

Massachusetts Makes a Radical Change in the Alimony Law

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The Alimony Reform Bill of 2011 has hit the governor's desk and been signed. This highly anticipated bill will become law in March 2012. Many have discussed the alimony bill online, in blogs, at the water cooler and certainly in the courthouses, but what exactly will the new law accomplish?

DURATION

One of the most important features of the new law is that the Massachusetts Courts will have the ability to limit the duration of alimony. Historically, the Judges of the Probate and Family Court had no ability to limit how long one spouse paid alimony to the other, regardless of the length of the marriage. The Bill provides the following durational limits:

- If the marriage lasted less than 5 years, the paying spouse would pay alimony for 2.5 years (or 50% of the months married) after the divorce;
- If the marriage is 10 years or less, but lasted more than 5 years, the paying spouse would pay alimony for sixty (60%) percent of the months married. To illustrate: The court could only order alimony be paid for 6 years after a 10 year marriage.
- If the marriage is 15 years or less, but lasted more than 10 years, the paying spouse would pay alimony for seventy (70%) percent of the months married. To illustrate: The court could only order alimony be paid for 10.5 years after a 15 year marriage.
- If the marriage is 20 years or less, but lasted more than 15 years, the paying spouse would pay alimony for eighty

(80%) percent of the months married. To illustrate: The court could only order alimony be paid for 16 years after a 20 year marriage.

- If the marriage lasted more than 20 years, the duration of the alimony would be at the Court's discretion. It is likely that these long term marriages would provide for at least 20 years of alimony, if not lifetime alimony, with the condition that there could be a termination when the payor reaches retirement age.

COHABITATION

The law finally recognizes, as many other states have already done, that cohabitation should be a factor in determining the amount of alimony provided, as well as how long it should last. Under the new law, if a judge determines that the recipient spouse is cohabitating with another adult, the judge has the authority to suspend the general term alimony during the cohabitation period, reduce the amount of alimony being paid, or terminate alimony altogether.

RETIREMENT

The law provides that upon the paying spouse reaching full retirement age, as determined by the United States Old Age, Survivors, and Disability Insurance program, which is currently 66 years old, then alimony shall terminate. This applies regardless of whether or not the paying spouse has the ability to continue working.

DETERMINING AMOUNT OF ALIMONY AND WHAT INCOME IS INCLUDED

The alimony reform law provides that the alimony recipient should not receive more than 30%-35% of the difference between the parties' income. It also provides for income attribution if there is an underemployed spouse. The law also provides that the paying spouse's second spouse's income and assets will not be considered in a modification

action. If the paying spouse pays child support, then the income considered to establish child support will be excluded from the income used to calculate alimony. A paying spouse's second job or overtime will not be considered in a modification if the second job or the overtime occurred after the initial order was set.

TYPES OF ALIMONY

The Bill also provides for four different types of alimony:

- general alimony, which can now be limited in time; (see Duration paragraph)
- rehabilitative alimony - which will not last for more than 5 years and can be modified during those 5 years;
- reimbursement alimony, which cannot be modified; and
- transitional alimony, which may not be modified and will only last 3 years.

WHEN TO MODIFY?

Come March 2012, the date the law is effective, it is anticipated that many people who are currently paying alimony will want relief from that obligation. Anticipating this, the Bill's authors incorporated a schedule of when a person with an alimony obligation can bring the matter back before the Court:

- The paying spouse who was married 5 years or less may file a modification action on or after March 1, 2013;
- The paying spouse who was married 10 years or less, but more than 5 years, may file a modification action on or after March 1, 2014;
- The paying spouse who was married 15 years or less, but more than 10 years, may file a modification action on or after March 1, 2015;

- d. The paying spouse who was married 20 years or less, but more than 15 years, may file a modification action on or after September 1, 2015;
- e. However, if the paying spouse reaches full retirement age on or before March 1, 2015, he or she may file a complaint for modification on or after March 13, 2013.

These are just some of the key points of the new law. There are nuances and details, however, which should be discussed carefully with your divorce attorney. At Burns & Levinson, our attorneys can assist both paying spouses and recipient spouses in navigating this new law and the changes it will bring.

For questions regarding this Client Update, please contact Francine Gardikas at 617.345.3261 / fgardikas@burnslev.com.