

HOUSE No. 03617

The Commonwealth of Massachusetts

PRESENTED BY:

Vincent A. Pedone

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 reforming alimony in the Commonwealth.

PETITION OF:

NAME: _____ | DISTRICT/ADDRESS: _____

HOUSE No. 03617

Report of the House committee on Bills in the Third Reading recommending that the Bill to reform and improve alimony (printed as Senate, No. 665), be amended by substitution of the accompanying bill (House, No. 3617). July 20, 2011.

The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven
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An Act reforming alimony in the Commonwealth.

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 1. This act shall be known as the Alimony Reform Act of 2011.
- 2 SECTION 2. Section 34 of chapter 208 of the General Laws, as appearing in the 2008 Official
3 Edition, is hereby amended by inserting after the word "other", in line 5, the following words:-
4 in accordance with sections 48 to 55, inclusive.
- 5 SECTION 3. Said section 34 of said chapter 208, as so appearing, is hereby further amended by
6 striking out the third sentence and inserting in the place thereof the following sentence:- In fixing
7 the nature and value of the property, if any, to be so assigned, the court, after hearing the
8 witnesses, if any, of each of the parties, shall consider the length of the marriage, the conduct of
9 the parties during the marriage, the age, health, station, occupation, amount and sources of
10 income, vocational skills, employability, estate, liabilities and needs of each of the parties, the

11 opportunity of each for future acquisition of capital assets and income, and the amount and
12 duration of alimony, if any, awarded under sections 48 to 55, inclusive.

13 SECTION 4. Said chapter 208 is hereby further amended by adding the following 8 sections:-

14 Section 48. As used in sections 49 to 55, inclusive, the following words shall, unless the context
15 requires otherwise, have the following meanings:-

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

19 "General term alimony", the periodic payment of support to a recipient spouse who is
20 economically dependent.

21 "Rehabilitative alimony", the periodic payment of support to a recipient spouse who is expected
22 to become economically self-sufficient by a predicted time, such as, without limitation,
23 reemployment; completion of job training; or receipt of a sum due from the payor spouse
24 pursuant to a judgment.

25 "Reimbursement alimony", the periodic or one-time payment of support to a recipient spouse
26 after a marriage of not more than 5 years and for the purpose of compensating the recipient for
27 economic or noneconomic contribution to the financial resources of the payor spouse, such as
28 enabling the payor spouse to complete an education or job training.

29 "Transitional alimony", the periodic or one-time payment of support to a recipient spouse after a
30 marriage of not more than 5 years and for the purpose of transitioning the recipient to an adjusted
31 lifestyle or location as a result of the divorce.

32 "Duration of marriage", the number of months from the date of legal marriage to the date of
33 service of a complaint or petition for divorce or separate support duly filed in a court of the
34 commonwealth or another court with jurisdiction to terminate the marriage. The court shall have
35 discretion to increase the duration of marriage where there is evidence that the parties' economic
36 marital partnership began during their cohabitation period prior to the marriage.

37 "Full retirement age", the payor's usual or ordinary retirement age for United States old-age
38 social security benefits. It shall not mean "early retirement age" if early retirement is available to
39 the payor or "maximum benefit retirement age" if additional benefits are available as a result of
40 delayed retirement.

41 Section 49. (a) General term alimony shall terminate upon the remarriage of the recipient or the
42 death of either spouse; provided, however, that the court may require the payor spouse to provide
43 life insurance or another form of reasonable security for payment of sums due to the recipient in
44 the event of the payor's death during the alimony term.

45 (b) Except upon a court finding that deviation beyond the time limits of this section are required
46 in the interests of justice, where the duration of marriage is 20 years or less, general term
47 alimony shall terminate no later than a date certain in accordance with durational limits set forth
48 below:

49 (1) If the duration of marriage is 5 years or less, general term alimony shall be no greater than
50 one-half the number of months of the marriage.

51 (2) If the duration of marriage is 10 years or less, but more than 5 years, general term alimony
52 shall be no greater than 60 per cent of the number of months of the marriage.

53 (3) If the duration of marriage is 15 years or less, but more than 10 years, general term alimony
54 shall be no greater than 70 per cent of the number of months of the marriage.

55 (4) If the duration of marriage is 20 years or less, but more than 15 years, general term alimony
56 shall be no greater than 80 per cent of the number of months of the marriage.

57 (c) The court shall have discretion to order alimony for an indefinite length of time for marriages
58 longer than 20 years.

59 (d) General term alimony shall be suspended, reduced or terminated upon the cohabitation of the
60 recipient spouse when the payor shows that the recipient has maintained a common household,
61 as defined below, with another person for a continuous period of at least 3 months.

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

65 (i) oral or written statements or representations made to third parties regarding the
66 relationship of the cohabitants;

67 (ii) the economic interdependence of the couple or economic dependence of 1 party on the
68 other;

69 (iii) the common household couple engaging in conduct and collaborative roles in furtherance
70 of their life together;

71 (iv) the benefit in the life of either or both of the common household parties from their
72 relationship;

73 (v) the community reputation of the parties as a couple; or

74 (vi) other relevant and material factors.

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

78 (e) Unless the payor and recipient agree otherwise, general term alimony may be modified in
79 duration or amount upon a material change of circumstances warranting modification.

80 Modification may be permanent, indefinite, or for a finite duration, as may be appropriate under
81 the circumstances before the court. Nothing in this section shall be construed to permit alimony
82 reinstatement after the recipient's remarriage, except by the parties' express written agreement.

