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REPORTS: Yes

New Jersey Law Revision Commission, "Final Report Relating to Equitable Distribution and the Elective Spousal Share", November 7, 2011

<https://static1.squarespace.com/static/596f60f4ebbd1a322db09e45/t/622935b8eb35f4215443a1f5/1751559993767/electvFR110711c.pdf>

New Jersey Law Revision Commission, "Minutes of Commission Meeting", November 17, 2011

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HEARINGS: No

NEWSPAPER ARTICLES: Yes

'Bar Report – March 20, 2023', *New Jersey Law Journal*, 20 Mar 2023

'Bar Report – June 19, 2023', *New Jersey Law Journal*, 19 June 2023

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P.L. 2023, CHAPTER 238, *approved January 8, 2024*
Assembly, No. 2351 (*Second Reprint*)

1 AN ACT concerning equitable distribution and amending various
2 sections of the New Jersey Statutes.

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

6
7 1. N.J.S.3B:5-3 is amended to read as follows:

8 3B:5-3. Intestate share of decedent's surviving spouse, partner in
9 a civil union, or domestic partner.

10 The intestate share of the surviving spouse, partner in a civil
11 union, or domestic partner is:

12 a. The entire intestate estate if:

13 (1) No descendant or parent of the decedent survives the
14 decedent; or

15 (2) All of the decedent's surviving descendants are also
16 descendants of the surviving spouse, partner in a civil union, or
17 domestic partner and there is no other descendant of the surviving
18 spouse or domestic partner, partner in a civil union, who survives
19 the decedent;

20 b. The first 25% of the intestate estate, but not less than
21 \$50,000.00 nor more than \$200,000.00, plus three-fourths of any
22 balance of the intestate estate, if no descendant of the decedent
23 survives the decedent, but a parent of the decedent survives the
24 decedent;

25 c. The first 25% of the intestate estate, but not less than
26 \$50,000.00 nor more than \$200,000.00, plus one-half of the balance
27 of the intestate estate:

28 (1) If all of the decedent's surviving descendants are also
29 descendants of the surviving spouse, partner in a civil union, or
30 domestic partner and the surviving spouse, partner in a civil union,
31 or domestic partner has one or more surviving descendants who are
32 not descendants of the decedent; or

33 (2) If one or more of the decedent's surviving descendants is not
34 a descendant of the surviving spouse, partner in a civil union, or
35 domestic partner.

36 d. For purposes of this section:

37 “Surviving spouse, partner in a civil union, or domestic partner”
38 shall not include²:

39 (1)² an individual who has filed a complaint not dismissed
40 pursuant to R.4:6-2 of the Rules of Court, or against whom a

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AJU committee amendments adopted October 17, 2022.

²Senate SJU committee amendments adopted June 12, 2023.

1 complaint not dismissed pursuant to R.4:6-2 of the Rules of Court,
2 has been filed for: divorce, dissolution of civil union, termination of
3 domestic partnership, or divorce from bed and board ²; or

4 (2) an individual who has entered into a validly executed
5 equitable distribution cut-off agreement or termination agreement
6 where the underlying subject matter of the complaint or equitable
7 distribution cut-off agreement or termination agreement is divorce,
8 dissolution of civil union, termination of domestic partnership or
9 divorce from bed and board; or

10 (3) an individual who at the time of death of the decedent had:

11 (a) ceased to cohabit with the decedent under circumstances
12 which would have given rise to a cause of action for divorce or
13 nullity of marriage to a decedent prior to his or her death under the
14 laws of this State; and

15 (b) where, through written agreement, affirmative acts, or both
16 written agreement and affirmative acts of the individual and
17 decedent there had been a division of assets equivalent to equitable
18 distribution; or

19 (4) an individual who, at the time of death of the deceased, had
20 entered into a validly executed marital settlement agreement with
21 the decedent where the underlying subject matter of the marital
22 settlement agreement is divorce, dissolution of civil union,
23 termination of domestic partnership, or divorce from bed and
24 board².

25 (cf: P.L.2005, c.331, s.2)

26
27 2. N.J.S.3B:5-4 is amended to read as follows:

28 3B:5-4. Intestate shares of heirs other than surviving spouse,
29 partner in a civil union, or domestic partner.

30 Any part of the intestate estate not passing to the decedent's
31 surviving spouse, partner in a civil union, or domestic partner under
32 N.J.S.3B:5-3, or the entire intestate estate if there is no surviving
33 spouse, partner in a civil union, or domestic partner, passes in the
34 following order to the individuals designated below who survive the
35 decedent:

36 a. To the decedent's descendants by representation;

37 b. If there are no surviving descendants, to the decedent's
38 parents equally if both survive, or to the surviving parent, except as
39 provided in section 4 of P.L.2009, c.43 (C.3B:5-14.1);

40 c. If there are no surviving descendants or parent, to the
41 descendants of the decedent's parents or either of them by
42 representation;

43 d. If there is no surviving descendant, parent or descendant of a
44 parent, but the decedent is survived by one or more grandparents,
45 half of the estate passes to the decedent's paternal grandparents
46 equally if both survive, or to the surviving paternal grandparent, or
47 to the descendants of the decedent's paternal grandparents or either

1 of them if both are deceased, the descendants taking by
2 representation; and the other half passes to the decedent's maternal
3 relatives in the same manner; but if there is no surviving
4 grandparent, or descendant of a grandparent on either the paternal
5 or the maternal side, the entire estate passes to the decedent's
6 relatives on the other side in the same manner as the half;

7 e. If there is no surviving descendant, parent, descendant of a
8 parent, or grandparent, but the decedent is survived by one or more
9 descendants of grandparents, the descendants take equally if they
10 are all of the same degree of kinship to the decedent, but if of
11 unequal degree those of more remote degree take by representation;

12 f. If there are no surviving descendants of grandparents, then
13 the decedent's step-children or their descendants by representation.
14 (cf: P.L.2009, c.43, s.3)

15

16 3. Section 58 of P.L.2004, c.132 (C.3B:7-1.1) is amended to
17 read as follows:

18 58. Effect of intentional killing on intestate succession, wills,
19 trusts, joint assets, life insurance and beneficiary designations.

20 a. An individual who is responsible for the intentional killing
21 of the decedent forfeits all benefits under this title with respect to
22 the decedent's estate, including an intestate share, an elective share,
23 an omitted spouse's, domestic partner's, civil union partner's, or
24 child's share, exempt property and a family allowance. If the
25 decedent died intestate, the decedent's intestate estate passes as if
26 the killer disclaimed his share.

27 b. The intentional killing of the decedent:

28 (1) revokes any revocable (a) disposition or appointment of
29 property made by decedent to the killer in a governing instrument
30 and any disposition or appointment created by law or in a governing
31 instrument to a relative of the killer, (b) provision in a governing
32 instrument conferring a general or special power of appointment on
33 the killer or a relative of the killer, and (c) nomination in a
34 governing instrument of the killer or a relative of the killer,
35 nominating or appointing the killer or a relative of the killer to
36 serve in any fiduciary or representative capacity; and

37 (2) severs the interests of the decedent and the killer in property
38 held by them at the time of the killing as joint tenants with the right
39 of survivorship or as tenants by the entirety, transforming the
40 interests of the decedent and killer into tenancies in common.

41 c. For purposes of this chapter: (1) "governing instrument"
42 means a governing instrument executed by the decedent; and (2)
43 "relative of the killer" means an individual who is related to the
44 killer by blood, adoption or affinity and who is not related to the
45 decedent by blood or adoption or affinity.

46 (cf: P.L.2005, c.331, s.6)

1 4. N.J.S.3B:8-1 is amended to read as follows:

2 3B:8-1. Elective share of surviving spouse or domestic partner
3 of person dying domiciled in this State; conditions.

4 ²a.² If a married person, partner in a civil union, or person in a
5 domestic partnership dies domiciled in this State, **[**on or after May
6 28, 1980,**]** the surviving spouse, partner in a civil union, or
7 domestic partner has a right of election to take an elective share of
8 one-third of the augmented estate under the limitations and
9 conditions hereinafter stated, **[**provided that at the time of death the
10 decedent and the surviving spouse or domestic partner had not been
11 living separate and apart in different habitations or had not ceased
12 to cohabit as man and wife, either as the result of judgment of
13 divorce from bed and board or under circumstances which would
14 have given rise to a cause of action for divorce or nullity of
15 marriage to a decedent prior to his death under the laws of this
16 State**]** unless either the decedent or the surviving spouse, partner in
17 a civil union, or domestic partner had filed a complaint not
18 dismissed pursuant to R.4:6-2 of the Rules of Court, for divorce,
19 dissolution of civil union, termination of domestic partnership or
20 divorce from bed and board.

21 ²b. For purposes of this section “surviving spouse, partner in a
22 civil union, or domestic partnership” shall not include those
23 individuals described pursuant to subsection d. of N.J.S.3B:5-3.²
24 (cf: P.L.2005, c.331, s.7)

25

26 5. N.J.S.3B:8-2 is amended to read as follows:

27 3B:8-2. Elective share of surviving spouse, partner in a civil
28 union, or domestic partner of person dying not domiciled in this
29 State.

30 If a married person, partner in a civil union, or person in a
31 domestic partnership not domiciled in this State dies, the right, if
32 any, of the surviving spouse, partner in a civil union, or domestic
33 partner to take an elective share in property in this State is governed
34 by the law of the decedent's domicile at death.

35 (cf: P.L.2005, c.331, s.8)

36

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

38 2A:34-23. Alimony, maintenance. Pending any matrimonial
39 action or action for dissolution of a civil union brought in this State
40 or elsewhere, or after judgment of divorce or dissolution or
41 maintenance, whether obtained in this State or elsewhere, the court
42 may make such order as to the alimony or maintenance of the
43 parties, and also as to the care, custody, education and maintenance
44 of the children, or any of them, as the circumstances of the parties
45 and the nature of the case shall render fit, reasonable and just, and
46 require reasonable security for the due observance of such orders,
47 including, but not limited to, the creation of trusts or other security

1 devices, to assure payment of reasonably foreseeable medical and
2 educational expenses. Upon neglect or refusal to give such
3 reasonable security, as shall be required, or upon default in
4 complying with any such order, the court may award and issue
5 process for the immediate sequestration of the personal estate, and
6 the rents and profits of the real estate of the party so charged, and
7 appoint a receiver thereof, and cause such personal estate and the
8 rents and profits of such real estate, or so much thereof as shall be
9 necessary, to be applied toward such alimony and maintenance as to
10 the said court shall from time to time seem reasonable and just; or
11 the performance of the said orders may be enforced by other ways
12 according to the practice of the court. Orders so made may be
13 revised and altered by the court from time to time as circumstances
14 may require.

15 The court may order one party to pay a retainer on behalf of the
16 other for expert and legal services when the respective financial
17 circumstances of the parties make the award reasonable and just. In
18 considering an application, the court shall review the financial
19 capacity of each party to conduct the litigation and the criteria for
20 award of counsel fees that are then pertinent as set forth by court
21 rule. Whenever any other application is made to a court which
22 includes an application for pendente lite or final award of counsel
23 fees, the court shall determine the appropriate award for counsel
24 fees, if any, at the same time that a decision is rendered on the other
25 issue then before the court and shall consider the factors set forth in
26 the court rule on counsel fees, the financial circumstances of the
27 parties, and the good or bad faith of either party. The court may not
28 order a retainer or counsel fee of a party convicted of an attempt or
29 conspiracy to murder the other party to be paid by the party who
30 was the intended victim of the attempt or conspiracy.

