

[Second Reprint]

ASSEMBLY, No. 2351

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED FEBRUARY 7, 2022

Sponsored by:

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Assemblywoman VICTORIA A. FLYNN

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Assemblywoman CAROL A. MURPHY

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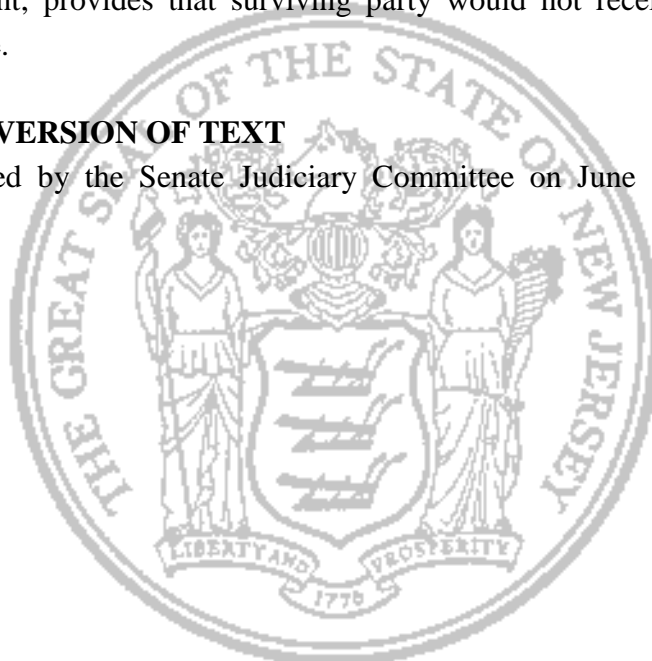
Assemblywoman McKnight

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 Senate Judiciary Committee on June 12, 2023, 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 include²:

39 (1)² an individual who has filed a complaint not dismissed
40 pursuant to R.4:6-2 of the Rules of Court, or against whom a
41 complaint not dismissed pursuant to R.4:6-2 of the Rules of Court,
42 has been filed for: divorce, dissolution of civil union, termination of
43 domestic partnership, or divorce from bed and board²; or

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.

²Senate SJU committee amendments adopted June 12, 2023.

1 (2) an individual who has entered into a validly executed
2 equitable distribution cut-off agreement or termination agreement
3 where the underlying subject matter of the complaint or equitable
4 distribution cut-off agreement or termination agreement is divorce,
5 dissolution of civil union, termination of domestic partnership or
6 divorce from bed and board; or

7 (3) an individual who at the time of death of the decedent had:

8 (a) ceased to cohabit with the decedent under circumstances
9 which would have given rise to a cause of action for divorce or
10 nullity of marriage to a decedent prior to his or her death under the
11 laws of this State; and

12 (b) where, through written agreement, affirmative acts, or both
13 written agreement and affirmative acts of the individual and
14 decedent there had been a division of assets equivalent to equitable
15 distribution; or

16 (4) an individual who, at the time of death of the deceased, had
17 entered into a validly executed marital settlement agreement with
18 the decedent where the underlying subject matter of the marital
19 settlement agreement is divorce, dissolution of civil union,
20 termination of domestic partnership, or divorce from bed and
21 board².

22 (cf: P.L.2005, c.331, s.2)

23
24 2. N.J.S.3B:5-4 is amended to read as follows:

25 3B:5-4. Intestate shares of heirs other than surviving spouse,
26 partner in a civil union, or domestic partner.

