HOUSE DOCKET, NO. 3145 FILED ON: 1/21/2011

HOUSE . . . . . No. 2852

The Commonwealth of Massachusetts

PRESENTED BY:

John H. Rogers

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:

An act to reform and improve alimony laws in Massachusetts.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
John H. Rogers	*12th Norfolk*
Bruce J. Ayers	*1st Norfolk*
Walter F. Timilty	*7th Norfolk*
Thomas M. Stanley	*9th Middlesex*
Denise Andrews	*2nd Franklin*
John P. Fresolo	*16th Worcester*
Kate Hogan	*3rd Middlesex*

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HOUSE . . . . . No. 2852

By Mr. Rogers of Norwood, a petition (accompanied by bill, House, No. 2852) of John H. Rogers and others for legislation to reform and improve alimony laws. The Judiciary.

The Commonwealth of Massachusetts

An act to reform and improve alimony laws in Massachusetts.

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.

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

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

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

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

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

40 (g) “Full retirement age” shall mean the payor’s usual or ordinary retirement age for
41 United States old-age social security benefits. It shall not mean “early retirement age” if early
42 retirement is available to the payor or “maximum benefit retirement age” if additional benefits
43 are available as a result of delayed retirement.

44 2. General Term Alimony.

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

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

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

55 (2) If the Duration of Marriage is ten years or less, but more than five years, General
56 Term Alimony shall be no greater than to sixty percent of the number of months of the marriage.

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

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

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

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

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

71 (i) Oral or written statements or representations made to third parties regarding the
72 relationship of the cohabitants;

73 (ii) The economic interdependence of the couple or economic dependence of one party on
74 the other;

75 (iii) The common household couple engaging in conduct and collaborative roles in
76 furtherance of their life together;

77 (iv) The benefit in the life of either or both of the common household parties from their
78 relationship;

79 (v) The community reputation of the parties as a couple;

80 (vi) Other relevant and material factors.

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

84 (e) Unless the payor and recipient agree otherwise, General Term Alimony may be
85 modified in duration or amount upon a material change of circumstances warranting
86 modification. Modification may be permanent, indefinite, or for a finite duration, as may be

87 appropriate under the circumstances before the court. Nothing in this provision shall be
88 construed to permit alimony reinstatement after the recipient's remarriage, except by the parties'
89 express written agreement.

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

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

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

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

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

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

106 3. Rehabilitative Alimony

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

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

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

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

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

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

120 4. Reimbursement Alimony

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

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

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

126 5. Transitional Alimony

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

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

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

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

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

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

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

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

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

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

159 (2) Tax considerations applicable to the parties;

160 (3) Whether the payor spouse is providing health insurance and the cost of heath
161 insurance for the recipient spouse;

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

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

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

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

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

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

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

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

181 7. Modifications

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

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

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

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

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

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

200 (4) Payors who were married to the alimony recipient twenty (20) years or less but more
201 than fifteen (15) years may file a modification action three and one-half (3 ½) years after the
202 effective date of the remaining provisions of this law.

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

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

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

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

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

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

218 8. Security

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

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

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

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