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

- 35 (1) Needs of the child;
- 36 (2) Standard of living and economic circumstances of each
37 parent;
- 38 (3) All sources of income and assets of each parent;
- 39 (4) Earning ability of each parent, including educational
40 background, training, employment skills, work experience,
41 custodial responsibility for children including the cost of providing
42 child care and the length of time and cost of each parent to obtain
43 training or experience for appropriate employment;
- 44 (5) Need and capacity of the child for education, including
45 higher education;
- 46 (6) Age and health of the child and each parent;
- 47 (7) Income, assets and earning ability of the child;

1 (8) Responsibility of the parents for the court-ordered support of
2 others;

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

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

5 The obligation to pay support for a child who has not been
6 emancipated by the court shall not terminate solely on the basis of
7 the child's age if the child suffers from a severe mental or physical
8 incapacity that causes the child to be financially dependent on a
9 parent. The obligation to pay support for that child shall continue
10 until the court finds that the child is relieved of the incapacity or is
11 no longer financially dependent on the parent. However, in
12 assessing the financial obligation of the parent, the court shall
13 consider, in addition to the factors enumerated in this section, the
14 child's eligibility for public benefits and services for people with
15 disabilities and may make such orders, including an order involving
16 the creation of a trust, as are necessary to promote the well-being of
17 the child.

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

21 b. In all actions brought for divorce, dissolution of a civil
22 union, divorce from bed and board, legal separation from a partner
23 in a civil union couple or nullity the court may award one or more
24 of the following types of alimony: open durational alimony;
25 rehabilitative alimony; limited duration alimony or reimbursement
26 alimony to either party. In so doing the court shall consider, but not
27 be limited to, the following factors:

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

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

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

31 (4) The standard of living established in the marriage or civil
32 union and the likelihood that each party can maintain a reasonably
33 comparable standard of living, with neither party having a greater
34 entitlement to that standard of living than the other;

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

37 (6) The length of absence from the job market of the party
38 seeking maintenance;

39 (7) The parental responsibilities for the children;

40 (8) The time and expense necessary to acquire sufficient
41 education or training to enable the party seeking maintenance to
42 find appropriate employment, the availability of the training and
43 employment, and the opportunity for future acquisitions of capital
44 assets and income;

45 (9) The history of the financial or non-financial contributions to
46 the marriage or civil union by each party including contributions to
47 the care and education of the children and interruption of personal
48 careers or educational opportunities;

1 (10) The equitable distribution of property ordered and any
2 payouts on equitable distribution, directly or indirectly, out of
3 current income, to the extent this consideration is reasonable, just
4 and fair;

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

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

10 (13) The nature, amount, and length of pendente lite support
11 paid, if any; and

12 (14) Any other factors which the court may deem relevant.

13 In each case where the court is asked to make an award of
14 alimony, the court shall consider and assess evidence with respect
15 to all relevant statutory factors. If the court determines that certain
16 factors are more or less relevant than others, the court shall make
17 specific written findings of fact and conclusions of law on the
18 reasons why the court reached that conclusion. No factor shall be
19 elevated in importance over any other factor unless the court finds
20 otherwise, in which case the court shall make specific written
21 findings of fact and conclusions of law in that regard.

22 When a share of a retirement benefit is treated as an asset for
23 purposes of equitable distribution, the court shall not consider
24 income generated thereafter by that share for purposes of
25 determining alimony.

26 c. In any case in which there is a request for an award of
27 alimony, the court shall consider and make specific findings on the
28 evidence about all of the statutory factors set forth in subsection b.
29 of this section.

30 For any marriage or civil union less than 20 years in duration,
31 the total duration of alimony shall not, except in exceptional
32 circumstances, exceed the length of the marriage or civil union.
33 Determination of the length and amount of alimony shall be made
34 by the court pursuant to consideration of all of the statutory factors
35 set forth in subsection b. of this section. In addition to those
36 factors, the court shall also consider the practical impact of the
37 parties' need for separate residences and the attendant increase in
38 living expenses on the ability of both parties to maintain a standard
39 of living reasonably comparable to the standard of living
40 established in the marriage or civil union, to which both parties are
41 entitled, with neither party having a greater entitlement thereto.

42 Exceptional circumstances which may require an adjustment to
43 the duration of alimony include:

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

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

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

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

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

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

11 (7) Tax considerations of either party;

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

14 An award of alimony for a limited duration may be modified
15 based either upon changed circumstances, or upon the
16 nonoccurrence of circumstances that the court found would occur at
17 the time of the award. The court may modify the amount of such an
18 award, but shall not modify the length of the term except in unusual
19 circumstances.

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

24 d. Rehabilitative alimony shall be awarded based upon a plan
25 in which the payee shows the scope of rehabilitation, the steps to be
26 taken, and the time frame, including a period of employment during
27 which rehabilitation will occur. An award of rehabilitative alimony
28 may be modified based either upon changed circumstances, or upon
29 the nonoccurrence of circumstances that the court found would
30 occur at the time of the rehabilitative award.

31 This section is not intended to preclude a court from modifying
32 alimony awards based upon the law.

33 e. Reimbursement alimony may be awarded under
34 circumstances in which one party supported the other through an
35 advanced education, anticipating participation in the fruits of the
36 earning capacity generated by that education. An award of
37 reimbursement alimony shall not be modified for any reason.

38 f. Except as provided in subsection i., nothing in this section
39 shall be construed to limit the court's authority to award open
40 durational alimony, limited duration alimony, rehabilitative alimony
41 or reimbursement alimony, separately or in any combination, as
42 warranted by the circumstances of the parties and the nature of the
43 case.

44 g. In all actions for divorce or dissolution other than those
45 where judgment is granted solely on the ground of separation the
46 court may consider also the proofs made in establishing such
47 ground in determining an amount of alimony or maintenance that is
48 fit, reasonable and just. In all actions for divorce, dissolution of

1 civil union, divorce from bed and board, or legal separation from a
2 partner in a civil union couple where judgment is granted on the
3 ground of institutionalization for mental illness the court may
4 consider the possible burden upon the taxpayers of the State as well
5 as the ability of the party to pay in determining an amount of
6 maintenance to be awarded.

7 h. (1) Except as provided in this subsection, in all actions
8 where a judgment of divorce, dissolution of civil union, or divorce
9 from bed and board **【**or legal separation from a partner in a civil
10 union couple**】** is entered the court may make such award or awards
11 to the parties, in addition to alimony and maintenance, to effectuate
12 an equitable distribution of the property, both real and personal,
13 which was legally and beneficially acquired by them or either of
14 them during the marriage or civil union. However, all such
15 property, real, personal or otherwise, legally or beneficially
16 acquired during the marriage or civil union by either party by way
17 of gift, devise, or intestate succession shall not be subject to
18 equitable distribution, except that interspousal gifts or gifts between
19 partners in a civil union couple shall be subject to equitable
20 distribution.

21 (2) If a complaint not dismissed pursuant to R.4:6-2 of the Rules
22 of Court has been filed for an action under paragraph (1) of this
23 section, and ²(a)² either party to the litigation dies prior to the entry
24 of the final judgment, ²or (b) if the parties had and remained
25 entered into a validly executed equitable distribution cut-off
26 agreement, termination agreement, or marital settlement agreement
27 where the underlying subject matter of the agreement is divorce,
28 dissolution of civil union, termination of domestic partnership, or
29 divorce from bed and board at the time of death of the decedent
30 occurring prior to the entry of the final judgment,² the court's
31 authority to effectuate an equitable distribution of the property shall
32 not abate. ²Pursuant to subparagraph (a)(3) of R.4:3-1 of the Rules
33 of Court, all such matters shall be filed and heard in the Family Part
34 of the Chancery Division of the Superior Court.²

35 (3) The court may not make an award concerning the equitable
36 distribution of property on behalf of a party **【**convicted of**】** barred
37 from inheriting under subsection a. of section 58 of P.L.2004, c.132
38 (C.3B:7-1.1)¹**【**,**】** or on behalf of¹ a party responsible for an attempt
39 or conspiracy to murder the other party.

40 i. No person convicted of Murder, N.J.S.2C:11-3;
41 Manslaughter, N.J.S.2C:11-4; Criminal Homicide, N.J.S.2C:11-2;
42 Aggravated Assault, under subsection b. of N.J.S.2C:12-1; or a
43 substantially similar offense under the laws of another jurisdiction,
44 may receive alimony if: (1) the crime results in death or serious
45 bodily injury, as defined in subsection b. of N.J.S.2C:11-1, to a
46 family member of a divorcing party; and (2) the crime was
47 committed after the marriage or civil union. A person convicted of

1 an attempt or conspiracy to commit murder may not receive
2 alimony from the person who was the intended victim of the
3 attempt or conspiracy. Nothing in this subsection shall be
4 construed to limit the authority of the court to deny alimony for
5 other bad acts.

6 As used in this subsection:

7 "Family member" means a spouse, partner in a civil union, child,
8 parent, sibling, aunt, uncle, niece, nephew, first cousin,
9 grandparent, grandchild, father-in-law, mother-in-law, son-in-law,
10 daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half
11 brother, or half sister, whether the individual is related by blood,
12 marriage or civil union, or adoption.

13 j. Alimony may be modified or terminated upon the
14 prospective or actual retirement of the obligor.

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

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

24 (a) The ages of the parties at the time of the application for
25 retirement;

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

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

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

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

34 (f) The health of the parties at the time of the retirement
35 application;

36 (g) Assets of the parties at the time of the retirement
37 application;

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

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

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

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

44 If the court determines, for good cause shown based on specific
45 written findings of fact and conclusions of law, that the
46 presumption has been overcome, then the court shall apply the
47 alimony factors as set forth in subsection b. of this section to the
48 parties' current circumstances in order to determine whether

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

5 (2) Where the obligor seeks to retire prior to attaining the full
6 retirement age as defined in this section, the obligor shall have the
7 burden of demonstrating by a preponderance of the evidence that
8 the prospective or actual retirement is reasonable and made in good
9 faith. Both the obligor's application to the court for modification or
10 termination of alimony and the obligee's response to the application
11 shall be accompanied by current Case Information Statements or
12 other relevant documents as required by the Rules of Court, as well
13 as the Case Information Statements or other documents from the
14 date of entry of the original alimony award and from the date of any
15 subsequent modification.

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

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

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

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

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

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

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

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

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

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

44 (3) When a retirement application is filed in cases in which
45 there is an existing final alimony order or enforceable written
46 agreement established prior to the effective date of this act, the
47 obligor's reaching full retirement age as defined in this section shall
48 be deemed a good faith retirement age. Upon application by the

1 obligor to modify or terminate alimony, both the obligor's
2 application to the court for modification or termination of alimony
3 and the obligee's response to the application shall be accompanied
4 by current Case Information Statements or other relevant documents
5 as required by the Rules of Court, as well as the Case Information
6 Statements or other documents from the date of entry of the original
7 alimony award and from the date of any subsequent modification.
8 In making its determination, the court shall consider the ability of
9 the obligee to have saved adequately for retirement as well as the
10 following factors in order to determine whether the obligor, by a
11 preponderance of the evidence, has demonstrated that modification
12 or termination of alimony is appropriate:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 Under circumstances where the changed circumstances arise
25 from the loss of employment, the length of time a party has been
26 involuntarily unemployed or has had an involuntary reduction in
27 income shall not be the only factor considered by the court when an
28 application is filed by a non-self-employed party to reduce alimony
29 because of involuntary loss of employment. The court shall
30 determine the application based upon all of the enumerated factors,
31 however, no application shall be filed until a party has been
32 unemployed, or has not been able to return to or attain employment
33 at prior income levels, or both, for a period of 90 days. The court
34 shall have discretion to make any relief granted retroactive to the
35 date of the loss of employment or reduction of income.

