

HOUSE No. 1785

The Commonwealth of Massachusetts

PRESENTED BY:

Steven M. Walsh

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the determination of alimony payments.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Jennifer L. Flanagan	Worcester and Middlesex
James B. Eldridge	Middlesex and Worcester
Patricia D. Jehlen	Second Middlesex
James E. Timilty	Bristol and Norfolk
Robert A. O'Leary	Cape and Islands
Steven M. Walsh	11th Essex
Demetrius J. Atsalis	Second Barnstable
F. Jay Barrows	1st Bristol
Carlo P. Basile	1st Suffolk
William N. Brownsberger	24th Middlesex
Viriato Manuel deMacedo	1st Plymouth
Stephen L. DiNatale	3rd Worcester
Mark V. Falzone	9th Essex
John V. Fernandes	10th Worcester
John P. Fresolo	16th Worcester
Paul K. Frost	7th Worcester
Danielle W. Gregoire	4th Middlesex
Bradford R. Hill	4th Essex
Donald F. Humason, Jr.	4th Hampden

Jay R. Kaufman	15th Middlesex
David P. Linsky	5th Middlesex
Jeffrey Davis Perry	5th Barnstable
George N. Peterson, Jr.	9th Worcester
Michael J. Rodrigues	8th Bristol
Frank I. Smizik	15th Norfolk
Joyce A. Spiliotis	12th Essex
Todd M. Smola	1st Hampden
Timothy J. Toomey, Jr.	26th Middlesex
Matthew C. Patrick	3rd Barnstable
Angelo J. Puppolo, Jr.	12th Hampden
Christopher J. Donelan	2nd Franklin
Stephen R. Canessa	12th Bristol
Denise Provost	27th Middlesex
Scott P. Brown	Norfolk, Bristol and Middlesex
Stephen Kulik	1st Franklin
John W. Scibak	2nd Hampshire
Steven A. Tolman	Second Suffolk and Middlesex
Alice K. Wolf	25th Middlesex
Garrett J. Bradley	3rd Plymouth
Harriette L. Chandler	First Worcester
Anne M. Gobi	5th Worcester
Benjamin Swan	11th Hampden
Robert F. Fennell	10th Essex
Elizabeth Poirier	14th Bristol
Cleon H. Turner	1st Barnstable
Paul J. Donato	35th Middlesex
Paul McMurtry	11th Norfolk
Mary E. Grant	6th Essex
William Lantigua	16th Essex
William Smitty Pignatelli	4th Berkshire
Karyn E. Polito	11th Worcester
Bradley H. Jones, Jr.	20th Middlesex
Anthony D. Galluccio	Middlesex, Suffolk and Essex
Anthony W. Petruccelli	First Suffolk and Middlesex
Karen E. Spilka	Second Middlesex and Norfolk
Christine E. Canavan	10th Plymouth
Thomas J. Calter	12th Plymouth
John J. Binienda	17th Worcester
Denis E. Guyer	2nd Berkshire
Linda Dorcena Forry	12th Suffolk
Allen J. McCarthy	7th Plymouth

Patricia A. Haddad	5th Bristol
Lewis G. Evangelidis	1st Worcester
Sean Garballey	23rd Middlesex
Anthony D. Galluccio	Middlesex, Suffolk and Essex
Thomas P. Conroy	13th Middlesex
David L. Flynn	8th Plymouth
Ellen Story	3rd Hampshire
James J. O'Day	14th Worcester District
David B. Sullivan	6th Bristol
Geraldo Alicea	6th Worcester
Steven J. D'Amico	4th Bristol

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1567 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO THE DETERMINATION OF ALIMONY PAYMENTS.

