

[First Reprint]

ASSEMBLY, No. 2351

STATE OF NEW JERSEY
220th LEGISLATURE

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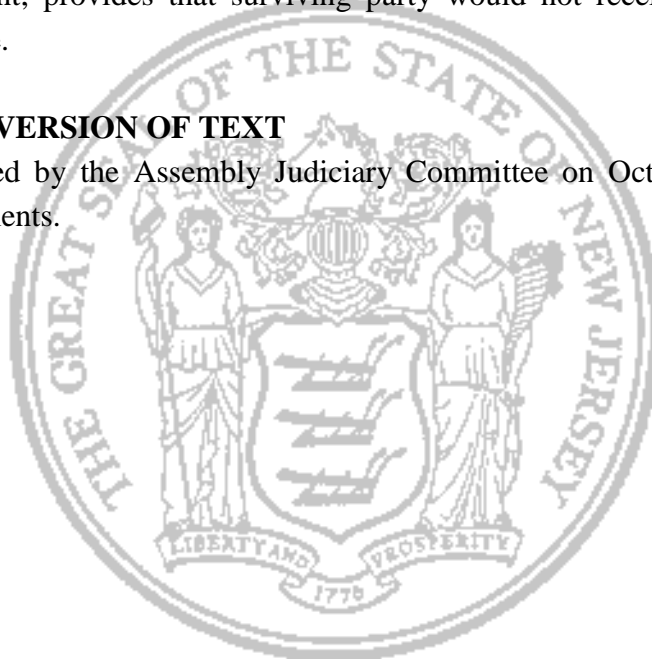
Assemblywoman McKnight

SYNOPSIS

Permits court to effectuate equitable distribution when complaint for divorce or dissolution of civil union has been filed and either party has died prior to final judgment; provides that surviving party would not receive intestate or elective share.

CURRENT VERSION OF TEXT

As reported by the Assembly Judiciary Committee on October 17, 2022, with amendments.



(Sponsorship Updated As Of: 10/27/2022)

1 AN ACT concerning equitable distribution and amending various
2 sections of the New Jersey Statutes.

3

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

6

7 1. N.J.S.3B:5-3 is amended to read as follows:

8 3B:5-3. Intestate share of decedent's surviving spouse, partner in
9 a civil union, or domestic partner.

10 The intestate share of the surviving spouse, partner in a civil
11 union, or domestic partner is:

12 a. The entire intestate estate if:

13 (1) No descendant or parent of the decedent survives the
14 decedent; or

15 (2) All of the decedent's surviving descendants are also
16 descendants of the surviving spouse, partner in a civil union, or
17 domestic partner and there is no other descendant of the surviving
18 spouse or domestic partner, partner in a civil union, who survives
19 the decedent;

20 b. The first 25% of the intestate estate, but not less than
21 \$50,000.00 nor more than \$200,000.00, plus three-fourths of any
22 balance of the intestate estate, if no descendant of the decedent
23 survives the decedent, but a parent of the decedent survives the
24 decedent;

25 c. The first 25% of the intestate estate, but not less than
26 \$50,000.00 nor more than \$200,000.00, plus one-half of the balance
27 of the intestate estate:

28 (1) If all of the decedent's surviving descendants are also
29 descendants of the surviving spouse, partner in a civil union, or
30 domestic partner and the surviving spouse, partner in a civil union,
31 or domestic partner has one or more surviving descendants who are
32 not descendants of the decedent; or

33 (2) If one or more of the decedent's surviving descendants is not
34 a descendant of the surviving spouse, partner in a civil union, or
35 domestic partner.

36 d. For purposes of this section:

37 “Surviving spouse, partner in a civil union, or domestic partner”
38 shall not include an individual who has filed a complaint not
39 dismissed pursuant to R.4:6-2 of the Rules of Court, or against
40 whom a complaint not dismissed pursuant to R.4:6-2 of the Rules of
41 Court, has been filed for: divorce, dissolution of civil union,
42 termination of domestic partnership, or divorce from bed and board.
43 (cf: P.L.2005, c.331, s.2)

44

45 2. N.J.S.3B:5-4 is amended to read as follows:

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AJU committee amendments adopted October 17, 2022.