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

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

1 n. Alimony may be suspended or terminated if the payee
2 cohabits with another person. Cohabitation involves a mutually
3 supportive, intimate personal relationship in which a couple has
4 undertaken duties and privileges that are commonly associated with
5 marriage or civil union but does not necessarily maintain a single
6 common household.

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

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

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

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

14 (4) Living together, the frequency of contact, the duration of the
15 relationship, and other indicia of a mutually supportive intimate
16 personal relationship;

17 (5) Sharing household chores;

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

21 (7) All other relevant evidence.

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

27 As used in this section:

28 "Full retirement age" shall mean the age at which a person is
29 eligible to receive full retirement for full retirement benefits under
30 section 216 of the federal Social Security Act (42 U.S.C. s.416).

31 (cf: P.L.2014, c.42, s.1)

32

33 7. This act shall take effect immediately.

34

35

36

37

38 Permits court to effectuate equitable distribution when complaint
39 for divorce or dissolution of civil union has been filed and either
40 party has died prior to final judgment; provides that surviving party
41 would not receive intestate or elective share.

ASSEMBLY, No. 2351

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED FEBRUARY 7, 2022

Sponsored by:

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Assemblywoman VICTORIA A. FLYNN

District 13 (Monmouth)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

SYNOPSIS

Permits court to effectuate equitable distribution when complaint for divorce or dissolution of civil union has been filed and either party has died prior to final judgment; provides that surviving party would not receive intestate or elective share.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/17/2022)

1 AN ACT concerning equitable distribution and amending various
2 sections of the New Jersey Statutes.

3

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

6

7 1. N.J.S.3B:5-3 is amended to read as follows:

8 3B:5-3. Intestate share of decedent's surviving spouse, partner in
9 a civil union, or domestic partner.

10 The intestate share of the surviving spouse, partner in a civil
11 union, or domestic partner is:

12 a. The entire intestate estate if:

13 (1) No descendant or parent of the decedent survives the
14 decedent; or

15 (2) All of the decedent's surviving descendants are also
16 descendants of the surviving spouse, partner in a civil union, or
17 domestic partner and there is no other descendant of the surviving
18 spouse or domestic partner, partner in a civil union, who survives
19 the decedent;

20 b. The first 25% of the intestate estate, but not less than
21 \$50,000.00 nor more than \$200,000.00, plus three-fourths of any
22 balance of the intestate estate, if no descendant of the decedent
23 survives the decedent, but a parent of the decedent survives the
24 decedent;

25 c. The first 25% of the intestate estate, but not less than
26 \$50,000.00 nor more than \$200,000.00, plus one-half of the balance
27 of the intestate estate:

28 (1) If all of the decedent's surviving descendants are also
29 descendants of the surviving spouse, partner in a civil union, or
30 domestic partner and the surviving spouse, partner in a civil union,
31 or domestic partner has one or more surviving descendants who are
32 not descendants of the decedent; or

33 (2) If one or more of the decedent's surviving descendants is not
34 a descendant of the surviving spouse, partner in a civil union, or
35 domestic partner.

36 d. For purposes of this section:

37 “Surviving spouse, partner in a civil union, or domestic partner”
38 shall not include an individual who has filed a complaint not
39 dismissed pursuant to R.4:6-2 of the Rules of Court, or against
40 whom a complaint not dismissed pursuant to R.4:6-2 of the Rules of
41 Court, has been filed for: divorce, dissolution of civil union,
42 termination of domestic partnership, or divorce from bed and board.
43 (cf: P.L.2005, c.331, s.2)

44

45 2. N.J.S.3B:5-4 is amended to read as follows:

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 3B:5-4. Intestate shares of heirs other than surviving spouse,
2 partner in a civil union, or domestic partner.

3 Any part of the intestate estate not passing to the decedent's
4 surviving spouse, partner in a civil union, or domestic partner under
5 N.J.S.3B:5-3, or the entire intestate estate if there is no surviving
6 spouse, partner in a civil union, or domestic partner, passes in the
7 following order to the individuals designated below who survive the
8 decedent:

9 a. To the decedent's descendants by representation;

10 b. If there are no surviving descendants, to the decedent's
11 parents equally if both survive, or to the surviving parent, except as
12 provided in section 4 of P.L.2009, c.43 (C.3B:5-14.1);

13 c. If there are no surviving descendants or parent, to the
14 descendants of the decedent's parents or either of them by
15 representation;

16 d. If there is no surviving descendant, parent or descendant of a
17 parent, but the decedent is survived by one or more grandparents,
18 half of the estate passes to the decedent's paternal grandparents
19 equally if both survive, or to the surviving paternal grandparent, or
20 to the descendants of the decedent's paternal grandparents or either
21 of them if both are deceased, the descendants taking by
22 representation; and the other half passes to the decedent's maternal
23 relatives in the same manner; but if there is no surviving
24 grandparent, or descendant of a grandparent on either the paternal
25 or the maternal side, the entire estate passes to the decedent's
26 relatives on the other side in the same manner as the half;

27 e. If there is no surviving descendant, parent, descendant of a
28 parent, or grandparent, but the decedent is survived by one or more
29 descendants of grandparents, the descendants take equally if they
30 are all of the same degree of kinship to the decedent, but if of
31 unequal degree those of more remote degree take by representation;

32 f. If there are no surviving descendants of grandparents, then
33 the decedent's step-children or their descendants by representation.

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

35

36 3. Section 58 of P.L.2004, c.132 (C.3B:7-1.1) is amended to
37 read as follows:

38 58. Effect of intentional killing on intestate succession, wills,
39 trusts, joint assets, life insurance and beneficiary designations.

40 a. An individual who is responsible for the intentional killing
41 of the decedent forfeits all benefits under this title with respect to
42 the decedent's estate, including an intestate share, an elective share,
43 an omitted spouse's, domestic partner's, civil union partner's, or
44 child's share, exempt property and a family allowance. If the
45 decedent died intestate, the decedent's intestate estate passes as if
46 the killer disclaimed his share.

47 b. The intentional killing of the decedent:

1 (1) revokes any revocable (a) disposition or appointment of
2 property made by decedent to the killer in a governing instrument
3 and any disposition or appointment created by law or in a governing
4 instrument to a relative of the killer, (b) provision in a governing
5 instrument conferring a general or special power of appointment on
6 the killer or a relative of the killer, and (c) nomination in a
7 governing instrument of the killer or a relative of the killer,
8 nominating or appointing the killer or a relative of the killer to
9 serve in any fiduciary or representative capacity; and

10 (2) severs the interests of the decedent and the killer in property
11 held by them at the time of the killing as joint tenants with the right
12 of survivorship or as tenants by the entireties, transforming the
13 interests of the decedent and killer into tenancies in common.

14 c. For purposes of this chapter: (1) "governing instrument"
15 means a governing instrument executed by the decedent; and (2)
16 "relative of the killer" means an individual who is related to the
17 killer by blood, adoption or affinity and who is not related to the
18 decedent by blood or adoption or affinity.

19 (cf: P.L.2005, c.331, s.6)

20

21 4. N.J.S.3B:8-1 is amended to read as follows:

22 3B:8-1. Elective share of surviving spouse or domestic partner
23 of person dying domiciled in this State; conditions.

24 If a married person, partner in a civil union, or person in a
25 domestic partnership dies domiciled in this State, **[**on or after May
26 28, 1980,**]** the surviving spouse, partner in a civil union, or
27 domestic partner has a right of election to take an elective share of
28 one-third of the augmented estate under the limitations and
29 conditions hereinafter stated, **[**provided that at the time of death the
30 decedent and the surviving spouse or domestic partner had not been
31 living separate and apart in different habitations or had not ceased
32 to cohabit as man and wife, either as the result of judgment of
33 divorce from bed and board or under circumstances which would
34 have given rise to a cause of action for divorce or nullity of
35 marriage to a decedent prior to his death under the laws of this
36 State**]** unless either the decedent or the surviving spouse, partner in
37 a civil union, or domestic partner had filed a complaint not
38 dismissed pursuant to R.4:6-2 of the Rules of Court, for divorce,
39 dissolution of civil union, termination of domestic partnership or
40 divorce from bed and board.

41 (cf: P.L.2005, c.331, s.7)

42

43 5. N.J.S.3B:8-2 is amended to read as follows:

44 3B:8-2. Elective share of surviving spouse, partner in a civil
45 union, or domestic partner of person dying not domiciled in this
46 State.

47 If a married person, partner in a civil union, or person in a
48 domestic partnership not domiciled in this State dies, the right, if

1 any, of the surviving spouse, partner in a civil union, or domestic
2 partner to take an elective share in property in this State is governed
3 by the law of the decedent's domicile at death.
4 (cf: P.L.2005, c.331, s.8)

5

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

7 2A:34-23. Alimony, maintenance. Pending any matrimonial
8 action or action for dissolution of a civil union brought in this State
9 or elsewhere, or after judgment of divorce or dissolution or
10 maintenance, whether obtained in this State or elsewhere, the court
11 may make such order as to the alimony or maintenance of the
12 parties, and also as to the care, custody, education and maintenance
13 of the children, or any of them, as the circumstances of the parties
14 and the nature of the case shall render fit, reasonable and just, and
15 require reasonable security for the due observance of such orders,
16 including, but not limited to, the creation of trusts or other security
17 devices, to assure payment of reasonably foreseeable medical and
18 educational expenses. Upon neglect or refusal to give such
19 reasonable security, as shall be required, or upon default in
20 complying with any such order, the court may award and issue
21 process for the immediate sequestration of the personal estate, and
22 the rents and profits of the real estate of the party so charged, and
23 appoint a receiver thereof, and cause such personal estate and the
24 rents and profits of such real estate, or so much thereof as shall be
25 necessary, to be applied toward such alimony and maintenance as to
26 the said court shall from time to time seem reasonable and just; or
27 the performance of the said orders may be enforced by other ways
28 according to the practice of the court. Orders so made may be
29 revised and altered by the court from time to time as circumstances
30 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
45 conspiracy to murder the other party to be paid by the party who
46 was the intended victim of the attempt or conspiracy.

47 a. In determining the amount to be paid by a parent for support
48 of the child and the period during which the duty of support is

1 owed, the court in those cases not governed by court rule shall
2 consider, but not be limited to, the following factors:

- 3 (1) Needs of the child;
- 4 (2) Standard of living and economic circumstances of each
5 parent;
- 6 (3) All sources of income and assets of each parent;
- 7 (4) Earning ability of each parent, including educational
8 background, training, employment skills, work experience,
9 custodial responsibility for children including the cost of providing
10 child care and the length of time and cost of each parent to obtain
11 training or experience for appropriate employment;
- 12 (5) Need and capacity of the child for education, including
13 higher education;
- 14 (6) Age and health of the child and each parent;
- 15 (7) Income, assets and earning ability of the child;
- 16 (8) Responsibility of the parents for the court-ordered support of
17 others;
- 18 (9) Reasonable debts and liabilities of each child and parent; and
19 (10) Any other factors the court may deem relevant.

