

ASSEMBLY, No. 4203

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED MAY 2, 2024

Sponsored by:

Assemblywoman MICHELE MATSIKLOUDIS

District 21 (Middlesex, Morris, Somerset and Union)

SYNOPSIS

Requires courts to consider availability of health insurance coverage in awarding alimony.

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT concerning health insurance coverage considerations in
2 awarding alimony, and amending N.J.S.2A:34-23 of the New
3 Jersey Statutes.

4

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

7

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

9 2A:34-23. Alimony, maintenance.

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

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

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.

1 order a retainer or counsel fee of a party convicted of an attempt or
2 conspiracy to murder the other party to be paid by the party who
3 was the intended victim of the attempt or conspiracy.

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

8 (1) Needs of the child;

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

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

12 (4) Earning ability of each parent, including educational
13 background, training, employment skills, work experience,
14 custodial responsibility for children including the cost of providing
15 child care and the length of time and cost of each parent to obtain
16 training or experience for appropriate employment;

17 (5) Need and capacity of the child for education, including
18 higher education;

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

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

21 (8) Responsibility of the parents for the court-ordered support of
22 others;

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

24 **[and]**

25 (10) Health insurance coverage available to the child through
26 each parent, with an emphasis on minimizing any disruption to the
27 child's ongoing care and treatment; and

28 **[(10)] (11)** Any other factors the court may deem relevant.

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

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

45 b. In all actions brought for divorce, dissolution of a civil
46 union, divorce from bed and board, legal separation from a partner
47 in a civil union couple or nullity the court may award one or more
48 of the following types of alimony: open durational alimony;

1 rehabilitative alimony; limited duration alimony or reimbursement
2 alimony to either party. In so doing the court shall consider, but not
3 be limited to, the following factors:

- 4 (1) The actual need and ability of the parties to pay;
- 5 (2) The duration of the marriage or civil union;
- 6 (3) The age, physical and emotional health of the parties;
- 7 (4) The standard of living established in the marriage or civil
8 union and the likelihood that each party can maintain a reasonably
9 comparable standard of living, with neither party having a greater
10 entitlement to that standard of living than the other;
- 11 (5) The earning capacities, educational levels, vocational skills,
12 and employability of the parties;
- 13 (6) The length of absence from the job market of the party
14 seeking maintenance;
- 15 (7) The parental responsibilities for the children;
- 16 (8) The time and expense necessary to acquire sufficient
17 education or training to enable the party seeking maintenance to
18 find appropriate employment, the availability of the training and
19 employment, and the opportunity for future acquisitions of capital
20 assets and income;
- 21 (9) The history of the financial or non-financial contributions to
22 the marriage or civil union by each party including contributions to
23 the care and education of the children and interruption of personal
24 careers or educational opportunities;
- 25 (10) The equitable distribution of property ordered and any
26 payouts on equitable distribution, directly or indirectly, out of
27 current income, to the extent this consideration is reasonable, just
28 and fair;
- 29 (11) The income available to either party through investment of
30 any assets held by that party;
- 31 (12) The tax treatment and consequences to both parties of any
32 alimony award, including the designation of all or a portion of the
33 payment as a non-taxable payment;
- 34 (13) The nature, amount, and length of pendente lite support
35 paid, if any; **[and]**
- 36 (14) The health insurance coverage available to each party, or the
37 ability of each party to pay for health insurance coverage,
38 particularly where one party was covered through an employer-
39 sponsored plan of the other party; and

40 **[(14)] (15)** Any other factors which the court may deem
41 relevant.

42 In each case where the court is asked to make an award of
43 alimony, the court shall consider and assess evidence with respect
44 to all relevant statutory factors. If the court determines that certain
45 factors are more or less relevant than others, the court shall make
46 specific written findings of fact and conclusions of law on the
47 reasons why the court reached that conclusion. No factor shall be
48 elevated in importance over any other factor unless the court finds

1 otherwise, in which case the court shall make specific written
2 findings of fact and conclusions of law in that regard.