1 3B:5-4. Intestate shares of heirs other than surviving spouse,
2 partner in a civil union, or domestic partner.

3 Any part of the intestate estate not passing to the decedent's
4 surviving spouse, partner in a civil union, or domestic partner under
5 N.J.S.3B:5-3, or the entire intestate estate if there is no surviving
6 spouse, partner in a civil union, or domestic partner, passes in the
7 following order to the individuals designated below who survive the
8 decedent:

9 a. To the decedent's descendants by representation;

10 b. If there are no surviving descendants, to the decedent's
11 parents equally if both survive, or to the surviving parent, except as
12 provided in section 4 of P.L.2009, c.43 (C.3B:5-14.1);

13 c. If there are no surviving descendants or parent, to the
14 descendants of the decedent's parents or either of them by
15 representation;

16 d. If there is no surviving descendant, parent or descendant of a
17 parent, but the decedent is survived by one or more grandparents,
18 half of the estate passes to the decedent's paternal grandparents
19 equally if both survive, or to the surviving paternal grandparent, or
20 to the descendants of the decedent's paternal grandparents or either
21 of them if both are deceased, the descendants taking by
22 representation; and the other half passes to the decedent's maternal
23 relatives in the same manner; but if there is no surviving
24 grandparent, or descendant of a grandparent on either the paternal
25 or the maternal side, the entire estate passes to the decedent's
26 relatives on the other side in the same manner as the half;

27 e. If there is no surviving descendant, parent, descendant of a
28 parent, or grandparent, but the decedent is survived by one or more
29 descendants of grandparents, the descendants take equally if they
30 are all of the same degree of kinship to the decedent, but if of
31 unequal degree those of more remote degree take by representation;

32 f. If there are no surviving descendants of grandparents, then
33 the decedent's step-children or their descendants by representation.

34 (cf: P.L.2009, c.43, s.3)

35

36 3. Section 58 of P.L.2004, c.132 (C.3B:7-1.1) is amended to
37 read as follows:

38 58. Effect of intentional killing on intestate succession, wills,
39 trusts, joint assets, life insurance and beneficiary designations.

40 a. An individual who is responsible for the intentional killing
41 of the decedent forfeits all benefits under this title with respect to
42 the decedent's estate, including an intestate share, an elective share,
43 an omitted spouse's, domestic partner's, civil union partner's, or
44 child's share, exempt property and a family allowance. If the
45 decedent died intestate, the decedent's intestate estate passes as if
46 the killer disclaimed his share.

47 b. The intentional killing of the decedent:

1 (1) revokes any revocable (a) disposition or appointment of
2 property made by decedent to the killer in a governing instrument
3 and any disposition or appointment created by law or in a governing
4 instrument to a relative of the killer, (b) provision in a governing
5 instrument conferring a general or special power of appointment on
6 the killer or a relative of the killer, and (c) nomination in a
7 governing instrument of the killer or a relative of the killer,
8 nominating or appointing the killer or a relative of the killer to
9 serve in any fiduciary or representative capacity; and

10 (2) severs the interests of the decedent and the killer in property
11 held by them at the time of the killing as joint tenants with the right
12 of survivorship or as tenants by the entirety, transforming the
13 interests of the decedent and killer into tenancies in common.

14 c. For purposes of this chapter: (1) "governing instrument"
15 means a governing instrument executed by the decedent; and (2)
16 "relative of the killer" means an individual who is related to the
17 killer by blood, adoption or affinity and who is not related to the
18 decedent by blood or adoption or affinity.

19 (cf: P.L.2005, c.331, s.6)

20

21 4. N.J.S.3B:8-1 is amended to read as follows:

22 3B:8-1. Elective share of surviving spouse or domestic partner
23 of person dying domiciled in this State; conditions.

