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2011 MA H.B. **2852**

MASSACHUSETTS 187TH GENERAL COURT -- 2011 REGULAR SESSION

HOUSE BILL **2852**

HOUSE NO. **2852**

THE COMMONWEALTH OF MASSACHUSETTS
IN THE YEAR TWO THOUSAND AND ELEVEN.

BILL TRACKING REPORT: 2011 Bill Tracking MA H.B. **2852**

2011 Bill Text MA H.B. 2852

VERSION: Introduced

VERSION-DATE: January 21, 2011

SYNOPSIS: AN ACT TO REFORM AND IMPROVE ALIMONY LAWS

TEXT: Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. That this Act shall be known as the Alimony Reform Act of 2011

SECTION 2. *Section 34 of chapter 208 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting, in line 5, after the word "other" the following words:*

in accordance with Section 48.

SECTION 3. Said *section 34 of said chapter 208, as so appearing, is hereby further amended by striking out the third sentence and inserting in the place thereof the following sentence:*

In fixing the nature and value of the property, if any, to be so assigned, the court, after hearing the witnesses, if any,

of each of the parties, shall consider the length of the marriage, the conduct of the parties during the marriage, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties, the opportunity of each for future acquisition of capital assets and income, and the amount and duration of alimony, if any, awarded under Section 48.

SECTION 4. Said chapter 208 is hereby further amended by inserting after section 47 the following section:

Section 48. 1. Definitions:

(a) "Alimony" is the payment of support from one spouse to another for a reasonable length of time, pursuant to a court order and for the purpose of providing a spouse in need of support periodic payments from a spouse who has the ability to pay it.

(b) "General Term Alimony" is the periodic payment of support to a recipient spouse who is economically dependent.

(c) "Rehabilitative Alimony" is the periodic payment of support to a recipient spouse who is expected to become economically self-sufficient by a predicted time, such as, without limitation, reemployment; completion of job training; or receipt of a sum due from the payer spouse pursuant to a judgment.

(d) "Reimbursement Alimony" is the periodic or one-time payment of support to a recipient spouse after a marriage of not more than five years and for the purpose of compensating the recipient for economic or noneconomic contribution to the financial resources of the payer spouse, such as enabling the payer spouse to complete an education or job training.

(e) "Transitional Alimony" is the periodic or one-time payment of support to a recipient spouse after a marriage of not more than five years and for the purpose of transitioning the recipient to an adjusted lifestyle or location as a result of the divorce.

(f) "Duration of Marriage" is the number of months from the date of legal marriage to the date of service of a complaint or petition for divorce or separate support duly filed in a court of the Commonwealth of Massachusetts or another court with jurisdiction to terminate the marriage. The court shall have discretion to increase the duration of marriage where there is evidence that the parties' economic marital partnership began during their cohabitation period prior to the marriage.

(g) "Full retirement age" shall mean the payer's usual or ordinary retirement age for United States old-age social security benefits. It shall not mean "early retirement age" if early retirement is available to the payer or "maximum benefit retirement age" if additional benefits are available as a result of delayed retirement.

2. General Term Alimony.

(a) General Term Alimony shall terminate upon the remarriage of the recipient or the death of either spouse, provided that the court may require the payer spouse to provide life insurance or another form of reasonable security for payment of sums due to the recipient in the event of the payer's death during the alimony term.

(b) Except upon a court finding that deviation beyond the time limits of this section are required in the interests of justice, where the Duration of Marriage is twenty years or less, General Term Alimony shall terminate no later than a date certain in accordance with durational limits set forth below:

(1) If the Duration of Marriage is five years, or less, General Term Alimony shall be no greater than one-half the number of months of the marriage.

(2) If the Duration of Marriage is ten years or less, but more than five years, General Term Alimony shall be no

greater than to sixty percent of the number of months of the marriage.

(3) If the Duration of Marriage is fifteen years or less, but more than ten years, General Term Alimony shall be no greater than seventy percent of the number of months of the marriage.

(4) If the Duration of Marriage is twenty years or less, but more than fifteen years, General Term Alimony shall be no greater than eighty percent of the number of months of the marriage.

(c) The court shall have discretion to order alimony for an indefinite length of time for marriages longer than twenty years.

(d) General Term Alimony shall be suspended, reduced or terminated upon the cohabitation of the recipient spouse when the payer shows that the recipient has maintained a common household, as defined below, with another person for a continuous period of at least three months.

