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LAW/RWH

[First Reprint]

SENATE, No. 2091

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED OCTOBER 2, 2008

Sponsored by:

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

Senator GERALD CARDINALE

District 39 (Bergen)

Assemblywoman LINDA STENDER

District 22 (Middlesex, Somerset and Union)

Assemblyman MICHAEL PATRICK CARROLL

District 25 (Morris)

Co-Sponsored by:

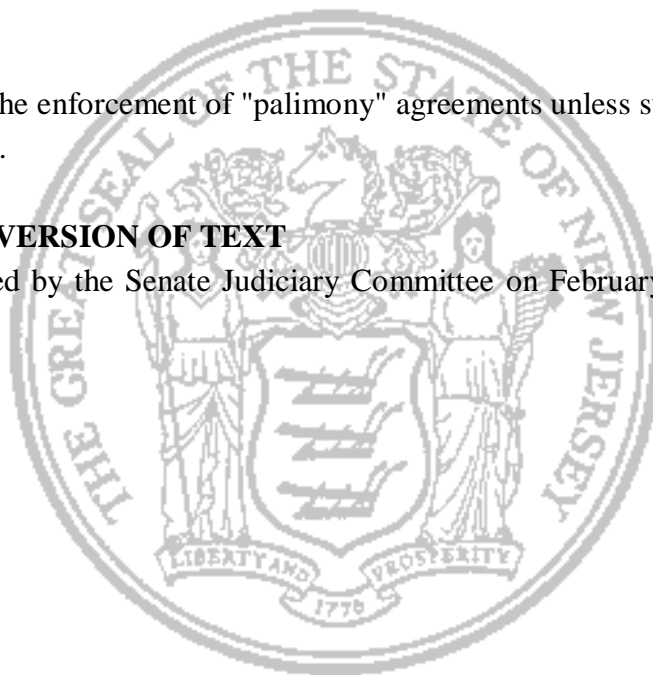
Assemblyman Wisniewski

SYNOPSIS

Prohibits the enforcement of "palimony" agreements unless such agreements are in writing.

CURRENT VERSION OF TEXT

As reported by the Senate Judiciary Committee on February 9, 2009, with amendments.



(Sponsorship Updated As Of: 1/12/2010)

1 AN ACT concerning palimony and amending R.S.25:1-5.

2

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

5

6 1. R.S.25:1-5 is amended to read as follows:

7 25:1-5. Promises or agreements not binding unless in writing.

8 No action shall be brought upon any of the following agreements or
9 promises, unless the agreement or promise, upon which such action
10 shall be brought or some memorandum or note thereof, shall be in
11 writing, and signed by the party to be charged therewith, or by some
12 other person thereunto by him lawfully authorized:

13 a. (Deleted by amendment, P.L.1995, c.360.)

14 b. (Deleted by amendment, P.L.1995, c.360.)

15 c. An agreement made upon consideration of marriage entered
16 into prior to the effective date of the "Uniform Premarital
17 Agreement Act," P.L.1988, c.99 (C.37:2-31 et seq.);

18 d. (Deleted by amendment, P.L.1995, c.360.)

19 e. (Deleted by amendment, P.L.1995, c.360.)

20 f. A contract, promise, undertaking or commitment to loan
21 money or to grant, extend or renew credit, in an amount greater than
22 \$100,000, not primarily for personal, family or household purposes,
23 made by a person engaged in the business of lending or arranging
24 for the lending of money or extending credit. For the purposes of
25 this subsection, a contract, promise, undertaking or commitment to
26 loan money shall include agreements to lease personal property if
27 the lease is primarily a method of financing the obtaining of the
28 property; **[or]**

29 g. An agreement by a creditor to forbear from exercising
30 remedies pursuant to a contract, promise, undertaking or
31 commitment which is subject to the provisions of subsection f. of
32 this section; or

33 h. A promise by one party to a non-marital personal relationship
34 to provide support ¹or other consideration¹ for the other party,
35 either during the course of such relationship or after its termination.

36 ¹For the purposes of this subsection, no such written promise is
37 binding unless it was made with the independent advice of counsel
38 for both parties¹.