24 If a married person, partner in a civil union, or person in a
25 domestic partnership dies domiciled in this State, **[**on or after May
26 28, 1980,**]** the surviving spouse, partner in a civil union, or
27 domestic partner has a right of election to take an elective share of
28 one-third of the augmented estate under the limitations and
29 conditions hereinafter stated, **[**provided that at the time of death the
30 decedent and the surviving spouse or domestic partner had not been
31 living separate and apart in different habitations or had not ceased
32 to cohabit as man and wife, either as the result of judgment of
33 divorce from bed and board or under circumstances which would
34 have given rise to a cause of action for divorce or nullity of
35 marriage to a decedent prior to his death under the laws of this
36 State**]** unless either the decedent or the surviving spouse, partner in
37 a civil union, or domestic partner had filed a complaint not
38 dismissed pursuant to R.4:6-2 of the Rules of Court, for divorce,
39 dissolution of civil union, termination of domestic partnership or
40 divorce from bed and board.

41 (cf: P.L.2005, c.331, s.7)

42

43 5. N.J.S.3B:8-2 is amended to read as follows:

44 3B:8-2. Elective share of surviving spouse, partner in a civil
45 union, or domestic partner of person dying not domiciled in this
46 State.

47 If a married person, partner in a civil union, or person in a
48 domestic partnership not domiciled in this State dies, the right, if

1 any, of the surviving spouse, partner in a civil union, or domestic
2 partner to take an elective share in property in this State is governed
3 by the law of the decedent's domicile at death.

4 (cf: P.L.2005, c.331, s.8)

5

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

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

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

47 a. In determining the amount to be paid by a parent for support
48 of the child and the period during which the duty of support is

1 owed, the court in those cases not governed by court rule shall
2 consider, but not be limited to, the following factors:

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

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

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

36 b. In all actions brought for divorce, dissolution of a civil
37 union, divorce from bed and board, legal separation from a partner
38 in a civil union couple or nullity the court may award one or more
39 of the following types of alimony: open durational alimony;
40 rehabilitative alimony; limited duration alimony or reimbursement
41 alimony to either party. In so doing the court shall consider, but not
42 be limited to, the following factors:

- 43 (1) The actual need and ability of the parties to pay;
- 44 (2) The duration of the marriage or civil union;
- 45 (3) The age, physical and emotional health of the parties;
- 46 (4) The standard of living established in the marriage or civil
47 union and the likelihood that each party can maintain a reasonably

1 comparable standard of living, with neither party having a greater
2 entitlement to that standard of living than the other;

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

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

7 (7) The parental responsibilities for the children;

8 (8) The time and expense necessary to acquire sufficient
9 education or training to enable the party seeking maintenance to
10 find appropriate employment, the availability of the training and
11 employment, and the opportunity for future acquisitions of capital
12 assets and income;

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

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

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

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

26 (13) The nature, amount, and length of pendente lite support
27 paid, if any; and

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

29 In each case where the court is asked to make an award of
30 alimony, the court shall consider and assess evidence with respect
31 to all relevant statutory factors. If the court determines that certain
32 factors are more or less relevant than others, the court shall make
33 specific written findings of fact and conclusions of law on the
34 reasons why the court reached that conclusion. No factor shall be
35 elevated in importance over any other factor unless the court finds
36 otherwise, in which case the court shall make specific written
37 findings of fact and conclusions of law in that regard.

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

42 c. In any case in which there is a request for an award of
43 alimony, the court shall consider and make specific findings on the
44 evidence about all of the statutory factors set forth in subsection b.
45 of this section.

46 For any marriage or civil union less than 20 years in duration,
47 the total duration of alimony shall not, except in exceptional
48 circumstances, exceed the length of the marriage or civil union.

1 Determination of the length and amount of alimony shall be made
2 by the court pursuant to consideration of all of the statutory factors
3 set forth in subsection b. of this section. In addition to those
4 factors, the court shall also consider the practical impact of the
5 parties' need for separate residences and the attendant increase in
6 living expenses on the ability of both parties to maintain a standard
7 of living reasonably comparable to the standard of living
8 established in the marriage or civil union, to which both parties are
9 entitled, with neither party having a greater entitlement thereto.

10 Exceptional circumstances which may require an adjustment to
11 the duration of alimony include:

12 (1) The ages of the parties at the time of the marriage or civil
13 union and at the time of the alimony award;

14 (2) The degree and duration of the dependency of one party on
15 the other party during the marriage or civil union;

16 (3) Whether a spouse or partner has a chronic illness or unusual
17 health circumstance;

18 (4) Whether a spouse or partner has given up a career or a career
19 opportunity or otherwise supported the career of the other spouse or
20 partner;

21 (5) Whether a spouse or partner has received a disproportionate
22 share of equitable distribution;

23 (6) The impact of the marriage or civil union on either party's
24 ability to become self-supporting, including but not limited to either
25 party's responsibility as primary caretaker of a child;

26 (7) Tax considerations of either party;

27 (8) Any other factors or circumstances that the court deems
28 equitable, relevant and material.

