

# ASSEMBLY, No. 4525

## STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED NOVEMBER 25, 2013

**Sponsored by:**

**Assemblyman THOMAS P. GIBLIN**

**District 34 (Essex and Passaic)**

**Assemblywoman PAMELA R. LAMPITT**

**District 6 (Burlington and Camden)**

**SYNOPSIS**

Clarifies certain factors concerning modification and termination of alimony; eliminates the term “permanent alimony” from the statutes.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning alimony and amending N.J.S.2A:34-23.

2

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

5

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

7 2A:34-23. Alimony, maintenance.

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

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

**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 conspiracy to murder the other party to be paid by the party who  
2 was the intended victim of the attempt or conspiracy.

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

7 (1) Needs of the child;

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

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

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

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

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

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

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

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

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

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

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

40 b. In all actions brought for divorce, dissolution of a civil  
41 union, divorce from bed and board, legal separation from a partner  
42 in a civil union couple or nullity the court may award one or more  
43 of the following types of alimony: **【permanent】** alimony of  
44 indefinite term; rehabilitative alimony; limited duration alimony or  
45 reimbursement alimony to either party. In so doing the court shall  
46 consider, but not be limited to, the following factors:

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

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

- 1 (3) The age, physical and emotional health of the parties;
- 2 (4) The standard of living established in the marriage or civil  
3 union and the likelihood that each party can maintain a reasonably  
4 comparable standard of living;
- 5 (5) The earning capacities, educational levels, vocational skills,  
6 and employability of the parties;
- 7 (6) The length of absence from the job market of the party  
8 seeking maintenance;
- 9 (7) The parental responsibilities for the children;
- 10 (8) The time and expense necessary to acquire sufficient  
11 education or training to enable the party seeking maintenance to  
12 find appropriate employment, the availability of the training and  
13 employment, and the opportunity for future acquisitions of capital  
14 assets and income;
- 15 (9) The history of the financial or non-financial contributions to  
16 the marriage or civil union by each party including contributions to  
17 the care and education of the children and interruption of personal  
18 careers or educational opportunities;
- 19 (10) The equitable distribution of property ordered and any  
20 payouts on equitable distribution, directly or indirectly, out of  
21 current income, to the extent this consideration is reasonable, just  
22 and fair;
- 23 (11) The income available to either party through investment of  
24 any assets held by that party;
- 25 (12) The tax treatment and consequences to both parties of any  
26 alimony award, including the designation of all or a portion of the  
27 payment as a non-taxable payment; and
- 28 (13) Any other factors which the court may deem relevant.

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

33 c. In any case in which there is a request for an award of  
34 **【permanent】** alimony of indefinite term, the court shall consider  
35 and make specific findings on the evidence about the above factors.  
36 If the court determines that an award of **【permanent】** alimony of  
37 indefinite term is not warranted, the court shall make specific  
38 findings on the evidence setting out the reasons therefor. The court  
39 shall then consider whether alimony is appropriate for any or all of  
40 the following: (1) limited duration; (2) rehabilitative; (3)  
41 reimbursement. In so doing, the court shall consider and make  
42 specific findings on the evidence about factors set forth above. The  
43 court shall not award limited duration alimony as a substitute for  
44 **【permanent】** alimony of indefinite term in those cases where  
45 **【permanent】** alimony of indefinite term would otherwise be  
46 awarded.

47 An award of alimony for a limited duration may be modified  
48 based either upon changed circumstances, or upon the

1 nonoccurrence of circumstances that the court found would occur at  
2 the time of the award. The court may modify the amount of such an  
3 award, but shall not modify the length of the term except in unusual  
4 circumstances.

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

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

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

18 e. Reimbursement alimony may be awarded under  
19 circumstances in which one party supported the other through an  
20 advanced education, anticipating participation in the fruits of the  
21 earning capacity generated by that education.

22 f. Except as provided in subsection i., nothing in this section  
23 shall be construed to limit the court's authority to award permanent  
24 alimony, limited duration alimony, rehabilitative alimony or  
25 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 adoption.

26    j. Alimony may be modified or terminated upon the  
27    prospective or actual retirement of the obligor. The obligor shall  
28    have the burden of demonstrating by a preponderance of the  
29    evidence that the prospective or actual retirement is reasonable and  
30    made in good faith. Both the obligor's application to the court for  
31    modification or termination of alimony and the obligee's response  
32    to the application shall be accompanied by current Case Information  
33    Statements or other relevant documents as required by the Rules of  
34    Court, as well as the Case Information Statements or other  
35    documents from the date of the original alimony award and from  
36    the date of any subsequent modification.

