteria for
36 award of counsel fees that are then pertinent as set forth by court
37 rule. Whenever any other application is made to a court which
38 includes an application for pendente lite or final award of counsel
39 fees, the court shall determine the appropriate award for counsel
40 fees, if any, at the same time that a decision is rendered on the other
41 issue then before the court and shall consider the factors set forth in
42 the court rule on counsel fees, the financial circumstances of the
43 parties, and the good or bad faith of either party. The court may not
44 order a retainer or counsel fee of a party convicted of an attempt or

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 conspiracy to murder the other party to be paid by the party who
2 was the intended victim of the attempt or conspiracy.

3 a. In determining the amount to be paid by a parent for support
4 of the child and the period during which the duty of support is
5 owed, the court in those cases not governed by court rule shall
6 consider, but not be limited to, the following factors:

7 (1) Needs of the child;

8 (2) Standard of living and economic circumstances of each
9 parent;

10 (3) All sources of income and assets of each parent;

11 (4) Earning ability of each parent, including educational
12 background, training, employment skills, work experience,
13 custodial responsibility for children including the cost of providing
14 child care and the length of time and cost of each parent to obtain
15 training or experience for appropriate employment;

16 (5) Need and capacity of the child for education, including
17 higher education;

18 (6) Age and health of the child and each parent;

19 (7) Income, assets and earning ability of the child;

20 (8) Responsibility of the parents for the court-ordered support of
21 others;

22 (9) Reasonable debts and liabilities of each child and parent; and

23 (10) Any other factors the court may deem relevant.

24 The obligation to pay support for a child who has not been
25 emancipated by the court shall not terminate solely on the basis of
26 the child's age if the child suffers from a severe mental or physical
27 incapacity that causes the child to be financially dependent on a
28 parent. The obligation to pay support for that child shall continue
29 until the court finds that the child is relieved of the incapacity or is
30 no longer financially dependent on the parent. However, in
31 assessing the financial obligation of the parent, the court shall
32 consider, in addition to the factors enumerated in this section, the
33 child's eligibility for public benefits and services for people with
34 disabilities and may make such orders, including an order involving
35 the creation of a trust, as are necessary to promote the well-being of
36 the child.

37 As used in this section "severe mental or physical incapacity"
38 shall not include a child's abuse of, or addiction to, alcohol or
39 controlled substances.

40 b. In all actions brought for divorce, dissolution of a civil
41 union, divorce from bed and board, legal separation from a partner
42 in a civil union couple or nullity the court may award one or more
43 of the following types of alimony: **【permanent】** alimony of
44 indefinite term; rehabilitative alimony; limited duration alimony or
45 reimbursement alimony to either party. In so doing the court shall
46 consider, but not be limited to, the following factors:

47 (1) The actual need and ability of the parties to pay;

- 1 (2) The duration of the marriage or civil union;
 - 2 (3) The age, physical and emotional health of the parties;
 - 3 (4) The standard of living established in the marriage or civil
4 union and the likelihood that each party can maintain a reasonably
5 comparable standard of living;
 - 6 (5) The earning capacities, educational levels, vocational skills,
7 and employability of the parties;
 - 8 (6) The length of absence from the job market of the party
9 seeking maintenance;
 - 10 (7) The parental responsibilities for the children;
 - 11 (8) The time and expense necessary to acquire sufficient
12 education or training to enable the party seeking maintenance to
13 find appropriate employment, the availability of the training and
14 employment, and the opportunity for future acquisitions of capital
15 assets and income;
 - 16 (9) The history of the financial or non-financial contributions to
17 the marriage or civil union by each party including contributions to
18 the care and education of the children and interruption of personal
19 careers or educational opportunities;
 - 20 (10) The equitable distribution of property ordered and any
21 payouts on equitable distribution, directly or indirectly, out of
22 current income, to the extent this consideration is reasonable, just
23 and fair;
 - 24 (11) The income available to either party through investment of
25 any assets held by that party;
 - 26 (12) The tax treatment and consequences to both parties of any
27 alimony award, including the designation of all or a portion of the
28 payment as a non-taxable payment; and
 - 29 (13) Any other factors which the court may deem relevant.
- 30 When a share of a retirement benefit is treated as an asset for
31 purposes of equitable distribution, the court shall not consider
32 income generated thereafter by that share for purposes of
33 determining alimony.
- 34 c. In any case in which there is a request for an award of
35 **【permanent】** alimony of indefinite term, the court shall consider
36 and make specific findings on the evidence about the above factors.
37 If the court determines that an award of **【permanent】** alimony of
38 indefinite term is not warranted, the court shall make specific
39 findings on the evidence setting out the reasons therefor. The court
40 shall then consider whether alimony is appropriate for any or all of
41 the following: (1) limited duration; (2) rehabilitative; (3)
42 reimbursement. In so doing, the court shall consider and make
43 specific findings on the evidence about factors set forth above. The
44 court shall not award limited duration alimony as a substitute for
45 **【permanent】** alimony of indefinite term in those cases where
46 **【permanent】** alimony of indefinite term would otherwise be
47 awarded.

1 An award of alimony for a limited duration may be modified
2 based either upon changed circumstances, or upon the
3 nonoccurrence of circumstances that the court found would occur at
4 the time of the award. The court may modify the amount of such an
5 award, but shall not modify the length of the term except in unusual
6 circumstances.

7 In determining the length of the term, the court shall consider the
8 length of time it would reasonably take for the recipient to improve
9 his or her earning capacity to a level where limited duration
10 alimony is no longer appropriate.

11 d. Rehabilitative alimony shall be awarded based upon a plan
12 in which the payee shows the scope of rehabilitation, the steps to be
13 taken, and the time frame, including a period of employment during
14 which rehabilitation will occur. An award of rehabilitative alimony
15 may be modified based either upon changed circumstances, or upon
16 the nonoccurrence of circumstances that the court found would
17 occur at the time of the rehabilitative award.

18 This section is not intended to preclude a court from modifying
19 permanent alimony awards based upon the law.

20 e. Reimbursement alimony may be awarded under
21 circumstances in which one party supported the other through an
22 advanced education, anticipating participation in the fruits of the
23 earning capacity generated by that education.

24 f. Except as provided in subsection i., nothing in this section
25 shall be construed to limit the court's authority to award permanent
26 alimony, limited duration alimony, rehabilitative alimony or
27 reimbursement alimony, separately or in any combination, as
28 warranted by the circumstances of the parties and the nature of the
29 case.

30 g. In all actions for divorce or dissolution other than those
31 where judgment is granted solely on the ground of separation the
32 court may consider also the proofs made in establishing such
33 ground in determining an amount of alimony or maintenance that is
34 fit, reasonable and just. In all actions for divorce, dissolution of
35 civil union, divorce from bed and board, or legal separation from a
36 partner in a civil union couple where judgment is granted on the
37 ground of institutionalization for mental illness the court may
38 consider the possible burden upon the taxpayers of the State as well
39 as the ability of the party to pay in determining an amount of
40 maintenance to be awarded.

41 h. Except as provided in this subsection, in all actions where a
42 judgment of divorce, dissolution of civil union, divorce from bed
43 and board or legal separation from a partner in a civil union couple
44 is entered the court may make such award or awards to the parties,
45 in addition to alimony and maintenance, to effectuate an equitable
46 distribution of the property, both real and personal, which was
47 legally and beneficially acquired by them or either of them during

1 the marriage or civil union. However, all such property, real,
2 personal or otherwise, legally or beneficially acquired during the
3 marriage or civil union by either party by way of gift, devise, or
4 intestate succession shall not be subject to equitable distribution,
5 except that interspousal gifts or gifts between partners in a civil
6 union couple shall be subject to equitable distribution. The court
7 may not make an award concerning the equitable distribution of
8 property on behalf of a party convicted of an attempt or conspiracy
9 to murder the other party.

10 i. No person convicted of Murder, N.J.S.2C:11-3;
11 Manslaughter, N.J.S.2C:11-4; Criminal Homicide, N.J.S.2C:11-2;
12 Aggravated Assault, under subsection b. of N.J.S.2C:12-1; or a
13 substantially similar offense under the laws of another jurisdiction,
14 may receive alimony if: (1) the crime results in death or serious
15 bodily injury, as defined in subsection b. of N.J.S.2C:11-1, to a
16 family member of a divorcing party; and (2) the crime was
17 committed after the marriage or civil union. A person convicted of
18 an attempt or conspiracy to commit murder may not receive
19 alimony from the person who was the intended victim of the
20 attempt or conspiracy. Nothing in this subsection shall be
21 construed to limit the authority of the court to deny alimony for
22 other bad acts.

23 As used in this subsection:

24 "Family member" means a spouse, child, parent, sibling, aunt,
25 uncle, niece, nephew, first cousin, grandparent, grandchild, father-
26 in-law, mother-in-law, son-in-law, daughter-in-law, stepparent,
27 stepchild, stepbrother, stepsister, half brother, or half sister, whether
28 the individual is related by blood, marriage, or adoption.

29 j. Alimony may be modified or terminated upon the
30 prospective or actual retirement of the obligor. The obligor shall
31 have the burden of demonstrating by a preponderance of the
32 evidence that the prospective or actual retirement is reasonable and
33 made in good faith. Both the obligor's application to the court for
34 modification or termination of alimony and the obligee's response
35 to the application shall be accompanied by current Case Information
36 Statements or other relevant documents as required by the Rules of
37 Court, as well as the Case Information Statements or other
38 documents from the date of the original alimony award and from
39 the date of any subsequent modification.

