

[First Reprint]

SENATE, No. 2991

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED SEPTEMBER 22, 2022

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

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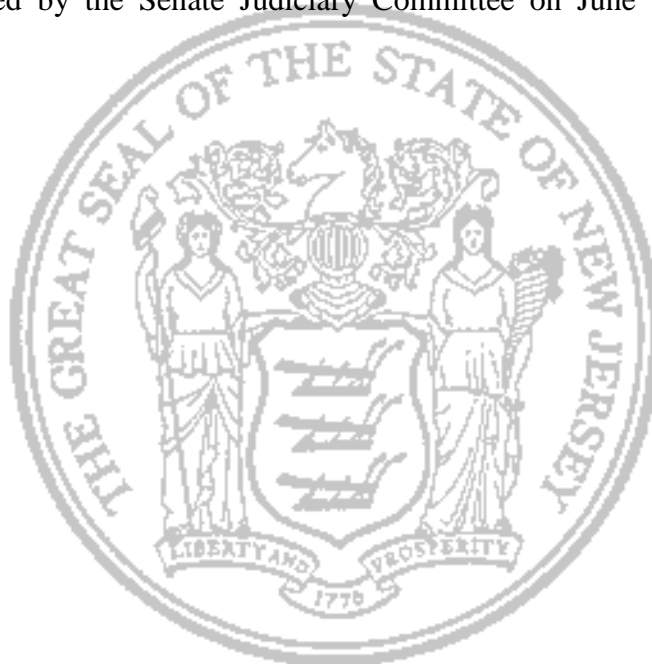
Senator Stack

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: 6/15/2023)

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 a
9 civil union, or domestic partner.

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

12 a. The entire intestate estate if:

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

14 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 the
19 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 of
27 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, or
31 domestic partner has one or more surviving descendants who are not
32 descendants of the decedent; or

33 (2) If one or more of the decedent's surviving descendants is not a
34 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 include¹:

39 (1)¹ 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, has
42 been filed for: divorce, dissolution of civil union, termination of
43 domestic partnership, or divorce from bed and board¹; or

44 (2) an individual who has entered into a validly executed equitable
45 distribution cut-off agreement or termination agreement where the

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:

¹Senate SJU committee amendments adopted June 12, 2023.

1 underlying subject matter of the complaint or equitable distribution
2 cut-off agreement or termination agreement is divorce, dissolution of
3 civil union, termination of domestic partnership or divorce from bed
4 and board; or
5 (3) an individual who at the time of death of the decedent had:
6 (a) ceased to cohabit with the decedent under circumstances which
7 would have given rise to a cause of action for divorce or nullity of
8 marriage to a decedent prior to his or her death under the laws of this
9 State; and
10 (b) where, through written agreement, affirmative acts, or both
11 written agreement and affirmative acts of the individual and decedent
12 there had been a division of assets equivalent to equitable distribution;
13 or
14 (4) an individual who, at the time of death of the decedent, had
15 entered into a validly executed marital settlement agreement with the
16 decedent where the underlying subject matter of the marital settlement
17 agreement is divorce, dissolution of civil union, termination of
18 domestic partnership, or divorce from bed and board¹.
19 (cf: P.L.2005, c.331, s.2)

20
21 2. N.J.S.3B:5-4 is amended to read as follows:

22 3B:5-4. Intestate shares of heirs other than surviving spouse,
23 partner in a civil union, or domestic partner.

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

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

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

34 c. If there are no surviving descendants or parent, to the
35 descendants of the decedent's parents or either of them by
36 representation;

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

1 e. If there is no surviving descendant, parent, descendant of a
2 parent, or grandparent, but the decedent is survived by one or more
3 descendants of grandparents, the descendants take equally if they
4 are all of the same degree of kinship to the decedent, but if of
5 unequal degree those of more remote degree take by representation;
6 f. If there are no surviving descendants of grandparents, then
7 the decedent's step-children or their descendants by representation.
8 (cf: P.L.2009, c.43, s.3)

9
10 3. Section 58 of P.L.2004, c.132 (C.3B:7-1.1) is amended to
11 read as follows:

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

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

21 b. The intentional killing of the decedent:

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

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

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

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

41

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

43 3B:8-1. Elective share of surviving spouse or domestic partner of
44 person dying domiciled in this State; conditions.