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

41    (1) the age and health of the parties at the time of the  
42    application;

43    (2) the obligor's field of employment and the generally accepted  
44    age of retirement for those in that field;

45    (3) the age when the obligor becomes eligible for retirement at  
46    the obligor's place of employment, including mandatory retirement  
47    dates or the dates upon which continued employment would no  
48    longer increase retirement benefits;

1       (4) 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       (5) the reasonable expectations of the parties regarding  
5 retirement during the marriage and at the time of the divorce;

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

9       (7) the obligee's level of financial independence and the  
10 financial impact of the retirement by the obligor upon the obligee;  
11 and

12       (8) any other relevant factors affecting the obligor's decision to  
13 retire and the parties' respective financial positions.

14       Assets which were distributed between the parties by way of  
15 equitable distribution at the time of the divorce shall not be  
16 considered for purposes of determining the obligor's ability to pay  
17 or the obligee's need.

18       If the court determines that the obligor has met his burden, then  
19 the court shall apply the alimony factors as set forth in section b. of  
20 this section to the parties' current circumstances in order to  
21 determine whether modification or termination of alimony is  
22 appropriate. If the obligor intends to retire but has not yet retired,  
23 the court shall establish the conditions under which the  
24 modification or termination of alimony will be effective.

25       k. When a non-self-employed party makes an application to  
26 reduce alimony or child support because of involuntary loss of  
27 employment, the court shall consider the following factors:

28           (1) The reasons for the loss of employment;

29           (2) The obligor's documented efforts to obtain replacement  
30 employment or to pursue an alternative occupation;

31           (3) Whether the obligor is making a good faith effort to find  
32 remunerative employment at any level and in any field;

33           (4) The income of the obligee; the obligee's circumstances; and  
34 the obligee's reasonable efforts to obtain employment in view of  
35 those circumstances and existing opportunities;

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

38           (6) Any severance compensation or award made in connection  
39 with the loss of employment;

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

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

1       (9) Whether a temporary remedy should be fashioned to provide  
2 adjustment of the support award from which modification is sought,  
3 and the terms of any such adjustment, pending continuing  
4 employment investigations by the unemployed spouse; and

5       (10) Any other factor the court deems relevant to fairly and  
6 equitable decide the application.

7       The length of time a party has been involuntarily unemployed or  
8 has had an involuntary reduction in income shall not be dispositive  
9 of the application and the court shall determine the application  
10 based upon all of the enumerated factors, except that no application  
11 shall be filed until a party has been unemployed, or not been able to  
12 return to employment at prior income levels, or both, for a period of  
13 90 days. The court shall have discretion to make any relief granted  
14 retroactive to the date of the loss of employment or reduction of  
15 income.

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

24       m. When assessing whether any temporary remedy should be  
25 fashioned, the court may temporarily suspend support, or reduce  
26 support on terms; direct that support be paid in some amount from  
27 assets pending further proceedings; direct a periodic review; or  
28 enter any other order the court finds appropriate to assure fairness  
29 and equity to both parties.

30       n. Alimony may be suspended or terminated if the payee cohabits  
31 with another person. Cohabitation involves an intimate relationship  
32 in which a couple has undertaken duties and privileges that are  
33 commonly associated with marriage.

34       When assessing whether cohabitation is occurring, the court shall  
35 consider the following:

36       (1) intertwined finances such as joint bank accounts and other  
37 joint holdings or liabilities;

38       (2) sharing or joint legal responsibility for living expenses;

39       (3) recognition of the relationship in the couple's social and  
40 family circle;

41       (4) living together;

42       (5) sharing household chores; and

43       (6) all other relevant evidence.

44       In evaluating whether cohabitation is occurring and whether  
45 alimony should be suspended or terminated, the court shall also  
46 consider the length of the relationship. A court may not find an  
47 absence of cohabitation solely on grounds that the couple does not



1 live together on a full-time basis.

2 (cf: P.L.2009, c.43, s.1)

3

4 2. This act shall take effect on the 90<sup>th</sup> day following enactment  
5 and shall apply to actions for divorce or dissolution filed on or after  
6 the effective date.