40 In order to determine whether the obligor has met the burden of
41 demonstrating that the obligor's prospective or actual retirement is
42 reasonable and made in good faith, the court shall consider the
43 following factors:

44 (1) the age and health of the parties at the time of the
45 application;

46 (2) the obligor's field of employment and the generally accepted
47 age of retirement for those in that field;

1 (3) the age when the obligor becomes eligible for retirement at
2 the obligor's place of employment, including mandatory retirement
3 dates or the dates upon which continued employment would no
4 longer increase retirement benefits;

5 (4) the obligor's motives in retiring, including any pressures to
6 retire applied by the obligor's employer or incentive plans offered
7 by the obligor's employer;

8 (5) the reasonable expectations of the parties regarding
9 retirement during the marriage and at the time of the divorce;

10 (6) the ability of the obligor to maintain support payments
11 following retirement, including whether the obligor will continue to
12 be employed part-time or work reduced hours;

13 (7) the obligee's level of financial independence and the
14 financial impact of the retirement by the obligor upon the obligee;
15 and

16 (8) any other relevant factors affecting the obligor's decision to
17 retire and the parties' respective financial positions.

18 Assets which were distributed between the parties by way of
19 equitable distribution at the time of the divorce shall not be
20 considered for purposes of determining the obligor's ability to pay
21 or the obligee's need.

22 If the court determines that the obligor has met his burden, then
23 the court shall apply the alimony factors as set forth in section b. of
24 this section to the parties' current circumstances in order to
25 determine whether modification or termination of alimony is
26 appropriate. If the obligor intends to retire but has not yet retired,
27 the court shall establish the conditions under which the
28 modification or termination of alimony will be effective.

29 k. When a non-self-employed party makes an application to
30 reduce alimony or child support because of involuntary loss of
31 employment, the court shall consider the following factors:

32 (1) The reasons for the loss of employment;

33 (2) The obligor's documented efforts to obtain replacement
34 employment or to pursue an alternative occupation;

35 (3) Whether the obligor is making a good faith effort to find
36 remunerative employment at any level and in any field;

37 (4) The income of the obligee; the obligee's circumstances; and
38 the obligee's reasonable efforts to obtain employment in view of
39 those circumstances and existing opportunities;

40 (5) The impact of the parties' health on their ability to obtain
41 employment;

42 (6) Any severance compensation or award made in connection
43 with the loss of employment;

44 (7) Any changes in the respective financial circumstances of the
45 parties that have occurred since the date of the order from which
46 modification is sought;

1 (8) The reasons for any change in either party's financial
2 circumstances since the date of the order from which modification
3 is sought, including, but not limited to, assessment of the extent to
4 which either party's financial circumstances at the time of the
5 application are attributable to enhanced earnings or financial
6 benefits received from any source since the date of the order;

7 (9) Whether a temporary remedy should be fashioned to provide
8 adjustment of the support award from which modification is sought,
9 and the terms of any such adjustment, pending continuing
10 employment investigations by the unemployed spouse; and

11 (10) Any other factor the court deems relevant to fairly and
12 equitable decide the application.

13 The length of time a party has been involuntarily unemployed or
14 has had an involuntary reduction in income shall not be dispositive
15 of the application and the court shall determine the application
16 based upon all of the enumerated factors, except that no application
17 shall be filed until a party has been unemployed, or not been able to
18 return to employment at prior income levels, or both, for a period of
19 90 days. The court shall have discretion to make any relief granted
20 retroactive to the date of the loss of employment or reduction of
21 income.

22 l. When a self-employed party seeks modification of alimony or
23 child support because of an involuntary reduction in income since
24 the date of the order from which modification is sought, then that
25 party's application for relief must include an analysis that sets forth
26 the economic and non-economic benefits the party receives from
27 the business, and which compares these economic and non-
28 economic benefits to those that were in existence at the time of the
29 entry of the order.

30 m. When assessing whether any temporary remedy should be
31 fashioned, the court may temporarily suspend support, or reduce
32 support on terms; direct that support be paid in some amount from
33 assets pending further proceedings; direct a periodic review; or
34 enter any other order the court finds appropriate to assure fairness
35 and equity to both parties.

36 n. Alimony may be suspended or terminated if the payee cohabits
37 with another person. Cohabitation involves an intimate relationship
38 in which a couple has undertaken duties and privileges that are
39 commonly associated with marriage.

40 When assessing whether cohabitation is occurring, the court shall
41 consider the following:

42 (1) intertwined finances such as joint bank accounts and other
43 joint holdings or liabilities;

44 (2) sharing or joint legal responsibility for living expenses;

45 (3) recognition of the relationship in the couple's social and
46 family circle;

47 (4) living together;

1 (5) sharing household chores; and

2 (6) all other relevant evidence.

3 In evaluating whether cohabitation is occurring and whether
4 alimony should be suspended or terminated, the court shall also
5 consider the length of the relationship. A court may not find an
6 absence of cohabitation solely on grounds that the couple does not
7 live together on a full-time basis.

8 (cf: P.L.2009, c.43, s.1)

9

10 2. This act shall take effect on the 90th day following enactment
11 and shall apply to actions for divorce or dissolution filed on or after
12 the effective date.

13

14

15

STATEMENT

16

17 This bill would clarify certain factors concerning the
18 modification and termination of alimony.

19 The bill amends N.J.S.2A:34-23 to set out specific grounds for
20 modification and termination when the obligor retires, loses his job,
21 or otherwise has a reduction in income, or when the obligee
22 cohabits with another person. The bill also eliminates the phrase
23 “permanent alimony” in the statutes and replaces it with “alimony
24 of indefinite term” to reflect the fact that alimony orders can be
25 modified by the court upon a change of circumstances.

26 RETIREMENT:

27 The bill specifies that alimony may be modified or terminated
28 upon the prospective or actual retirement of the obligor. The obligor
29 would have the burden of demonstrating by a preponderance of the
30 evidence that the prospective or actual retirement is reasonable and
31 made in good faith. Both the obligor’s application to the court for
32 modification or termination of alimony and the obligee’s response
33 to the application would be accompanied by current Case
34 Information Statements or other relevant documents as required by
35 the Rules of Court, as well as the Case Information Statements or
36 other documents from the date of the original alimony award and
37 from the date of any subsequent modification.

38 In order to determine whether the obligor has met the burden of
39 demonstrating that the obligor’s prospective or actual retirement is
40 reasonable and made in good faith, the court would consider the
41 following factors:

42 (1) the age and health of the parties at the time of the
43 application;

44 (2) the obligor’s field of employment and the generally accepted
45 age of retirement for those in that field;

46 (3) the age when the obligor becomes eligible for retirement at
47 the obligor’s place of employment, including mandatory retirement

1 dates or the dates upon which continued employment would no
2 longer increase retirement benefits;

3 (4) the obligor's motives in retiring, including any pressures to
4 retire applied by the obligor's employer or incentive plans offered
5 by the obligor's employer;

6 (5) the reasonable expectations of the parties regarding
7 retirement during the marriage and at the time of the divorce;

8 (6) the ability of the obligor to maintain support payments
9 following retirement, including whether the obligor will continue to
10 be employed part-time or work reduced hours;

11 (7) the obligee's level of financial independence and the
12 financial impact of the retirement by the obligor upon the obligee;
13 and

14 (8) any other relevant factors affecting the obligor's decision to
15 retire and the parties' respective financial positions.

16 If the court determines that the obligor has met his burden, then
17 the court would apply the general alimony factors as set forth in
18 N.J.S.2A34-23 to the parties' current circumstances in order to
19 determine whether modification or termination of alimony is
20 appropriate. If the obligor intends to retire but has not yet retired,
21 the court shall establish the conditions under which the
22 modification or termination of alimony will be effective.

23 APPLICATION BY NON-SELF-EMPLOYED PERSON:

24 Under the bill, when a non-self-employed party makes an
25 application to reduce alimony or child support because of
26 involuntary loss of employment, the court shall consider the
27 following factors:

28 (1) The reasons for the loss of employment;

29 (2) The obligor's documented efforts to obtain replacement
30 employment or to pursue an alternative occupation;

31 (3) Whether the obligor is making a good faith effort to find
32 remunerative employment at any level and in any field;

33 (4) The income of the obligee; the obligee's circumstances; and
34 the obligee's reasonable efforts to obtain employment in view of
35 those circumstances and existing opportunities;

36 (5) The impact of the parties' health on their ability to obtain
37 employment;

38 (6) Any severance compensation or award made in connection
39 with the loss of employment;

40 (7) Any changes in the respective financial circumstances of the
41 parties that have occurred since the date of the order from which
42 modification is sought;

43 (8) The reasons for any change in either party's financial
44 circumstances since the date of the order from which modification
45 is sought, including, but not limited to, assessment of the extent to
46 which either party's financial circumstances at the time of the

1 application are attributable to enhanced earnings or financial
2 benefits received from any source since the date of the order;

3 (9) Whether a temporary remedy should be fashioned to provide
4 adjustment of the support award from which modification is sought,
5 and the terms of any such adjustment, pending continuing
6 employment investigations by the unemployed spouse; and

7 (10) Any other factor the court deems relevant to fairly and
8 equitable decide the application.

9 APPLICATION BY SELF-EMPLOYED PERSON:

10 The bill provides that when a self-employed party seeks
11 modification of alimony or child support because of an involuntary
12 reduction in income since the date of the order from which
13 modification is sought, then that party's application for relief must
14 include an analysis that sets forth the economic and non-economic
15 benefits the party receives from the business, and which compares
16 these economic and non-economic benefits to those that were in
17 existence at the time of the entry of the order.

18 EFFECT OF EQUITABLE DISTRIBUTION:

19 The bill provides that assets which were distributed between the
20 parties by way of equitable distribution at the time of the divorce
21 would not be considered for purposes of determining the obligor's
22 ability to pay or the obligee's need.

23 TEMPORARY REMEDIES:

24 When assessing whether any temporary remedy should be
25 fashioned, the court may temporarily suspend support, or reduce
26 support on terms; direct that support be paid in some amount from
27 assets pending further proceedings; direct a periodic review; or
28 enter any other order the court finds appropriate to assure fairness
29 and equity to both parties.

30 COHABITATION:

31 The bill provides that alimony may be suspended or terminated if
32 the payee cohabits with another person. Cohabitation involves an
33 intimate relationship in which a couple has undertaken duties and
34 privileges that are commonly associated with marriage.