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

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

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

37 c. If there are no surviving descendants or parent, to the
38 descendants of the decedent's parents or either of them by
39 representation;

40 d. If there is no surviving descendant, parent or descendant of a
41 parent, but the decedent is survived by one or more grandparents,
42 half of the estate passes to the decedent's paternal grandparents
43 equally if both survive, or to the surviving paternal grandparent, or
44 to the descendants of the decedent's paternal grandparents or either
45 of them if both are deceased, the descendants taking by
46 representation; and the other half passes to the decedent's maternal
47 relatives in the same manner; but if there is no surviving
48 grandparent, or descendant of a grandparent on either the paternal

1 or the maternal side, the entire estate passes to the decedent's
2 relatives on the other side in the same manner as the half;

3 e. If there is no surviving descendant, parent, descendant of a
4 parent, or grandparent, but the decedent is survived by one or more
5 descendants of grandparents, the descendants take equally if they
6 are all of the same degree of kinship to the decedent, but if of
7 unequal degree those of more remote degree take by representation;

8 f. If there are no surviving descendants of grandparents, then
9 the decedent's step-children or their descendants by representation.
10 (cf: P.L.2009, c.43, s.3)

11

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

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

16 a. An individual who is responsible for the intentional killing
17 of the decedent forfeits all benefits under this title with respect to
18 the decedent's estate, including an intestate share, an elective share,
19 an omitted spouse's, domestic partner's, civil union partner's, or
20 child's share, exempt property and a family allowance. If the
21 decedent died intestate, the decedent's intestate estate passes as if
22 the killer disclaimed his share.

23 b. The intentional killing of the decedent:

24 (1) revokes any revocable (a) disposition or appointment of
25 property made by decedent to the killer in a governing instrument
26 and any disposition or appointment created by law or in a governing
27 instrument to a relative of the killer, (b) provision in a governing
28 instrument conferring a general or special power of appointment on
29 the killer or a relative of the killer, and (c) nomination in a
30 governing instrument of the killer or a relative of the killer,
31 nominating or appointing the killer or a relative of the killer to
32 serve in any fiduciary or representative capacity; and

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

37 c. For purposes of this chapter: (1) "governing instrument"
38 means a governing instrument executed by the decedent; and (2)
39 "relative of the killer" means an individual who is related to the
40 killer by blood, adoption or affinity and who is not related to the
41 decedent by blood or adoption or affinity.

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

43

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

45 3B:8-1. Elective share of surviving spouse or domestic partner
46 of person dying domiciled in this State; conditions.

47 ²a.² If a married person, partner in a civil union, or person in a
48 domestic partnership dies domiciled in this State, [on or after May

1 28, 1980,] the surviving spouse, partner in a civil union, or
2 domestic partner has a right of election to take an elective share of
3 one-third of the augmented estate under the limitations and
4 conditions hereinafter stated, [provided that at the time of death the
5 decedent and the surviving spouse or domestic partner had not been
6 living separate and apart in different habitations or had not ceased
7 to cohabit as man and wife, either as the result of judgment of
8 divorce from bed and board or under circumstances which would
9 have given rise to a cause of action for divorce or nullity of
10 marriage to a decedent prior to his death under the laws of this
11 State] unless either the decedent or the surviving spouse, partner in
12 a civil union, or domestic partner had filed a complaint not
13 dismissed pursuant to R.4:6-2 of the Rules of Court, for divorce,
14 dissolution of civil union, termination of domestic partnership or
15 divorce from bed and board.

16 ²b. For purposes of this section “surviving spouse, partner in a
17 civil union, or domestic partnership” shall not include those
18 individuals described pursuant to subsection d. of N.J.S.3B:5-3.²
19 (cf: P.L.2005, c.331, s.7)

20
21 5. N.J.S.3B:8-2 is amended to read as follows:

22 3B:8-2. Elective share of surviving spouse, partner in a civil
23 union, or domestic partner of person dying not domiciled in this
24 State.

25 If a married person, partner in a civil union, or person in a
26 domestic partnership not domiciled in this State dies, the right, if
27 any, of the surviving spouse, partner in a civil union, or domestic
28 partner to take an elective share in property in this State is governed
29 by the law of the decedent's domicile at death.