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

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

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

23 Exceptional circumstances which may require an adjustment to
24 the duration of alimony include:

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

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

29 (3) Whether a spouse or partner has a chronic illness or unusual
30 health circumstance, and the health insurance coverage available to
31 that spouse or partner, or the ability of each party to pay for health
32 insurance coverage, particularly where that spouse or partner was
33 covered through an employer-sponsored plan of the other spouse or
34 partner;

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
47 based either upon changed circumstances, or upon the
48 nonoccurrence of circumstances that the court found would occur at

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

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

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

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

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

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

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

39 h. Except as provided in this subsection, in all actions where a
40 judgment of divorce, dissolution of civil union, divorce from bed
41 and board or legal separation from a partner in a civil union couple
42 is entered the court may make such award or awards to the parties,
43 in addition to alimony and maintenance, to effectuate an equitable
44 distribution of the property, both real and personal, which was
45 legally and beneficially acquired by them or either of them during
46 the marriage or civil union. However, all such property, real,
47 personal or otherwise, legally or beneficially acquired during the
48 marriage or civil union by either party by way of gift, devise, or

1 intestate succession shall not be subject to equitable distribution,
2 except that interspousal gifts or gifts between partners in a civil
3 union couple shall be subject to equitable distribution. The court
4 may not make an award concerning the equitable distribution of
5 property on behalf of a party convicted of an attempt or conspiracy
6 to murder the other party.

7 i. No person convicted of Murder, N.J.S.2C:11-3;
8 Manslaughter, N.J.S.2C:11-4; Criminal Homicide, N.J.S.2C:11-2;
9 Aggravated Assault, under subsection b. of N.J.S.2C:12-1; or a
10 substantially similar offense under the laws of another jurisdiction,
11 may receive alimony if: (1) the crime results in death or serious
12 bodily injury, as defined in subsection b. of N.J.S.2C:11-1, to a
13 family member of a divorcing party; and (2) the crime was
14 committed after the marriage or civil union. A person convicted of
15 an attempt or conspiracy to commit murder may not receive
16 alimony from the person who was the intended victim of the
17 attempt or conspiracy. Nothing in this subsection shall be
18 construed to limit the authority of the court to deny alimony for
19 other bad acts.

20 As used in this subsection:

21 “Family member” means a spouse, child, parent, sibling, aunt,
22 uncle, niece, nephew, first cousin, grandparent, grandchild, father-
23 in-law, mother-in-law, son-in-law, daughter-in-law, stepparent,
24 stepchild, stepbrother, stepsister, half brother, or half sister, whether
25 the individual is related by blood, marriage or civil union, or
26 adoption.

27 j. Alimony may be modified or terminated upon the
28 prospective or actual retirement of the obligor.

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

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

38 (a) The ages of the parties at the time of the application for
39 retirement;

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

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

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

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

1 (f) The health of the parties at the time of the retirement
2 application;

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

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

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

8 (j) The ability of the recipient to have saved adequately for
9 retirement; **【and】**

10 (k) The health insurance coverage available to each party, or the
11 ability of each party to pay for health insurance coverage,
12 particularly where one party was covered through an employer-
13 sponsored retiree plan of the other party; and

14 **【(k)】** (l) Any other factors that the court may deem relevant.

15 If the court determines, for good cause shown based on specific
16 written findings of fact and conclusions of law, that the
17 presumption has been overcome, then the court shall apply the
18 alimony factors as set forth in subsection b. of this section to the
19 parties' current circumstances in order to determine whether
20 modification or termination of alimony is appropriate. If the
21 obligor intends to retire but has not yet retired, the court shall
22 establish the conditions under which the modification or
23 termination of alimony will be effective.