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

1 Section 34 of Chapter 208 of the General Laws, as appearing in the 2006 Official Edition,
2 is hereby amended in the third sentence by striking the words:

3 “or in fixing the nature and value of the property, if any, to be so assigned, the court, after
4 hearing the witnesses, if any, of each party, shall consider the length of the marriage, the conduct
5 of the parties during the marriage, the age, health, station, occupation, amount and sources of
6 income, vocational skills, employability, estate, liabilities and needs of each of the parties and
7 the opportunity of each for future acquisition of capital assets and income.”;

8 And by inserting in place thereof the following words:

9 “the court shall consider all of the following circumstances:

- 10 (a) The extent to which the earning capacity of each party is sufficient, together with the
11 unearned income described in (h) below, to maintain the preponderance of the standard of
12 living established during the marriage and upon the date of separation, taking into account
13 the marketable skills of whichever party may not then exhibit such sufficient earning
14 capacity and the time and expense of employment counseling and training required to further
15 develop such skills or to acquire other, more marketable skills or employment.
16 (b) The willingness and diligence of the party not then exhibiting such earning capacity to seek
17 the employment counseling and training described in (a) above.
18 (c) The goal that any party needing alimony shall be self-supporting within a reasonable period
19 of time. Such reasonable period of time shall be one-half of the length of the marriage. The
20 length of the marriage is the period commencing upon the date of the marriage and ending
21 upon the date of separation, deducting therefrom any period(s) of physical separation during
22 the marriage. Such reasonable period of time, or duration of alimony, shall not exceed

23 twelve years except only when the supported party shall have custody (sole physical or joint
24 (or “shared”) physical) of one or more children of the marriage not then having attained the
25 age of sixteen years as of such twelfth year, in which case alimony shall continue until such
26 one or more children have attained such age.

27 (d) All alimony due for more than five years shall, beginning with the commencement of the
28 second half of such period of time of alimony and continuing each twelve month period
29 thereafter during such second half, decline by ten percent after the application of (e) below
30 and except only when either: 1) the supported party shall then have custody (sole physical or
31 joint (or “shared”) physical) of one or more children of the marriage then not having attained
32 the age of sixteen years; or 2) the court finds the supported party to be incapable, both
33 physically and mentally, of any gainful employment.

34 (e) The sole and exclusive reason or cause warranting an increase in the amount of alimony shall
35 be the percentage rise, if any, during the prior calendar year in the Consumer Product Index,
36 as published by the United States Department of Labor, such increase shall commence at the
37 beginning of the calendar year and shall equal such rise provided that the earned income of
38 the supporting party has increased during such prior calendar year by more than three times
39 such percentage increase in such Index.

40 (f) The obligation of the supporting party to pay alimony shall, without exception, cease upon
41 such party attaining retirement age, as defined in Title II, section 216, of the Social Security
42 Act (42 USC 416).

43 (g) The ability of the supporting party to pay alimony, taking into account such party’s actual
44 earned income during the prior calendar year, the average of the actual earned income during
45 the three prior calendar years, the cost to maintain the preponderance of the standard of living
46 defined in (a) above, the obligation to pay child support, and the impact on such earned
47 income should the supporting party have custody (sole physical or joint (or “shared”)
48 physical) of one or more children of the marriage.

49 (h) The unearned income generated by the marital assets owned by the supported party following
50 the divorce.

51 (i) The duration of the marriage.

52 (j) The age and health of the parties

53 (k) The extent, if any, to which the supported party contributed to the attainment by the
54 supporting party of an education, training or license.

55 (l) There shall be a rebuttable presumption of substantially decreased need for alimony if the
56 supported party is cohabiting with another adult.

57 (m)The income and assets of any adult cohabiting with the supporting party, whether or
58 not the supporting party is married to such adult, shall not be considered when
59 determining or modifying alimony.

60 (n)All alimony orders and agreements in effect as of the date hereof shall be amended by
61 the court, within eighteen months of such date, to be in substantial compliance
62 herewith excepting only that the maximum duration of alimony following such date
63 shall be the greater of: 1) three years; or 2) three years, plus the reasonable period of

64 time, as defined in (c) above, less the number of years alimony has been paid prior to
65 such date.