45 ¹a.¹ If a married person, partner in a civil union, or person in a
46 domestic partnership dies domiciled in this State, **[**on or after May 28,
47 1980,**]** the surviving spouse, partner in a civil union, or domestic
48 partner has a right of election to take an elective share of one-third of

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

13 ¹b. For purposes of this section “surviving spouse, partner in a
14 civil union, or domestic partnership” shall not include those
15 individuals described pursuant to subsection d. of N.J.S.3B:5-3.¹
16 (cf: P.L.2005, c.331, s.7)

17

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

19 3B:8-2. Elective share of surviving spouse, partner in a civil
20 union, or domestic partner of person dying not domiciled in this
21 State.

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

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

28

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

30 2A:34-23. Alimony, maintenance. Pending any matrimonial action
31 or action for dissolution of a civil union brought in this State or
32 elsewhere, or after judgment of divorce or dissolution or maintenance,
33 whether obtained in this State or elsewhere, the court may make such
34 order as to the alimony or maintenance of the parties, and also as to the
35 care, custody, education and maintenance of the children, or any of
36 them, as the circumstances of the parties and the nature of the case
37 shall render fit, reasonable and just, and require reasonable security for
38 the due observance of such orders, including, but not limited to, the
39 creation of trusts or other security devices, to assure payment of
40 reasonably foreseeable medical and educational expenses. Upon
41 neglect or refusal to give such reasonable security, as shall be required,
42 or upon default in complying with any such order, the court may
43 award and issue process for the immediate sequestration of the
44 personal estate, and the rents and profits of the real estate of the party
45 so charged, and appoint a receiver thereof, and cause such personal
46 estate and the rents and profits of such real estate, or so much thereof
47 as shall be necessary, to be applied toward such alimony and

1 maintenance as to the said court shall from time to time seem
2 reasonable and just; or the performance of the said orders may be
3 enforced by other ways according to the practice of the court. Orders
4 so made may be revised and altered by the court from time to time as
5 circumstances may require.

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

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

- 26 (1) Needs of the child;
- 27 (2) Standard of living and economic circumstances of each parent;
- 28 (3) All sources of income and assets of each parent;
- 29 (4) Earning ability of each parent, including educational
30 background, training, employment skills, work experience, custodial
31 responsibility for children including the cost of providing child care
32 and the length of time and cost of each parent to obtain training or
33 experience for appropriate employment;
- 34 (5) Need and capacity of the child for education, including higher
35 education;
- 36 (6) Age and health of the child and each parent;
- 37 (7) Income, assets and earning ability of the child;
- 38 (8) Responsibility of the parents for the court-ordered support of
39 others;
- 40 (9) Reasonable debts and liabilities of each child and parent; and
- 41 (10) Any other factors the court may deem relevant.

42 The obligation to pay support for a child who has not been
43 emancipated by the court shall not terminate solely on the basis of the
44 child's age if the child suffers from a severe mental or physical
45 incapacity that causes the child to be financially dependent on a parent.
46 The obligation to pay support for that child shall continue until the
47 court finds that the child is relieved of the incapacity or is no longer
48 financially dependent on the parent. However, in assessing the

1 financial obligation of the parent, the court shall consider, in addition
2 to the factors enumerated in this section, the child's eligibility for
3 public benefits and services for people with disabilities and may make
4 such orders, including an order involving the creation of a trust, as are
5 necessary to promote the well-being of the child.

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

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

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

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

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

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

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

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

27 (7) The parental responsibilities for the children;

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

32 (9) The history of the financial or non-financial contributions to
33 the marriage or civil union by each party including contributions to the
34 care and education of the children and interruption of personal careers
35 or educational opportunities;

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

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

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

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

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

47 In each case where the court is asked to make an award of alimony,
48 the court shall consider and assess evidence with respect to all relevant

1 statutory factors. If the court determines that certain factors are more
2 or less relevant than others, the court shall make specific written
3 findings of fact and conclusions of law on the reasons why the court
4 reached that conclusion. No factor shall be elevated in importance
5 over any other factor unless the court finds otherwise, in which case
6 the court shall make specific written findings of fact and conclusions
7 of law in that regard.