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

31

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

33 2A:34-23. Alimony, maintenance. Pending any matrimonial
34 action or action for dissolution of a civil union brought in this State
35 or elsewhere, or after judgment of divorce or dissolution or
36 maintenance, whether obtained in this State or elsewhere, the court
37 may make such order as to the alimony or maintenance of the
38 parties, and also as to the care, custody, education and maintenance
39 of the children, or any of them, as the circumstances of the parties
40 and the nature of the case shall render fit, reasonable and just, and
41 require reasonable security for the due observance of such orders,
42 including, but not limited to, the creation of trusts or other security
43 devices, to assure payment of reasonably foreseeable medical and
44 educational expenses. Upon neglect or refusal to give such
45 reasonable security, as shall be required, or upon default in
46 complying with any such order, the court may award and issue
47 process for the immediate sequestration of the personal estate, and
48 the rents and profits of the real estate of the party so charged, and

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

9 The court may order one party to pay a retainer on behalf of the
10 other for expert and legal services when the respective financial
11 circumstances of the parties make the award reasonable and just. In
12 considering an application, the court shall review the financial
13 capacity of each party to conduct the litigation and the criteria for
14 award of counsel fees that are then pertinent as set forth by court
15 rule. Whenever any other application is made to a court which
16 includes an application for pendente lite or final award of counsel
17 fees, the court shall determine the appropriate award for counsel
18 fees, if any, at the same time that a decision is rendered on the other
19 issue then before the court and shall consider the factors set forth in
20 the court rule on counsel fees, the financial circumstances of the
21 parties, and the good or bad faith of either party. The court may not
22 order a retainer or counsel fee of a party convicted of an attempt or
23 conspiracy to murder the other party to be paid by the party who
24 was the intended victim of the attempt or conspiracy.

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

29 (1) Needs of the child;

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

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

33 (4) Earning ability of each parent, including educational
34 background, training, employment skills, work experience,
35 custodial responsibility for children including the cost of providing
36 child care and the length of time and cost of each parent to obtain
37 training or experience for appropriate employment;

38 (5) Need and capacity of the child for education, including
39 higher education;

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

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

42 (8) Responsibility of the parents for the court-ordered support of
43 others;

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

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

46 The obligation to pay support for a child who has not been
47 emancipated by the court shall not terminate solely on the basis of
48 the child's age if the child suffers from a severe mental or physical

1 incapacity that causes the child to be financially dependent on a
2 parent. The obligation to pay support for that child shall continue
3 until the court finds that the child is relieved of the incapacity or is
4 no longer financially dependent on the parent. However, in
5 assessing the financial obligation of the parent, the court shall
6 consider, in addition to the factors enumerated in this section, the
7 child's eligibility for public benefits and services for people with
8 disabilities and may make such orders, including an order involving
9 the creation of a trust, as are necessary to promote the well-being of
10 the child.

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

14 b. In all actions brought for divorce, dissolution of a civil
15 union, divorce from bed and board, legal separation from a partner
16 in a civil union couple or nullity the court may award one or more
17 of the following types of alimony: open durational alimony;
18 rehabilitative alimony; limited duration alimony or reimbursement
19 alimony to either party. In so doing the court shall consider, but not
20 be limited to, the following factors:

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

22 (2) The duration of the marriage or civil union;

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

24 (4) The standard of living established in the marriage or civil
25 union and the likelihood that each party can maintain a reasonably
26 comparable standard of living, with neither party having a greater
27 entitlement to that standard of living than the other;

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

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

32 (7) The parental responsibilities for the children;

33 (8) The time and expense necessary to acquire sufficient
34 education or training to enable the party seeking maintenance to
35 find appropriate employment, the availability of the training and
36 employment, and the opportunity for future acquisitions of capital
37 assets and income;

38 (9) The history of the financial or non-financial contributions to
39 the marriage or civil union by each party including contributions to
40 the care and education of the children and interruption of personal
41 careers or educational opportunities;