35 When assessing whether cohabitation is occurring, the court shall
36 consider the following:

37 (1) intertwined finances such as joint bank accounts and other
38 joint holdings or liabilities;

39 (2) sharing or joint legal responsibility for living expenses;

40 (3) recognition of the relationship in the couple's social and
41 family circle;

42 (4) living together;

43 (5) sharing household chores; and

44 (6) all other relevant evidence.

45 In evaluating whether cohabitation is occurring and whether
46 alimony should be suspended or terminated, the court would also be
47 required to consider the length of the relationship. A court could

A1649 GIBLIN, LAMPITT

12

1 not find an absence of cohabitation solely on grounds that the
2 couple does not live together on a full-time basis.

3 EFFECTIVE DATE:

4 The bill would take effect on the 90th day following enactment
5 and apply to actions for divorce or dissolution filed on or after the
6 effective date.

SENATE, No. 488

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

Senator ROBERT W. SINGER

District 30 (Monmouth and Ocean)

Co-Sponsored by:

**Senators A.R.Bucco, Kyrillos, Bateman, Oroho, Stack, Cardinale, Beck
and Cunningham**

SYNOPSIS

Revises alimony laws, including eliminating permanent alimony and establishing guidelines for amount and duration of alimony awards.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 7/1/2014)

1 AN ACT concerning alimony, amending N.J.S.2A:34-23 and
2 N.J.S.2A:34-25, and supplementing Title 2A of the New Jersey
3 Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. N.J.S.2A:34-23 is amended to read as follows:
9 2A:34-23. Alimony, maintenance.

10 Pending any matrimonial action or action for dissolution of a
11 civil union brought in this State or elsewhere, or after judgment of
12 divorce or dissolution or maintenance, whether obtained in this
13 State or elsewhere, the court may make such order as to the alimony
14 or maintenance of the parties, and also as to the care, custody,
15 education and maintenance of the children, or any of them, as the
16 circumstances of the parties and the nature of the case shall render
17 fit, reasonable and just, and require reasonable security for the due
18 observance of such orders, including, but not limited to, the creation
19 of trusts or other security devices, to assure payment of reasonably
20 foreseeable medical and educational expenses. Upon neglect or
21 refusal to give such reasonable security, as shall be required, or
22 upon default in complying with any such order, the court may
23 award and issue process for the immediate sequestration of the
24 personal estate, and the rents and profits of the real estate of the
25 party so charged, and appoint a receiver thereof, and cause such
26 personal estate and the rents and profits of such real estate, or so
27 much thereof as shall be necessary, to be applied toward such
28 alimony and maintenance as to the said court shall from time to
29 time seem reasonable and just; or the performance of the said orders
30 may be enforced by other ways according to the practice of the
31 court. Orders so made may be revised and altered by the court from
32 time to time as circumstances may require.

33 The court may order one party to pay a retainer on behalf of the
34 other for expert and legal services when the respective financial
35 circumstances of the parties make the award reasonable and just. In
36 considering an application, the court shall review the financial
37 capacity of each party to conduct the litigation and the criteria for
38 award of counsel fees that are then pertinent as set forth by court
39 rule. Whenever any other application is made to a court which
40 includes an application for pendente lite or final award of counsel
41 fees, the court shall determine the appropriate award for counsel
42 fees, if any, at the same time that a decision is rendered on the other
43 issue then before the court and shall consider the factors set forth in
44 the court rule on counsel fees, the financial circumstances of the
45 parties, and the good or bad faith of either party. The court may not

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 order a retainer or counsel fee of a party convicted of an attempt or
2 conspiracy to murder the other party to be paid by the party who
3 was the intended victim of the attempt or conspiracy.

4 a. In determining the amount to be paid by a parent for support
5 of the child and the period during which the duty of support is
6 owed, the court in those cases not governed by court rule shall
7 consider, but not be limited to, the following factors:

8 (1) Needs of the child;

9 (2) Standard of living and economic circumstances of each
10 parent;

11 (3) All sources of income and assets of each parent;

12 (4) Earning ability of each parent, including educational
13 background, training, employment skills, work experience,
14 custodial responsibility for children including the cost of providing
15 child care and the length of time and cost of each parent to obtain
16 training or experience for appropriate employment;

17 (5) Need and capacity of the child for education, including
18 higher education;

19 (6) Age and health of the child and each parent;

20 (7) Income, assets and earning ability of the child;

21 (8) Responsibility of the parents for the court-ordered support of
22 others;

23 (9) Reasonable debts and liabilities of each child and parent; and

24 (10) Any other factors the court may deem relevant.

25 The obligation to pay support for a child who has not been
26 emancipated by the court shall not terminate solely on the basis of
27 the child's age if the child suffers from a severe mental or physical
28 incapacity that causes the child to be financially dependent on a
29 parent. The obligation to pay support for that child shall continue
30 until the court finds that the child is relieved of the incapacity or is
31 no longer financially dependent on the parent. However, in
32 assessing the financial obligation of the parent, the court shall
33 consider, in addition to the factors enumerated in this section, the
34 child's eligibility for public benefits and services for people with
35 disabilities and may make such orders, including an order involving
36 the creation of a trust, as are necessary to promote the well-being of
37 the child.

38 As used in this section "severe mental or physical incapacity"
39 shall not include a child's abuse of, or addiction to, alcohol or
40 controlled substances.

41 b. In all actions brought for divorce, dissolution of a civil
42 union, divorce from bed and board, legal separation from a partner
43 in a civil union couple or nullity the court may award one or more
44 of the following types of alimony: **【permanent alimony;】**
45 rehabilitative alimony; limited duration alimony or reimbursement
46 alimony to either party. In so doing the court shall consider, but not
47 be limited to, the following factors:

- 1 (1) The actual need and ability of the parties to pay;
- 2 (2) The duration of the marriage or civil union;
- 3 (3) The age, physical and emotional health of the parties;
- 4 (4) The standard of living established in the marriage or civil
5 union and the likelihood that each party can maintain a reasonably
6 comparable standard of living;
- 7 (5) The earning capacities, educational levels, vocational skills,
8 and employability of the parties;
- 9 (6) The length of absence from the job market of the party
10 seeking maintenance;
- 11 (7) The parental responsibilities for the children;
- 12 (8) The time and expense necessary to acquire sufficient
13 education or training to enable the party seeking maintenance to
14 find appropriate employment, the availability of the training and
15 employment, and the opportunity for future acquisitions of capital
16 assets and income;
- 17 (9) The history of the financial or non-financial contributions to
18 the marriage or civil union by each party including contributions to
19 the care and education of the children and interruption of personal
20 careers or educational opportunities;
- 21 (10) The equitable distribution of property ordered and any
22 payouts on equitable distribution, directly or indirectly, out of
23 current income, to the extent this consideration is reasonable, just
24 and fair;
- 25 (11) The income available to either party through investment of
26 any assets held by that party;
- 27 (12) The tax treatment and consequences to both parties of any
28 alimony award, including the designation of all or a portion of the
29 payment as a non-taxable payment; and
- 30 (13) Any other factors which the court may deem relevant.

31 The court may attribute income to a party upon finding that the
32 party is voluntarily unemployed or underemployed based on that
33 party's age, physical and emotional health, earning capacity,
34 educational level, vocational skills, and employability.

35 When a share of a retirement benefit is treated as an asset for
36 purposes of equitable distribution, the court shall not consider
37 income generated thereafter by that share for purposes of
38 determining alimony.

39 c. **【**In any case in which there is a request for an award of
40 permanent alimony, the court shall consider and make specific
41 findings on the evidence about the above factors. If the court
42 determines that an award of permanent alimony is not warranted,
43 the court shall make specific findings on the evidence setting out
44 the reasons therefor.**】** The court shall **【**then**】** consider whether
45 alimony is appropriate for any or all of the following: (1) limited
46 duration; (2) rehabilitative; (3) reimbursement. In so doing, the
47 court shall consider and make specific findings on the evidence

1 about factors set forth above. **【The court shall not award limited**
2 **duration alimony as a substitute for permanent alimony in those**
3 **cases where permanent alimony would otherwise be awarded.】**

4 The court shall determine the length of the term of limited
5 duration alimony as provided in subsection j. The amount of
6 limited duration alimony should generally not exceed the recipient's
7 need or 30 to 35 percent of the difference between the parties' gross
8 incomes established at the time of the initial award. The court may
9 deviate from the amount limit upon written findings that deviation
10 is necessary. Grounds for deviation may include: advanced age,
11 chronic illness, or unusual health circumstances of either party; tax
12 considerations for either party; whether the payer is providing or
13 has been ordered to provide health insurance or the cost of health
14 insurance to the payee; sources and amounts of unearned income
15 not allocated in equitable distribution; the payee's inability to
16 become self-supporting because of physical or mental abuse by the
17 payer; either party's inability to provide for that party's own
18 support because of a deficiency of property, maintenance, or
19 employment opportunity; and any other factors the court deems
20 relevant and material.

21 An award of alimony for a limited duration may be modified
22 based either upon changed circumstances, or upon the
23 nonoccurrence of circumstances that the court found would occur at
24 the time of the award. The court may modify the amount of such an
25 award, but shall not modify the length of the term except in unusual
26 circumstances.

27 Additionally, the court may modify, suspend, or terminate an
28 award of limited duration alimony when the payer spouse or partner
29 shows the payee has maintained a cohabitation relationship with
30 another person for a continuous period of at least three months.
31 The award may be reinstated upon termination of the cohabitation
32 relationship; however, if reinstated the duration of the award shall
33 not extend beyond the termination date of the original order.
34 Limited duration alimony may not be modified, suspended, or
35 terminated unless the court finds the cohabitation relationship is
36 characterized by stability, permanency, and mutual
37 interdependence, and if the economic benefit inuring to the payee is
38 sufficiently material to constitute a change of circumstances. In
39 determining whether to modify, suspend, or terminate limited
40 duration alimony, the court shall consider whether the parties have
41 intertwined finances including, but not limited to, a joint bank
42 account; whether they share living expenses and household chores;
43 and any other relevant and material factors.