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

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

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

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

43 (c) The age when the obligor becomes eligible for retirement at
44 the obligor's place of employment, including mandatory retirement
45 dates or the dates upon which continued employment would no
46 longer 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
3 by the obligor's employer;

4 (e) The reasonable expectations of the parties regarding
5 retirement during the marriage or civil union and at the time of the
6 divorce or dissolution;

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

10 (g) The obligee's level of financial independence and the
11 financial impact of the obligor's retirement upon the obligee,
12 including the impact of modifications to health insurance coverage
13 as a result of the obligor's retirement; and

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

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

19 (3) When a retirement application is filed in cases in which
20 there is an existing final alimony order or enforceable written
21 agreement established prior to the effective date of this act, the
22 obligor's reaching full retirement age as defined in this section shall
23 be deemed a good faith retirement age. Upon application by the
24 obligor to modify or terminate alimony, both the obligor's
25 application to the court for modification or termination of alimony
26 and the obligee's response to the application shall be accompanied
27 by current Case Information Statements or other relevant documents
28 as required by the Rules of Court, as well as the Case Information
29 Statements or other documents from the date of entry of the original
30 alimony award and from the date of any subsequent modification.
31 In making its determination, the court shall consider the ability of
32 the obligee to have saved adequately for retirement as well as the
33 following factors in order to determine whether the obligor, by a
34 preponderance of the evidence, has demonstrated that modification
35 or termination of alimony is appropriate:

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

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

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

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

1 (e) The reasonable expectations of the parties regarding
2 retirement during the marriage or civil union and at the time of the
3 divorce or dissolution;

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

7 (g) The obligee's level of financial independence and the
8 financial impact of the obligor's retirement upon the obligee,
9 including the impact of modifications to health insurance coverage
10 as a result of the obligor's retirement; and

11 (h) Any other relevant factors affecting the parties' respective
12 financial positions.

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

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

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

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

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

26 (4) The income of the obligee; the obligee's circumstances; and
27 the obligee's reasonable efforts to obtain employment in view of
28 those circumstances and existing opportunities;

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

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

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

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

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

46 **[and]**

47 (10) The health insurance coverage available to each party, or the
48 ability of each party to pay for health insurance coverage,

1 particularly where one party was covered through an employer-
2 sponsored plan of the other party; and

3 **[(10)] (11)** Any other factor the court deems relevant to fairly
4 and equitably decide the application.

5 Under circumstances where the changed circumstances arise
6 from the loss of employment, the length of time a party has been
7 involuntarily unemployed or has had an involuntary reduction in
8 income shall not be the only factor considered by the court when an
9 application is filed by a non-self-employed party to reduce alimony
10 because of involuntary loss of employment. The court shall
11 determine the application based upon all of the enumerated factors,
12 however, no application shall be filed until a party has been
13 unemployed, or has not been able to return to or attain employment
14 at prior income levels, or both, for a period of 90 days. The court
15 shall have discretion to make any relief granted retroactive to the
16 date of the loss of employment or reduction of income. Where the
17 obligee's health insurance coverage is through the obligor's
18 employer and there is a loss of employment, the court shall give due
19 consideration to the obligor's good faith efforts to arrange for
20 continuation of health insurance coverage for the obligee, which
21 may include, by way of example and not limitation, coverage
22 through Medicaid, the Consolidated Omnibus Budget
23 Reconciliation Act of 1986 (COBRA), Pub.L.99-272, 100 Stat. 82,
24 or the Affordable Care Act, Pub.L.111-148, 124 Stat. 119.

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

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

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

44 When assessing whether cohabitation is occurring, the court shall
45 consider the following:

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

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

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

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

6 (5) Sharing household chores;

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

10 (7) All other relevant evidence.

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

16 As used in this section:

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

20

21 2. This act shall take effect immediately.

22

23

24

STATEMENT

25

26 This bill amends the State alimony statute, N.J.S.2A:34-23, to
27 require, when awarding alimony, the court to consider, among other
28 factors, the availability of health insurance coverage to each spouse
29 and the couple's children, or the ability to pay for coverage,
30 particularly where coverage was previously through one of the
31 spouse's employer.