39 (cf: P.L.1995, c.360, s.8)

40

41 2. This act shall take effect immediately.

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SJU committee amendments adopted February 9, 2009.

SENATE, No. 2091

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED OCTOBER 2, 2008

Sponsored by:

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

Senator GERALD CARDINALE

District 39 (Bergen)

SYNOPSIS

Prohibits the enforcement of "palimony" agreements unless such agreements are in writing.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/27/2009)

1 AN ACT concerning palimony and amending R.S.25:1-5.

2

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

5

6 1. R.S.25:1-5 is amended to read as follows:

7 25:1-5. Promises or agreements not binding unless in writing.

8 No action shall be brought upon any of the following agreements or
9 promises, unless the agreement or promise, upon which such action
10 shall be brought or some memorandum or note thereof, shall be in
11 writing, and signed by the party to be charged therewith, or by some
12 other person thereunto by him lawfully authorized:

13 a. (Deleted by amendment, P.L.1995, c.360.)

14 b. (Deleted by amendment, P.L.1995, c.360.)

15 c. An agreement made upon consideration of marriage entered
16 into prior to the effective date of the "Uniform Premarital
17 Agreement Act," P.L.1988, c.99 (C.37:2-31 et seq.);

18 d. (Deleted by amendment, P.L.1995, c.360.)

19 e. (Deleted by amendment, P.L.1995, c.360.)

20 f. A contract, promise, undertaking or commitment to loan
21 money or to grant, extend or renew credit, in an amount greater than
22 \$100,000, not primarily for personal, family or household purposes,
23 made by a person engaged in the business of lending or arranging
24 for the lending of money or extending credit. For the purposes of
25 this subsection, a contract, promise, undertaking or commitment to
26 loan money shall include agreements to lease personal property if
27 the lease is primarily a method of financing the obtaining of the
28 property; **[or]**

29 g. An agreement by a creditor to forbear from exercising
30 remedies pursuant to a contract, promise, undertaking or
31 commitment which is subject to the provisions of subsection f. of
32 this section; or

33 h. A promise by one party to a non-marital personal relationship
34 to provide support for the other party, either during the course of
35 such relationship or after its termination.

36 (cf: P.L.1995, c.360, s.8)

37

38 2. This act shall take effect immediately.

39

40

41

STATEMENT

42

43 In two recent cases Devaney v. L'Esperance, (A-20-2007)
44 (Decided June 17, 2008) and In re Estate of Roccamonte, 174 N.J.
45 381 (2002) the New Jersey Supreme Court has upheld palimony

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 agreements between two unmarried cohabitants. In the Devaney
2 case the Court held that “cohabitation is not an essential
3 requirement, for a cause of action for palimony, but a marital-type
4 relationship is required.” Id. at 2. In the Roccamonte case, the court
5 held that an implied promise of support for life is enforceable
6 against the promisor’s (cohabitant) estate. In re Estate of
7 Roccamonte, 174 N.J. 381, 395 (2002). These decisions are
8 consistent with the court's prior decision in Kozłowski v.
9 Kozłowski, 80 N.J. 378 (1979), which had held that a promise of
10 lifetime support by one cohabitant to another in a marital-like
11 relationship would be enforced, if one of the partners was induced
12 to cohabit by the promise. The court held that the right to such
13 support is found in contract principles and that the contract may be
14 either express or implied.

15 This bill is intended to overturn these "palimony" decisions by
16 requiring that any such contract must be in writing and signed by
17 the person making the promise.

18 More specifically, the bill provides that a promise by one party
19 to a non-marital personal relationship to provide support for the
20 other party, either during the course of such relationship or after its
21 termination, is not binding unless it is in writing and signed.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2091

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 9, 2009

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 2091.

This bill is intended to overturn recent "palimony" decisions by New Jersey courts by requiring that any such contract must be in writing and signed by the person making the promise. More specifically, the bill provides that a promise by one party to a non-marital personal relationship to provide support for the other party, either during the course of such relationship or after its termination, is not binding unless it is in writing and signed.