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

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

36 b. In all actions brought for divorce, dissolution of a civil
37 union, divorce from bed and board, legal separation from a partner
38 in a civil union couple or nullity the court may award one or more
39 of the following types of alimony: open durational alimony;
40 rehabilitative alimony; limited duration alimony or reimbursement
41 alimony to either party. In so doing the court shall consider, but not
42 be limited to, the following factors:

- 43 (1) The actual need and ability of the parties to pay;
- 44 (2) The duration of the marriage or civil union;
- 45 (3) The age, physical and emotional health of the parties;
- 46 (4) The standard of living established in the marriage or civil
47 union and the likelihood that each party can maintain a reasonably

1 comparable standard of living, with neither party having a greater
2 entitlement to that standard of living than the other;

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

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

7 (7) The parental responsibilities for the children;

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

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

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

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

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

26 (13) The nature, amount, and length of pendente lite support
27 paid, if any; and

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

29 In each case where the court is asked to make an award of
30 alimony, the court shall consider and assess evidence with respect
31 to all relevant statutory factors. If the court determines that certain
32 factors are more or less relevant than others, the court shall make
33 specific written findings of fact and conclusions of law on the
34 reasons why the court reached that conclusion. No factor shall be
35 elevated in importance over any other factor unless the court finds
36 otherwise, in which case the court shall make specific written
37 findings of fact and conclusions of law in that regard.

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

42 c. In any case in which there is a request for an award of
43 alimony, the court shall consider and make specific findings on the
44 evidence about all of the statutory factors set forth in subsection b.
45 of this section.

46 For any marriage or civil union less than 20 years in duration,
47 the total duration of alimony shall not, except in exceptional
48 circumstances, exceed the length of the marriage or civil union.

1 Determination of the length and amount of alimony shall be made
2 by the court pursuant to consideration of all of the statutory factors
3 set forth in subsection b. of this section. In addition to those
4 factors, the court shall also consider the practical impact of the
5 parties' need for separate residences and the attendant increase in
6 living expenses on the ability of both parties to maintain a standard
7 of living reasonably comparable to the standard of living
8 established in the marriage or civil union, to which both parties are
9 entitled, with neither party having a greater entitlement thereto.

10 Exceptional circumstances which may require an adjustment to
11 the duration of alimony include:

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

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

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

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

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

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

26 (7) Tax considerations of either party;

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

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

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

39 d. Rehabilitative alimony shall be awarded based upon a plan
40 in which the payee shows the scope of rehabilitation, the steps to be
41 taken, and the time frame, including a period of employment during
42 which rehabilitation will occur. An award of rehabilitative alimony
43 may be modified based either upon changed circumstances, or upon
44 the nonoccurrence of circumstances that the court found would
45 occur at the time of the rehabilitative award.

46 This section is not intended to preclude a court from modifying
47 alimony awards based upon the law.

1 e. Reimbursement alimony may be awarded under
2 circumstances in which one party supported the other through an
3 advanced education, anticipating participation in the fruits of the
4 earning capacity generated by that education. An award of
5 reimbursement alimony shall not be modified for any reason.

6 f. Except as provided in subsection i., nothing in this section
7 shall be construed to limit the court's authority to award open
8 durational alimony, limited duration alimony, rehabilitative alimony
9 or reimbursement alimony, separately or in any combination, as
10 warranted by the circumstances of the parties and the nature of the
11 case.

12 g. In all actions for divorce or dissolution other than those
13 where judgment is granted solely on the ground of separation the
14 court may consider also the proofs made in establishing such
15 ground in determining an amount of alimony or maintenance that is
16 fit, reasonable and just. In all actions for divorce, dissolution of
17 civil union, divorce from bed and board, or legal separation from a
18 partner in a civil union couple where judgment is granted on the
19 ground of institutionalization for mental illness the court may
20 consider the possible burden upon the taxpayers of the State as well
21 as the ability of the party to pay in determining an amount of
22 maintenance to be awarded.

23 h. (1) Except as provided in this subsection, in all actions
24 where a judgment of divorce, dissolution of civil union, or divorce
25 from bed and board **【**or legal separation from a partner in a civil
26 union couple**】** is entered the court may make such award or awards
27 to the parties, in addition to alimony and maintenance, to effectuate
28 an equitable distribution of the property, both real and personal,
29 which was legally and beneficially acquired by them or either of
30 them during the marriage or civil union. However, all such
31 property, real, personal or otherwise, legally or beneficially
32 acquired during the marriage or civil union by either party by way
33 of gift, devise, or intestate succession shall not be subject to
34 equitable distribution, except that interspousal gifts or gifts between
35 partners in a civil union couple shall be subject to equitable
36 distribution.

37 (2) If a complaint not dismissed pursuant to R.4:6-2 of the Rules
38 of Court has been filed for an action under paragraph (1) of this
39 section, and either party to the litigation dies prior to the entry of
40 the final judgment, the court's authority to effectuate an equitable
41 distribution of the property shall not abate.

42 (3) The court may not make an award concerning the equitable
43 distribution of property on behalf of a party **【**convicted of**】** barred
44 from inheriting under subsection a. of section 58 of P.L.2004, c.132
45 (C.3B:7-1.1), a party responsible for an attempt or conspiracy to
46 murder the other party.

47 i. No person convicted of Murder, N.J.S.2C:11-3;
48 Manslaughter, N.J.S.2C:11-4; Criminal Homicide, N.J.S.2C:11-2;

1 Aggravated Assault, under subsection b. of N.J.S.2C:12-1; or a
2 substantially similar offense under the laws of another jurisdiction,
3 may receive alimony if: (1) the crime results in death or serious
4 bodily injury, as defined in subsection b. of N.J.S.2C:11-1, to a
5 family member of a divorcing party; and (2) the crime was
6 committed after the marriage or civil union. A person convicted of
7 an attempt or conspiracy to commit murder may not receive
8 alimony from the person who was the intended victim of the
9 attempt or conspiracy. Nothing in this subsection shall be
10 construed to limit the authority of the court to deny alimony for
11 other bad acts.

12 As used in this subsection:

13 "Family member" means a spouse, partner in a civil union, child,
14 parent, sibling, aunt, uncle, niece, nephew, first cousin,
15 grandparent, grandchild, father-in-law, mother-in-law, son-in-law,
16 daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half
17 brother, or half sister, whether the individual is related by blood,
18 marriage or civil union, or adoption.

19 j. Alimony may be modified or terminated upon the
20 prospective or actual retirement of the obligor.

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

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

30 (a) The ages of the parties at the time of the application for
31 retirement;

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

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

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

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

40 (f) The health of the parties at the time of the retirement
41 application;

42 (g) Assets of the parties at the time of the retirement
43 application;

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

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

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

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

2 If the court determines, for good cause shown based on specific
3 written findings of fact and conclusions of law, that the
4 presumption has been overcome, then the court shall apply the
5 alimony factors as set forth in subsection b. of this section to the
6 parties' current circumstances in order to determine whether
7 modification or termination of alimony is appropriate. If the obligor
8 intends to retire but has not yet retired, the court shall establish the
9 conditions under which the modification or termination of alimony
10 will be effective.

11 (2) Where the obligor seeks to retire prior to attaining the full
12 retirement age as defined in this section, the obligor shall have the
13 burden of demonstrating by a preponderance of the evidence that
14 the prospective or actual retirement is reasonable and made in good
15 faith. Both the obligor's application to the court for modification or
16 termination of alimony and the obligee's response to the application
17 shall be accompanied by current Case Information Statements or
18 other relevant documents as required by the Rules of Court, as well
19 as the Case Information Statements or other documents from the
20 date of entry of the original alimony award and from the date of any
21 subsequent modification.

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

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

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

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

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

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

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

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

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

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

4 (3) When a retirement application is filed in cases in which
5 there is an existing final alimony order or enforceable written
6 agreement established prior to the effective date of this act, the
7 obligor's reaching full retirement age as defined in this section shall
8 be deemed a good faith retirement age. Upon application by the
9 obligor to modify or terminate alimony, both the obligor's
10 application to the court for modification or termination of alimony
11 and the obligee's response to the application shall be accompanied
12 by current Case Information Statements or other relevant documents
13 as required by the Rules of Court, as well as the Case Information
14 Statements or other documents from the date of entry of the original
15 alimony award and from the date of any subsequent modification.
16 In making its determination, the court shall consider the ability of
17 the obligee to have saved adequately for retirement as well as the
18 following factors in order to determine whether the obligor, by a
19 preponderance of the evidence, has demonstrated that modification
20 or termination of alimony is appropriate:

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

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

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

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

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

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

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

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

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

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

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

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

30 Under circumstances where the changed circumstances arise
31 from the loss of employment, the length of time a party has been
32 involuntarily unemployed or has had an involuntary reduction in
33 income shall not be the only factor considered by the court when an
34 application is filed by a non-self-employed party to reduce alimony
35 because of involuntary loss of employment. The court shall
36 determine the application based upon all of the enumerated factors,
37 however, no application shall be filed until a party has been
38 unemployed, or has not been able to return to or attain employment
39 at prior income levels, or both, for a period of 90 days. The court
40 shall have discretion to make any relief granted retroactive to the
41 date of the loss of employment or reduction of income.

42 1. When a self-employed party seeks modification of alimony
43 because of an involuntary reduction in income since the date of the
44 order from which modification is sought, then that party's
45 application for relief must include an analysis that sets forth the
46 economic and non-economic benefits the party receives from the
47 business, and which compares these economic and non-economic

1 benefits to those that were in existence at the time of the entry of
2 the order.

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

8 n. Alimony may be suspended or terminated if the payee
9 cohabits with another person. Cohabitation involves a mutually
10 supportive, intimate personal relationship in which a couple has
11 undertaken duties and privileges that are commonly associated with
12 marriage or civil union but does not necessarily maintain a single
13 common household.

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

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

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

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

21 (4) Living together, the frequency of contact, the duration of the
22 relationship, and other indicia of a mutually supportive intimate
23 personal relationship;

24 (5) Sharing household chores;

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

28 (7) All other relevant evidence.

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

34 As used in this section:

35 "Full retirement age" shall mean the age at which a person is
36 eligible to receive full retirement for full retirement benefits under
37 section 216 of the federal Social Security Act (42 U.S.C. s.416).

38 (cf: P.L.2014, c.42, s.1)

39

40 7. This act shall take effect immediately.

41

42

43

STATEMENT

44

45 This bill provides that if a complaint has been filed for divorce,
46 dissolution of a civil union, or divorce from bed and board, and
47 either party to the litigation dies prior to the entry of the final
48 judgment, the court has authority to effectuate an equitable

1 distribution of the property. In addition, the bill expands the laws
2 of intestate succession and elective share to include partners in a
3 civil union and also provides that a surviving spouse, partner in a
4 civil union, or domestic partner who has filed a complaint or against
5 a complaint has been filed for divorce, dissolution of civil union,
6 termination of domestic partnership, or divorce from bed and board,
7 would not receive an intestate share of the decedent's estate and has
8 no right of election to take an elective share of the estate. This bill
9 is intended to eliminate what has been known as the "black hole"
10 that exists when a surviving spouse is excluded from receiving
11 his/her share of equitable distribution when a spouse dies prior to a
12 final judgment of divorce being issued and the surviving spouse is
13 therefore left without a remedy.

14 This bill amends N.J.S.3B:5-3 to provide that a partner in a civil
15 union, in addition to the surviving spouse or domestic partner, may
16 take an intestate share of the decedent's estate. The bill also
17 amends this section to provide that a surviving spouse, partner in a
18 civil union, or domestic partner would not include an individual
19 who has filed a complaint not dismissed pursuant to R.4:6-2 of the
20 Rules of Court or against whom a complaint not dismissed pursuant
21 to R. 4:6-2 of the Rules of Court has been filed for divorce,
22 dissolution of civil union, termination of domestic partnership, or
23 divorce from bed and board.