(1) Persons are deemed to maintain a common household when they share a primary residence together with or without others. In determining whether the recipient is maintaining a common household, the court may consider any of the following factors:

- (i) Oral or written statements or representations made to third parties regarding the relationship of the cohabitants;
- (ii) The economic interdependence of the couple or economic dependence of one party on the other;
- (iii) The common household couple engaging in conduct and collaborative roles in furtherance of their life together;
- (iv) The benefit in the life of either or both of the common household parties from their relationship;
- (v) The community reputation of the parties as a couple;
- (vi) Other relevant and material factors.

(2) An alimony obligation suspended reduced or terminated under this provision may be reinstated upon termination of the recipients common household relationship; but, if reinstated it shall not extend beyond the termination date of the original order.

(e) Unless the payer and recipient agree otherwise, General Term Alimony may be modified in duration or amount upon a material change of circumstances warranting modification. Modification may be permanent, indefinite, or for a finite duration, as may be appropriate under the circumstances before the court. Nothing in this provision shall be construed to permit alimony reinstatement after the recipient's remarriage, except by the parties' express written agreement.

(f) Once issued, General Term Alimony orders shall terminate upon the payer attaining the full retirement age when he or she is eligible for the old-age retirement benefit under the United States Old-Age, Disability, and Survivors Insurance Act, *42 U. S. C. 416*, as amended and as may be amended in the future. The payer's ability to work beyond said age shall not be a reason to extend alimony, provided that:

(1) When the court enters an initial alimony judgment, the court may set a different alimony termination date for good cause shown. In granting deviation, the court must enter written findings of the reasons for deviation.

(2) The court may grant a recipient an extension of an existing alimony order for good cause shown. In granting extension, the court must enter written findings of:

- (i) A material change of circumstance that occurred after entry of the alimony judgment; and

(ii) Reasons for the extension that are supported by clear and convincing evidence.

(3) The provisions of this section shall be prospective, such that alimony judgments entered before the effective date of this act shall terminate only as set forth in section 7(b) of this chapter.

3. Rehabilitative Alimony

(a) Rehabilitative Alimony shall terminate upon the remarriage of the recipient, or the occurrence of a specific event in the future, or the death of either spouse, provided that the court may require the payer to provide reasonable security for payment of sums due to the recipient in the event of the payer's death during the alimony term.

(b) The alimony term for rehabilitative alimony shall be no more than five years. Unless the recipient has remarried, the Rehabilitative Alimony term may be extended on a complaint for modification upon a showing of compelling circumstances in the event that:

(1) Unforeseen events prevent the recipient spouse from being self-supporting at the end of the term with due consideration to the length of the marriage; and

(2) The court finds that the recipient endeavored to become self-supporting; and

(3) The payer has continuing ability to pay and no undue burden.

(c) The court shall have discretion to modify the amount of periodic Rehabilitative Alimony based upon material change of circumstance within the rehabilitative period.

4. Reimbursement Alimony

(a) Reimbursement Alimony shall terminate upon the death of the recipient or a date certain.

(b) Reimbursement alimony may not be modified by either party.

(c) Income guidelines set forth in section 6 (b), below, shall not apply to Reimbursement Alimony.

5. Transitional Alimony

(a) Transitional Alimony shall terminate upon the death of the recipient or a date certain that is not longer than three years from the date of the parties' divorce, provided that the court may require the payer to provide reasonable security for payment of sums due to the recipient in the event of the payer's death during the alimony term

(b) Transitional alimony may not be modified, extended or replaced by another form of alimony.

6. Considerations for Setting Form, Amount and Duration of Alimony

(a) In determining the appropriate form of alimony and in setting the amount and duration of support, a court shall consider: the length of the marriage; age of the parties; health of the parties; both parties' income, employment and employability, including employability through reasonable diligence and additional training, if necessary; economic and non-economic contribution to the marriage; marital lifestyle; ability of each party to maintain the marital lifestyle; lost economic opportunity as a result of the marriage; and such other factors as the court may deem relevant and material.

(b) Except for Reimbursement Alimony or circumstances warranting deviation for other forms of alimony, the amount of alimony should generally not exceed the recipient's need or 30 percent to 35 percent of the difference between the parties gross incomes established at the time of the order being issued. Subject to section (c) below, income shall be defined as set forth in the Massachusetts Child Support Guidelines, as they may be amended from time-to-time.

(c) For purposes of setting an alimony order, the court shall exclude from its income calculation:

(1) Capital gain income and dividend and interest income which derives from assets equitably divided between the parties under Section 34; and

(2) Gross income which the court has already considered for setting a child support order whether pursuant to the Massachusetts Child Support Guidelines or otherwise; provided that nothing in this section shall limit the court's discretion to cast a presumptive child support order under the Child Support Guidelines in terms of unallocated or undifferentiated alimony and child support.

