

ASSEMBLY, No. 81

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

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

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

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

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

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

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

15 (1) Needs of the child;

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

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

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

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

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

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

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

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

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

31 b. In all actions brought for divorce, divorce from bed and board,
32 or nullity the court may award permanent or rehabilitative alimony or
33 both to either party, and in so doing shall consider, but not be limited
34 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 parental responsibilities for the children;

46 (8) The time and expense necessary to acquire sufficient education

1 or training to enable the party seeking maintenance to find appropriate
2 employment, the availability of the training and employment, and the
3 opportunity for future acquisitions of capital assets and income;

4 ~~[(8)]~~(9) The history of the financial or non-financial contributions
5 to the marriage by each party including contributions to the care and
6 education of the children and interruption of personal careers or
7 educational opportunities;

8 ~~[(9)]~~(10) The equitable distribution of property ordered and any
9 payouts on equitable distribution, directly or indirectly, out of current
10 income, to the extent this consideration is reasonable, just and fair; and

11 ~~[(10)]~~(11) Any other factors which the court may deem relevant.

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

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

19 An award of rehabilitative alimony may be modified based either
20 upon changed circumstances, or upon the nonoccurrence of
21 circumstances that the court found would occur at the time of the
22 rehabilitative award. This section is not intended to preclude a court
23 from modifying permanent alimony awards based upon the law. In all
24 actions for divorce other than those where judgment is granted solely
25 on the ground of separation the court may consider also the proofs
26 made in establishing such ground in determining an amount of alimony
27 or maintenance that is fit, reasonable and just. In all actions for
28 divorce or divorce from bed and board where judgment is granted on
29 the ground of institutionalization for mental illness the court may
30 consider the possible burden upon the taxpayers of the State as well
31 as the ability of the party to pay in determining an amount of
32 maintenance to be awarded.

33 In all actions where a judgment of divorce or divorce from bed and
34 board is entered the court may make such award or awards to the
35 parties, in addition to alimony and maintenance, to effectuate an
36 equitable distribution of the property, both real and personal, which
37 was legally and beneficially acquired by them or either of them during
38 the marriage. However, all such property, real, personal or otherwise,
39 legally or beneficially acquired during the marriage by either party by
40 way of gift, devise, or intestate succession shall not be subject to
41 equitable distribution, except that interspousal gifts shall be subject to
42 equitable distribution.

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

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45 2. This act shall take effect immediately.

STATEMENT

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3 This bill would amend N.J.S.2A:34-23, the alimony statute, to
4 clarify that the court consider the impact on both parties in awarding
5 permanent or rehabilitative alimony.

6 Currently, the statute provides that, among other factors used in
7 determining alimony, the court must consider:

8 The length of absence from the job market and custodial
9 responsibilities for children of the party seeking maintenance.

10 [2A:34-23b.(6).]

11 It is generally acknowledged that this factor is directed to the
12 alimony recipient's earning capacity and how that capacity has been
13 affected by two factors -- the length of the recipient's absence from the
14 job market, and the recipient's custodial responsibilities for the
15 children. However, the sponsor believes that in order to advance the
16 principles of fairness and gender neutrality which are inherent in
17 modern law, this factor should be changed to reflect not just the
18 alimony recipient's child-rearing responsibilities, but both parties'
19 child-rearing responsibilities. Consequently, the bill would split the
20 current factor (6) into two separate factors, to now read:

21 (6) The length of absence from the job market of the party seeking
22 maintenance;

23 (7) The parental responsibilities for the children.

24 This bill embodies Recommendation 19 of the report of the
25 Commission to Study the Law of Divorce, issued April 18, 1995.

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30 Amends equitable distribution statute to clarify that court must
31 consider both parents' responsibilities for the children.