In two recent cases, Devaney v. L'Esperance, 195 N.J. 247 (2008) and In re Estate of Roccamonte, 174 N.J. 381 (2002), the New Jersey Supreme Court upheld palimony agreements between two unmarried cohabitants. In the Devaney case the court held that "cohabitation is not an essential requirement for a cause of action for palimony, but a marital-type relationship is required." In the Roccamonte case, the court held that an implied promise of support for life is enforceable against the promisor's (cohabitant's) estate. Those decisions are consistent with the court's prior decision in Kozlowski v. Kozlowski, 80 N.J. 378 (1979), which had held that a promise of lifetime support by one cohabitant to another in a marital-like relationship would be enforced, if one of the partners was induced to cohabit by the promise. The court held that the right to such support is found in contract principles and that the contract may be either express or implied.

As introduced, the bill refers to a promise "to provide support" for the other party. The committee amendments broaden this provision to refer not only to a promise to provide support, but to also refer to a promise to provide other consideration.

The committee amendments also require that any such written promise will not be enforceable unless it was made with the independent advice of counsel for both parties.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2091

STATE OF NEW JERSEY

DATED: DECEMBER 3, 2009

The Assembly Judiciary Committee reports favorably Senate Bill No. 2091(1R).

This bill is intended to overturn recent "palimony" decisions by New Jersey courts by requiring that any such contract must be in writing and signed by the person making the promise. More specifically, the bill provides that a promise by one party to a non-marital personal relationship to provide support or other consideration for the other party, either during the course of such relationship or after its termination, is not binding unless it is in writing and signed. The bill provides that no such written promise is binding unless it was made with the independent advice of counsel for both parties.

In two recent cases, Devaney v. L'Esperance, 195 N.J. 247 (2008) and In re Estate of Roccamonte, 174 N.J. 381 (2002), the New Jersey Supreme Court upheld palimony agreements between two unmarried cohabitants. In the Devaney case the court held that "cohabitation is not an essential requirement for a cause of action for palimony, but a marital-type relationship is required." In the Roccamonte case, the court held that an implied promise of support for life is enforceable against the promisor's (cohabitant's) estate. Those decisions are consistent with the court's prior decision in Kozlowski v. Kozlowski, 80 N.J. 378 (1979), which had held that a promise of lifetime support by one cohabitant to another in a marital-like relationship would be enforced, if one of the partners was induced to cohabit by the promise. The court held that the right to such support is found in contract principles and that the contract may be either express or implied.

ASSEMBLY, No. 4296

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED NOVEMBER 30, 2009

Sponsored by:

Assemblywoman LINDA STENDER

District 22 (Middlesex, Somerset and Union)

Co-Sponsored by:

Assemblyman Wisniewski

SYNOPSIS

Prohibits the enforcement of "palimony" agreements unless such agreements are in writing.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/4/2009)

1 AN ACT concerning palimony and amending R.S.25:1-5.

2

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

5

6 1. R.S.25:1-5 is amended to read as follows:

7 25:1-5. Promises or agreements not binding unless in writing.

8 No action shall be brought upon any of the following agreements or
9 promises, unless the agreement or promise, upon which such action
10 shall be brought or some memorandum or note thereof, shall be in
11 writing, and signed by the party to be charged therewith, or by some
12 other person thereunto by him lawfully authorized:

13 a. (Deleted by amendment, P.L.1995, c.360.)

14 b. (Deleted by amendment, P.L.1995, c.360.)

15 c. An agreement made upon consideration of marriage entered
16 into prior to the effective date of the "Uniform Premarital
17 Agreement Act," P.L.1988, c.99 (C.37:2-31 et seq.);

18 d. (Deleted by amendment, P.L.1995, c.360.)

19 e. (Deleted by amendment, P.L.1995, c.360.)