(d) In setting an initial alimony order, or in modifying an existing order, the court may deviate from duration and amount limits for General Term Alimony and Rehabilitative Alimony upon written findings that deviation is necessary. Grounds for deviation may include:

(1) Advanced age; chronic illness; or unusual health circumstances of either party;

(2) Tax considerations applicable to the parties;

(3) Whether the payer spouse is providing health insurance and the cost of health insurance for the recipient spouse;

(4) Whether the payer spouse has been ordered to secure life insurance for the benefit of the recipient spouse and the cost of such insurance;

(5) Sources and amounts of unearned income, including capital gains, interest and dividends, annuity and investment income from assets that were not allocated in the parties divorce;

(6) Significant premarital cohabitation that included economic partnership and/or marital separation of significant duration, each of which the court may consider in determining the length of the marriage;

(7) A party's inability to provide for his or her own support by reason of physical or mental abuse by the payer;

(8) A party's inability to provide for his or her own support by reason of a party's deficiency's of property, maintenance or employment opportunity; and

(9) Upon written findings, any other factor that the court deems relevant and material.

(e) In determining the incomes of parties with respect to the issue of alimony, the Court may attribute income to a party who is unemployed or underemployed.

(f) Where the Court orders alimony concurrent with or subsequent to a child support order, the combined duration of alimony and child support shall not exceed the longer of: (i) the alimony duration available at the time of divorce; or (ii) rehabilitative alimony commencing upon the termination of child support.

7. Modifications

(a) Enactment of this chapter shall not be deemed a material change of circumstance that warrants modification of the amount of existing alimony judgments.

(b) Enactment of this chapter shall be deemed a material change of circumstance that warrants modification of existing alimony judgments that exceed the durational limits set forth in section 2, above. Existing alimony awards shall be deemed General Term Alimony, and shall be modified upon a complaint for modification without additional material change of circumstance, unless the court finds that deviation from the durational limits is warranted.

(c) Any complaint for modification filed by a payer pursuant to this section solely because the existing alimony judgment exceeds the durational limits set forth in section 2, above, may only be filed pursuant to the following time line:

(1) Payers who were married to the alimony recipient five (5) years or less, may file a modification action one (1) year after the effective date of the remaining provisions of this law.

(2) Payers who were married to the alimony recipient ten (10) years or less but more than five (5) years may file a modification action two (2) years after the effective date of the remaining provisions of this law.

(3) Payers who were married to the alimony recipient fifteen (15) years or less but more than ten (10) years may file a modification action three (3) years after the effective date of the remaining provisions of this law.

(4) Payers who were married to the alimony recipient twenty (20) years or less but more than fifteen (15) years may file a modification action three and one-half (3 1/2) years after the effective date of the remaining provisions of this law.

(5) Notwithstanding the provisions of subsections (1) through (4) above, any payer who is eligible for the full old age benefit under the United States Old Age, Disability, and Survivor Insurance Act, 42 U. S. C. 416, or who will become eligible for said benefit within 3 years from the date this act takes effect, may file a complaint for modification one year after this act takes effect,

(e) Under no circumstances shall the enactment of this chapter provide a right to seek or receive modification of an existing alimony judgment in which the parties have agreed that their alimony judgment is not modifiable, or in which the parties have expressed their intention that their agreed alimony provisions survive the judgment and therefore are not modifiable.

(f) In the event of the payer's remarriage, income and assets of the payer's spouse shall not be considered in a redetermination of alimony in a modification action.

(g) Income from a second job or overtime work shall be presumed immaterial to alimony modification if:

(1) A party works more than a single full-time equivalent position; and

(2) The second job or overtime commenced after entry of the initial order.

8. Security

(a) The court may require reasonable security for alimony in the event of the payer's death during the alimony period. Security may include, but is not limited to, maintenance of life insurance.

(b) Orders to maintain life insurance shall be based upon due consideration of the following factors: age and insurability of the payer; cost of insurance; amount of the judgment; policies carried during the marriage; duration of the alimony order; prevailing interest rates at the time of the order; other obligations of the payer.

(c) Orders to maintain security shall be modifiable upon a material change of circumstance.

SECTION 5. Sections 1 through 4, inclusive, shall take effect 90 days from the effective date of this act.

SPONSOR: Rogers

SUBJECT: SPOUSAL SUPPORT (95%); RETIREMENT & RETIREES (82%); MARRIAGE (63%); PERSONAL FINANCE (62%); EARLY RETIREMENT (62%); DIVORCE & DISSOLUTION (62%); LEGISLATORS (62%); LEGISLATION (61%);

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