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

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

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

27 Exceptional circumstances which may require an adjustment to the
28 duration of alimony include:

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

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

33 (3) Whether a spouse or partner has a chronic illness or unusual
34 health circumstance;

35 (4) Whether a spouse or partner has given up a career or a career
36 opportunity or otherwise supported the career of the other spouse or
37 partner;

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

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

43 (7) Tax considerations of either party;

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

46 An award of alimony for a limited duration may be modified based
47 either upon changed circumstances, or upon the nonoccurrence of
48 circumstances that the court found would occur at the time of the

1 award. The court may modify the amount of such an award, but shall
2 not modify the length of the term except in unusual circumstances.

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

7 d. Rehabilitative alimony shall be awarded based upon a plan in
8 which the payee shows the scope of rehabilitation, the steps to be
9 taken, and the time frame, including a period of employment during
10 which rehabilitation will occur. An award of rehabilitative alimony
11 may be modified based either upon changed circumstances, or upon
12 the nonoccurrence of circumstances that the court found would occur
13 at the time of the rehabilitative award.

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

16 e. Reimbursement alimony may be awarded under circumstances
17 in which one party supported the other through an advanced education,
18 anticipating participation in the fruits of the earning capacity generated
19 by that education. An award of reimbursement alimony shall not be
20 modified for any reason.

21 f. Except as provided in subsection i., nothing in this section shall
22 be construed to limit the court's authority to award open durational
23 alimony, limited duration alimony, rehabilitative alimony or
24 reimbursement alimony, separately or in any combination, as
25 warranted by the circumstances of the parties and the nature of the
26 case.

27 g. In all actions for divorce or dissolution other than those where
28 judgment is granted solely on the ground of separation the court may
29 consider also the proofs made in establishing such ground in
30 determining an amount of alimony or maintenance that is fit,
31 reasonable and just. In all actions for divorce, dissolution of civil
32 union, divorce from bed and board, or legal separation from a partner
33 in a civil union couple where judgment is granted on the ground of
34 institutionalization for mental illness the court may consider the
35 possible burden upon the taxpayers of the State as well as the ability of
36 the party to pay in determining an amount of maintenance to be
37 awarded.

38 h. (1) Except as provided in this subsection, in all actions where a
39 judgment of divorce, dissolution of civil union, or divorce from bed
40 and board **【or legal separation from a partner in a civil union couple】**
41 is entered the court may make such award or awards to the parties, in
42 addition to alimony and maintenance, to effectuate an equitable
43 distribution of the property, both real and personal, which was legally
44 and beneficially acquired by them or either of them during the
45 marriage or civil union. However, all such property, real, personal or
46 otherwise, legally or beneficially acquired during the marriage or civil
47 union by either party by way of gift, devise, or intestate succession
48 shall not be subject to equitable distribution, except that interspousal

1 gifts or gifts between partners in a civil union couple shall be subject
2 to equitable distribution.

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

17 (3) The court may not make an award concerning the equitable
18 distribution of property on behalf of a party **【convicted of】** barred
19 from inheriting under subsection a. of section 58 of P.L.2004, c.132
20 (C.3B:7-1.1)¹**【,】** or on behalf of¹ a party responsible for an attempt or
21 conspiracy to murder the other party.

22 i. No person convicted of Murder, N.J.S.2C:11-3; Manslaughter,
23 N.J.S.2C:11-4; Criminal Homicide, N.J.S.2C:11-2; Aggravated
24 Assault, under subsection b. of N.J.S.2C:12-1; or a substantially
25 similar offense under the laws of another jurisdiction, may receive
26 alimony if: (1) the crime results in death or serious bodily injury, as
27 defined in subsection b. of N.J.S.2C:11-1, to a family member of a
28 divorcing party; and (2) the crime was committed after the marriage or
29 civil union. A person convicted of an attempt or conspiracy to commit
30 murder may not receive alimony from the person who was the
31 intended victim of the attempt or conspiracy. Nothing in this
32 subsection shall be construed to limit the authority of the court to deny
33 alimony for other bad acts.