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

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

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

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

1 e. Reimbursement alimony may be awarded under
2 circumstances in which one party supported the other through an
3 advanced education, anticipating participation in the fruits of the
4 earning capacity generated by that education. An award of
5 reimbursement alimony shall not be modified for any reason.

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

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

23 h. (1) Except as provided in this subsection, in all actions
24 where a judgment of divorce, dissolution of civil union, or divorce
25 from bed and board **【**or legal separation from a partner in a civil
26 union couple**】** is entered the court may make such award or awards
27 to the parties, in addition to alimony and maintenance, to effectuate
28 an equitable distribution of the property, both real and personal,
29 which was legally and beneficially acquired by them or either of
30 them during the marriage or civil union. However, all such
31 property, real, personal or otherwise, legally or beneficially
32 acquired during the marriage or civil union by either party by way
33 of gift, devise, or intestate succession shall not be subject to
34 equitable distribution, except that interspousal gifts or gifts between
35 partners in a civil union couple shall be subject to equitable
36 distribution.

37 (2) If a complaint not dismissed pursuant to R.4:6-2 of the Rules
38 of Court has been filed for an action under paragraph (1) of this
39 section, and either party to the litigation dies prior to the entry of
40 the final judgment, the court's authority to effectuate an equitable
41 distribution of the property shall not abate.

42 (3) The court may not make an award concerning the equitable
43 distribution of property on behalf of a party **【**convicted of**】** barred
44 from inheriting under subsection a. of section 58 of P.L.2004, c.132
45 (C.3B:7-1.1)¹**【**,**】** or on behalf of¹ a party responsible for an attempt

46 or conspiracy to murder the other party.
47 i. No person convicted of Murder, N.J.S.2C:11-3;
48 Manslaughter, N.J.S.2C:11-4; Criminal Homicide, N.J.S.2C:11-2;

1 Aggravated Assault, under subsection b. of N.J.S.2C:12-1; or a
2 substantially similar offense under the laws of another jurisdiction,
3 may receive alimony if: (1) the crime results in death or serious
4 bodily injury, as defined in subsection b. of N.J.S.2C:11-1, to a
5 family member of a divorcing party; and (2) the crime was
6 committed after the marriage or civil union. A person convicted of
7 an attempt or conspiracy to commit murder may not receive
8 alimony from the person who was the intended victim of the
9 attempt or conspiracy. Nothing in this subsection shall be
10 construed to limit the authority of the court to deny alimony for
11 other bad acts.

12 As used in this subsection:

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

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

21 (1) There shall be a rebuttable presumption that alimony shall
22 terminate upon the obligor spouse or partner attaining full
23 retirement age, except that any arrearages that have accrued prior to
24 the termination date shall not be vacated or annulled. The court may
25 set a different alimony termination date for good cause shown based
26 on specific written findings of fact and conclusions of law.

27 The rebuttable presumption may be overcome if, upon
28 consideration of the following factors and for good cause shown,
29 the court determines that alimony should continue:

30 (a) The ages of the parties at the time of the application for
31 retirement;

32 (b) The ages of the parties at the time of the marriage or civil
33 union and their ages at the time of entry of the alimony award;

34 (c) The degree and duration of the economic dependency of the
35 recipient upon the payor during the marriage or civil union;

36 (d) Whether the recipient has foregone or relinquished or
37 otherwise sacrificed claims, rights or property in exchange for a
38 more substantial or longer alimony award;

39 (e) The duration or amount of alimony already paid;

40 (f) The health of the parties at the time of the retirement
41 application;

42 (g) Assets of the parties at the time of the retirement
43 application;

44 (h) Whether the recipient has reached full retirement age as
45 defined in this section;

46 (i) Sources of income, both earned and unearned, of the parties;

47 (j) The ability of the recipient to have saved adequately for
48 retirement; and

1 (k) Any other factors that the court may deem relevant.

