

A4525

ASSEMBLY, No. 4525
STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED NOVEMBER 25, 2013

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

As introduced.

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

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

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

2A:34-23. Alimony, maintenance.

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

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

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

- (1) Needs of the child;
- (2) Standard of living and economic circumstances of each parent;

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

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

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

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

- (1) The actual need and ability of the parties to pay;
- (2) The duration of the marriage or civil union;
- (3) The age, physical and emotional health of the parties;
- (4) 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;
- (5) The earning capacities, educational levels, vocational skills, and employability of the parties;
- (6) The length of absence from the job market of the party seeking maintenance;
- (7) The parental responsibilities for the children;
- (8) The time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, the availability of the training and

employment, and the opportunity for future acquisitions of capital assets and income;

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

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

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

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

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

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

c. In any case in which there is a request for an award of [permanent] alimony of indefinite term, the court shall consider and make specific findings on the evidence about the above factors. If the court determines that an award of [permanent] alimony of indefinite term is not warranted, the court shall make specific findings on the evidence setting out the reasons therefor. The court shall then consider whether alimony is appropriate for any or all of the following: (1) limited duration; (2) rehabilitative; (3) reimbursement. In so doing, the court shall consider and make specific findings on the evidence about factors set forth above. The court shall not award limited duration alimony as a substitute for [permanent] alimony of indefinite term in those cases where [permanent] alimony of indefinite term would otherwise be awarded.

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

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

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

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

e. Reimbursement alimony may be awarded under circumstances in which one party supported

A4525

the other through an advanced education, anticipating participation in the fruits of the earning capacity generated by that education.

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

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

h. Except as provided in this subsection, in all actions where a judgment of divorce, dissolution of civil union, divorce from bed and board or legal separation from a partner in a civil union couple is entered the court may make such award or awards to the parties, in addition to alimony and maintenance, to effectuate an equitable distribution of the property, both real and personal, which was legally and beneficially acquired by them or either of them during the marriage or civil union. However, all such property, real, personal or otherwise, legally or beneficially acquired during the marriage or civil union by either party by way of gift, devise, or intestate succession shall not be subject to equitable distribution, except that interspousal gifts or gifts between partners in a civil union couple shall be subject to equitable distribution. The court may not make an award concerning the equitable distribution of property on behalf of a party convicted of an attempt or conspiracy to murder the other party.

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

As used in this subsection:

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

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

obligor. The obligor shall 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 for modification or termination of alimony 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 the original alimony award and from the date of any subsequent modification.

In order to determine whether the obligor has met the burden of demonstrating that the obligor's 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 and at the time of the divorce;

(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.

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

If the court determines that the obligor has met his burden, then the court shall apply the alimony factors as set forth in section b. of this section to the parties' current circumstances 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 shall establish the conditions under which the modification or termination of alimony will be effective.

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

(1) The reasons for the loss of employment;

(2) The obligor's documented efforts to obtain replacement employment or to pursue an

alternative occupation;

(3) 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 the 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; and

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

The length of time a party has been involuntarily unemployed or has had an involuntary reduction in income shall not be dispositive of the application and the court shall determine the application based upon all of the enumerated factors, except that no application shall be filed until a party has been unemployed, or not been able to return to 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.

l. When a self-employed party seeks modification of alimony or child support 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.

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

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

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 legal responsibility for living expenses;

- (3) recognition of the relationship in the couple's social and family circle;
- (4) living together;
- (5) sharing household chores; and
- (6) 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.

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

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

STATEMENT

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

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

RETIREMENT:

The bill specifies that alimony may be modified or terminated upon the prospective or actual retirement of the obligor. 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 for modification or termination of alimony and the obligee's response to the application would 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 the original alimony award and from the date of any subsequent modification.

In order to determine whether the obligor has met the burden of demonstrating that the obligor's prospective or actual retirement is reasonable and made in good faith, the court would 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 and at the time of the divorce;
- (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 court determines that the obligor has met his burden, then the court would apply the general alimony factors as set forth in N.J.S.2A34-23 to the parties' current circumstances 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 shall establish the conditions under which the modification or termination of alimony will be effective.

APPLICATION BY NON-SELF-EMPLOYED PERSON:

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

(1) The reasons for the loss of employment;

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

(3) 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 the 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; and

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

APPLICATION BY SELF-EMPLOYED PERSON:

The bill provides that when a self-employed party seeks modification of alimony or child support 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.

EFFECT OF EQUITABLE DISTRIBUTION:

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

TEMPORARY REMEDIES:

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

COHABITATION:

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

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 legal responsibility for living expenses;
- (3) recognition of the relationship in the couple's social and family circle;
- (4) living together;
- (5) sharing household chores; and
- (6) all other relevant evidence.

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

EFFECTIVE DATE:

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