42 (10) The equitable distribution of property ordered and any
43 payouts on equitable distribution, directly or indirectly, out of
44 current income, to the extent this consideration is reasonable, just
45 and fair;

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

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

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

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

7 In each case where the court is asked to make an award of
8 alimony, the court shall consider and assess evidence with respect
9 to all relevant statutory factors. If the court determines that certain
10 factors are more or less relevant than others, the court shall make
11 specific written findings of fact and conclusions of law on the
12 reasons why the court reached that conclusion. No factor shall be
13 elevated in importance over any other factor unless the court finds
14 otherwise, in which case the court shall make specific written
15 findings of fact and conclusions of law in that regard.

16 When a share of a retirement benefit is treated as an asset for
17 purposes of equitable distribution, the court shall not consider
18 income generated thereafter by that share for purposes of
19 determining alimony.

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

24 For any marriage or civil union less than 20 years in duration,
25 the total duration of alimony shall not, except in exceptional
26 circumstances, exceed the length of the marriage or civil union.
27 Determination of the length and amount of alimony shall be made
28 by the court pursuant to consideration of all of the statutory factors
29 set forth in subsection b. of this section. In addition to those
30 factors, the court shall also consider the practical impact of the
31 parties' need for separate residences and the attendant increase in
32 living expenses on the ability of both parties to maintain a standard
33 of living reasonably comparable to the standard of living
34 established in the marriage or civil union, to which both parties are
35 entitled, with neither party having a greater entitlement thereto.

36 Exceptional circumstances which may require an adjustment to
37 the duration of alimony include:

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

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

42 (3) Whether a spouse or partner has a chronic illness or unusual
43 health circumstance;

44 (4) Whether a spouse or partner has given up a career or a career
45 opportunity or otherwise supported the career of the other spouse or
46 partner;

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

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

4 (7) Tax considerations of either party;

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

7 An award of alimony for a limited duration may be modified
8 based either upon changed circumstances, or upon the
9 nonoccurrence of circumstances that the court found would occur at
10 the time of the award. The court may modify the amount of such an
11 award, but shall not modify the length of the term except in unusual
12 circumstances.

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

17 d. Rehabilitative alimony shall be awarded based upon a plan
18 in which the payee shows the scope of rehabilitation, the steps to be
19 taken, and the time frame, including a period of employment during
20 which rehabilitation will occur. An award of rehabilitative alimony
21 may be modified based either upon changed circumstances, or upon
22 the nonoccurrence of circumstances that the court found would
23 occur at the time of the rehabilitative award.

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

26 e. Reimbursement alimony may be awarded under
27 circumstances in which one party supported the other through an
28 advanced education, anticipating participation in the fruits of the
29 earning capacity generated by that education. An award of
30 reimbursement alimony shall not be modified for any reason.

31 f. Except as provided in subsection i., nothing in this section
32 shall be construed to limit the court's authority to award open
33 durational alimony, limited duration alimony, rehabilitative alimony
34 or reimbursement alimony, separately or in any combination, as
35 warranted by the circumstances of the parties and the nature of the
36 case.

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

1 h. (1) Except as provided in this subsection, in all actions
2 where a judgment of divorce, dissolution of civil union, or divorce
3 from bed and board **【**or legal separation from a partner in a civil
4 union couple**】** is entered the court may make such award or awards
5 to the parties, in addition to alimony and maintenance, to effectuate
6 an equitable distribution of the property, both real and personal,
7 which was legally and beneficially acquired by them or either of
8 them during the marriage or civil union. However, all such
9 property, real, personal or otherwise, legally or beneficially
10 acquired during the marriage or civil union by either party by way
11 of gift, devise, or intestate succession shall not be subject to
12 equitable distribution, except that interspousal gifts or gifts between
13 partners in a civil union couple shall be subject to equitable
14 distribution.

