

ASSEMBLY, No. 76

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

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

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

7 2A:34-23. Pending any matrimonial action brought in this State or
8 elsewhere, or after judgment of divorce or maintenance, whether
9 obtained in this State or elsewhere, the court may make such order as
10 to the alimony or maintenance of the parties, and also as to the care,
11 custody, education and maintenance of the children, or any of them,
12 as the circumstances of the parties and the nature of the case shall
13 render fit, reasonable and just, and require reasonable security for the
14 due observance of such orders, including, but not limited to, the
15 creation of trusts or other security devices, to assure payment of
16 reasonably foreseeable medical and educational expenses. Upon
17 neglect or refusal to give such reasonable security, as shall be required,
18 or upon default in complying with any such order, the court may
19 award and issue process for the immediate sequestration of the
20 personal estate, and the rents and profits of the real estate of the party
21 so charged, and appoint a receiver thereof, and cause such personal
22 estate and the rents and profits of such real estate, or so much thereof
23 as shall be necessary, to be applied toward such alimony and
24 maintenance as to the said court shall from time to time seem
25 reasonable and just; or the performance of the said orders may be
26 enforced by other ways according to the practice of the court. Orders
27 so made may be revised and altered by the court from time to time as
28 circumstances may require.

29 The court may order one party to pay a retainer on behalf of the
30 other for expert and legal services when the respective financial
31 circumstances of the parties make the award reasonable and just. In
32 considering an application, the court shall review the financial capacity

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 of each party to conduct the litigation and the criteria for award of
2 counsel fees that are then pertinent as set forth by court rule.
3 Whenever any other application is made to a court which includes an
4 application for pendente lite or final award of counsel fees, the court
5 shall determine the appropriate award for counsel fees, if any, at the
6 same time that a decision is rendered on the other issue then before the
7 court and shall consider the factors set forth in the court rule on
8 counsel fees, the financial circumstances of the parties, and the good
9 or bad faith of either party.

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

14 (1) Needs of the child;

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

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

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

22 (5) Need and capacity of the child for education, including higher
23 education;

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

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

26 (8) Responsibility of the parents for the court-ordered support of
27 others;

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

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

30 b. In all actions brought for divorce, divorce from bed and board,
31 or nullity the court may award one or more of the following types of
32 alimony: permanent alimony; [or] rehabilitative alimony; or limited
33 duration alimony [or both] to either party[, and in]. In so doing the
34 court shall consider, but not be limited to, the following factors:

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

36 (2) The duration of the marriage;

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

38 (4) The standard of living established in the marriage and the
39 likelihood that each party can maintain a reasonably comparable
40 standard of living;

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

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

45 (7) The time and expense necessary to acquire sufficient education
46 or training to enable the party seeking maintenance to find appropriate

1 employment, the availability of the training and employment, and the
2 opportunity for future acquisitions of capital assets and income;

3 (8) The history of the financial or non-financial contributions to the
4 marriage by each party including contributions to the care and
5 education of the children and interruption of personal careers or
6 educational opportunities;

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

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

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

15 c. In any case in which there is a request for an award of
16 [rehabilitative or] permanent alimony, the court shall consider and
17 make specific findings on the evidence about the above factors. If the
18 court determines that an award of permanent alimony is not warranted,
19 the court shall make specific findings on the evidence setting out the
20 reasons therefor. The court shall then consider whether alimony for
21 a specified limited duration is appropriate. In so doing, the court shall
22 consider and make specific findings on the evidence about factors set
23 forth below. The court shall not award limited duration alimony as a
24 substitute for permanent alimony in those cases involving long-term
25 marriages where permanent alimony would otherwise be awarded.

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

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

35 (1) In determining whether alimony for a specified limited duration
36 is appropriate, the court shall also consider whether, in lieu of such an
37 award, equitable distribution of the marital property could be used to
38 compensate the potential alimony recipient for the recipient's financial
39 or non-financial contributions to the marriage. If equitable distribution
40 cannot be so used, the court shall then determine whether limited
41 duration alimony is appropriate, and shall make specific findings about
42 the following factors:

43 (a) The duration of the marriage;

44 (b) The payor's ability to pay;

45 (c) The age, physical health and emotional health of the parties.

46 (d) The standard of living enjoyed during the marriage.

1 (e) The contribution of the spouse seeking support to the
2 development and maintenance of the parties' marital standard of living.

3 (f) The financial and non-financial contributions of the parties to
4 the marriage.

5 (g) The educational levels, vocational skills and earning capacities
6 of the parties and how they were affected by the marriage.

7 (h) The economic impact on the parties of the child-rearing
8 responsibilities for children of the marriage.

9 (i) The distribution of property acquired during the marriage and
10 the ability of either spouse to have acquired such assets without the
11 marriage.