24 N.J.S.3B:5-4 provides the order of heirs that would take any part
25 of an intestate estate not passing to the decedent's surviving spouse
26 or domestic partner, or the entire intestate estate if there is no
27 surviving spouse or domestic partner. This section is amended to
28 include a partner in a civil union, in addition to the surviving spouse
29 or domestic partner.

30 Section 58 of P.L.2004, c.132 (C.3B:7-1.1) is amended to
31 include a civil union partner among of the list of persons who
32 would forfeit all benefits under Title 3B with respect to the
33 decedent's estate if the decedent was intentionally killed by that
34 individual.

35 N.J.S.3B:8-1 is amended to provide if a partner in a civil union,
36 in addition to a married person or a person in a domestic
37 partnership, dies in this State, the surviving spouse, partner in a
38 civil union, or domestic partner has a right of election to take an
39 elective share of one-third of the augmented estate, unless either the
40 decedent or the surviving spouse, partner in a civil union, or
41 domestic partner had filed a complaint not dismissed pursuant to
42 R.4:6-2 of the Rules of Court for divorce, dissolution of civil union,
43 termination of domestic partnership, or divorce from bed and board.

44 N.J.S.3B:8-2 is amended to provide if a partner in a civil union,
45 in addition to a married person or a person in a domestic
46 partnership, not domiciled in this State dies, the right, if any, of the
47 surviving spouse, partner in a civil union, or domestic partner to

1 take an elective share in property in this State is governed by the
2 law of the decedent's domicile at death.

3 This bill also amends N.J.S.2A:34-23 to provide that if a
4 complaint not dismissed pursuant to R.4:6-2 has been filed for
5 divorce, dissolution of a civil union, or divorce from bed and board,
6 and either party to the litigation dies prior to the entry of the final
7 judgment, the court's authority to effectuate an equitable
8 distribution of the property would not abate. This statute is also
9 amended to provide that the court may not make an award
10 concerning the equitable distribution of property on behalf of a
11 party barred from inheriting on grounds that the party was
12 responsible the intentional killing of the other party. The definition
13 of a "family member" is also revised to include a "partner in a civil
14 union."

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2351

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 17, 2022

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 2351.

This bill provides that if a complaint has been filed for divorce, dissolution of a civil union, or divorce from bed and board, and either party dies prior to the entry of a final judgment, the court has authority to order equitable distribution of the couple's property. The bill provides that under these circumstances the surviving spouse, civil union partner, or domestic partner would not have a right to an intestate share or an elective share of the decedent's estate.

Under current law, if a spouse or partner dies while the divorce or dissolution is pending, the survivor is excluded from equitable distribution. At the same time, current law provides that if both parties were living separately, the survivor is also excluded from an elective share of the decedent's estate.

The bill also clarifies a provision in current law which bars the court from making an equitable distribution award on behalf of a party convicted of an attempt or conspiracy to murder the other party. Under the bill, the court is also barred from making an award concerning equitable distribution on behalf of a party barred from inheriting under N.J.S.A.3B:7-1.1. The referenced statute provides, among other provisions, that a person responsible for an intentional killing forfeits all benefits with regard to an intestate share or elective share of the decedent's estate.

In addition, the bill expands the laws of intestate succession and elective share to encompass a surviving partner in a civil union. Currently, these statutes apply only to a surviving spouse or surviving domestic partner.

The committee made a technical amendment to the bill to clarify language regarding equitable distribution.

COMMITTEE AMENDMENTS:

Technical amendment to section 6 of the bill, which amends N.J.S.2A:34-23 concerning equitable distribution.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2351

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 12, 2023

The Senate Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 2351 (1R).

This bill provides that if a complaint has been filed for divorce, dissolution of a civil union, termination of domestic partnership, or divorce from bed and board, and either party dies prior to the entry of a final judgment, or the parties had and remained entered into an equitable distribution cut-off agreement, termination agreement, or marital settlement agreement where the underlying subject matter was for such divorce, dissolution, or termination and a party to that agreement died prior to the entry of a final judgment, the court would be authorized to proceed with awarding an equitable distribution of the couple's property. The bill further provides that under these circumstances, in which the surviving spouse or partner would still be entitled to a divided portion of the former couple's property, that person would not instead have a right to an intestate share of the decedent's estate pursuant to N.J.S.3B:5-3, or an elective share of one-third of the decedent's augmented estate pursuant to N.J.S.3B:8-1 et seq.

The bill would further make the following types of surviving spouse or partner ineligible to receive an intestate share or elective share of the decedent's property, because of an earlier arrangement providing for a distribution of the couples' property:

- if the person, at the time of death of the decedent, had (1) ceased to cohabit with the decedent under circumstances which would have given rise to a cause of action for divorce or nullity of marriage to a decedent prior to his or her death under the laws of this State; and (2) where, through written agreement, affirmative acts, or both written agreement and affirmative acts of the person and decedent there had been a division of assets equivalent to equitable distribution; and

- a person who, at the time of death of the decedent, had entered into a validly executed marital settlement agreement with the decedent where the underlying subject matter of the marital settlement agreement is divorce, dissolution of civil union, termination of domestic partnership, or divorce from bed and board.

Under current law, if a spouse or partner dies while the divorce, dissolution, or termination is pending, the survivor is excluded from an award of equitable distribution, as the matter gets removed from the Superior Court, Chancery Division, Family Part (the “family court”) to be handled as a probate matter of the decedent’s estate. In such probate matters, if the surviving spouse or partner was no longer cohabitating with the other spouse or partner at the time of death, the probate law precludes that surviving spouse or partner from being able to claim an elective share of the decedent’s estate. Thus, in some scenarios, a surviving spouse or partner who was still legally married or partnered at the time of the other’s death, having not gotten an equitable distribution through the family court, may also not have a claim on any share of the estate. This bill would address this by permitting the family court action to proceed and the surviving spouse or partner receiving an award of equitable distribution of the former couple’s property.

In addition to addressing the interplay between family law and probate law as heretofore described, the bill clarifies the laws of intestate succession and those governing elective shares of augmented estates by expressly including the surviving partner in a civil union among the types of surviving persons who may have claims under such laws. Currently, the statutes being amended by the bill only expressly list a surviving spouse or surviving domestic partner, however they apply to a surviving civil union partner by virtue of section 4 of P.L.2006, c.103 (C.37:1-37), which states that “[c]ivil union couples shall have all of the same benefits, protections and responsibilities under law . . . as are granted to spouses in a marriage.” Expressly listing them in these statutes provides further clarity as to their applicability to civil union partners.

This bill, as amended and reported, is identical to Senate Bill No. 2991, also amended and reported today by the committee.

The committee amendments to the bill:

- add several categories of individuals who are not considered to be a surviving spouse, partner in a civil union, or domestic partner for purposes of receiving an intestate share of a decedent’s estate or elective share of a decedent’s augmented estate, because of an earlier arrangement providing for a distribution of the couples’ property; and

- provide for the family court to proceed in effectuating an equitable distribution of a couples’ property pursuant to a filed complaint, when one person died prior to entry of the final judgment and the parties had and remained entered into an equitable distribution cut-off agreement, termination agreement, or marital settlement agreement where the underlying subject matter was for a divorce, dissolution of civil union, or termination of domestic partnership.

SENATE, No. 2991

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED SEPTEMBER 22, 2022

Sponsored by:
Senator TROY SINGLETON
District 7 (Burlington)

SYNOPSIS

Permits court to effectuate equitable distribution when complaint for divorce or dissolution of civil union has been filed and either party has died prior to final judgment; provides that surviving party would not receive intestate or elective share.

CURRENT VERSION OF TEXT

As introduced.



S2991 SINGLETON

2

1 AN ACT concerning equitable distribution and amending various
2 sections of the New Jersey Statutes.

3

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

6

7 1. N.J.S.3B:5-3 is amended to read as follows:

8 3B:5-3. Intestate share of decedent's surviving spouse, partner in
9 a civil union, or domestic partner.

10 The intestate share of the surviving spouse, partner in a civil
11 union, or domestic partner is:

12 a. The entire intestate estate if:

13 (1) No descendant or parent of the decedent survives the
14 decedent; or

15 (2) All of the decedent's surviving descendants are also
16 descendants of the surviving spouse, partner in a civil union, or
17 domestic partner and there is no other descendant of the surviving
18 spouse or domestic partner, partner in a civil union, who survives
19 the decedent;

20 b. The first 25% of the intestate estate, but not less than
21 \$50,000.00 nor more than \$200,000.00, plus three-fourths of any
22 balance of the intestate estate, if no descendant of the decedent
23 survives the decedent, but a parent of the decedent survives the
24 decedent;

25 c. The first 25% of the intestate estate, but not less than
26 \$50,000.00 nor more than \$200,000.00, plus one-half of the balance
27 of the intestate estate:

28 (1) If all of the decedent's surviving descendants are also
29 descendants of the surviving spouse, partner in a civil union, or
30 domestic partner and the surviving spouse, partner in a civil union,
31 or domestic partner has one or more surviving descendants who are
32 not descendants of the decedent; or

33 (2) If one or more of the decedent's surviving descendants is not
34 a descendant of the surviving spouse, partner in a civil union, or
35 domestic partner.

36 d. For purposes of this section:

37 “Surviving spouse, partner in a civil union, or domestic partner”
38 shall not include an individual who has filed a complaint not
39 dismissed pursuant to R.4:6-2 of the Rules of Court, or against
40 whom a complaint not dismissed pursuant to R.4:6-2 of the Rules of
41 Court, has been filed for: divorce, dissolution of civil union,
42 termination of domestic partnership, or divorce from bed and board.
43 (cf: P.L.2005, c.331, s.2)

44

45 2. N.J.S.3B:5-4 is amended to read as follows:

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.

S2991 SINGLETON

1 3B:5-4. Intestate shares of heirs other than surviving spouse,
2 partner in a civil union, or domestic partner.

3 Any part of the intestate estate not passing to the decedent's
4 surviving spouse, partner in a civil union, or domestic partner under
5 N.J.S.3B:5-3, or the entire intestate estate if there is no surviving
6 spouse, partner in a civil union, or domestic partner, passes in the
7 following order to the individuals designated below who survive the
8 decedent:

9 a. To the decedent's descendants by representation;

10 b. If there are no surviving descendants, to the decedent's
11 parents equally if both survive, or to the surviving parent, except as
12 provided in section 4 of P.L.2009, c.43 (C.3B:5-14.1);

13 c. If there are no surviving descendants or parent, to the
14 descendants of the decedent's parents or either of them by
15 representation;

16 d. If there is no surviving descendant, parent or descendant of a
17 parent, but the decedent is survived by one or more grandparents,
18 half of the estate passes to the decedent's paternal grandparents
19 equally if both survive, or to the surviving paternal grandparent, or
20 to the descendants of the decedent's paternal grandparents or either
21 of them if both are deceased, the descendants taking by
22 representation; and the other half passes to the decedent's maternal
23 relatives in the same manner; but if there is no surviving
24 grandparent, or descendant of a grandparent on either the paternal
25 or the maternal side, the entire estate passes to the decedent's
26 relatives on the other side in the same manner as the half;

27 e. If there is no surviving descendant, parent, descendant of a
28 parent, or grandparent, but the decedent is survived by one or more
29 descendants of grandparents, the descendants take equally if they
30 are all of the same degree of kinship to the decedent, but if of
31 unequal degree those of more remote degree take by representation;

32 f. If there are no surviving descendants of grandparents, then
33 the decedent's step-children or their descendants by representation.

