HOUSE . . . . . No. 3617

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

In the Year Two Thousand Eleven

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:

SECTION 1. 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 after the word "other", in line 5, the following words:- in accordance with sections 48 to 55, inclusive.

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 sections 48 to 55, inclusive.

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

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

"Alimony", 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

69 (ii) the economic interdependence of the couple or economic dependence of 1 party on
70 the other;

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

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

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

76 (vi) other relevant and material factors.

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

80 (e) Unless the payor and recipient agree otherwise, general term alimony may be
81 modified in duration or amount upon a material change of circumstances warranting
82 modification. Modification may be permanent, indefinite, or for a finite duration, as may be
83 appropriate under the circumstances before the court. Nothing in this section shall be construed
84 to permit alimony reinstatement after the recipient's remarriage, except by the parties' express
85 written agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

148 (2) tax considerations applicable to the parties;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

213 SECTION 7. Notwithstanding the provisions of clauses (1) to (4) of section 6 of this act,
214 any payor who is eligible for the full old-age benefit under the United States Old Age, Disability,

215 and Survivor Insurance Act, 42 U.S.C. 416, or who will become eligible for said benefit on or
216 before March 1, 2015 may file a complaint for modification on or after March 1, 2013.

217 SECTION 8. Sections 1 to 7, inclusive, shall take effect on March 1, 2012 ."