



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

**FOLLOWING WERE PRINTED:**

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<b>REPORTS:</b>	No
<b>HEARINGS:</b>	No
<b>NEWSPAPER ARTICLES:</b>	Yes

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

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

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

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

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

LAW/RWH

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

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

2

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

5

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

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

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

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

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

Matter underlined thus is new matter.

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

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

10 (1) Needs of the child;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (7) Tax considerations of either party;

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

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

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

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

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

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

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

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

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

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

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

24 As used in this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (5) Sharing household chores;

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

42 (7) All other relevant evidence.

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

1 As used in this section:

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

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

6

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

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

14

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

# ASSEMBLY, No. 845

## STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

**Sponsored by:**

**Assemblyman CHARLES MAINOR**

**District 31 (Hudson)**

**Assemblyman SEAN T. KEAN**

**District 30 (Monmouth and Ocean)**

**Assemblyman BENJIE E. WIMBERLY**

**District 35 (Bergen and Passaic)**

**Assemblywoman ANGELICA M. JIMENEZ**

**District 32 (Bergen and Hudson)**

**Assemblyman CRAIG J. COUGHLIN**

**District 19 (Middlesex)**

**Co-Sponsored by:**

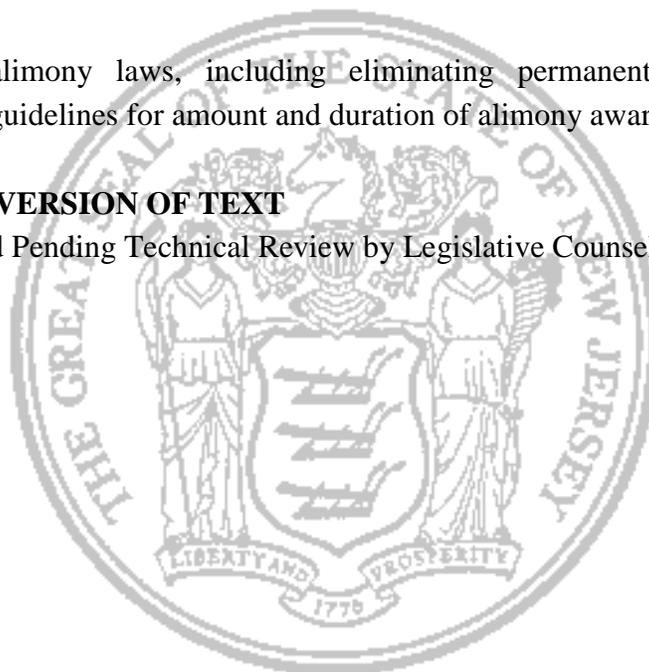
**Assemblywoman Tucker, Assemblymen Wolfe, Prieto, Gusciora, Wilson,  
Eustace, O'Scanlon, Space and Assemblywoman McHose**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



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

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

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

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

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

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

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

Matter underlined thus is new matter.

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

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

8 (1) Needs of the child;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20    As used in this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4

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

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

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

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

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

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

42

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

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STATEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# ASSEMBLY JUDICIARY COMMITTEE

## STATEMENT TO

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

# **STATE OF NEW JERSEY**

DATED: JUNE 26, 2014

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

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

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

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

#### TYPES OF ALIMONY AND DURATIONAL LIMITS

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

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

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

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

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

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

#### RETIREMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### LOSS OF INCOME

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

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

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

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

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

#### COHABITATION

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

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

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

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

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

EFFECTIVE DATE:

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

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

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

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

# STATE OF NEW JERSEY

DATED: JUNE 30, 2014

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

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

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

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

#### TYPES OF ALIMONY AND DURATIONAL LIMITS

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

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

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

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

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

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

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

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

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

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

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

(7) Tax considerations of either party; and

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

#### RETIREMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### LOSS OF INCOME

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

(1) The reasons for any loss of income;

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

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

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

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

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

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

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

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

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

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

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

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

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

#### COHABITATION

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

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

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

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

**EFFECTIVE DATE:**

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

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

**COMMITTEE ACTION**

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

# ASSEMBLY, No. 971

## STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

**Sponsored by:**

**Assemblyman TROY SINGLETON**

**District 7 (Burlington)**

**Assemblyman BENJIE E. WIMBERLY**

**District 35 (Bergen and Passaic)**

**SYNOPSIS**

Eliminates permanent alimony and revises certain standards for alimony awards.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



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

A971 SINGLETON, WIMBERLY

2

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

4

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

7

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

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

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

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

**Matter underlined thus is new matter.**

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

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

8 (1) Needs of the child;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 As used in this subsection:

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

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

39

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

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

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

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

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

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

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

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

32

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

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



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

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

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

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

**A971 SINGLETON, WIMBERLY**

11

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

# ASSEMBLY, No. 1649

## STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

**Sponsored by:**

**Assemblyman THOMAS P. GIBLIN**

**District 34 (Essex and Passaic)**

**Assemblywoman PAMELA R. LAMPITT**

**District 6 (Burlington and Camden)**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



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

2

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

5

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

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

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

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

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

Matter underlined thus is new matter.