7

8

9

STATEMENT

10

11 This bill would clarify certain factors concerning the  
12 modification and termination of alimony.

13 The bill amends N.J.S.2A:34-23 to set out specific grounds for  
14 modification and termination when the obligor retires, loses his job,  
15 or otherwise has a reduction in income, or when the obligee  
16 cohabits with another person. The bill also eliminates the phrase  
17 “permanent alimony” in the statutes and replaces it with “alimony  
18 of indefinite term” to reflect the fact that alimony orders can be  
19 modified by the court upon a change of circumstances.

20 RETIREMENT:

21 The bill specifies that alimony may be modified or terminated  
22 upon the prospective or actual retirement of the obligor. The obligor  
23 would have the burden of demonstrating by a preponderance of the  
24 evidence that the prospective or actual retirement is reasonable and  
25 made in good faith. Both the obligor’s application to the court for  
26 modification or termination of alimony and the obligee’s response  
27 to the application would be accompanied by current Case  
28 Information Statements or other relevant documents as required by  
29 the Rules of Court, as well as the Case Information Statements or  
30 other documents from the date of the original alimony award and  
31 from the date of any subsequent modification.

32 In order to determine whether the obligor has met the burden of  
33 demonstrating that the obligor’s prospective or actual retirement is  
34 reasonable and made in good faith, the court would consider the  
35 following factors:

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

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

40 (3) 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 (4) 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;

47 (5) the reasonable expectations of the parties regarding  
48 retirement during the marriage and at the time of the divorce;

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

4 (7) the obligee's level of financial independence and the  
5 financial impact of the retirement by the obligor upon the obligee;  
6 and

7 (8) any other relevant factors affecting the obligor's decision to  
8 retire and the parties' respective financial positions.

9 If the court determines that the obligor has met his burden, then  
10 the court would apply the general alimony factors as set forth in  
11 N.J.S.2A34-23 to the parties' current circumstances in order to  
12 determine whether modification or termination of alimony is  
13 appropriate. If the obligor intends to retire but has not yet retired,  
14 the court shall establish the conditions under which the  
15 modification or termination of alimony will be effective.

16 APPLICATION BY NON-SELF-EMPLOYED PERSON:

17 Under the bill, when a non-self-employed party makes an  
18 application to reduce alimony or child support because of  
19 involuntary loss of employment, the court shall consider the  
20 following factors:

21 (1) The reasons for the loss of employment;

22 (2) The obligor's documented efforts to obtain replacement  
23 employment or to pursue an alternative occupation;

24 (3) Whether the obligor is making a good faith effort to find  
25 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 the 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; and

46 (10) Any other factor the court deems relevant to fairly and  
47 equitable decide the application.

1 APPLICATION BY SELF-EMPLOYED PERSON:

2 The bill provides that when a self-employed party seeks  
3 modification of alimony or child support because of an involuntary  
4 reduction in income since the date of the order from which  
5 modification is sought, then that party's application for relief must  
6 include an analysis that sets forth the economic and non-economic  
7 benefits the party receives from the business, and which compares  
8 these economic and non-economic benefits to those that were in  
9 existence at the time of the entry of the order.

10 EFFECT OF EQUITABLE DISTRIBUTION:

11 The bill provides that assets which were distributed between the  
12 parties by way of equitable distribution at the time of the divorce  
13 would not be considered for purposes of determining the obligor's  
14 ability to pay or the obligee's need.

15 TEMPORARY REMEDIES:

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

22 COHABITATION:

23 The bill provides that alimony may be suspended or terminated if  
24 the payee cohabits with another person. Cohabitation involves an  
25 intimate relationship in which a couple has undertaken duties and  
26 privileges that are commonly associated with marriage.

27 When assessing whether cohabitation is occurring, the court shall  
28 consider the following:

29 (1) intertwined finances such as joint bank accounts and other  
30 joint holdings or liabilities;

31 (2) sharing or joint legal responsibility for living expenses;

32 (3) recognition of the relationship in the couple's social and  
33 family circle;

34 (4) living together;

35 (5) sharing household chores; and

36 (6) all other relevant evidence.

37 In evaluating whether cohabitation is occurring and whether  
38 alimony should be suspended or terminated, the court would also be  
39 required to consider the length of the relationship. A court could  
40 not find an absence of cohabitation solely on grounds that the  
41 couple does not live together on a full-time basis.

42 EFFECTIVE DATE:

43 The bill would take effect on the 90<sup>th</sup> day following enactment  
44 and apply to actions for divorce or dissolution filed on or after the  
45 effective date.