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

35

36 3. Section 58 of P.L.2004, c.132 (C.3B:7-1.1) is amended to
37 read as follows:

38 58. Effect of intentional killing on intestate succession, wills,
39 trusts, joint assets, life insurance and beneficiary designations.

40 a. An individual who is responsible for the intentional killing
41 of the decedent forfeits all benefits under this title with respect to
42 the decedent's estate, including an intestate share, an elective share,
43 an omitted spouse's, domestic partner's, civil union partner's, or
44 child's share, exempt property and a family allowance. If the
45 decedent died intestate, the decedent's intestate estate passes as if
46 the killer disclaimed his share.

47 b. The intentional killing of the decedent:

S2991 SINGLETON

4

1 (1) revokes any revocable (a) disposition or appointment of
2 property made by decedent to the killer in a governing instrument
3 and any disposition or appointment created by law or in a governing
4 instrument to a relative of the killer, (b) provision in a governing
5 instrument conferring a general or special power of appointment on
6 the killer or a relative of the killer, and (c) nomination in a
7 governing instrument of the killer or a relative of the killer,
8 nominating or appointing the killer or a relative of the killer to
9 serve in any fiduciary or representative capacity; and

10 (2) severs the interests of the decedent and the killer in property
11 held by them at the time of the killing as joint tenants with the right
12 of survivorship or as tenants by the entireties, transforming the
13 interests of the decedent and killer into tenancies in common.

14 c. For purposes of this chapter: (1) "governing instrument"
15 means a governing instrument executed by the decedent; and (2)
16 "relative of the killer" means an individual who is related to the
17 killer by blood, adoption or affinity and who is not related to the
18 decedent by blood or adoption or affinity.

19 (cf: P.L.2005, c.331, s.6)

20

21 4. N.J.S.3B:8-1 is amended to read as follows:

22 3B:8-1. Elective share of surviving spouse or domestic partner
23 of person dying domiciled in this State; conditions.

24 If a married person, partner in a civil union, or person in a
25 domestic partnership dies domiciled in this State, **[**on or after May
26 28, 1980,**]** the surviving spouse, partner in a civil union, or
27 domestic partner has a right of election to take an elective share of
28 one-third of the augmented estate under the limitations and
29 conditions hereinafter stated, **[**provided that at the time of death the
30 decedent and the surviving spouse or domestic partner had not been
31 living separate and apart in different habitations or had not ceased
32 to cohabit as man and wife, either as the result of judgment of
33 divorce from bed and board or under circumstances which would
34 have given rise to a cause of action for divorce or nullity of
35 marriage to a decedent prior to his death under the laws of this
36 State**]** unless either the decedent or the surviving spouse, partner in
37 a civil union, or domestic partner had filed a complaint not
38 dismissed pursuant to R.4:6-2 of the Rules of Court, for divorce,
39 dissolution of civil union, termination of domestic partnership or
40 divorce from bed and board.

41 (cf: P.L.2005, c.331, s.7)

42

43 5. N.J.S.3B:8-2 is amended to read as follows:

44 3B:8-2. Elective share of surviving spouse, partner in a civil
45 union, or domestic partner of person dying not domiciled in this
46 State.

S2991 SINGLETON

1 If a married person, partner in a civil union, or person in a
2 domestic partnership not domiciled in this State dies, the right, if
3 any, of the surviving spouse, partner in a civil union, or domestic
4 partner to take an elective share in property in this State is governed
5 by the law of the decedent's domicile at death.

6 (cf: P.L.2005, c.331, s.8)

7
8 6. N.J.S.2A:34-23 is amended to read as follows:

9 2A:34-23. Alimony, maintenance. Pending any matrimonial
10 action or action for dissolution of a civil union brought in this State
11 or elsewhere, or after judgment of divorce or dissolution or
12 maintenance, whether obtained in this State or elsewhere, the court
13 may make such order as to the alimony or maintenance of the
14 parties, and also as to the care, custody, education and maintenance
15 of the children, or any of them, as the circumstances of the parties
16 and the nature of the case shall render fit, reasonable and just, and
17 require reasonable security for the due observance of such orders,
18 including, but not limited to, the creation of trusts or other security
19 devices, to assure payment of reasonably foreseeable medical and
20 educational expenses. Upon neglect or refusal to give such
21 reasonable security, as shall be required, or upon default in
22 complying with any such order, the court may award and issue
23 process for the immediate sequestration of the personal estate, and
24 the rents and profits of the real estate of the party so charged, and
25 appoint a receiver thereof, and cause such personal estate and the
26 rents and profits of such real estate, or so much thereof as shall be
27 necessary, to be applied toward such alimony and maintenance as to
28 the said court shall from time to time seem reasonable and just; or
29 the performance of the said orders may be enforced by other ways
30 according to the practice of the court. Orders so made may be
31 revised and altered by the court from time to time as circumstances
32 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
46 order a retainer or counsel fee of a party convicted of an attempt or
47 conspiracy to murder the other party to be paid by the party who
48 was the intended victim of the attempt or conspiracy.

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

- 5 (1) Needs of the child;
- 6 (2) Standard of living and economic circumstances of each
7 parent;
- 8 (3) All sources of income and assets of each parent;
- 9 (4) Earning ability of each parent, including educational
10 background, training, employment skills, work experience,
11 custodial responsibility for children including the cost of providing
12 child care and the length of time and cost of each parent to obtain
13 training or experience for appropriate employment;
- 14 (5) Need and capacity of the child for education, including
15 higher education;
- 16 (6) Age and health of the child and each parent;
- 17 (7) Income, assets and earning ability of the child;
- 18 (8) Responsibility of the parents for the court-ordered support of
19 others;
- 20 (9) Reasonable debts and liabilities of each child and parent; and
21 (10) Any other factors the court may deem relevant.

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

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

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

- 45 (1) The actual need and ability of the parties to pay;
- 46 (2) The duration of the marriage or civil union;
- 47 (3) The age, physical and emotional health of the parties;

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1 (4) The standard of living established in the marriage or civil
2 union and the likelihood that each party can maintain a reasonably
3 comparable standard of living, with neither party having a greater
4 entitlement to that standard of living than the other;

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;

28 (13) The nature, amount, and length of pendente lite support
29 paid, if any; and

30 (14) Any other factors which the court may deem relevant.

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

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

44 c. In any case in which there is a request for an award of
45 alimony, the court shall consider and make specific findings on the
46 evidence about all of the statutory factors set forth in subsection b.
47 of this section.

1 For any marriage or civil union less than 20 years in duration,
2 the total duration of alimony shall not, except in exceptional
3 circumstances, exceed the length of the marriage or civil union.
4 Determination of the length and amount of alimony shall be made
5 by the court pursuant to consideration of all of the statutory factors
6 set forth in subsection b. of this section. In addition to those
7 factors, the court shall also consider the practical impact of the
8 parties' need for separate residences and the attendant increase in
9 living expenses on the ability of both parties to maintain a standard
10 of living reasonably comparable to the standard of living
11 established in the marriage or civil union, to which both parties are
12 entitled, with neither party having a greater entitlement thereto.

13 Exceptional circumstances which may require an adjustment to
14 the duration of alimony include:

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

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

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

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

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

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

29 (7) Tax considerations of either party;

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

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

42 d. Rehabilitative alimony shall be awarded based upon a plan
43 in which the payee shows the scope of rehabilitation, the steps to be
44 taken, and the time frame, including a period of employment during
45 which rehabilitation will occur. An award of rehabilitative alimony
46 may be modified based either upon changed circumstances, or upon
47 the nonoccurrence of circumstances that the court found would
48 occur at the time of the rehabilitative award.

1 This section is not intended to preclude a court from modifying
2 alimony awards based upon the law.

3 e. Reimbursement alimony may be awarded under
4 circumstances in which one party supported the other through an
5 advanced education, anticipating participation in the fruits of the
6 earning capacity generated by that education. An award of
7 reimbursement alimony shall not be modified for any reason.

8 f. Except as provided in subsection i., nothing in this section
9 shall be construed to limit the court's authority to award open
10 durational alimony, limited duration alimony, rehabilitative alimony
11 or reimbursement alimony, separately or in any combination, as
12 warranted by the circumstances of the parties and the nature of the
13 case.

14 g. In all actions for divorce or dissolution other than those
15 where judgment is granted solely on the ground of separation the
16 court may consider also the proofs made in establishing such
17 ground in determining an amount of alimony or maintenance that is
18 fit, reasonable and just. In all actions for divorce, dissolution of
19 civil union, divorce from bed and board, or legal separation from a
20 partner in a civil union couple where judgment is granted on the
21 ground of institutionalization for mental illness the court may
22 consider the possible burden upon the taxpayers of the State as well
23 as the ability of the party to pay in determining an amount of
24 maintenance to be awarded.

25 h. (1) Except as provided in this subsection, in all actions
26 where a judgment of divorce, dissolution of civil union, or divorce
27 from bed and board **【**or legal separation from a partner in a civil
28 union couple**】** is entered the court may make such award or awards
29 to the parties, in addition to alimony and maintenance, to effectuate
30 an equitable distribution of the property, both real and personal,
31 which was legally and beneficially acquired by them or either of
32 them during the marriage or civil union. However, all such
33 property, real, personal or otherwise, legally or beneficially
34 acquired during the marriage or civil union by either party by way
35 of gift, devise, or intestate succession shall not be subject to
36 equitable distribution, except that interspousal gifts or gifts between
37 partners in a civil union couple shall be subject to equitable
38 distribution.

39 (2) If a complaint not dismissed pursuant to R.4:6-2 of the Rules
40 of Court has been filed for an action under paragraph (1) of this
41 section, and either party to the litigation dies prior to the entry of
42 the final judgment, the court's authority to effectuate an equitable
43 distribution of the property shall not abate.

44 (3) The court may not make an award concerning the equitable
45 distribution of property on behalf of a party **【**convicted of**】** barred
46 from inheriting under subsection a. of section 58 of P.L.2004, c.132
47 (C.3B:7-1.1), a party responsible for an attempt or conspiracy to
48 murder the other party.

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

14 As used in this subsection:

15 "Family member" means a spouse, partner in a civil union, child,
16 parent, sibling, aunt, uncle, niece, nephew, first cousin,
17 grandparent, grandchild, father-in-law, mother-in-law, son-in-law,
18 daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half
19 brother, or half sister, whether the individual is related by blood,
20 marriage or civil union, or adoption.

21 j. Alimony may be modified or terminated upon the
22 prospective or actual retirement of the obligor.

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

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

32 (a) The ages of the parties at the time of the application for
33 retirement;

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

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

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

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

42 (f) The health of the parties at the time of the retirement
43 application;

44 (g) Assets of the parties at the time of the retirement
45 application;

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

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

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

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

4 If the court determines, for good cause shown based on specific
5 written findings of fact and conclusions of law, that the
6 presumption has been overcome, then the court shall apply the
7 alimony factors as set forth in subsection b. of this section to the
8 parties' current circumstances in order to determine whether
9 modification or termination of alimony is appropriate. If the obligor
10 intends to retire but has not yet retired, the court shall establish the
11 conditions under which the modification or termination of alimony
12 will be effective.

13 (2) Where the obligor seeks to retire prior to attaining the full
14 retirement age as defined in this section, the obligor shall have the
15 burden of demonstrating by a preponderance of the evidence that
16 the prospective or actual retirement is reasonable and made in good
17 faith. Both the obligor's application to the court for modification or
18 termination of alimony and the obligee's response to the application
19 shall be accompanied by current Case Information Statements or
20 other relevant documents as required by the Rules of Court, as well
21 as the Case Information Statements or other documents from the
22 date of entry of the original alimony award and from the date of any
23 subsequent modification.

