

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.

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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;

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.
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## 24 STATEMENT

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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.

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3 Adds new factor to equitable distribution statute concerning deferral  
4 of career goals.