20 f. A contract, promise, undertaking or commitment to loan
21 money or to grant, extend or renew credit, in an amount greater than
22 \$100,000, not primarily for personal, family or household purposes,
23 made by a person engaged in the business of lending or arranging
24 for the lending of money or extending credit. For the purposes of
25 this subsection, a contract, promise, undertaking or commitment to
26 loan money shall include agreements to lease personal property if
27 the lease is primarily a method of financing the obtaining of the
28 property; **[or]**

29 g. An agreement by a creditor to forbear from exercising
30 remedies pursuant to a contract, promise, undertaking or
31 commitment which is subject to the provisions of subsection f. of
32 this section; or

33 h. A promise by one party to a non-marital personal
34 relationship to provide support or other consideration for the other
35 party, either during the course of such relationship or after its
36 termination. For the purposes of this subsection, no such written
37 promise is binding unless it was made with the independent advice
38 of counsel for both parties.

39 (cf: P.L.1995, c.360, s.8)

40

41 2. This act shall take effect immediately.

42

43 STATEMENT

44

45 This bill is intended to overturn recent "palimony" decisions by

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 New Jersey courts by requiring that any such contract must be in
2 writing and signed by the person making the promise. More
3 specifically, the bill provides that a promise by one party to a non-
4 marital personal relationship to provide support or other
5 consideration for the other party, either during the course of such
6 relationship or after its termination, is not binding unless it is in
7 writing and signed. The bill provides that any such written promise
8 will not be enforceable unless it was made with the independent
9 advice of counsel for both parties.

10 In two recent cases, Devaney v. L'Esperance, 195 N.J. 247
11 (2008) and In re Estate of Roccamonte, 174 N.J. 381 (2002), the
12 New Jersey Supreme Court upheld palimony agreements between
13 two unmarried cohabitants. In the Devaney case the court held that
14 "cohabitation is not an essential requirement for a cause of action
15 for palimony, but a marital-type relationship is required." In the
16 Roccamonte case, the court held that an implied promise of support
17 for life is enforceable against the promisor's (cohabitant's) estate.
18 Those decisions are consistent with the court's prior decision in
19 Kozlowski v. Kozlowski, 80 N.J. 378 (1979), which had held that a
20 promise of lifetime support by one cohabitant to another in a
21 marital-like relationship would be enforced, if one of the partners
22 was induced to cohabit by the promise. The court held that the right
23 to such support is found in contract principles and that the contract
24 may be either express or implied.

ASSEMBLY, No. 3833

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED MARCH 9, 2009

Sponsored by:

Assemblyman MICHAEL PATRICK CARROLL

District 25 (Morris)

SYNOPSIS

Prohibits the enforcement of "palimony" agreements unless such agreements are in writing.

CURRENT VERSION OF TEXT

As introduced.



A3833 CARROLL

2

1 AN ACT concerning palimony and amending R.S.25:1-5.

2

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

5

6 1. R.S.25:1-5 is amended to read as follows:

7 25:1-5. Promises or agreements not binding unless in writing.

8 No action shall be brought upon any of the following agreements or
9 promises, unless the agreement or promise, upon which such action
10 shall be brought or some memorandum or note thereof, shall be in
11 writing, and signed by the party to be charged therewith, or by some
12 other person thereunto by him lawfully authorized:

13 a. (Deleted by amendment, P.L.1995, c.360.)

14 b. (Deleted by amendment, P.L.1995, c.360.)

15 c. An agreement made upon consideration of marriage entered
16 into prior to the effective date of the "Uniform Premarital
17 Agreement Act," P.L.1988, c.99 (C.37:2-31 et seq.);

18 d. (Deleted by amendment, P.L.1995, c.360.)

19 e. (Deleted by amendment, P.L.1995, c.360.)

20 f. A contract, promise, undertaking or commitment to loan
21 money or to grant, extend or renew credit, in an amount greater than
22 \$100,000, not primarily for personal, family or household purposes,
23 made by a person engaged in the business of lending or arranging
24 for the lending of money or extending credit. For the purposes of
25 this subsection, a contract, promise, undertaking or commitment to
26 loan money shall include agreements to lease personal property if
27 the lease is primarily a method of financing the obtaining of the
28 property; **[or]**

29 g. An agreement by a creditor to forbear from exercising
30 remedies pursuant to a contract, promise, undertaking or
31 commitment which is subject to the provisions of subsection f. of
32 this section; or

33 h. A promise by one party to a non-marital personal relationship
34 to provide support for the other party, either during the course of
35 such relationship or after its termination.