44 **【In determining the length of the term, the court shall consider**
45 **the length of time it would reasonably take for the recipient to**
46 **improve his or her earning capacity to a level where limited**
47 **duration alimony is no longer appropriate.】**

1 d. Rehabilitative alimony shall be awarded based upon a plan
2 in which the payee shows the scope of rehabilitation, the steps to be
3 taken, and the time frame, including a period of employment during
4 which rehabilitation will occur. An award of rehabilitative alimony
5 may be modified based either upon changed circumstances, or upon
6 the nonoccurrence of circumstances that the court found would
7 occur at the time of the rehabilitative award. Rehabilitative
8 alimony shall not exceed a term of five years, except that the court
9 in its discretion may extend rehabilitative alimony upon a finding
10 that: (1) unforeseen events prevent the payee from being self-
11 supporting at the end of the term; (2) the payee endeavored to
12 become self-supporting; and (3) extending rehabilitative alimony
13 would not constitute an undue burden on the payer.

14 **【This section is not intended to preclude a court from modifying**
15 **permanent alimony awards based upon the law.】**

16 e. Reimbursement alimony may be awarded under
17 circumstances in which one party supported the other through an
18 advanced education, anticipating participation in the fruits of the
19 earning capacity generated by that education. Reimbursement
20 alimony may not be modified.

21 f. Except as provided in subsection i., nothing in this section
22 shall be construed to limit the court's authority to award **【permanent**
23 **alimony,】** limited duration alimony, rehabilitative alimony or
24 reimbursement alimony, separately or in any combination, as
25 warranted by the circumstances of the parties and the nature of the
26 case.

27 g. In all actions for divorce or dissolution other than those
28 where judgment is granted solely on the ground of separation the
29 court may consider also the proofs made in establishing such
30 ground in determining an amount of alimony or maintenance that is
31 fit, reasonable and just. In all actions for divorce, dissolution of
32 civil union, divorce from bed and board, or legal separation from a
33 partner in a civil union couple where judgment is granted on the
34 ground of institutionalization for mental illness the court may
35 consider the possible burden upon the taxpayers of the State as well
36 as the ability of the party to pay in determining an amount of
37 maintenance to be awarded.

38 h. Except as provided in this subsection, in all actions where a
39 judgment of divorce, dissolution of civil union, divorce from bed
40 and board or legal separation from a partner in a civil union couple
41 is entered the court may make such award or awards to the parties,
42 in addition to alimony and maintenance, to effectuate an equitable
43 distribution of the property, both real and personal, which was
44 legally and beneficially acquired by them or either of them during
45 the marriage or civil union. However, all such property, real,
46 personal or otherwise, legally or beneficially acquired during the
47 marriage or civil union by either party by way of gift, devise, or

1 intestate succession shall not be subject to equitable distribution,
2 except that interspousal gifts or gifts between partners in a civil
3 union couple shall be subject to equitable distribution. The court
4 may not make an award concerning the equitable distribution of
5 property on behalf of a party convicted of an attempt or conspiracy
6 to murder the other party.

7 i. No person convicted of Murder, N.J.S.2C:11-3;
8 Manslaughter, N.J.S.2C:11-4; Criminal Homicide, N.J.S.2C:11-2;
9 Aggravated Assault, under subsection b. of N.J.S.2C:12-1; or a
10 substantially similar offense under the laws of another jurisdiction,
11 may receive alimony if: (1) the crime results in death or serious
12 bodily injury, as defined in subsection b. of N.J.S.2C:11-1, to a
13 family member of a divorcing party; and (2) the crime was
14 committed after the marriage or civil union. A person convicted of
15 an attempt or conspiracy to commit murder may not receive
16 alimony from the person who was the intended victim of the
17 attempt or conspiracy. Nothing in this subsection shall be
18 construed to limit the authority of the court to deny alimony for
19 other bad acts.

20 As used in this subsection:

21 "Family member" means a spouse, child, parent, sibling, aunt,
22 uncle, niece, nephew, first cousin, grandparent, grandchild, father-
23 in-law, mother-in-law, son-in-law, daughter-in-law, stepparent,
24 stepchild, stepbrother, stepsister, half brother, or half sister, whether
25 the individual is related by blood, marriage, or adoption.

26 j. The term of limited duration alimony shall be established as
27 follows:

28 (1) If the duration of the marriage or civil union is five years or
29 less, the term of alimony shall not be greater than one-half the
30 number of months of the marriage or civil union;

31 (2) If the duration of the marriage or civil union is 10 years or
32 less but greater than five years, the term of alimony shall not be
33 greater than 60 percent of the number of months of the marriage or
34 civil union;

35 (3) If the duration of the marriage or civil union is 15 years or
36 less but greater than 10 years, the term of alimony shall not be
37 greater than 70 percent of the number of months of the marriage or
38 civil union;

39 (4) If the duration of the marriage or civil union is 20 years or
40 less but greater than 15 years, the term of alimony shall not be
41 greater than 80 percent of the number of months of the marriage or
42 civil union;

43 (5) If the duration of the marriage or civil union is greater than
44 20 years, the court shall have discretion to award alimony for an
45 indefinite length of time.

46 The court may deviate from the durational limits set forth in this
47 subsection in the interests of justice. In deviating from these limits,

1 the court shall make specific findings on the evidence setting out
2 the reasons therefor.

3 (cf: P.L.2009, c.43, s.1)

4
5 2. N.J.S.2A:34-25 is amended to read as follows:

6 2A:34-25. a. If after the judgment of divorce or dissolution a
7 former spouse shall remarry or a former partner shall enter into a
8 new civil union, **permanent and** limited duration alimony shall
9 terminate as of the date of remarriage or new civil union except that
10 any arrearages that have accrued prior to the date of remarriage or
11 new civil union shall not be vacated or annulled. A former spouse
12 or former partner in a civil union couple who remarries or enters
13 into a new civil union shall promptly so inform the spouse or
14 partner paying **permanent or** limited duration alimony as well as
15 the collecting agency, if any. The court may order such alimony
16 recipient who fails to comply with the notification provision of this
17 act to pay any reasonable attorney fees and court costs incurred by
18 the recipient's former spouse or partner as a result of such non-
19 compliance.

20 The remarriage or establishment of a new civil union of a former
21 spouse or partner receiving rehabilitative or reimbursement alimony
22 shall not be cause for termination of such alimony by the court
23 unless the court finds that the circumstances upon which the award
24 was based have not occurred or unless the payer spouse or partner
25 demonstrates an agreement or good cause to the contrary.

26 b. Alimony shall terminate upon the death of the payer spouse
27 or partner, except that any arrearages that have accrued prior to the
28 date of the payer spouse's or partner's death shall not be vacated or
29 annulled.

30 c. Alimony shall terminate upon the payer spouse or partner
31 attaining full retirement age when the payer is eligible for the old-
32 age retirement benefit under the federal Social Security act, except
33 that any arrearages that have accrued prior to the termination date
34 shall not be vacated or annulled. The payer's ability to work or
35 decision to continue working beyond such date shall not constitute
36 grounds to extend alimony, except that:

37 (1) When making an initial alimony award the court may set a
38 different alimony termination date for good cause shown. In
39 establishing a different termination date, the court shall make
40 specific findings on the evidence setting out the reasons therefor.

41 (2) The court may extend an existing alimony award for good
42 cause shown based on specific findings of a material change in
43 circumstances supported by clear and convincing evidence.

44 d. Nothing in this act shall be construed to prohibit a court
45 from ordering either spouse or partner to maintain life insurance for
46 the protection of the former spouse, partner, or the children of the

1 marriage or civil union in the event of the payer spouse's or
2 partner's death.

3 (cf: P.L.2006, c.103, s.82)

4

5 3. (New section) a. Every action to modify an existing
6 alimony award pursuant to this section shall be commenced within
7 two years of the effective date of P.L. , c. (C.) (pending
8 before the Legislature as this bill). Nothing in this section shall be
9 deemed to affect the right to modification of any alimony award
10 based on a change of circumstances.

11 b. Upon motion by either party to the award, a permanent
12 alimony award existing on the effective date of P.L. ,
13 c. (C.) (pending before the Legislature as this bill) shall be
14 converted to limited duration alimony and may be modified to
15 conform to the provisions of P.L. , c. (C.) (pending
16 before the Legislature as this bill), including but not limited to the
17 durational limits set forth in subsection j. of N.J.S.2A:34-23, unless
18 the court finds deviation from such provisions is warranted. The
19 moving party need not prove a change of circumstances for the
20 purposes of such modification.

21 c. Upon motion by either party to the award a limited duration
22 alimony award existing on the effective date of P.L. ,
23 c. (C.) (pending before the Legislature as this bill) that
24 exceeds the durational limits set forth in subsection j. of
25 N.J.S.2A:34-23 may be modified to conform to the provisions of
26 that subsection unless the court finds that deviation from such
27 durational limits is warranted. The moving party need not prove a
28 change of circumstances for the purposes of such modification.

29 d. Upon motion by either party to the award a rehabilitative
30 alimony award existing on the effective date of P.L. ,
31 c. (C.) (pending before the Legislature as this bill) may be
32 modified to conform to the provisions of subsection d. of
33 N.J.S.2A:34-23.

34 e. The enactment of P.L. , c. (C.) (pending before
35 the Legislature as this bill) shall not constitute a material change of
36 circumstances for the purposes of modifying the amount of an
37 existing alimony award.

38 f. Nothing in P.L. , c. (C.) (pending before the
39 Legislature as this bill) shall provide a right to seek or receive
40 modification of an alimony award in which the parties have agreed
41 that alimony is not modifiable.

42

43 4. This act shall take effect October 1, 2013, and sections 1 and
44 2 of this act shall apply to judgments for alimony entered on or after
45 the effective date.

STATEMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

This bill would revise the laws concerning alimony by eliminating permanent alimony and establishing guidelines concerning the amount and duration of other types of alimony.