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

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

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

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

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

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

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

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

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

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

4 (3) When a retirement application is filed in cases in which
5 there is an existing final alimony order or enforceable written
6 agreement established prior to the effective date of this act, the
7 obligor's reaching full retirement age as defined in this section shall
8 be deemed a good faith retirement age. Upon application by the
9 obligor to modify or terminate alimony, both the obligor's
10 application to the court for modification or termination of alimony
11 and the obligee's response to the application shall be accompanied
12 by current Case Information Statements or other relevant documents
13 as required by the Rules of Court, as well as the Case Information
14 Statements or other documents from the date of entry of the original
15 alimony award and from the date of any subsequent modification.
16 In making its determination, the court shall consider the ability of
17 the obligee to have saved adequately for retirement as well as the
18 following factors in order to determine whether the obligor, by a
19 preponderance of the evidence, has demonstrated that modification
20 or termination of alimony is appropriate:

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

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

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

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

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

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

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

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

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

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

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

- 1 (2) Under circumstances where there has been a loss of
2 employment, the obligor's documented efforts to obtain replacement
3 employment or to pursue an alternative occupation;
- 4 (3) Under circumstances where there has been a loss of
5 employment, whether the obligor is making a good faith effort to
6 find remunerative employment at any level and in any field;
- 7 (4) The income of the obligee; the obligee's circumstances; and
8 the obligee's reasonable efforts to obtain employment in view of
9 those circumstances and existing opportunities;
- 10 (5) The impact of the parties' health on their ability to obtain
11 employment;
- 12 (6) Any severance compensation or award made in connection
13 with any loss of employment;
- 14 (7) Any changes in the respective financial circumstances of the
15 parties that have occurred since the date of the order from which
16 modification is sought;
- 17 (8) The reasons for any change in either party's financial
18 circumstances since the date of the order from which modification
19 is sought, including, but not limited to, assessment of the extent to
20 which either party's financial circumstances at the time of the
21 application are attributable to enhanced earnings or financial
22 benefits received from any source since the date of the order;
- 23 (9) Whether a temporary remedy should be fashioned to provide
24 adjustment of the support award from which modification is sought,
25 and the terms of any such adjustment, pending continuing
26 employment investigations by the unemployed spouse or partner;
27 and
- 28 (10) Any other factor the court deems relevant to fairly and
29 equitably decide the application.
- 30 Under circumstances where the changed circumstances arise
31 from the loss of employment, the length of time a party has been
32 involuntarily unemployed or has had an involuntary reduction in
33 income shall not be the only factor considered by the court when an
34 application is filed by a non-self-employed party to reduce alimony
35 because of involuntary loss of employment. The court shall
36 determine the application based upon all of the enumerated factors,
37 however, no application shall be filed until a party has been
38 unemployed, or has not been able to return to or attain employment
39 at prior income levels, or both, for a period of 90 days. The court
40 shall have discretion to make any relief granted retroactive to the
41 date of the loss of employment or reduction of income.
- 42 1. When a self-employed party seeks modification of alimony
43 because of an involuntary reduction in income since the date of the
44 order from which modification is sought, then that party's
45 application for relief must include an analysis that sets forth the
46 economic and non-economic benefits the party receives from the
47 business, and which compares these economic and non-economic

1 benefits to those that were in existence at the time of the entry of
2 the order.

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

8 n. Alimony may be suspended or terminated if the payee
9 cohabits with another person. Cohabitation involves a mutually
10 supportive, intimate personal relationship in which a couple has
11 undertaken duties and privileges that are commonly associated with
12 marriage or civil union but does not necessarily maintain a single
13 common household.

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

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

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

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

21 (4) Living together, the frequency of contact, the duration of the
22 relationship, and other indicia of a mutually supportive intimate
23 personal relationship;

24 (5) Sharing household chores;

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

28 (7) All other relevant evidence.

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

34 As used in this section:

35 "Full retirement age" shall mean the age at which a person is
36 eligible to receive full retirement for full retirement benefits under
37 section 216 of the federal Social Security Act (42 U.S.C. s.416).

38 (cf: P.L.2014, c.42, s.1)

39

40 7. This act shall take effect immediately.

41

42

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STATEMENT

44

45 This bill provides that if a complaint has been filed for divorce,
46 dissolution of a civil union, or divorce from bed and board, and
47 either party to the litigation dies prior to the entry of the final
48 judgment, the court has authority to effectuate an equitable

1 distribution of the property. In addition, the bill expands the laws
2 of intestate succession and elective share to include partners in a
3 civil union and also provides that a surviving spouse, partner in a
4 civil union, or domestic partner who has filed a complaint or against
5 a complaint has been filed for divorce, dissolution of civil union,
6 termination of domestic partnership, or divorce from bed and board,
7 would not receive an intestate share of the decedent's estate and has
8 no right of election to take an elective share of the estate. This bill
9 is intended to eliminate what has been known as the "black hole"
10 that exists when a surviving spouse is excluded from receiving
11 his/her share of equitable distribution when a spouse dies prior to a
12 final judgment of divorce being issued and the surviving spouse is
13 therefore left without a remedy.

14 This bill amends N.J.S.3B:5-3 to provide that a partner in a civil
15 union, in addition to the surviving spouse or domestic partner, may
16 take an intestate share of the decedent's estate. The bill also amends
17 this section to provide that a surviving spouse, partner in a civil union, or
18 domestic partner would not include an individual who has filed a
19 complaint not dismissed pursuant to R.4:6-2 of the Rules of Court or
20 against whom a complaint not dismissed pursuant to R. 4:6-2 of the Rules
21 of Court has been filed for divorce, dissolution of civil union, termination
22 of domestic partnership, or divorce from bed and board.

23 N.J.S.3B:5-4 provides the order of heirs that would take any part of an
24 intestate estate not passing to the decedent's surviving spouse or domestic
25 partner, or the entire intestate estate if there is no surviving spouse or
26 domestic partner. This section is amended to include a partner in a civil
27 union, in addition to the surviving spouse or domestic partner.

28 Section 58 of P.L.2004, c.132 (C.3B:7-1.1) is amended to include a
29 civil union partner among of the list of persons who would forfeit all
30 benefits under Title 3B with respect to the decedent's estate if the
31 decedent was intentionally killed by that individual.

32 N.J.S.3B:8-1 is amended to provide if a partner in a civil union, in
33 addition to a married person or a person in a domestic partnership, dies in
34 this State, the surviving spouse, partner in a civil union, or domestic
35 partner has a right of election to take an elective share of one-third of the
36 augmented estate, unless either the decedent or the surviving spouse,
37 partner in a civil union, or domestic partner had filed a complaint not
38 dismissed pursuant to R.4:6-2 of the Rules of Court for divorce,
39 dissolution of civil union, termination of domestic partnership, or divorce
40 from bed and board.

41 N.J.S.3B:8-2 is amended to provide if a partner in a civil union, in
42 addition to a married person or a person in a domestic partnership, not
43 domiciled in this State dies, the right, if any, of the surviving spouse,
44 partner in a civil union, or domestic partner to take an elective share in
45 property in this State is governed by the law of the decedent's domicile at
46 death.

47 This bill also amends N.J.S.2A:34-23 to provide that if a complaint not
48 dismissed pursuant to R.4:6-2 has been filed for divorce, dissolution of a
49 civil union, or divorce from bed and board, and either party to the
50 litigation dies prior to the entry of the final judgment, the court's
51 authority to effectuate an equitable distribution of the property would not

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1 abate. This statute is also amended to provide that the court may not
2 make an award concerning the equitable distribution of property on behalf
3 of a party barred from inheriting on grounds that the party was
4 responsible the intentional killing of the other party. The definition of a
5 “family member” is also revised to include a “partner in a civil union.”

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2991

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 12, 2023

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 2991.

This bill provides that if a complaint has been filed for divorce, dissolution of a civil union, termination of domestic partnership, or divorce from bed and board, and either party dies prior to the entry of a final judgment, or the parties had and remained entered into an equitable distribution cut-off agreement, termination agreement, or marital settlement agreement where the underlying subject matter was for such divorce, dissolution, or termination and a party to that agreement died prior to the entry of a final judgment, the court would be authorized to proceed with awarding an equitable distribution of the couple's property. The bill further provides that under these circumstances, in which the surviving spouse or partner would still be entitled to a divided portion of the former couple's property, that person would not instead have a right to an intestate share of the decedent's estate pursuant to N.J.S.3B:5-3, or an elective share of one-third of the decedent's augmented estate pursuant to N.J.S.3B:8-1 et seq.

The bill would further make the following types of surviving spouse or partner ineligible to receive an intestate share or elective share of the decedent's property, because of an earlier arrangement providing for a distribution of the couples' property:

- if the person, at the time of death of the decedent, had (1) ceased to cohabit with the decedent under circumstances which would have given rise to a cause of action for divorce or nullity of marriage to a decedent prior to his or her death under the laws of this State; and (2) where, through written agreement, affirmative acts, or both written agreement and affirmative acts of the person and decedent there had been a division of assets equivalent to equitable distribution; and

- a person who, at the time of death of the decedent, had entered into a validly executed marital settlement agreement with the decedent where the underlying subject matter of the marital settlement agreement is divorce, dissolution of civil union, termination of domestic partnership, or divorce from bed and board.

Under current law, if a spouse or partner dies while the divorce, dissolution, or termination is pending, the survivor is excluded from

an award of equitable distribution, as the matter gets removed from the Superior Court, Chancery Division, Family Part (the “family court”) to be handled as a probate matter of the decedent’s estate. In such probate matters, if the surviving spouse or partner was no longer cohabitating with the other spouse or partner at the time of death, the probate law precludes that surviving spouse or partner from being able to claim an elective share of the decedent’s estate. Thus, in some scenarios, a surviving spouse or partner who was still legally married or partnered at the time of the other’s death, having not gotten an equitable distribution through the family court, may also not have a claim on any share of the estate. This bill would address this by permitting the family court action to proceed and the surviving spouse or partner receiving an award of equitable distribution of the former couple’s property.

In addition to addressing the interplay between family law and probate law as heretofore described, the bill clarifies the laws of intestate succession and those governing elective shares of augmented estates by expressly including the surviving partner in a civil union among the types of surviving persons who may have claims under such laws. Currently, the statutes being amended by the bill only expressly list a surviving spouse or surviving domestic partner, however they apply to a surviving civil union partner by virtue of section 4 of P.L.2006, c.103 (C.37:1-37), which states that “[c]ivil union couples shall have all of the same benefits, protections and responsibilities under law . . . as are granted to spouses in a marriage.” Expressly listing them in these statutes provides further clarity as to their applicability to civil union partners.

This bill, as amended and reported, is identical to the First Reprint of Assembly Bill No. 2351, also amended and reported today by the committee.

The committee amendments to the bill:

- add several categories of individuals who are not considered to be a surviving spouse, partner in a civil union, or domestic partner for purposes of receiving an intestate share of a decedent’s estate or elective share of a decedent’s augmented estate, because of an earlier arrangement providing for a distribution of the couples’ property; and

- provide for the family court to proceed in effectuating an equitable distribution of a couples’ property pursuant to a filed complaint, when one person died prior to entry of the final judgment and the parties had and remained entered into an equitable distribution cut-off agreement, termination agreement, or marital settlement agreement where the underlying subject matter was for a divorce, dissolution of civil union, or termination of domestic partnership.