15 (2) If a complaint not dismissed pursuant to R.4:6-2 of the Rules
16 of Court has been filed for an action under paragraph (1) of this
17 section, and ²(a)² either party to the litigation dies prior to the entry
18 of the final judgment, ²or (b) if the parties had and remained
19 entered into a validly executed equitable distribution cut-off
20 agreement, termination agreement, or marital settlement agreement
21 where the underlying subject matter of the agreement is divorce,
22 dissolution of civil union, termination of domestic partnership, or
23 divorce from bed and board at the time of death of the decedent
24 occurring prior to the entry of the final judgment,² the court's
25 authority to effectuate an equitable distribution of the property shall
26 not abate. ²Pursuant to subparagraph (a)(3) of R.4:3-1 of the Rules
27 of Court, all such matters shall be filed and heard in the Family Part
28 of the Chancery Division of the Superior Court.²

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

33 or conspiracy to murder the other party.
34 i. No person convicted of Murder, N.J.S.2C:11-3;
35 Manslaughter, N.J.S.2C:11-4; Criminal Homicide, N.J.S.2C:11-2;
36 Aggravated Assault, under subsection b. of N.J.S.2C:12-1; or a
37 substantially similar offense under the laws of another jurisdiction,
38 may receive alimony if: (1) the crime results in death or serious
39 bodily injury, as defined in subsection b. of N.J.S.2C:11-1, to a
40 family member of a divorcing party; and (2) the crime was
41 committed after the marriage or civil union. A person convicted of
42 an attempt or conspiracy to commit murder may not receive
43 alimony from the person who was the intended victim of the
44 attempt or conspiracy. Nothing in this subsection shall be
45 construed to limit the authority of the court to deny alimony for
46 other bad acts.

47 As used in this subsection:

1 "Family member" means a spouse, partner in a civil union, child,
2 parent, sibling, aunt, uncle, niece, nephew, first cousin,
3 grandparent, grandchild, father-in-law, mother-in-law, son-in-law,
4 daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half
5 brother, or half sister, whether the individual is related by blood,
6 marriage or civil union, or adoption.

7 j. Alimony may be modified or terminated upon the
8 prospective or actual retirement of the obligor.

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

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

18 (a) The ages of the parties at the time of the application for
19 retirement;

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

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

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

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

28 (f) The health of the parties at the time of the retirement
29 application;

30 (g) Assets of the parties at the time of the retirement
31 application;

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

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

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

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

38 If the court determines, for good cause shown based on specific
39 written findings of fact and conclusions of law, that the
40 presumption has been overcome, then the court shall apply the
41 alimony factors as set forth in subsection b. of this section to the
42 parties' current circumstances in order to determine whether
43 modification or termination of alimony is appropriate. If the obligor
44 intends to retire but has not yet retired, the court shall establish the
45 conditions under which the modification or termination of alimony
46 will be effective.

47 (2) Where the obligor seeks to retire prior to attaining the full
48 retirement age as defined in this section, the obligor shall have the

1 burden of demonstrating by a preponderance of the evidence that
2 the prospective or actual retirement is reasonable and made in good
3 faith. Both the obligor's application to the court for modification or
4 termination of alimony and the obligee's response to the application
5 shall be accompanied by current Case Information Statements or
6 other relevant documents as required by the Rules of Court, as well
7 as the Case Information Statements or other documents from the
8 date of entry of the original alimony award and from the date of any
9 subsequent modification.