12 (j) The entitlement of either spouse to enjoy a standard of living
13 comparable to that enjoyed during the marriage, given the parties'
14 financial and non-financial contributions to the development,
15 maintenance and acquisition of income or assets which supported the
16 marital lifestyle.

17 (k) Whether the parties were economically advantaged or
18 disadvantaged by the marriage.

19 (l) The income or property brought to the marriage by the parties.

20 (m) The use and dissipation during the marriage of the parties'
21 pre-marital assets.

22 (n) The income generated by assets equitably distributed, except
23 for income generated by a share of a retirement benefit treated as an
24 asset and equitably distributed.

25 (o) The sale of the marital residence and the availability of the
26 proceeds for the parties' use.

27 (p) Such other factors as the court deems appropriate.

28 d. In any case in which there is a request for an award of
29 rehabilitative alimony, the court shall consider and make specific
30 findings on the evidence about the above factors. An award of
31 rehabilitative alimony may be modified based either upon changed
32 circumstances, or upon the nonoccurrence of circumstances that the
33 court found would occur at the time of the rehabilitative award.

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

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

45 f. In all actions where a judgment of divorce or divorce from bed
46 and board is entered the court may make such award or awards to the

1 parties, in addition to alimony and maintenance, to effectuate an
2 equitable distribution of the property, both real and personal, which
3 was legally and beneficially acquired by them or either of them during
4 the marriage. However, all such property, real, personal or otherwise,
5 legally or beneficially acquired during the marriage by either party by
6 way of gift, devise, or intestate succession shall not be subject to
7 equitable distribution, except that interspousal gifts shall be subject to
8 equitable distribution.

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

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

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

16 2A:34-25. If after the judgment of divorce a former spouse shall
17 remarry, permanent and limited duration alimony shall terminate as of
18 the date of remarriage except that any arrearages that have accrued
19 prior to the date of remarriage shall not be vacated or annulled. The
20 remarriage of a former spouse receiving rehabilitative alimony shall not
21 be cause for termination of the rehabilitative alimony by the court
22 unless the court finds that the circumstances upon which the award
23 was based have not occurred or unless the payer spouse demonstrates
24 an agreement or good cause to the contrary.

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

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

32 (cf: P.L.1988, c.153, s.7)

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34 3. This act shall take effect immediately.

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STATEMENT

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39 This bill authorizes the courts to award limited duration alimony in
40 certain cases.

41 Under current law, the courts may award two types of alimony:
42 permanent alimony, which is intended to compensate a spouse for an
43 economic dependency created by the marriage, and rehabilitative
44 alimony, which is intended for specific educational or training
45 purposes and is of short duration. This bill would establish limited
46 duration alimony as a third type of alimony, to be used in those cases

1 involving shorter-term marriages where permanent or rehabilitative
2 alimony would be inappropriate or inapplicable but where,
3 nonetheless, economic assistance for a limited period of time would be
4 just.

5 The bill provides that, in any case where a party requests an award
6 of permanent alimony, the court would first be required to consider
7 and make specific findings on a number of factors, including the need
8 and ability of the parties to pay, the duration of the marriage, the
9 health of the parties, their standard of living and their earning
10 capacities. After this threshold determination, if the court determines
11 that an award of permanent alimony is not warranted, it would then
12 consider whether limited duration alimony is warranted.

13 The court would also be required to consider whether, in lieu of a
14 limited duration alimony award, equitable distribution of the marital
15 property could be used to compensate the potential alimony recipient
16 for the recipient's financial or non-financial contributions to the
17 marriage.

18 The bill sets out specific factors for the court to consider in making
19 the determination whether limited duration alimony is warranted,
20 including, among others:

21 • The contribution of the spouse seeking support to the
22 development and maintenance of the parties' marital standard of living.

23 • The financial and non-financial contributions of the parties to the
24 marriage.

25 • The educational levels, vocational skills and earning capacities of
26 the parties and how they were affected by the marriage.

27 • The economic impact on the parties of the child-rearing
28 responsibilities for children of the marriage.

29 • The distribution of property acquired during the marriage and the
30 ability of either spouse to have acquired such assets without the
31 marriage.

32 • The entitlement of either spouse to enjoy a standard of living
33 comparable to that enjoyed during the marriage, given the parties'
34 financial and non-financial contributions to the development,
35 maintenance and acquisition of income or assets which supported the
36 marital lifestyle.

37 • Whether the parties were economically advantaged or
38 disadvantaged by the marriage.

39 • The income or property brought to the marriage by the parties.

40 • The use and dissipation during the marriage of the parties'
41 pre-marital assets.

42 The bill specifically provides that the court shall not award limited
43 duration alimony as a substitute for permanent alimony in those cases
44 involving long-term marriages where permanent alimony would
45 otherwise be awarded under current law.

1 This bill embodies Recommendation 13 of the report of the
2 Commission to Study the Law of Divorce, issued April 18, 1995.

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7 Provides for limited duration alimony.