34 As used in this subsection:

35 "Family member" means a spouse, partner in a civil union, child,
36 parent, sibling, aunt, uncle, niece, nephew, first cousin, grandparent,
37 grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law,
38 stepparent, stepchild, stepbrother, stepsister, half brother, or half sister,
39 whether the individual is related by blood, marriage or civil union, or
40 adoption.

41 j. Alimony may be modified or terminated upon the prospective
42 or actual retirement of the obligor.

43 (1) There shall be a rebuttable presumption that alimony shall
44 terminate upon the obligor spouse or partner attaining full retirement
45 age, except that any arrearages that have accrued prior to the
46 termination date shall not be vacated or annulled. The court may set a

1 different alimony termination date for good cause shown based on
2 specific written findings of fact and conclusions of law.

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

6 (a) The ages of the parties at the time of the application for
7 retirement;

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

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

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

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

16 (f) The health of the parties at the time of the retirement
17 application;

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

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

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

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

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

25 If the court determines, for good cause shown based on specific
26 written findings of fact and conclusions of law, that the presumption
27 has been overcome, then the court shall apply the alimony factors as
28 set forth in subsection b. of this section to the parties' current
29 circumstances in order to determine whether modification or
30 termination of alimony is appropriate. If the obligor intends to retire
31 but has not yet retired, the court shall establish the conditions under
32 which the modification or termination of alimony will be effective.

33 (2) Where the obligor seeks to retire prior to attaining the full
34 retirement age as defined in this section, the obligor shall have the
35 burden of demonstrating by a preponderance of the evidence that the
36 prospective or actual retirement is reasonable and made in good faith.
37 Both the obligor's application to the court for modification or
38 termination of alimony and the obligee's response to the application
39 shall be accompanied by current Case Information Statements or other
40 relevant documents as required by the Rules of Court, as well as the
41 Case Information Statements or other documents from the date of
42 entry of the original alimony award and from the date of any
43 subsequent modification.

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

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

- 1 (b) The obligor's field of employment and the generally accepted
2 age of retirement for those in that field;
- 3 (c) The age when the obligor becomes eligible for retirement at the
4 obligor's place of employment, including mandatory retirement dates
5 or the dates upon which continued employment would no longer
6 increase retirement benefits;
- 7 (d) The obligor's motives in retiring, including any pressures to
8 retire applied by the obligor's employer or incentive plans offered by
9 the obligor's employer;
- 10 (e) The reasonable expectations of the parties regarding retirement
11 during the marriage or civil union and at the time of the divorce or
12 dissolution;
- 13 (f) The ability of the obligor to maintain support payments
14 following retirement, including whether the obligor will continue to be
15 employed part-time or work reduced hours;
- 16 (g) The obligee's level of financial independence and the financial
17 impact of the obligor's retirement upon the obligee; and
- 18 (h) Any other relevant factors affecting the obligor's decision to
19 retire and the parties' respective financial positions.
- 20 If the obligor intends to retire but has not yet retired, the court shall
21 establish the conditions under which the modification or termination of
22 alimony will be effective.
- 23 (3) When a retirement application is filed in cases in which there is
24 an existing final alimony order or enforceable written agreement
25 established prior to the effective date of this act, the obligor's reaching
26 full retirement age as defined in this section shall be deemed a good
27 faith retirement age. Upon application by the obligor to modify or
28 terminate alimony, both the obligor's application to the court for
29 modification or termination of alimony and the obligee's response to
30 the application shall be accompanied by current Case Information
31 Statements or other relevant documents as required by the Rules of
32 Court, as well as the Case Information Statements or other documents
33 from the date of entry of the original alimony award and from the date
34 of any subsequent modification. In making its determination, the court
35 shall consider the ability of the obligee to have saved adequately for
36 retirement as well as the following factors in order to determine
37 whether the obligor, by a preponderance of the evidence, has
38 demonstrated that modification or termination of alimony is
39 appropriate:
- 40 (a) The age and health of the parties at the time of the application;
- 41 (b) The obligor's field of employment and the generally accepted
42 age of retirement for those in that field;
- 43 (c) The age when the obligor becomes eligible for retirement at the
44 obligor's place of employment, including mandatory retirement dates
45 or the dates upon which continued employment would no longer
46 increase retirement benefits;