Under current law, a court may award four types of alimony: permanent, limited duration, rehabilitative, and reimbursement. The four types of alimony are designed to address different types of considerations that arise during the dissolution of a marriage or civil union. For example, rehabilitative alimony is intended to permit a former spouse or civil union partner to obtain the training and education necessary to return to the workforce and enhance and improve their earning capacity. Reimbursement alimony is awarded to reimburse one spouse or civil union partner for financial contributions made to the other spouse or civil union partner's education or professional training. Permanent alimony is awarded following a lengthy marriage or civil union marked by prolonged economic dependence and sustained contribution to the marriage or civil union. Limited duration alimony is awarded for a set period of time and may not be awarded as a substitute for permanent alimony. There are no guidelines in the current law concerning the duration or amount of an alimony award.

This bill would eliminate permanent alimony awards and establish guidelines for the term of limited duration alimony based on the length of the marriage:

- (1) If the duration of the marriage or civil union is five years or less, the term of alimony would be a maximum of one-half the number of months of the marriage or civil union;
- (2) If the duration of the marriage or civil union is 10 years or less but greater than five years, the term of alimony would be a maximum of 60 percent of the number of months of the marriage or civil union;
- (3) If the duration of the marriage or civil union is 15 years or less but greater than 10 years, the term of alimony would be a maximum of 70 percent of the number of months of the marriage or civil union;
- (4) If the duration of the marriage or civil union is 20 years or less but greater than 15 years, the term of alimony would be a maximum of 80 percent of the number of months of the marriage or civil union;
- (5) If the duration of the marriage or civil union is greater than 20 years, the court would have discretion to award alimony for an indefinite length of time.

The court would be permitted to deviate from these durational limits in the interests of justice and would be required to make specific findings on the evidence setting out the reasons for deviation.

1 The bill would also provide that the amount of a limited duration
2 alimony award should generally not exceed the recipient's need or
3 30 to 35 percent of the difference between the parties' gross
4 incomes. A court would be permitted to deviate from this guideline
5 upon a written finding that deviation is necessary. Additionally, the
6 court would be permitted to attribute income to either party when it
7 finds that party is voluntarily underemployed or unemployed.

8 Under current law, limited duration alimony may be modified
9 based on changed circumstances or upon the nonoccurrence of
10 circumstances that the court found would occur at the time of the
11 award. The court may modify the amount of the award but not the
12 length of the term except in unusual circumstances.

13 The bill would additionally permit suspension, modification, or
14 termination of a limited duration alimony award in the event the
15 recipient establishes a cohabitation relationship with another person
16 for a continuous period of at least three months. The original
17 alimony award could be reinstated upon termination of the
18 cohabitation relationship but would not extend beyond the
19 termination date of the original order. The bill would provide that
20 limited duration alimony may be modified, suspended, or
21 terminated only if the court finds the cohabitation relationship is
22 characterized by stability, permanency, and mutual
23 interdependence, and if the economic benefit inuring to the payee is
24 sufficiently material to constitute a change of circumstances. In
25 determining whether to modify, suspend, or terminate limited
26 duration alimony, the court would consider whether the parties have
27 intertwined finances including, but not limited to, a joint bank
28 account; whether they share living expenses and household chores;
29 and any other relevant and material factors.

30 Under current law, alimony terminates upon the death of either
31 party and both permanent and limited duration alimony terminate
32 upon the recipient remarrying or establishing a new civil union; any
33 arrearages that have accrued as of the date of death, remarriage, or
34 establishing a new civil union may not be vacated or annulled.

35 The bill would provide that alimony would also terminate upon
36 the payer spouse or partner attaining full retirement age when the
37 payer is eligible for the old-age retirement benefit under the federal
38 Social Security act; however, any arrearages that accrued prior to
39 the termination date would not be vacated or annulled. The payer's
40 ability to work beyond such date would not constitute grounds to
41 extend alimony, but the court would have discretion to extend an
42 alimony award beyond the termination date for good cause shown
43 either when making the initial alimony award or upon a finding of a
44 material change in circumstances supported by clear and convincing
45 evidence.

46 Additionally, the bill would provide that rehabilitative alimony
47 would not exceed a term of five years. The court would have

1 discretion to extend the term of rehabilitative alimony upon finding
2 that: (1) unforeseen events prevent the payee from being self-
3 supporting at the end of the term; (2) the payee endeavored to
4 become self-supporting; and (3) extending rehabilitative alimony
5 would not constitute an undue burden on the payer.

6 The bill would also provide that reimbursement alimony could
7 not be modified.

8 Finally, the bill would permit modification of alimony awards
9 existing on the effective date to conform to the provisions of the
10 bill. Limited duration and rehabilitative alimony awards could be
11 modified to conform to the durational guidelines provided in the
12 bill, and permanent alimony awards could be converted to limited
13 duration alimony awards and modified to conform to the durational
14 guidelines for limited duration alimony. A motion for modification
15 could be brought by either party to the award and the moving party
16 would not need to show a change of circumstances to receive a
17 modification. The bill additionally provides that its enactment
18 would not constitute a change of circumstances for the purposes of
19 modifying the amount of an existing alimony award and it would
20 not permit modification of an award that the parties previously
21 agreed could not be modified. The bill would require that all
22 petitions for modifications in connection with its enactment be
23 brought within two years of the effective date. However, nothing in
24 the bill would be deemed to affect the right to modification of any
25 alimony award based on a change of circumstances.

26 The bill would take effect on October 1, 2013 and sections 1 and
27 2 of the bill would apply to judgments for alimony entered on or
28 after that date.

29 This bill is modeled on the Massachusetts “Alimony Reform
30 Law of 2011.”

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 488 and 1808**

STATE OF NEW JERSEY

DATED: JUNE 30, 2014

The Senate Judiciary Committee reports favorably a Senate Committee Substitute for Senate Bill Nos. 488 and 1808.

This committee substitute amends N.J.S.2A:34-23 to modify the types of alimony that may be awarded, establish durational limits for alimony awards, and to enumerate certain factors concerning modification and termination of alimony.

The committee substitute provides specific grounds for modification and termination when the obligor retires, loses a job or otherwise has a reduction in income, or when the obligee cohabits with another person. The substitute also eliminates the phrase “permanent alimony” from the statutes and establishes the term “open durational alimony.”

The committee substitute modifies the factors to be considered by the court in determining an alimony award by clarifying that when considering the standard of living established in the marriage or civil union and the likelihood that each party can maintain a reasonably comparable standard of living, neither party shall have a greater entitlement to that standard of living than the other. In addition to the factors set forth in the current statute, the court shall consider the nature, amount, and length of pendente lite support paid, if any.

TYPES OF ALIMONY AND DURATIONAL LIMITS

Under current law, the court may award the following types of alimony: permanent, limited duration, rehabilitative, and reimbursement. Permanent alimony is awarded when the parties have had a lengthy marriage or civil union marked by economic dependence and contribution to the marriage or civil union. Limited duration alimony is awarded for a set period of time when it is determined that an award of permanent alimony is not warranted. Rehabilitative alimony is awarded to permit a spouse or partner to obtain the training and education necessary to return to the workforce and enhance their earning capacity. Reimbursement alimony is awarded to one spouse or partner for financial contributions made to the other spouse or partner’s education or professional training.

The committee substitute amends the statute to eliminate the requirement that the court must first determine that an award of

permanent alimony is not warranted prior to awarding limited duration and other types of alimony.

The durational limits established by the committee substitute provide that for any marriage or civil union less than 20 years in duration, the total duration of alimony shall not, except in exceptional circumstances, exceed the length of the marriage or civil union. The committee substitute clarifies that a determination of the length and amount of alimony is to be made by the court pursuant to consideration of all of the statutory factors set forth in subsection b. of section 1 of the committee substitute, amending N.J.S.2A:34-23. In addition, the court must consider the practical impact of the parties' need for separate residences and the attendant increase in living expenses on the ability of both parties to maintain a standard of living reasonably comparable to the standard of living established in the marriage or civil union, with neither party having a greater entitlement to that standard of living.

Exceptional circumstances which may warrant deviation from the durational limits include:

(1) The ages of the parties at the time of the marriage or civil union and at the time of the alimony award;

(2) The degree and duration of the dependency of one party on the other party during the marriage or civil union;

(3) Whether a spouse or partner has a chronic illness or unusual health circumstance;

(4) Whether a spouse or partner has given up a career or a career opportunity or otherwise supported the career of the other spouse or partner;

(5) Whether a spouse or partner has received a disproportionate share of the marital estate;

(6) The impact of the marriage or civil union on either party's ability to become self-supporting, including but not limited to either party's responsibility as primary caretaker of a child;

(7) Tax considerations of either party; and

(8) Any other factors or circumstances that the court deems equitable, relevant and material.

RETIREMENT

The committee substitute specifies that alimony may be modified or terminated upon the prospective or actual retirement of the obligor. Under the substitute, there shall be a rebuttable presumption that alimony shall terminate upon the obligor reaching full retirement age, except that any arrearages that have accrued prior to the termination date shall not be vacated or annulled. "Full retirement age" is defined as the age at which a person is eligible to receive full retirement for full retirement benefits under section 216 of the federal Social Security Act (42 U.S.C. s.416). The court may set a different alimony termination date for good cause based on specific findings of fact and conclusions of law. The rebuttable presumption may be overcome if

the court determines that alimony should continue after consideration of the following factors:

- (1) The ages of the parties at the time of the application for retirement;
- (2) The ages of the parties at the time of the marriage or civil union and their ages at the time of the alimony award;
- (3) The degree and duration of the economic dependency of the recipient upon the payor during the marriage or civil union;
- (4) Whether the recipient has foregone or relinquished or otherwise sacrificed claims, rights or property in exchange for a more substantial or longer alimony award;
- (5) The duration or amount of alimony already paid;
- (6) The health of the parties at the time of the retirement application;
- (7) Assets of the parties at the time of the retirement application;
- (8) Whether the recipient has reached full retirement age as defined in the committee substitute;
- (9) Sources of income, both earned and unearned, of the parties;
- (10) The ability of the recipient to have saved adequately for retirement; and
- (11) Any other factors that the court may deem relevant.