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

14 (a) The age and health of the parties at the time of the
15 application;

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

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

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

25 (e) The reasonable expectations of the parties regarding
26 retirement during the marriage or civil union and at the time of the
27 divorce or dissolution;

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

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

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

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

38 (3) When a retirement application is filed in cases in which
39 there is an existing final alimony order or enforceable written
40 agreement established prior to the effective date of this act, the
41 obligor's reaching full retirement age as defined in this section shall
42 be deemed a good faith retirement age. Upon application by the
43 obligor to modify or terminate alimony, both the obligor's
44 application to the court for modification or termination of alimony
45 and the obligee's response to the application shall be accompanied
46 by current Case Information Statements or other relevant documents
47 as required by the Rules of Court, as well as the Case Information
48 Statements or other documents from the date of entry of the original

1 alimony award and from the date of any subsequent modification.
2 In making its determination, the court shall consider the ability of
3 the obligee to have saved adequately for retirement as well as the
4 following factors in order to determine whether the obligor, by a
5 preponderance of the evidence, has demonstrated that modification
6 or termination of alimony is appropriate:

7 (a) The age and health of the parties at the time of the
8 application;

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

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

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

18 (e) The reasonable expectations of the parties regarding
19 retirement during the marriage or civil union and at the time of the
20 divorce or dissolution;

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

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

26 (h) Any other relevant factors affecting the parties' respective
27 financial positions.

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

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

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

35 (2) Under circumstances where there has been a loss of
36 employment, the obligor's documented efforts to obtain replacement
37 employment or to pursue an alternative occupation;

38 (3) Under circumstances where there has been a loss of
39 employment, whether the obligor is making a good faith effort to
40 find remunerative employment at any level and in any field;

41 (4) The income of the obligee; the obligee's circumstances; and
42 the obligee's reasonable efforts to obtain employment in view of
43 those circumstances and existing opportunities;

44 (5) The impact of the parties' health on their ability to obtain
45 employment;

46 (6) Any severance compensation or award made in connection
47 with any loss of employment;

1 (7) Any changes in the respective financial circumstances of the
2 parties that have occurred since the date of the order from which
3 modification is sought;

4 (8) The reasons for any change in either party's financial
5 circumstances since the date of the order from which modification
6 is sought, including, but not limited to, assessment of the extent to
7 which either party's financial circumstances at the time of the
8 application are attributable to enhanced earnings or financial
9 benefits received from any source since the date of the order;

10 (9) Whether a temporary remedy should be fashioned to provide
11 adjustment of the support award from which modification is sought,
12 and the terms of any such adjustment, pending continuing
13 employment investigations by the unemployed spouse or partner;
14 and

15 (10) Any other factor the court deems relevant to fairly and
16 equitably decide the application.

17 Under circumstances where the changed circumstances arise
18 from the loss of employment, the length of time a party has been
19 involuntarily unemployed or has had an involuntary reduction in
20 income shall not be the only factor considered by the court when an
21 application is filed by a non-self-employed party to reduce alimony
22 because of involuntary loss of employment. The court shall
23 determine the application based upon all of the enumerated factors,
24 however, no application shall be filed until a party has been
25 unemployed, or has not been able to return to or attain employment
26 at prior income levels, or both, for a period of 90 days. The court
27 shall have discretion to make any relief granted retroactive to the
28 date of the loss of employment or reduction of income.

29 l. When a self-employed party seeks modification of alimony
30 because of an involuntary reduction in income since the date of the
31 order from which modification is sought, then that party's
32 application for relief must include an analysis that sets forth the
33 economic and non-economic benefits the party receives from the
34 business, and which compares these economic and non-economic
35 benefits to those that were in existence at the time of the entry of
36 the order.

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

42 n. Alimony may be suspended or terminated if the payee
43 cohabits with another person. Cohabitation involves a mutually
44 supportive, intimate personal relationship in which a couple has
45 undertaken duties and privileges that are commonly associated with
46 marriage or civil union but does not necessarily maintain a single
47 common household.

1 When assessing whether cohabitation is occurring, the court shall
2 consider the following:

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

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

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

8 (4) Living together, the frequency of contact, the duration of the
9 relationship, and other indicia of a mutually supportive intimate
10 personal relationship;

11 (5) Sharing household chores;

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

15 (7) All other relevant evidence.

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

21 As used in this section:

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

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

26

27 7. This act shall take effect immediately.