36 (cf: P.L.1995, c.360, s.8)

37

38 2. This act shall take effect immediately.

39

40

41

STATEMENT

42

43 In In re Estate of Roccamonte, 174 N.J. 381 (2002), the New
44 Jersey Supreme Court held that a so-called "palimony" agreement
45 between two unmarried cohabitants would be enforced against a

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

Matter underlined thus is new matter.

A3833 CARROLL

1 cohabitant's estate. The decision was consistent with the court's
2 prior decision in Kozłowski v. Kozłowski, 80 N.J. 378 (1979),
3 which had held that a promise of lifetime support by one cohabitant
4 to another in a marital-like relationship would be enforced, if one of
5 the partners was induced to cohabit by the promise. The court held
6 that the right to such support is found in contract principles and that
7 the contract may be either express or implied.

8 This bill is intended to overturn these "palimony" decisions by
9 requiring that any such contract must be in writing and signed by
10 the person making the promise.

11 More specifically, the bill provides that a promise by one party
12 to a non-marital personal relationship to provide support for the
13 other party, either during the course of such relationship or after its
14 termination, is not binding unless it is in writing and signed.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, Nos. 4296 and 3833

STATE OF NEW JERSEY

DATED: DECEMBER 3, 2009

The Assembly Judiciary Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 4296 and 3833.

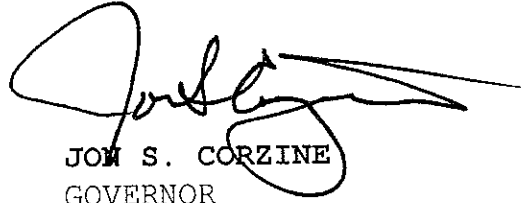
This substitute is intended to overturn recent "palimony" decisions by New Jersey courts by requiring that any such contract must be in writing and signed by the person making the promise. More specifically, the substitute provides that a promise by one party to a non-marital personal relationship to provide support or other consideration for the other party, either during the course of such relationship or after its termination, is not binding unless it is in writing and signed. The substitute provides that no such written promise is binding unless it was made with the independent advice of counsel for both parties.

In two recent cases, Devaney v. L'Esperance, 195 N.J. 247 (2008) and In re Estate of Roccamonte, 174 N.J. 381 (2002), the New Jersey Supreme Court upheld palimony agreements between two unmarried cohabitants. In the Devaney case the court held that "cohabitation is not an essential requirement for a cause of action for palimony, but a marital-type relationship is required." In the Roccamonte case, the court held that an implied promise of support for life is enforceable against the promisor's (cohabitant's) estate. Those decisions are consistent with the court's prior decision in Kozlowski v. Kozlowski, 80 N.J. 378 (1979), which had held that a promise of lifetime support by one cohabitant to another in a marital-like relationship would be enforced, if one of the partners was induced to cohabit by the promise. The court held that the right to such support is found in contract principles and that the contract may be either express or implied.

This substitute is identical to Senate Bill No. 2091(1R).

GOVERNOR'S
STATEMENT ON SIGNING
SENATE BILL NO. 2091
(First Reprint)

I approve Senate Bill No. 2091 (First Reprint) in light of the representation by legislative leadership and the bill sponsors that this law will be improved to recognize agreements or promises in a non-marital relationship as binding when they are mutual, in writing, and notarized as opposed to mandating the involvement or services of an attorney. Legislative leadership and the sponsors share my goal of providing greater clarity in the enforcement of palimony agreements but ensuring that this law does not have an adverse impact on parties who may not be able to afford the services of an attorney. I take this action in light of the time constraints that result at the end of a legislative session, which do not afford time for a Conditional Veto to recommend removal of this provision.



JON S. CORZINE
GOVERNOR

DATED: 1/18/10

ATTEST:



WILLIAM J. CASTNER, JR.
CHIEF COUNSEL TO THE GOVERNOR