If the court determines that the presumption has been overcome, then the court would apply the alimony factors set forth in subsection b. of section 1 of the committee substitute in order to determine whether modification or termination of alimony is appropriate. If the obligor intends to retire but has not yet retired, the court would establish the conditions under which the modification or termination of alimony will be effective.

If an obligor seeks to retire prior to reaching full retirement age, the obligor would have the burden of demonstrating, by a preponderance of the evidence, that the prospective or actual retirement is reasonable and made in good faith. Both the obligor's application to the court and the obligee's response to the application shall be accompanied by current Case Information Statements or other relevant documents as required by the Rules of Court, as well as the Case Information Statements or other documents from the date of entry of the original alimony award and from the date of any subsequent modification.

In determining whether the obligor demonstrated that the prospective or actual retirement is reasonable and made in good faith, the court shall consider the following factors:

- (1) The age and health of the parties at the time of the application;
- (2) The obligor's field of employment and the generally accepted age of retirement for those in that field;
- (3) The age when the obligor becomes eligible for retirement at the obligor's place of employment, including mandatory retirement dates

or the dates upon which continued employment would no longer increase retirement benefits;

(4) The obligor's motives in retiring, including any pressures to retire applied by the obligor's employer or incentive plans offered by the obligor's employer;

(5) The reasonable expectations of the parties regarding retirement during the marriage or civil union and at the time of the divorce or dissolution;

(6) The ability of the obligor to maintain support payments following retirement, including whether the obligor will continue to be employed part-time or work reduced hours;

(7) The obligee's level of financial independence and the financial impact of the retirement by the obligor upon the obligee; and

(8) Any other relevant factors affecting the obligor's decision to retire and the parties' respective financial positions.

If the obligor intends to retire but has not yet retired, the court shall establish the conditions under which the modification or termination of alimony will be effective.

When an obligor filed an application for modification or termination based on retirement in which the existing final alimony order or enforceable written agreement was established prior to the effective date of the enactment, the obligor's reaching full retirement age as defined in the committee substitute shall be deemed a good faith retirement age. Both the obligor's application to the court and the obligee's response to the application must be accompanied by current Case Information Statements or other relevant documents as required by the Rules of Court, as well as the Case Information Statements or other documents from the date of entry of the original alimony award and from the date of any subsequent modification. In making its determination, the court shall consider the ability of the recipient to have saved adequately for retirement as well as the following factors in order to determine whether the obligor, by a preponderance of the evidence, has demonstrated that modification or termination of alimony is appropriate:

(1) The age and health of the parties at the time of the application;

(2) The obligor's field of employment and the generally accepted age of retirement for those in that field;

(3) The age when the obligor becomes eligible for retirement at the obligor's place of employment, including mandatory retirement dates or the dates upon which continued employment would no longer increase retirement benefits;

(4) The obligor's motives in retiring, including any pressures to retire applied by the obligor's employer or incentive plans offered by the obligor's employer;

(5) The reasonable expectations of the parties regarding retirement during the marriage or civil union and at the time of the divorce or dissolution;

(6) The ability of the obligor to maintain support payments following retirement, including whether the obligor will continue to be employed part-time or work reduced hours;

(7) The obligee's level of financial independence and the financial impact of the retirement by the obligor upon the obligee; and

(8) Any other relevant factors affecting the parties' respective financial positions.

The committee substitute provides that the assets distributed between the parties at the time of the entry of a final order of divorce or dissolution of a civil union shall not be considered by the court for purposes of determining the obligor's ability to pay alimony following retirement.

LOSS OF INCOME

When an obligor who is not self-employed seeks modification of alimony, the court shall consider the following factors:

(1) The reasons for any loss of income;

(2) Under circumstances where there has been a loss of employment, the obligor's documented efforts to obtain replacement employment or to pursue an alternative occupation;

(3) Under circumstances where there has been a loss of employment, whether the obligor is making a good faith effort to find remunerative employment at any level and in any field;

(4) The income of the obligee; the obligee's circumstances; and the obligee's reasonable efforts to obtain employment in view of those circumstances and existing opportunities;

(5) The impact of the parties' health on their ability to obtain employment;

(6) Any severance compensation or award made in connection with any loss of employment;

(7) Any changes in the respective financial circumstances of the parties that have occurred since the date of the order from which modification is sought;

(8) The reasons for any change in either party's financial circumstances since the date of the order from which modification is sought, including, but not limited to, assessment of the extent to which either party's financial circumstances at the time of the application are attributable to enhanced earnings or financial benefits received from any source since the date of the order;

(9) Whether a temporary remedy should be fashioned to provide adjustment of the support award from which modification is sought, and the terms of any such adjustment, pending continuing employment investigations by the unemployed spouse or partner; and

(10) Any other factor the court deems relevant to fairly and equitably decide the application.

If the changed circumstances arise from the loss of employment, the length of time a party has been involuntarily unemployed or has had an involuntary reduction in income shall not be the only factor

considered by the court, but rather the court shall determine the application based upon all of the enumerated factors, however, no application shall be filed until a party has been unemployed, or has not been able to return to or attain employment at prior income levels, or both, for a period of 90 days. The court shall have discretion to make any relief granted retroactive to the date of the loss of employment or reduction of income.

When a self-employed party seeks modification of alimony because of an involuntary reduction in income since the date of the order from which modification is sought, then that party's application for relief must include an analysis that sets forth the economic and non-economic benefits the party receives from the business, and which compares these economic and non-economic benefits to those that were in existence at the time of the entry of the order.

The court may establish a temporary remedy which may include: temporarily suspending or reducing support on terms established by the court; directing that support be paid in some amount from assets pending further proceedings; directing a periodic review; or entering any other order the court finds appropriate to assure fairness and equity to both parties.

COHABITATION

Under the substitute, the court may suspend or terminate alimony if a payee cohabits with another person. Pursuant to the committee substitute, cohabitation involves a mutually supportive, intimate personal relationship in which a couple has undertaken duties and privileges that are commonly associated with marriage or civil union but does not necessarily maintain a single common household.

When assessing whether cohabitation is occurring, the court shall consider the following:

- (1) Intertwined finances such as joint bank accounts and other joint holdings or liabilities;
- (2) Sharing or joint responsibility for living expenses;
- (3) Recognition of the relationship in the couple's social and family circle;
- (4) Living together, the frequency of contact, the duration of the relationship, and other indicia of a mutually supportive intimate personal relationship;
- (5) Sharing household chores;
- (6) Whether the recipient of alimony has received an enforceable promise of support from another person within the meaning of subsection h. of R.S.25:1-5 ("palimony"); and
- (7) All other relevant evidence.

In evaluating whether cohabitation is occurring and whether alimony should be suspended or terminated, the court shall also consider the length of the relationship. A court may not find an absence of cohabitation solely on grounds that the couple does not live together on a full-time basis.

EFFECTIVE DATE:

The substitute would take effect immediately and shall not be construed either to modify the duration of alimony ordered or agreed upon or other specifically bargained for contractual provisions that have been incorporated into:

- a. a final judgment of divorce or dissolution;
- b. a final order that has concluded post-judgment litigation; or
- c. any enforceable written agreement between the parties.

COMMITTEE ACTION

As reported, this substitute is identical to the Assembly Committee Substitute for Assembly Bill Nos. 845, 971, and 1649, also reported by the committee today.

SENATE, No. 1808

STATE OF NEW JERSEY
216th LEGISLATURE

INTRODUCED MARCH 24, 2014

Sponsored by:

Senator ANTHONY R. BUCCO

District 25 (Morris and Somerset)

SYNOPSIS

Clarifies certain factors concerning modification and termination of alimony; eliminates the term “permanent alimony” from the statutes.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning alimony and amending N.J.S.2A:34-23.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

5

6 1. N.J.S.2A:34-23 is amended to read as follows:

7 2A:34-23. Alimony, maintenance.

8 Pending any matrimonial action or action for dissolution of a
9 civil union brought in this State or elsewhere, or after judgment of
10 divorce or dissolution or maintenance, whether obtained in this
11 State or elsewhere, the court may make such order as to the alimony
12 or maintenance of the parties, and also as to the care, custody,
13 education and maintenance of the children, or any of them, as the
14 circumstances of the parties and the nature of the case shall render
15 fit, reasonable and just, and require reasonable security for the due
16 observance of such orders, including, but not limited to, the creation
17 of trusts or other security devices, to assure payment of reasonably
18 foreseeable medical and educational expenses. Upon neglect or
19 refusal to give such reasonable security, as shall be required, or
20 upon default in complying with any such order, the court may
21 award and issue process for the immediate sequestration of the
22 personal estate, and the rents and profits of the real estate of the
23 party so charged, and appoint a receiver thereof, and cause such
24 personal estate and the rents and profits of such real estate, or so
25 much thereof as shall be necessary, to be applied toward such
26 alimony and maintenance as to the said court shall from time to
27 time seem reasonable and just; or the performance of the said orders
28 may be enforced by other ways according to the practice of the
29 court. Orders so made may be revised and altered by the court from
30 time to time as circumstances may require.

31 The court may order one party to pay a retainer on behalf of the
32 other for expert and legal services when the respective financial
33 circumstances of the parties make the award reasonable and just. In
34 considering an application, the court shall review the financial
35 capacity of each party to conduct the litigation and the criteria for
36 award of counsel fees that are then pertinent as set forth by court
37 rule. Whenever any other application is made to a court which
38 includes an application for pendente lite or final award of counsel
39 fees, the court shall determine the appropriate award for counsel
40 fees, if any, at the same time that a decision is rendered on the other
41 issue then before the court and shall consider the factors set forth in
42 the court rule on counsel fees, the financial circumstances of the
43 parties, and the good or bad faith of either party. The court may not
44 order a retainer or counsel fee of a party convicted of an attempt or

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 conspiracy to murder the other party to be paid by the party who
2 was the intended victim of the attempt or conspiracy.