Governor Murphy Takes Action on Legislation

01/8/2024

TRENTON – Today, Governor Murphy signed the following bills into law:

- S-530/A-5164 (Ruiz, Turner/Coughlin, Quijano, McKnight, Reynolds-Jackson)** - Requires certain school meal information be provided to public school students' parents and requires school districts to request that families apply for school meals under certain circumstances
- S-553/A-4238 (Zwicker/Conaway, Atkins)** - Adds technology transfer duties to New Jersey Commission on Science, Innovation and Technology
- S-652/A-117 (Oroho, Pou/Space, Calabrese, Wirths)** - Permits governing body of municipalities having population of 30,000 or less to serve as local board of health; validates cc actions
- S-762/A-3786 (Pou, Cruz-Perez/Sumter, Reynolds-Jackson)** - Concerns certification of tax collectors
- S-765/A-3246 (Pou, Pennacchio/Lampitt, Schaer, Murphy)** - Prohibits carrier from precluding dentist from billing covered person under certain circumstances
- S-1211/A-1222 (Singleton, Gopal/Pintor Marin, Mukherji, Park)** - Provides for civil actions against persons or entities profiting from commission of human trafficking offenses, or maintaining victims of such offenses
- S-1228/A-4092 (Greenstein/Diegnan, Benson, Jaffer, Verrelli)** - Allows certain airports to carry over certain grant money into future years
- S-1892/A-4501 (Johnson, Schepisi/Park, Wimberly, Matsikoudis)** - Authorizes certain boards of education to issue bonds to repair damages caused by natural disasters in certain circumstances
- S-2057/A-1174 (Turner, Greenstein/Jasey, Benson, Quijano)** - Requires certain documentation of needs of students with disabilities during school security drills and emergency situations and in school security plans; requires staff training on needs of students with disabilities in emergency planning
- S-2716/A-4153 (Vitale, Turner/Carter, McKnight, Atkins)** - Requires NJ FamilyCare to reimburse claims for covered services submitted by clinical social workers, professional counselors, and marriage and family therapists under certain circumstances
- S-2789/A-3793 (Cruz-Perez, Johnson/Benson, Wimberly, Lopez)** - Requires certain permit holders to complete practice driving hours to obtain probationary driver's license
- S-3013/A-5062 (Scutari, Pou/Carter, Atkins, Stanfield)** - Revises definition of women's business enterprise and minority business enterprise
- S-3079/A-4977 (Diegnan, Lagana/Lampitt, Benson, Wimberly)** - Establishes School Safety and Security Task Force.
- S-3409/A-4785 (Pou, Oroho/McKeon, Flynn, Wimberly)** - Updates certain insurance company investment provisions in accordance with Investments of Insurers Model Act
- S-3490/A-5124 (Smith/Stanley, Calabrese)** - Amends certain requirements for installation of electric vehicle supply equipment and Make-Ready parking spaces
- S-3604/A-5212 (Madden, Cruz-Perez/Murphy, Stanley)** - Authorizes use of healthcare platforms providing discounted prices for payment of prescription and non-prescription drug devices and for telehealth and telemedicine services
- S-3723/A-5365 (Smith/McKeon, Danielsen, Haider)** – “Electric and Hybrid Vehicle Battery Management Act”
- S-3916/A-5486 (Cruz-Perez, Turner/Sauickie, Freiman, Rooney)** - Expands eligibility for wildlife fencing programs to farmers leasing farmland; clarifies eligibility and provides for uniform funding levels for grant recipients
- S-3969/A-5658 (Gopal/Freiman, Murphy)** - Allows for credit against contract cost for primary care services managed by health care provider for public employees and their dependents; allows referrals to other providers that have contractual relationship with such health care provider
- S-4081/A-5891 (Beach, Diegnan/Atkins, Carter)** - Allows board of county commissioners to hold annual meeting at certain additional locations other than Superior Court
- A-111/S-3201 (Space, Wirths, McCarthy Patrick/Oroho, Durr)** - Provides that farm, farmstand, or other agricultural operation selling firewood obtained from property other than seller's shall not be considered lumber yard; prohibits sale of untreated firewood from outside of State
- A-649/S-587 (McClellan, McKnight/Testa)** - Expands purposes for which civil asset forfeiture funds may be used by law enforcement agency
- A-831/S-461 (Jimenez, Rooney, Timberlake/Sacco, Greenstein)** - Provides for reciprocity of certain out-of-State EMT certification; establishes criminal history record background check process
- A-1475/S-1809 (Lopez, Speight, Haider/Ruiz, Cunningham)** - Requires court to consider information concerning coercive control in domestic violence proceedings
- A-1507/S-1503 (McKnight, Carter, Speight/Gopal, Oroho)** - Permits chair or booth rentals for the purpose of providing cosmetology and hairstyling services or ancillary services
- A-1570/S-2216 (Moen/Madden, Singleton)** - Authorizes issuance of special license plates for alumni of four-year public institutions of higher education
- A-1581/S-3880 (Moen, Benson, Conaway/Cruz-Perez, Turner)** - Requires MVC to provide customer service telephone number at motor vehicle inspection facilities
- A-1704/S-1000 (Speight, Pintor Marin, McKnight/Ruiz, Gopal)** - Requires domestic violence orders to be issued in other languages in addition to English under certain circumstances
- ACS for A-1707/S-3700 (Speight, McKnight, Karabinchak/Burgess, Ruiz)** - Establishes presumption that VCCO will order payment to victim of crime
- A-2040/S-540 (Benson, McKnight/Ruiz, Pou)** - Requires Commissioner of Human Services to request authorization for SNAP benefits to be used to pay delivery charges for online grocery purchases
- A-2138/SCS for S-1890 (Moriarty, Mukherji, McKnight/Johnson, Singer)** - Updates regulation of home improvement and home elevation contractors and contractors' businesses
- A-2351/S-2991 (Mukherji, Flynn, Murphy/Singleton)** - Permits court to effectuate equitable distribution when complaint for divorce or dissolution of civil union has been filed and party has died prior to final judgment; provides that surviving party would not receive intestate or elective share

A-3093/S-1516 (Stanley, Jaffer, Murphy/Greenstein, Gopal) - Authorizes court to include in domestic violence restraining orders a provision making the order applicable to a pre victim's child upon birth of the child

A-3737/S-3393 (Speight, Swain, McKnight/Ruiz, O'Scanlon) - Establishes menstrual health public awareness campaign

A-4125/S-2712 (Haider, Swain, Stanley/Singleton, Greenstein) - Prohibits sale, manufacture, distribution, and use of firefighting foam containing intentionally added perfluoroalk and polyfluoroalkyl substances; requires DEP to establish collection and disposal program; appropriates \$250,000

A-4614/S-3547 (Greenwald, Jasey, Carter, Lampitt/Pou, Vitale) - Modifies Nursing Faculty Loan Redemption Program

A-4729/S-3279 (Sauickie, Freiman, Clifton/Stanfield, Cruz-Perez) - Revises method for appraisals of farmland to be acquired for farmland preservation purposes

A-4757/S-3263 (Jimenez, Tucker, Atkins/Burgess, Turner) - Requires DCA to conduct surveys and report data related to homelessness in administering the Rental Assistance Navigation Program

A-4913/S-3133 (Conaway, Stanley, Wimberly/Johnson, Scutari) - Requires carriers to offer health care providers more than one method of payment for reimbursement

A-5036/S-3551 (Tully, Swain, Karabinchak, Lagana/A.M. Bucco) - Requires "Electronic Permit Processing Review System" in DCA to enable applicant to submit electronic sign and certain other submission materials for permit application review

A-5208/S-4082 (Coughlin, Munoz, Wimberly/Scutari, A.M. Bucco) - Extends provisions of P.L.2021, c.498 in certain circumstances

A-5281/S-2341 (Chaparro, Jimenez, Stanley/Johnson) - Eliminates position of constable; removes statutory references to constable; repeals various parts of statutory law; implements recommendation of SCI report concerning elimination of constables

A-5417/S-3890 (Lampitt, Jasey, Swain/Ruiz, Burgess) - Prohibits limiting number of county college credits that may be applied towards educator preparation program and teach certification requirements

A-5501/SCS for S-3895 (Jasey/Zwicker, Sarlo, Ruiz) - Adjusts bid threshold amounts for certain public research universities; permits certain contracts for school districts, municipalities, and counties to be awarded by qualified purchasing agent

A-5648/S-3933 (Barranco, Rooney/A.M. Bucco) - Authorizes State Treasurer to sell as surplus property certain land and improvements in Township of Morris in Morris County

A-5813/S-3392 (Wimberly, Sumter/Pou) - Exempts electricity sold to certain recovered materials manufacturing facilities from renewable energy portfolio standards

AJR-230/SJR-129 (Karabinchak, Schaer, Freiman/Diegnan, Beach, A.M. Bucco) - Recognizes 75th anniversary of establishment of State of Israel

Governor Murphy conditionally vetoed the following bills:

S-539/A-2140 (Ruiz, Pou/Reynolds-Jackson, Wimberly, Mosquera) - CONDITIONAL - Permits online purchase of eligible foods using WIC funds and use of WIC funds for groc delivery charges

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S-1680/A-2257 (Pou, Ruiz/Murphy, Quijano, Wimberly) - CONDITIONAL - Designates each community college in State as provider of allowable services under SNAP employm and training program

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S-2535/A-4048 (Polistina, Pou/Benson, McKnight, Reynolds-Jackson, Carter) - CONDITIONAL - Requires health benefits coverage of hearing aids and cochlear implants for insureds aged 21 or younger

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SCS for S-3632 and 3649/ACS for A-1948 (Johnson, Cryan/Haider, Conaway, Quijano) - CONDITIONAL - Requires labeling of non-flushable disposable wipes

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A-2146/S-855 (Reynolds-Jackson, Wimberly, Sumter/Singleton, Beach) - CONDITIONAL - Creates State business assistance program to establish contracting agency procure goals for socially and economically disadvantaged business enterprises

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A-3092/S-2415 (Stanley, Jaffer, Mukherji/Gopal, Ruiz) - CONDITIONAL - Requires State agencies update demographic data collection methods on Asian, Native Hawaiian, Pa Islander, Middle Eastern, North African, and South Asian and Indian Diaspora residents of this State

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A-4033/S-2657 (Coughlin, Wimberly/Sarlo, Ruiz) - CONDITIONAL - Extends deadline for completion of school district's annual audit

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ACS for A-4821 and 4823/S-3283 (Karabinchak, Conaway, Schaer/Greenstein, Zwicker) - CONDITIONAL - Directs DEP to take certain actions concerning identification and testing of microplastics in drinking water, and requires DEP and BPU to study and promote use of microplastics removal technologies

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A-5416/S-3883 (Wimberly, Giblin, Haider/Greenstein, Turner) - CONDITIONAL - Requires State Board of Education to authorize alternate route to expedite teacher certifiator persons employed as paraprofessionals in school districts

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A-5610/S-3954 (Greenwald, Spearman, Chaparro/Beach, A.M. Bucco) - CONDITIONAL - Revises penalties for possession or consumption of alcoholic beverages by underag persons

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Governor Murphy absolute vetoed the following bills:

ACS for A-3677 and 2807/SS for S-2186 (Stanley, Verrelli, Jaffer, Calabrese/Greenstein, Smith) - ABSOLUTE - Prohibits sale, distribution, import, export or propagation of ce invasive species without permit from Department of Agriculture; establishes NJ Invasive Species Council

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A-5283/S-3939 (Tully, Greenwald, Mosquera/Lagana, Gopal) – ABSOLUTE - Requires calculation of national average time needed to approve applications for initial credential i profession or occupation and use of average time as standard in New Jersey

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