2 If the court determines, for good cause shown based on specific
3 written findings of fact and conclusions of law, that the
4 presumption has been overcome, then the court shall apply the
5 alimony factors as set forth in subsection b. of this section to the
6 parties' current circumstances in order to determine whether
7 modification or termination of alimony is appropriate. If the obligor
8 intends to retire but has not yet retired, the court shall establish the
9 conditions under which the modification or termination of alimony
10 will be effective.

11 (2) Where the obligor seeks to retire prior to attaining the full
12 retirement age as defined in this section, the obligor shall have the
13 burden of demonstrating by a preponderance of the evidence that
14 the prospective or actual retirement is reasonable and made in good
15 faith. Both the obligor's application to the court for modification or
16 termination of alimony and the obligee's response to the application
17 shall be accompanied by current Case Information Statements or
18 other relevant documents as required by the Rules of Court, as well
19 as the Case Information Statements or other documents from the
20 date of entry of the original alimony award and from the date of any
21 subsequent modification.

22 In order to determine whether the obligor has met the burden of
23 demonstrating that the obligor's prospective or actual retirement is
24 reasonable and made in good faith, the court shall consider the
25 following factors:

26 (a) The age and health of the parties at the time of the
27 application;

28 (b) The obligor's field of employment and the generally
29 accepted age of retirement for those in that field;

30 (c) The age when the obligor becomes eligible for retirement at
31 the obligor's place of employment, including mandatory retirement
32 dates or the dates upon which continued employment would no
33 longer increase retirement benefits;

34 (d) The obligor's motives in retiring, including any pressures to
35 retire applied by the obligor's employer or incentive plans offered
36 by the obligor's employer;

37 (e) The reasonable expectations of the parties regarding
38 retirement during the marriage or civil union and at the time of the
39 divorce or dissolution;

40 (f) The ability of the obligor to maintain support payments
41 following retirement, including whether the obligor will continue to
42 be employed part-time or work reduced hours;

43 (g) The obligee's level of financial independence and the
44 financial impact of the obligor's retirement upon the obligee; and

45 (h) Any other relevant factors affecting the obligor's decision to
46 retire and the parties' respective financial positions.

1 If the obligor intends to retire but has not yet retired, the court
2 shall establish the conditions under which the modification or
3 termination of alimony will be effective.

4 (3) When a retirement application is filed in cases in which
5 there is an existing final alimony order or enforceable written
6 agreement established prior to the effective date of this act, the
7 obligor's reaching full retirement age as defined in this section shall
8 be deemed a good faith retirement age. Upon application by the
9 obligor to modify or terminate alimony, both the obligor's
10 application to the court for modification or termination of alimony
11 and the obligee's response to the application shall be accompanied
12 by current Case Information Statements or other relevant documents
13 as required by the Rules of Court, as well as the Case Information
14 Statements or other documents from the date of entry of the original
15 alimony award and from the date of any subsequent modification.
16 In making its determination, the court shall consider the ability of
17 the obligee to have saved adequately for retirement as well as the
18 following factors in order to determine whether the obligor, by a
19 preponderance of the evidence, has demonstrated that modification
20 or termination of alimony is appropriate:

21 (a) The age and health of the parties at the time of the
22 application;

23 (b) The obligor's field of employment and the generally
24 accepted age of retirement for those in that field;

25 (c) The age when the obligor becomes eligible for retirement at
26 the obligor's place of employment, including mandatory retirement
27 dates or the dates upon which continued employment would no
28 longer increase retirement benefits;

29 (d) The obligor's motives in retiring, including any pressures to
30 retire applied by the obligor's employer or incentive plans offered
31 by the obligor's employer;

32 (e) The reasonable expectations of the parties regarding
33 retirement during the marriage or civil union and at the time of the
34 divorce or dissolution;

35 (f) The ability of the obligor to maintain support payments
36 following retirement, including whether the obligor will continue to
37 be employed part-time or work reduced hours;

38 (g) The obligee's level of financial independence and the
39 financial impact of the obligor's retirement upon the obligee; and

40 (h) Any other relevant factors affecting the parties' respective
41 financial positions.

