

2A:34-23.1

LEGISLATIVE HISTORY CHECKLIST
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(Equitable distribution)

NJEA: 2A:34-23.1

LAWS OF: 1997 CHAPTER: 407

BILL NO: A82

SPONSOR(S): Kavanaugh and others

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: Judiciary
SENATE: Women's Issues

AMENDED DURING PASSAGE: Yes Amendments during passage denoted by
First reprint enacted superscript numbers

DATE OF PASSAGE: ASSEMBLY: September 26, 1996
SENATE: January 12, 1997

DATE OF APPROVAL: January 19, 1998

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: Yes

HEARINGS: No

974.90 New Jersey. Commission To Study The Law of Divorce.
M359 Report..., April 18, 1995. Trenton, 1995.
1995a [see recommendation #20--pp.47-48]

974.90 New Jersey. Commission To Study The Law of Divorce.
M359 Preliminary report...March 15, 1995. Trenton, 1995.
1995 [see recommendation #20--pp.58-59]

KBP:pp

P.L. 1997, CHAPTER 407, *approved January 19, 1998*
Assembly, No. 82 (*First Reprint*)

1 AN ACT concerning equitable distribution and amending P.L.1988,
2 c.153.

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

6
7 1. Section 4 of P.L.1988, c.153 (C.2A:34-23.1) is amended to read
8 as follows:

9 4. In making an equitable distribution of property, the court shall
10 consider, but not be limited to, the following factors:

- 11 a. The duration of the marriage;
- 12 b. The age and physical and emotional health of the parties;
- 13 c. The income or property brought to the marriage by each party;
- 14 d. The standard of living established during the marriage;
- 15 e. Any written agreement made by the parties before or during the
16 marriage concerning an arrangement of property distribution;
- 17 f. The economic circumstances of each party at the time the
18 division of property becomes effective;
- 19 g. The income and earning capacity of each party, including
20 educational background, training, employment skills, work experience,
21 length of absence from the job market, custodial responsibilities for
22 children, and the time and expense necessary to acquire sufficient
23 education or training to enable the party to become self-supporting at
24 a standard of living reasonably comparable to that enjoyed during the
25 marriage;
- 26 h. The contribution by each party to the education, training or
27 earning power of the other;
- 28 i. The contribution of each party to the acquisition, dissipation,
29 preservation, depreciation or appreciation in the amount or value of
30 the marital property, as well as the contribution of a party as a
31 homemaker;

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AJU committee amendments adopted June 10, 1996.

1 j. The tax consequences of the proposed distribution to each party;

2 k. The present value of the property;

3 l. The need of a parent who has physical custody of a child to own
4 or occupy the marital residence and to use or own the household
5 effects;

6 m. The debts and liabilities of the parties;

7 n. The need for creation, now or in the future, of a trust fund to
8 secure reasonably foreseeable medical or educational costs for a
9 spouse or children; and

10 o. The extent to which a party deferred achieving their career goals
11 ¹[thereby allowing the other party's earning capacity to be enhanced]¹.

12 p. Any other factors which the court may deem relevant.

13 In every case, the court shall make specific findings of fact on the
14 evidence relevant to all issues pertaining to asset eligibility or
15 ineligibility, asset valuation, and equitable distribution, including
16 specifically, but not limited to, the factors set forth in this section.

17 It shall be a rebuttable presumption that each party made a
18 substantial financial or nonfinancial contribution to the acquisition of
19 income and property while the party was married.

20 (cf: P.L. 1988, c. 153, s. 4)

21

22 2. This act shall take effect immediately.