3 a. In determining the amount to be paid by a parent for support
4 of the child and the period during which the duty of support is
5 owed, the court in those cases not governed by court rule shall
6 consider, but not be limited to, the following factors:

7 (1) Needs of the child;

8 (2) Standard of living and economic circumstances of each
9 parent;

10 (3) All sources of income and assets of each parent;

11 (4) Earning ability of each parent, including educational
12 background, training, employment skills, work experience,
13 custodial responsibility for children including the cost of providing
14 child care and the length of time and cost of each parent to obtain
15 training or experience for appropriate employment;

16 (5) Need and capacity of the child for education, including
17 higher education;

18 (6) Age and health of the child and each parent;

19 (7) Income, assets and earning ability of the child;

20 (8) Responsibility of the parents for the court-ordered support of
21 others;

22 (9) Reasonable debts and liabilities of each child and parent; and

23 (10) Any other factors the court may deem relevant.

24 The obligation to pay support for a child who has not been
25 emancipated by the court shall not terminate solely on the basis of
26 the child's age if the child suffers from a severe mental or physical
27 incapacity that causes the child to be financially dependent on a
28 parent. The obligation to pay support for that child shall continue
29 until the court finds that the child is relieved of the incapacity or is
30 no longer financially dependent on the parent. However, in
31 assessing the financial obligation of the parent, the court shall
32 consider, in addition to the factors enumerated in this section, the
33 child's eligibility for public benefits and services for people with
34 disabilities and may make such orders, including an order involving
35 the creation of a trust, as are necessary to promote the well-being of
36 the child.

37 As used in this section "severe mental or physical incapacity"
38 shall not include a child's abuse of, or addiction to, alcohol or
39 controlled substances.

40 b. In all actions brought for divorce, dissolution of a civil
41 union, divorce from bed and board, legal separation from a partner
42 in a civil union couple or nullity the court may award one or more
43 of the following types of alimony: **permanent** alimony of
44 indefinite term; rehabilitative alimony; limited duration alimony or
45 reimbursement alimony to either party. In so doing the court shall
46 consider, but not be limited to, the following factors:

47 (1) The actual need and ability of the parties to pay;

48 (2) The duration of the marriage or civil union;

1 (3) The age, physical and emotional health of the parties;

2 (4) The standard of living established in the marriage or civil
3 union and the likelihood that each party can maintain a reasonably
4 comparable standard of living;

5 (5) The earning capacities, educational levels, vocational skills,
6 and employability of the parties;

7 (6) The length of absence from the job market of the party
8 seeking maintenance;

9 (7) The parental responsibilities for the children;

10 (8) The time and expense necessary to acquire sufficient
11 education or training to enable the party seeking maintenance to
12 find appropriate employment, the availability of the training and
13 employment, and the opportunity for future acquisitions of capital
14 assets and income;

15 (9) The history of the financial or non-financial contributions to
16 the marriage or civil union by each party including contributions to
17 the care and education of the children and interruption of personal
18 careers or educational opportunities;

19 (10) The equitable distribution of property ordered and any
20 payouts on equitable distribution, directly or indirectly, out of
21 current income, to the extent this consideration is reasonable, just
22 and fair;

23 (11) The income available to either party through investment of
24 any assets held by that party;

25 (12) The tax treatment and consequences to both parties of any
26 alimony award, including the designation of all or a portion of the
27 payment as a non-taxable payment; and

28 (13) Any other factors which the court may deem relevant.

29 When a share of a retirement benefit is treated as an asset for
30 purposes of equitable distribution, the court shall not consider
31 income generated thereafter by that share for purposes of
32 determining alimony.

33 c. In any case in which there is a request for an award of
34 **【permanent】** alimony of indefinite term, the court shall consider
35 and make specific findings on the evidence about the above factors.
36 If the court determines that an award of **【permanent】** alimony of
37 indefinite term is not warranted, the court shall make specific
38 findings on the evidence setting out the reasons therefor. The court
39 shall then consider whether alimony is appropriate for any or all of
40 the following: (1) limited duration; (2) rehabilitative; (3)
41 reimbursement. In so doing, the court shall consider and make
42 specific findings on the evidence about factors set forth above. The
43 court shall not award limited duration alimony as a substitute for
44 **【permanent】** alimony of indefinite term in those cases where
45 **【permanent】** alimony of indefinite term would otherwise be
46 awarded.

47 An award of alimony for a limited duration may be modified
48 based either upon changed circumstances, or upon the

1 nonoccurrence of circumstances that the court found would occur at
2 the time of the award. The court may modify the amount of such an
3 award, but shall not modify the length of the term except in unusual
4 circumstances.

5 In determining the length of the term, the court shall consider the
6 length of time it would reasonably take for the recipient to improve
7 his or her earning capacity to a level where limited duration
8 alimony is no longer appropriate.

9 d. Rehabilitative alimony shall be awarded based upon a plan
10 in which the payee shows the scope of rehabilitation, the steps to be
11 taken, and the time frame, including a period of employment during
12 which rehabilitation will occur. An award of rehabilitative alimony
13 may be modified based either upon changed circumstances, or upon
14 the nonoccurrence of circumstances that the court found would
15 occur at the time of the rehabilitative award.

16 This section is not intended to preclude a court from modifying
17 permanent alimony awards based upon the law.

18 e. Reimbursement alimony may be awarded under
19 circumstances in which one party supported the other through an
20 advanced education, anticipating participation in the fruits of the
21 earning capacity generated by that education.

22 f. Except as provided in subsection i., nothing in this section
23 shall be construed to limit the court's authority to award permanent
24 alimony, limited duration alimony, rehabilitative alimony or
25 reimbursement alimony, separately or in any combination, as
26 warranted by the circumstances of the parties and the nature of the
27 case.

28 g. In all actions for divorce or dissolution other than those
29 where judgment is granted solely on the ground of separation the
30 court may consider also the proofs made in establishing such
31 ground in determining an amount of alimony or maintenance that is
32 fit, reasonable and just. In all actions for divorce, dissolution of
33 civil union, divorce from bed and board, or legal separation from a
34 partner in a civil union couple where judgment is granted on the
35 ground of institutionalization for mental illness the court may
36 consider the possible burden upon the taxpayers of the State as well
37 as the ability of the party to pay in determining an amount of
38 maintenance to be awarded.

39 h. Except as provided in this subsection, in all actions where a
40 judgment of divorce, dissolution of civil union, divorce from bed
41 and board or legal separation from a partner in a civil union couple
42 is entered the court may make such award or awards to the parties,
43 in addition to alimony and maintenance, to effectuate an equitable
44 distribution of the property, both real and personal, which was
45 legally and beneficially acquired by them or either of them during
46 the marriage or civil union. However, all such property, real,
47 personal or otherwise, legally or beneficially acquired during the
48 marriage or civil union by either party by way of gift, devise, or

1 intestate succession shall not be subject to equitable distribution,
2 except that interspousal gifts or gifts between partners in a civil
3 union couple shall be subject to equitable distribution. The court
4 may not make an award concerning the equitable distribution of
5 property on behalf of a party convicted of an attempt or conspiracy
6 to murder the other party.

7 i. No person convicted of Murder, N.J.S.2C:11-3;
8 Manslaughter, N.J.S.2C:11-4; Criminal Homicide, N.J.S.2C:11-2;
9 Aggravated Assault, under subsection b. of N.J.S.2C:12-1; or a
10 substantially similar offense under the laws of another jurisdiction,
11 may receive alimony if: (1) the crime results in death or serious
12 bodily injury, as defined in subsection b. of N.J.S.2C:11-1, to a
13 family member of a divorcing party; and (2) the crime was
14 committed after the marriage or civil union. A person convicted of
15 an attempt or conspiracy to commit murder may not receive
16 alimony from the person who was the intended victim of the
17 attempt or conspiracy. Nothing in this subsection shall be
18 construed to limit the authority of the court to deny alimony for
19 other bad acts.

20 As used in this subsection:

21 "Family member" means a spouse, child, parent, sibling, aunt,
22 uncle, niece, nephew, first cousin, grandparent, grandchild, father-
23 in-law, mother-in-law, son-in-law, daughter-in-law, stepparent,
24 stepchild, stepbrother, stepsister, half brother, or half sister, whether
25 the individual is related by blood, marriage, or adoption.

26 j. Alimony may be modified or terminated upon the
27 prospective or actual retirement of the obligor. The obligor shall
28 have the burden of demonstrating by a preponderance of the
29 evidence that the prospective or actual retirement is reasonable and
30 made in good faith. Both the obligor's application to the court for
31 modification or termination of alimony and the obligee's response
32 to the application shall be accompanied by current Case Information
33 Statements or other relevant documents as required by the Rules of
34 Court, as well as the Case Information Statements or other
35 documents from the date of the original alimony award and from
36 the date of any subsequent modification.

37 In order to determine whether the obligor has met the burden of
38 demonstrating that the obligor's prospective or actual retirement is
39 reasonable and made in good faith, the court shall consider the
40 following factors:

41 (1) the age and health of the parties at the time of the
42 application;

43 (2) the obligor's field of employment and the generally accepted
44 age of retirement for those in that field;

45 (3) the age when the obligor becomes eligible for retirement at
46 the obligor's place of employment, including mandatory retirement
47 dates or the dates upon which continued employment would no
48 longer increase retirement benefits;

1 (4) the obligor's motives in retiring, including any pressures to
2 retire applied by the obligor's employer or incentive plans offered
3 by the obligor's employer;

4 (5) the reasonable expectations of the parties regarding
5 retirement during the marriage and at the time of the divorce;

6 (6) the ability of the obligor to maintain support payments
7 following retirement, including whether the obligor will continue to
8 be employed part-time or work reduced hours;

9 (7) the obligee's level of financial independence and the
10 financial impact of the retirement by the obligor upon the obligee;
11 and

12 (8) any other relevant factors affecting the obligor's decision to
13 retire and the parties' respective financial positions.

14 Assets which were distributed between the parties by way of
15 equitable distribution at the time of the divorce shall not be
16 considered for purposes of determining the obligor's ability to pay
17 or the obligee's need.