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

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

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

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

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

95 Section 50. (a) Rehabilitative alimony shall terminate upon the remarriage of the recipient, or the
96 occurrence of a specific event in the future, or the death of either spouse; provided, however, that
97 the court may require the payor to provide reasonable security for payment of sums due to the
98 recipient in the event of the payor's death during the alimony term.

99 (b) The alimony term for rehabilitative alimony shall be no more than 5 years. Unless the
100 recipient has remarried, the rehabilitative alimony may be extended on a complaint for
101 modification upon a showing of compelling circumstances in the event that:

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

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

105 (3) the payor has continuing ability to pay and no undue burden.

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

108 Section 51.(a) Reimbursement alimony shall terminate upon the death of the recipient or a date
109 certain.

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

111 (c) Income guidelines set forth in subsection (b) of section 53 shall not apply to reimbursement
112 alimony.

113 Section 52. (a) Transitional alimony shall terminate upon the death of the recipient or a date
114 certain that is not longer than 3 years from the date of the parties' divorce; provided, however,
115 that the court may require the payor to provide reasonable security for payment of sums due to
116 the recipient in the event of the payor's death during the alimony term.

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

118 Section 53. (a) In determining the appropriate form of alimony and in setting the amount and
119 duration of support, a court shall consider: the length of the marriage; age of the parties; health of
120 the parties; both parties' income, employment and employability, including employability
121 through reasonable diligence and additional training, if necessary; economic and non-economic
122 contribution to the marriage; marital lifestyle; ability of each party to maintain the marital
123 lifestyle; lost economic opportunity as a result of the marriage; and such other factors as the
124 court may deem relevant and material.

125 (b) Except for reimbursement alimony or circumstances warranting deviation for other forms of
126 alimony, the amount of alimony should generally not exceed the recipient's need or 30 per cent
127 to 35 per cent of the difference between the parties' gross incomes established at the time of the
128 order being issued. Subject to subsection (c), income shall be defined as set forth in the
129 Massachusetts child support guidelines, as they may be amended from time-to-time.

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

131 (1) capital gain income and dividend and interest income which derives from assets equitably
132 divided between the parties under section 34; and

133 (2) gross income which the court has already considered for setting a child support order
134 whether pursuant to the Massachusetts child support guidelines or otherwise; provided, however,
135 that nothing in this section shall limit the court's discretion to cast a presumptive child support
136 order under the child support guidelines in terms of unallocated or undifferentiated alimony and
137 child support.

138 (d) In setting an initial alimony order, or in modifying an existing order, the court may deviate
139 from duration and amount limits for general term alimony and rehabilitative alimony upon
140 written findings that deviation is necessary. Grounds for deviation may include:

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

142 (2) tax considerations applicable to the parties;

143 (3) whether the payor spouse is providing health insurance and the cost of health insurance for
144 the recipient spouse;

145 (4) whether the payor spouse has been ordered to secure life insurance for the benefit of the
146 recipient spouse and the cost of such insurance;

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

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

152 (7) a party's inability to provide for his or her own support by reason of physical or mental
153 abuse by the payor;

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

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

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

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

163 Section 54. (a) Sections 48 to 55, inclusive, shall not be deemed a material change of
164 circumstance that warrants modification of the amount of existing alimony judgments; provided,
165 however, that existing alimony judgments that exceed the durational limits set forth in section 49
166 shall be deemed a material change of circumstance that warrant modification. Existing alimony
167 awards shall be deemed general term alimony, and shall be modified upon a complaint for
168 modification without additional material change of circumstance, unless the court finds that
169 deviation from the durational limits is warranted.

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171 (b) Under no circumstances shall sections 48 to 55, inclusive, provide a right to seek or receive
172 modification of an existing alimony judgment in which the parties have agreed that their alimony
173 judgment is not modifiable, or in which the parties have expressed their intention that their
174 agreed alimony provisions survive the judgment and therefore are not modifiable.

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

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

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

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

181 Section 55. (a) The court may require reasonable security for alimony in the event of the payor's
182 death during the alimony period. Security may include, but not be limited to, maintenance of life
183 insurance.

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

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

189 SECTION 5. Section 49 of chapter 208 of the General Laws shall be prospective, such that
190 alimony judgments entered before March 1, 2012 shall terminate only as set forth in subsection
191 (b) of said section 49.

192 SECTION 6. Any complaint for modification filed by a payor pursuant to section 54 of chapter
193 208 of the General Laws solely because the existing alimony judgment exceeds the durational
194 limits set forth in section 49 of said chapter 208, may only be filed pursuant to the following:

195 (1) Payors who were married to the alimony recipient 5 years or less, may file a modification
196 action on or after March 1, 2013.

197 (2) Payors who were married to the alimony recipient 10 years or less, but more than 5 years,
198 may file a modification action on or after March 1, 2014 .

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200 (3) Payors who were married to the alimony recipient 15 years or less, but more than 10 years,
201 may file a modification action on or after March 1, 2015.

202 (4) Payors who were married to the alimony recipient 20 years or less, but more than 15 years,
203 may file a modification action on or after September 1, 2015.

204 SECTION 7. Notwithstanding the provisions of clauses (1) to (4) of section 6 of this act, any
205 payor who is eligible for the full old-age benefit under the United States Old Age, Disability, and
206 Survivor Insurance Act, 42 U.S.C. 416, or who will become eligible for said benefit on or before
207 March 1, 2015 may file a complaint for modification on or after March 1, 2013.

208 SECTION 8. Sections 1 to 7, inclusive, shall take effect on March 1, 2012 .”