42 (4) The assets distributed between the parties at the time of the
43 entry of a final order of divorce or dissolution of a civil union shall
44 not be considered by the court for purposes of determining the
45 obligor's ability to pay alimony following retirement.

46 k. When a non-self-employed party seeks modification of
47 alimony, the court shall consider the following factors:

48 (1) The reasons for any loss of income;

- 1 (2) Under circumstances where there has been a loss of
2 employment, the obligor's documented efforts to obtain replacement
3 employment or to pursue an alternative occupation;
- 4 (3) Under circumstances where there has been a loss of
5 employment, whether the obligor is making a good faith effort to
6 find remunerative employment at any level and in any field;
- 7 (4) The income of the obligee; the obligee's circumstances; and
8 the obligee's reasonable efforts to obtain employment in view of
9 those circumstances and existing opportunities;
- 10 (5) The impact of the parties' health on their ability to obtain
11 employment;
- 12 (6) Any severance compensation or award made in connection
13 with any loss of employment;
- 14 (7) Any changes in the respective financial circumstances of the
15 parties that have occurred since the date of the order from which
16 modification is sought;
- 17 (8) The reasons for any change in either party's financial
18 circumstances since the date of the order from which modification
19 is sought, including, but not limited to, assessment of the extent to
20 which either party's financial circumstances at the time of the
21 application are attributable to enhanced earnings or financial
22 benefits received from any source since the date of the order;
- 23 (9) Whether a temporary remedy should be fashioned to provide
24 adjustment of the support award from which modification is sought,
25 and the terms of any such adjustment, pending continuing
26 employment investigations by the unemployed spouse or partner;
27 and
- 28 (10) Any other factor the court deems relevant to fairly and
29 equitably decide the application.

30 Under circumstances where the changed circumstances arise
31 from the loss of employment, the length of time a party has been
32 involuntarily unemployed or has had an involuntary reduction in
33 income shall not be the only factor considered by the court when an
34 application is filed by a non-self-employed party to reduce alimony
35 because of involuntary loss of employment. The court shall
36 determine the application based upon all of the enumerated factors,
37 however, no application shall be filed until a party has been
38 unemployed, or has not been able to return to or attain employment
39 at prior income levels, or both, for a period of 90 days. The court
40 shall have discretion to make any relief granted retroactive to the
41 date of the loss of employment or reduction of income.

42 1. When a self-employed party seeks modification of alimony
43 because of an involuntary reduction in income since the date of the
44 order from which modification is sought, then that party's
45 application for relief must include an analysis that sets forth the
46 economic and non-economic benefits the party receives from the
47 business, and which compares these economic and non-economic

1 benefits to those that were in existence at the time of the entry of
2 the order.

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

8 n. Alimony may be suspended or terminated if the payee
9 cohabits with another person. Cohabitation involves a mutually
10 supportive, intimate personal relationship in which a couple has
11 undertaken duties and privileges that are commonly associated with
12 marriage or civil union but does not necessarily maintain a single
13 common household.

14 When assessing whether cohabitation is occurring, the court shall
15 consider the following:

16 (1) Intertwined finances such as joint bank accounts and other
17 joint holdings or liabilities;

18 (2) Sharing or joint responsibility for living expenses;

19 (3) Recognition of the relationship in the couple's social and
20 family circle;

21 (4) Living together, the frequency of contact, the duration of the
22 relationship, and other indicia of a mutually supportive intimate
23 personal relationship;

24 (5) Sharing household chores;

25 (6) Whether the recipient of alimony has received an
26 enforceable promise of support from another person within the
27 meaning of subsection h. of R.S.25:1-5; and

28 (7) All other relevant evidence.

29 In evaluating whether cohabitation is occurring and whether
30 alimony should be suspended or terminated, the court shall also
31 consider the length of the relationship. A court may not find an
32 absence of cohabitation solely on grounds that the couple does not
33 live together on a full-time basis.

34 As used in this section:

35 "Full retirement age" shall mean the age at which a person is
36 eligible to receive full retirement for full retirement benefits under
37 section 216 of the federal Social Security Act (42 U.S.C. s.416).

38 (cf: P.L.2014, c.42, s.1)

39

40 7. This act shall take effect immediately.