

ASSEMBLY, No. 75

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman KAVANAUGH and Assemblywoman CRECCO

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

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

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8 1. (New section) Findings and Declarations.

9 The Legislature is cognizant of court decisions which have
10 established a duty to support children after they have reached the age
11 of majority, under appropriate circumstances, including a duty to
12 provide for a "necessary education." The Legislature hereby finds and
13 declares that for the sake of predictability in fixing the obligations of
14 parents to their children and in planning the financial aspects of
15 providing such a "necessary education," that the statutory law should
16 provide for a time when the obligation to pay support on behalf of a
17 child definitively ends.

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

20 2A:34-23. Pending any matrimonial action brought in this State or
21 elsewhere, or after judgment of divorce or maintenance, whether
22 obtained in this State or elsewhere, the court may make such order as
23 to the alimony or maintenance of the parties, and also as to the care,
24 custody, education and maintenance of the children, or any of them,
25 as the circumstances of the parties and the nature of the case shall
26 render fit, reasonable and just, and require reasonable security for the
27 due observance of such orders, including, but not limited to, the
28 creation of trusts or other security devices, to assure payment of
29 reasonably foreseeable medical and educational expenses. Upon
30 neglect or refusal to give such reasonable security, as shall be required,
31 or upon default in complying with any such order, the court may
32 award and issue process for the immediate sequestration of the

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 personal estate, and the rents and profits of the real estate of the party
2 so charged, and appoint a receiver thereof, and cause such personal
3 estate and the rents and profits of such real estate, or so much thereof
4 as shall be necessary, to be applied toward such alimony and
5 maintenance as to the said court shall from time to time seem
6 reasonable and just; or the performance of the said orders may be
7 enforced by other ways according to the practice of the court. Orders
8 so made may be revised and altered by the court from time to time as
9 circumstances may require.

10 The court may order one party to pay a retainer on behalf of the
11 other for expert and legal services when the respective financial
12 circumstances of the parties make the award reasonable and just. In
13 considering an application, the court shall review the financial capacity
14 of each party to conduct the litigation and the criteria for award of
15 counsel fees that are then pertinent as set forth by court rule.
16 Whenever any other application is made to a court which includes an
17 application for pendente lite or final award of counsel fees, the court
18 shall determine the appropriate award for counsel fees, if any, at the
19 same time that a decision is rendered on the other issue then before the
20 court and shall consider the factors set forth in the court rule on
21 counsel fees, the financial circumstances of the parties, and the good
22 or bad faith of either party.

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

- 27 (1) Needs of the child;
- 28 (2) Standard of living and economic circumstances of each parent;
- 29 (3) All sources of income and assets of each parent;
- 30 (4) Earning ability of each parent, including educational
31 background, training, employment skills, work experience, custodial
32 responsibility for children including the cost of providing child care
33 and the length of time and cost of each parent to obtain training or
34 experience for appropriate employment;
- 35 (5) Need and capacity of the child for education, including higher
36 education;
- 37 (6) Age and health of the child and each parent;
- 38 (7) Income, assets and earning ability of the child;
- 39 (8) Responsibility of the parents for the court-ordered support of
40 others;
- 41 (9) Reasonable debts and liabilities of each child and parent; and
42 (10) Any other factors the court may deem relevant.

43 Except in a case where a child is financially dependent on a parent
44 because of a mental or physical disability, the obligation to pay support
45 for a child terminates upon the occurrence of any of the following
46 events:

1 (1) The child is emancipated pursuant to law, including but not
2 limited to emancipation by induction into military service and
3 emancipation by marriage, or is emancipated by court order; or

4 (2) The child graduates high school or reaches the age of 18,
5 whichever is later.

6 There is a presumption that the obligation to pay support for a child
7 who has not graduated high school terminates if the child has reached
8 the age of 18 but is not attending high school.

9 b. In all actions brought for divorce, divorce from bed and board,
10 or nullity the court may award permanent or rehabilitative alimony or
11 both to either party, and in so doing shall consider, but not be limited
12 to, the following factors:

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

14 (2) The duration of the marriage;

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

16 (4) The standard of living established in the marriage and the
17 likelihood that each party can maintain a reasonably comparable
18 standard of living;

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

21 (6) The length of absence from the job market and custodial
22 responsibilities for children of the party seeking maintenance;

23 (7) The time and expense necessary to acquire sufficient education
24 or training to enable the party seeking maintenance to find appropriate
25 employment, the availability of the training and employment, and the
26 opportunity for future acquisitions of capital assets and income;

27 (8) The history of the financial or non-financial contributions to the
28 marriage by each party including contributions to the care and
29 education of the children and interruption of personal careers or
30 educational opportunities;

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

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

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

39 In any case in which there is a request for an award of rehabilitative
40 or permanent alimony, the court shall consider and make specific
41 findings on the evidence about the above factors.

42 An award of rehabilitative alimony may be modified based either
43 upon changed circumstances, or upon the nonoccurrence of
44 circumstances that the court found would occur at the time of the
45 rehabilitative award. This section is not intended to preclude a court
46 from modifying permanent alimony awards based upon the law. In all

1 actions for divorce other than those where judgment is granted solely
2 on the ground of separation the court may consider also the proofs
3 made in establishing such ground in determining an amount of alimony
4 or maintenance that is fit, reasonable and just. In all actions for
5 divorce or divorce from bed and board where judgment is granted on
6 the ground of institutionalization for mental illness the court may
7 consider the possible burden upon the taxpayers of the State as well
8 as the ability of the party to pay in determining an amount of
9 maintenance to be awarded.

10 In all actions where a judgment of divorce or divorce from bed and
11 board is entered the court may make such award or awards to the
12 parties, in addition to alimony and maintenance, to effectuate an
13 equitable distribution of the property, both real and personal, which
14 was legally and beneficially acquired by them or either of them during
15 the marriage. However, all such property, real, personal or otherwise,
16 legally or beneficially acquired during the marriage by either party by
17 way of gift, devise, or intestate succession shall not be subject to
18 equitable distribution, except that interspousal gifts shall be subject to
19 equitable distribution.

20 (cf: P.L.1988, c.153, s.3)

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22 3. This act shall take effect immediately.

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STATEMENT

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27 This bill amends N.J.S.2A:34-23 to establish a definitive time at
28 which a child would be "emancipated" and relinquish the right to
29 receive child support.

30 Under current case law, when a child reaches the age of 18 there is
31 prima facie, but not conclusive, proof of emancipation. Whether a
32 child will actually be considered emancipated at age 18 turns on the
33 particular facts of that child's circumstances. (See Newburgh v.
34 Arrigo, 88 N.J. 529 (1982)).

35 The courts have also held that, in addition to paying child support
36 for children over the age of 18, parents may also be ordered to
37 contribute to their children's post-secondary education and even, in
38 some cases, graduate school.

39 This bill would counter the case law by providing that, except in a
40 case where a child is financially dependent on a parent because of a
41 mental or physical disability, the obligation to pay support for a child
42 terminates upon the occurrence of any of the following events:

43 (1) The child is emancipated pursuant to law, including but not
44 limited to emancipation by induction into military service and
45 emancipation by marriage, or is emancipated by court order; or

1 (2) The child graduates high school or reaches the age of 18,
2 whichever is later.

3 The bill also establishes a presumption that the obligation to pay
4 support for a child who has not graduated high school terminates if the
5 child has reached the age of 18 but is not attending high school.

6 This bill embodies Recommendation 9 of the report of the
7 Commission to Study the Law of Divorce, issued April 18, 1995.

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12 Establishes definitive time when a child is "emancipated" and
13 relinquishes the right to child support.