- 1 (d) The obligor's motives in retiring, including any pressures to
2 retire applied by the obligor's employer or incentive plans offered by
3 the obligor's employer;
- 4 (e) The reasonable expectations of the parties regarding retirement
5 during the marriage or civil union and at the time of the divorce or
6 dissolution;
- 7 (f) The ability of the obligor to maintain support payments
8 following retirement, including whether the obligor will continue to be
9 employed part-time or work reduced hours;
- 10 (g) The obligee's level of financial independence and the financial
11 impact of the obligor's retirement upon the obligee; and
- 12 (h) Any other relevant factors affecting the parties' respective
13 financial positions.
- 14 (4) The assets distributed between the parties at the time of the
15 entry of a final order of divorce or dissolution of a civil union shall not
16 be considered by the court for purposes of determining the obligor's
17 ability to pay alimony following retirement.
- 18 k. When a non-self-employed party seeks modification of
19 alimony, the court shall consider the following factors:
- 20 (1) The reasons for any loss of income;
- 21 (2) Under circumstances where there has been a loss of
22 employment, the obligor's documented efforts to obtain replacement
23 employment or to pursue an alternative occupation;
- 24 (3) Under circumstances where there has been a loss of
25 employment, whether the obligor is making a good faith effort to find
26 remunerative employment at any level and in any field;
- 27 (4) The income of the obligee; the obligee's circumstances; and the
28 obligee's reasonable efforts to obtain employment in view of those
29 circumstances and existing opportunities;
- 30 (5) The impact of the parties' health on their ability to obtain
31 employment;
- 32 (6) Any severance compensation or award made in connection
33 with any loss of employment;
- 34 (7) Any changes in the respective financial circumstances of the
35 parties that have occurred since the date of the order from which
36 modification is sought;
- 37 (8) The reasons for any change in either party's financial
38 circumstances since the date of the order from which modification is
39 sought, including, but not limited to, assessment of the extent to which
40 either party's financial circumstances at the time of the application are
41 attributable to enhanced earnings or financial benefits received from
42 any source since the date of the order;
- 43 (9) Whether a temporary remedy should be fashioned to provide
44 adjustment of the support award from which modification is sought,
45 and the terms of any such adjustment, pending continuing employment
46 investigations by the unemployed spouse or partner; and
- 47 (10) Any other factor the court deems relevant to fairly and
48 equitably decide the application.

1 Under circumstances where the changed circumstances arise from
2 the loss of employment, the length of time a party has been
3 involuntarily unemployed or has had an involuntary reduction in
4 income shall not be the only factor considered by the court when an
5 application is filed by a non-self-employed party to reduce alimony
6 because of involuntary loss of employment. The court shall determine
7 the application based upon all of the enumerated factors, however, no
8 application shall be filed until a party has been unemployed, or has not
9 been able to return to or attain employment at prior income levels, or
10 both, for a period of 90 days. The court shall have discretion to make
11 any relief granted retroactive to the date of the loss of employment or
12 reduction of income.

13 1. When a self-employed party seeks modification of alimony
14 because of an involuntary reduction in income since the date of the
15 order from which modification is sought, then that party's application
16 for relief must include an analysis that sets forth the economic and
17 non-economic benefits the party receives from the business, and which
18 compares these economic and non-economic benefits to those that
19 were in existence at the time of the entry of the order.

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

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

30 When assessing whether cohabitation is occurring, the court shall
31 consider the following:

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

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

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

37 (4) Living together, the frequency of contact, the duration of the
38 relationship, and other indicia of a mutually supportive intimate
39 personal relationship;

40 (5) Sharing household chores;

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

44 (7) All other relevant evidence.

45 In evaluating whether cohabitation is occurring and whether
46 alimony should be suspended or terminated, the court shall also
47 consider the length of the relationship. A court may not find an

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1 absence of cohabitation solely on grounds that the couple does not live
2 together on a full-time basis.

3 As used in this section:

4 "Full retirement age" shall mean the age at which a person is
5 eligible to receive full retirement for full retirement benefits under
6 section 216 of the federal Social Security Act (42 U.S.C. s.416).
7 (cf: P.L.2014, c.42, s.1)

8

9 7. This act shall take effect immediately.