23

24

25

26

27 Adds new factor to equitable distribution statute concerning deferral
28 of career goals.

ASSEMBLY, No. 82

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman KAVANAUGH

1 AN ACT concerning equitable distribution and amending P.L.1988,
2 c.153.

3
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5 of New Jersey:

6
7 1. Section 4 of P.L.1988, c.153 (C.2A:34-23.1) is amended to read
8 as follows:

9 4. In making an equitable distribution of property, the court shall
10 consider, but not be limited to, the following factors:

- 11 a. The duration of the marriage;
- 12 b. The age and physical and emotional health of the parties;
- 13 c. The income or property brought to the marriage by each party;
- 14 d. The standard of living established during the marriage;
- 15 e. Any written agreement made by the parties before or during the
16 marriage concerning an arrangement of property distribution;
- 17 f. The economic circumstances of each party at the time the
18 division of property becomes effective;
- 19 g. The income and earning capacity of each party, including
20 educational background, training, employment skills, work experience,
21 length of absence from the job market, custodial responsibilities for
22 children, and the time and expense necessary to acquire sufficient
23 education or training to enable the party to become self-supporting at
24 a standard of living reasonably comparable to that enjoyed during the
25 marriage;
- 26 h. The contribution by each party to the education, training or
27 earning power of the other;
- 28 i. The contribution of each party to the acquisition, dissipation,
29 preservation, depreciation or appreciation in the amount or value of
30 the marital property, as well as the contribution of a party as a
31 homemaker;
- 32 j. The tax consequences of the proposed distribution to each party;

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

Matter underlined thus is new matter.

- 1 k. The present value of the property;
- 2 l. The need of a parent who has physical custody of a child to own
- 3 or occupy the marital residence and to use or own the household
- 4 effects;
- 5 m. The debts and liabilities of the parties;
- 6 n. The need for creation, now or in the future, of a trust fund to
- 7 secure reasonably foreseeable medical or educational costs for a
- 8 spouse or children; and
- 9 o. The extent to which a party deferred achieving their career goals
- 10 thereby allowing the other party's earning capacity to be enhanced.
- 11 p. Any other factors which the court may deem relevant.

12 In every case, the court shall make specific findings of fact on the
13 evidence relevant to all issues pertaining to asset eligibility or
14 ineligibility, asset valuation, and equitable distribution, including
15 specifically, but not limited to, the factors set forth in this section.

16 It shall be a rebuttable presumption that each party made a
17 substantial financial or nonfinancial contribution to the acquisition of
18 income and property while the party was married.

19 (cf: P.L. 1988, c. 153, s. 4)

20

21 2. This act shall take effect immediately.

22

23

24

STATEMENT

25

26 This bill would amend the equitable distribution statute, N.J.S.A.
27 2A:34-23.1, to add an additional factor for the court to consider in
28 allocating assets pursuant to equitable distribution.

29 The new factor would require the court to consider the extent to
30 which a party deferred achieving career goals, thereby allowing the
31 other party's earning capacity to be enhanced.

32 The sponsor believes this to be an essential ingredient in
33 determining the fairness of allocating marital assets acquired during
34 the marriage. In a common factual scenario, the wife remains home
35 for a number of years to care for the children and, as a consequence,
36 her earning capacity is materially and adversely affected. By contrast,
37 because of the wife's efforts in caring for the children, the husband has
38 the ability to develop his own career and to have his own earning
39 capacity enhanced. Under the bill, this issue would be set forth in the
40 statute as a factor that the court (and the parties themselves, when
41 they settle cases) must consider in evaluating the fairness of an overall
42 distribution of assets.

43 This bill embodies Recommendation 20 of the report of the
44 Commission to Study the Law of Divorce, issued April 18, 1995.

- 1 _____
- 2
- 3 Adds new factor to equitable distribution statute concerning deferral
- 4 of career goals.

[Passed Both Houses]

[First Reprint]

ASSEMBLY, No. 82

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen KAVANAUGH, COHEN,
Senators Martin, Ewing, Cafiero and Baer

1 AN ACT concerning equitable distribution and amending P.L.1988,
2 c.153.

3

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

6

7 1. Section 4 of P.L.1988, c.153 (C.2A:34-23.1) is amended to read
8 as follows:

9 4. In making an equitable distribution of property, the court shall
10 consider, but not be limited to, the following factors:

11 a. The duration of the marriage;

12 b. The age and physical and emotional health of the parties;

13 c. The income or property brought to the marriage by each party;

14 d. The standard of living established during the marriage;

15 e. Any written agreement made by the parties before or during the
16 marriage concerning an arrangement of property distribution;

17 f. The economic circumstances of each party at the time the
18 division of property becomes effective;

19 g. The income and earning capacity of each party, including
20 educational background, training, employment skills, work experience,
21 length of absence from the job market, custodial responsibilities for
22 children, and the time and expense necessary to acquire sufficient
23 education or training to enable the party to become self-supporting at
24 a standard of living reasonably comparable to that enjoyed during the
25 marriage;

26 h. The contribution by each party to the education, training or
27 earning power of the other;

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AJU committee amendments adopted June 10, 1996.