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

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

7 (1) Needs of the child;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 As used in this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47       (4) living together;

1       (5) sharing household chores; and

2       (6) all other relevant evidence.

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

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

9

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

13

14

15

#### STATEMENT

16

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

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

26       RETIREMENT:

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

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

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

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

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

- 1 dates or the dates upon which continued employment would no  
2 longer increase retirement benefits;
- 3 (4) the obligor's motives in retiring, including any pressures to  
4 retire applied by the obligor's employer or incentive plans offered  
5 by the obligor's employer;
- 6 (5) the reasonable expectations of the parties regarding  
7 retirement during the marriage and at the time of the divorce;
- 8 (6) the ability of the obligor to maintain support payments  
9 following retirement, including whether the obligor will continue to  
10 be employed part-time or work reduced hours;
- 11 (7) the obligee's level of financial independence and the  
12 financial impact of the retirement by the obligor upon the obligee;  
13 and
- 14 (8) any other relevant factors affecting the obligor's decision to  
15 retire and the parties' respective financial positions.

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

23 APPLICATION BY NON-SELF-EMPLOYED PERSON:

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

- 28 (1) The reasons for the loss of employment;
- 29 (2) The obligor's documented efforts to obtain replacement  
30 employment or to pursue an alternative occupation;
- 31 (3) Whether the obligor is making a good faith effort to find  
32 remunerative employment at any level and in any field;
- 33 (4) The income of the obligee; the obligee's circumstances; and  
34 the obligee's reasonable efforts to obtain employment in view of  
35 those circumstances and existing opportunities;
- 36 (5) The impact of the parties' health on their ability to obtain  
37 employment;
- 38 (6) Any severance compensation or award made in connection  
39 with the loss of employment;
- 40 (7) Any changes in the respective financial circumstances of the  
41 parties that have occurred since the date of the order from which  
42 modification is sought;
- 43 (8) The reasons for any change in either party's financial  
44 circumstances since the date of the order from which modification  
45 is sought, including, but not limited to, assessment of the extent to  
46 which either party's financial circumstances at the time of the

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

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

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

9 APPLICATION BY SELF-EMPLOYED PERSON:

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

18 EFFECT OF EQUITABLE DISTRIBUTION:

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

23 TEMPORARY REMEDIES:

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

30 COHABITATION:

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

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

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

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

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

42 (4) living together;

43 (5) sharing household chores; and

44 (6) all other relevant evidence.

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

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

3 EFFECTIVE DATE:

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

# SENATE, No. 488

## STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

**Sponsored by:**

**Senator NICHOLAS P. SCUTARI**

**District 22 (Middlesex, Somerset and Union)**

**Senator ROBERT W. SINGER**

**District 30 (Monmouth and Ocean)**

**Co-Sponsored by:**

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

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



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

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

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

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

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

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

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

**Matter underlined thus is new matter.**

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

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

8 (1) Needs of the child;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20    As used in this subsection:

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

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

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

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

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

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

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

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

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

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

4

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

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

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

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

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

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

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

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

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

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

4

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

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

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

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

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

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

42

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

STATEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

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

# **STATE OF NEW JERSEY**

DATED: JUNE 30, 2014

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

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

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

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

#### TYPES OF ALIMONY AND DURATIONAL LIMITS

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

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

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

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

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

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

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

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

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

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

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

(7) Tax considerations of either party; and

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

#### RETIREMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### LOSS OF INCOME

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

(1) The reasons for any loss of income;

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

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

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

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

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

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

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

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

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

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

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

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

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

#### COHABITATION

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

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

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

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

**EFFECTIVE DATE:**

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

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

**COMMITTEE ACTION**

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

**SENATE, No. 1808**

**STATE OF NEW JERSEY**  
**216th LEGISLATURE**

INTRODUCED MARCH 24, 2014

**Sponsored by:**

**Senator ANTHONY R. BUCCO**

**District 25 (Morris and Somerset)**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As introduced.



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

2

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

5

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

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

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

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

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

Matter underlined thus is new matter.

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

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

7 (1) Needs of the child;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (7) The parental responsibilities for the children;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 As used in this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41       (4) living together;

42       (5) sharing household chores; and

43       (6) all other relevant evidence.

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

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

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

3

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

7

8

9

STATEMENT

10

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

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

20 RETIREMENT:

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

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

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

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

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

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

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

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

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

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

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

16 APPLICATION BY NON-SELF-EMPLOYED PERSON:

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

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

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

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

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

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

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

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

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

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

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

48 APPLICATION BY SELF-EMPLOYED PERSON:

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

9 EFFECT OF EQUITABLE DISTRIBUTION:

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

14 TEMPORARY REMEDIES:

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

21 COHABITATION:

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

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

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

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

41 EFFECTIVE DATE:

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