18 If the court determines that the obligor has met his burden, then
19 the court shall apply the alimony factors as set forth in section b. of
20 this section to the parties' current circumstances in order to
21 determine whether modification or termination of alimony is
22 appropriate. If the obligor intends to retire but has not yet retired,
23 the court shall establish the conditions under which the
24 modification or termination of alimony will be effective.

25 k. When a non-self-employed party makes an application to
26 reduce alimony or child support because of involuntary loss of
27 employment, the court shall consider the following factors:

28 (1) The reasons for the loss of employment;

29 (2) The obligor's documented efforts to obtain replacement
30 employment or to pursue an alternative occupation;

31 (3) Whether the obligor is making a good faith effort to find
32 remunerative employment at any level and in any field;

33 (4) The income of the obligee; the obligee's circumstances; and
34 the obligee's reasonable efforts to obtain employment in view of
35 those circumstances and existing opportunities;

36 (5) The impact of the parties' health on their ability to obtain
37 employment;

38 (6) Any severance compensation or award made in connection
39 with the loss of employment;

40 (7) Any changes in the respective financial circumstances of the
41 parties that have occurred since the date of the order from which
42 modification is sought;

43 (8) The reasons for any change in either party's financial
44 circumstances since the date of the order from which modification
45 is sought, including, but not limited to, assessment of the extent to
46 which either party's financial circumstances at the time of the
47 application are attributable to enhanced earnings or financial
48 benefits received from any source since the date of the order;

1 (9) Whether a temporary remedy should be fashioned to provide
2 adjustment of the support award from which modification is sought,
3 and the terms of any such adjustment, pending continuing
4 employment investigations by the unemployed spouse; and

5 (10) Any other factor the court deems relevant to fairly and
6 equitable decide the application.

7 The length of time a party has been involuntarily unemployed or
8 has had an involuntary reduction in income shall not be dispositive
9 of the application and the court shall determine the application
10 based upon all of the enumerated factors, except that no application
11 shall be filed until a party has been unemployed, or not been able to
12 return to employment at prior income levels, or both, for a period of
13 90 days. The court shall have discretion to make any relief granted
14 retroactive to the date of the loss of employment or reduction of
15 income.

16 l. When a self-employed party seeks modification of alimony or
17 child support because of an involuntary reduction in income since
18 the date of the order from which modification is sought, then that
19 party's application for relief must include an analysis that sets forth
20 the economic and non-economic benefits the party receives from
21 the business, and which compares these economic and non-
22 economic benefits to those that were in existence at the time of the
23 entry of the order.

24 m. When assessing whether any temporary remedy should be
25 fashioned, the court may temporarily suspend support, or reduce
26 support on terms; direct that support be paid in some amount from
27 assets pending further proceedings; direct a periodic review; or
28 enter any other order the court finds appropriate to assure fairness
29 and equity to both parties.

30 n. Alimony may be suspended or terminated if the payee
31 cohabits with another person. Cohabitation involves an intimate
32 relationship in which a couple has undertaken duties and privileges
33 that are commonly associated with marriage.

34 When assessing whether cohabitation is occurring, the court shall
35 consider the following:

36 (1) intertwined finances such as joint bank accounts and other
37 joint holdings or liabilities;

38 (2) sharing or joint legal responsibility for living expenses;

39 (3) recognition of the relationship in the couple's social and
40 family circle;

41 (4) living together;

42 (5) sharing household chores; and

43 (6) all other relevant evidence.

44 In evaluating whether cohabitation is occurring and whether
45 alimony should be suspended or terminated, the court shall also
46 consider the length of the relationship. A court may not find an
47 absence of cohabitation solely on grounds that the couple

1 does not live together on a full-time basis.

2 (cf: P.L.2009, c.43, s.1)

3

4 2. This act shall take effect on the 90th day following enactment
5 and shall apply to actions for divorce or dissolution filed on or after
6 the effective date.

7

8

9

STATEMENT

10

11 This bill would clarify certain factors concerning the
12 modification and termination of alimony.

13 The bill amends N.J.S.2A:34-23 to set out specific grounds for
14 modification and termination when the obligor retires, loses his job,
15 or otherwise has a reduction in income, or when the obligee
16 cohabits with another person. The bill also eliminates the phrase
17 “permanent alimony” in the statutes and replaces it with “alimony
18 of indefinite term” to reflect the fact that alimony orders can be
19 modified by the court upon a change of circumstances.

20 RETIREMENT:

21 The bill specifies that alimony may be modified or terminated
22 upon the prospective or actual retirement of the obligor. The obligor
23 would have the burden of demonstrating by a preponderance of the
24 evidence that the prospective or actual retirement is reasonable and
25 made in good faith. Both the obligor’s application to the court for
26 modification or termination of alimony and the obligee’s response
27 to the application would be accompanied by current Case
28 Information Statements or other relevant documents as required by
29 the Rules of Court, as well as the Case Information Statements or
30 other documents from the date of the original alimony award and
31 from the date of any subsequent modification.

32 In order to determine whether the obligor has met the burden of
33 demonstrating that the obligor’s prospective or actual retirement is
34 reasonable and made in good faith, the court would consider the
35 following factors:

36 (1) the age and health of the parties at the time of the
37 application;

38 (2) the obligor’s field of employment and the generally accepted
39 age of retirement for those in that field;

40 (3) the age when the obligor becomes eligible for retirement at
41 the obligor’s place of employment, including mandatory retirement
42 dates or the dates upon which continued employment would no
43 longer increase retirement benefits;

44 (4) the obligor’s motives in retiring, including any pressures to
45 retire applied by the obligor’s employer or incentive plans offered
46 by the obligor’s employer;

47 (5) the reasonable expectations of the parties regarding
48 retirement during the marriage and at the time of the divorce;

1 (6) the ability of the obligor to maintain support payments
2 following retirement, including whether the obligor will continue to
3 be employed part-time or work reduced hours;

4 (7) the obligee's level of financial independence and the
5 financial impact of the retirement by the obligor upon the obligee;
6 and

7 (8) any other relevant factors affecting the obligor's decision to
8 retire and the parties' respective financial positions.

9 If the court determines that the obligor has met his burden, then
10 the court would apply the general alimony factors as set forth in
11 N.J.S.2A34-23 to the parties' current circumstances in order to
12 determine whether modification or termination of alimony is
13 appropriate. If the obligor intends to retire but has not yet retired,
14 the court shall establish the conditions under which the
15 modification or termination of alimony will be effective.

16 APPLICATION BY NON-SELF-EMPLOYED PERSON:

17 Under the bill, when a non-self-employed party makes an
18 application to reduce alimony or child support because of
19 involuntary loss of employment, the court shall consider the
20 following factors:

21 (1) The reasons for the loss of employment;

22 (2) The obligor's documented efforts to obtain replacement
23 employment or to pursue an alternative occupation;

24 (3) Whether the obligor is making a good faith effort to find
25 remunerative employment at any level and in any field;

26 (4) The income of the obligee; the obligee's circumstances; and
27 the obligee's reasonable efforts to obtain employment in view of
28 those circumstances and existing opportunities;

29 (5) The impact of the parties' health on their ability to obtain
30 employment;

31 (6) Any severance compensation or award made in connection
32 with the loss of employment;

33 (7) Any changes in the respective financial circumstances of the
34 parties that have occurred since the date of the order from which
35 modification is sought;

36 (8) The reasons for any change in either party's financial
37 circumstances since the date of the order from which modification
38 is sought, including, but not limited to, assessment of the extent to
39 which either party's financial circumstances at the time of the
40 application are attributable to enhanced earnings or financial
41 benefits received from any source since the date of the order;

42 (9) Whether a temporary remedy should be fashioned to provide
43 adjustment of the support award from which modification is sought,
44 and the terms of any such adjustment, pending continuing
45 employment investigations by the unemployed spouse; and

46 (10) Any other factor the court deems relevant to fairly and
47 equitable decide the application.

48 APPLICATION BY SELF-EMPLOYED PERSON:

1 The bill provides that when a self-employed party seeks
2 modification of alimony or child support because of an involuntary
3 reduction in income since the date of the order from which
4 modification is sought, then that party's application for relief must
5 include an analysis that sets forth the economic and non-economic
6 benefits the party receives from the business, and which compares
7 these economic and non-economic benefits to those that were in
8 existence at the time of the entry of the order.

9 EFFECT OF EQUITABLE DISTRIBUTION:

10 The bill provides that assets which were distributed between the
11 parties by way of equitable distribution at the time of the divorce
12 would not be considered for purposes of determining the obligor's
13 ability to pay or the obligee's need.

14 TEMPORARY REMEDIES:

15 When assessing whether any temporary remedy should be
16 fashioned, the court may temporarily suspend support, or reduce
17 support on terms; direct that support be paid in some amount from
18 assets pending further proceedings; direct a periodic review; or
19 enter any other order the court finds appropriate to assure fairness
20 and equity to both parties.

21 COHABITATION:

22 The bill provides that alimony may be suspended or terminated if
23 the payee cohabits with another person. Cohabitation involves an
24 intimate relationship in which a couple has undertaken duties and
25 privileges that are commonly associated with marriage.

26 When assessing whether cohabitation is occurring, the court shall
27 consider the following:

- 28 (1) intertwined finances such as joint bank accounts and other
29 joint holdings or liabilities;
- 30 (2) sharing or joint legal responsibility for living expenses;
- 31 (3) recognition of the relationship in the couple's social and
32 family circle;
- 33 (4) living together;
- 34 (5) sharing household chores; and
- 35 (6) all other relevant evidence.

36 In evaluating whether cohabitation is occurring and whether
37 alimony should be suspended or terminated, the court would also be
38 required to consider the length of the relationship. A court could
39 not find an absence of cohabitation solely on grounds that the
40 couple does not live together on a full-time basis.

41 EFFECTIVE DATE:

42 The bill would take effect on the 90th day following enactment
43 and apply to actions for divorce or dissolution filed on or after the
44 effective date.