- 1 i. The contribution of each party to the acquisition, dissipation,
2 preservation, depreciation or appreciation in the amount or value of
3 the marital property, as well as the contribution of a party as a
4 homemaker;
- 5 j. The tax consequences of the proposed distribution to each party;
- 6 k. The present value of the property;
- 7 l. The need of a parent who has physical custody of a child to own
8 or occupy the marital residence and to use or own the household
9 effects;
- 10 m. The debts and liabilities of the parties;
- 11 n. The need for creation, now or in the future, of a trust fund to
12 secure reasonably foreseeable medical or educational costs for a
13 spouse or children; and
- 14 o. The extent to which a party deferred achieving their career goals
15 '[thereby allowing the other party's earning capacity to be
16 enhanced]'.
- 17 p. Any other factors which the court may deem relevant.

18 In every case, the court shall make specific findings of fact on the
19 evidence relevant to all issues pertaining to asset eligibility or
20 ineligibility, asset valuation, and equitable distribution, including
21 specifically, but not limited to, the factors set forth in this section.

22 It shall be a rebuttable presumption that each party made a
23 substantial financial or nonfinancial contribution to the acquisition of
24 income and property while the party was married.

25 (cf: P.L. 1988, c. 153, s. 4)

26

27 2. This act shall take effect immediately.

28

29

30

31

32 Adds new factor to equitable distribution statute concerning deferral
33 of career goals.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 82

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 10, 1996

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No.82.

This bill would amend the equitable distribution statute, N.J.S.A. 2A:34-23.1, to add an additional factor for the court to consider in allocating assets pursuant to equitable distribution. The new factor would require the court to consider the extent to which a party deferred achieving career goals. The committee amendments delete the qualifying language, "thereby allowing the other party's earning capacity to be enhanced." The committee considered that there may be circumstances in which the party with the earning capacity does not see an actual enhancement in earning capacity.

In a common factual scenario, the wife remains home for a number of years to care for the children and, as a consequence, her earning capacity is materially and adversely affected. By contrast, because of the wife's efforts in caring for the children, the husband has the ability to develop his own career and to have his own earning capacity enhanced. Under the bill, this issue would be set forth in the statute as a factor that the court (and the parties themselves, when they settle cases) must consider in evaluating the fairness of an overall distribution of assets.

This bill embodies Recommendation 20 of the report of the Commission to Study the Law of Divorce, issued April 18, 1995.

This bill was prefiled for introduction in the 1996 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

SENATE WOMEN'S ISSUES, CHILDREN AND FAMILY
SERVICES COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 82

STATE OF NEW JERSEY

DATED: JANUARY 23, 1997

The Senate Women's Issues, Children and Family Services Committee reports favorably Assembly Bill No. 82 (1R).

This bill would amend the equitable distribution statute, N.J.S.A. 2A:34-23.1, to add an additional factor for the court to consider in allocating assets pursuant to equitable distribution. The new factor would require the court to consider the extent to which a party deferred achieving career goals.

In a common factual scenario, the wife remains home for a number of years to care for the children and, as a consequence, her earning capacity is materially and adversely affected. By contrast, because of the wife's efforts in caring for the children, the husband has the ability to develop his own career and to have his own earning capacity enhanced. Under the bill, this issue would be set forth in the statute as a factor that the court (and the parties themselves, when they settle cases) must consider in evaluating the fairness of an overall distribution of assets.

This bill embodies Recommendation 20 of the report of the Commission to Study the Law of Divorce, issued April 18, 1995.

This bill is identical to Senate Bill No. 1496, sponsored by Senators Ewing and Martin, which this committee also reported favorably on this date.