

HOUSE No. 1418

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to alimony..

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

1 Chapter 208 of the General Laws, as appearing in the 2006 official edition, is hereby
2 amended by striking out section 34 and inserting in place thereof the following section:—

3 Section 34. Upon divorce or upon a complaint in an action brought at any time after a
4 divorce, whether such a divorce has been adjudged in this commonwealth or another jurisdiction,
5 the court of the commonwealth, provided there is personal jurisdiction over both parties, may
6 make a judgment for either of the parties to pay alimony to the other. In addition to or in lieu of a
7 judgment to pay alimony, the court may assign to either husband or wife any part of the estate of
8 the other, including but not limited to, all vested and nonvested benefits, rights and funds accrued
9 during the marriage and which shall include, but not be limited to, retirement benefits, military
10 retirement benefits if qualified under and to the extent provided by federal law, pension, profit-
11 sharing, annuity, deferred compensation and insurance. The court shall neither assign more than
12 fifty percent of the marital estate to either spouse, nor assign more than fifty percent of one
13 spouse’s estate to the other spouse. In considering the payment of alimony, the court shall
14 consider the ability of each spouse to earn a living and shall use this standard to decide the

15 amount and duration of any payments, if any, to be awarded to either party. In awarding
16 alimony, the court shall also consider who files for divorce and shall not endeavor to reward the
17 party filing for divorce and to punish the party not filing or not desiring a divorce. The court
18 shall consider the educational level of each spouse and the income that each spouse would have
19 normally earned had they not been married. The court may also consider that each person has
20 certain inherent capabilities and skills and that they have a human and constitutional right to own
21 and benefit from those skills and capabilities. The court shall not be allowed to award earnings
22 from one spouse to the other in an effort to create or sustain a lifestyle that might have existed in
23 marriage, or to redistribute income so as to create an unfair situation where one spouse has a gain
24 and other spouse has a loss. In no case shall either spouse lose certain civil and constitutional
25 rights that they have had in marriage, nor should either party lose rights that they have as a free
26 American citizen. The right to live life as a free American citizen including the right to change
27 jobs, retire, change careers or to not work at all shall be maintained as if the parties were still
28 married. In this case, the party deciding not to work, will also lose income and shall not be
29 advantaged as compared to the other party. The court may consider transitional alimony
30 payments of up to two years to allow for an orderly sale of property and assets and to allow for a
31 reasonable life transition period. In no case shall the court be allowed to financially punish one
32 party over the other. In the case of the award of transitional alimony, if any, the court shall not
33 make an award that causes an unfair distribution from one party to the other and in no case shall
34 the higher earning spouse have less net income than the lower earning spouse. When
35 considering this transitional alimony, if any, the court must consider the impact of income
36 taxes, medicare payments, social security payments, health care insurance deductions and any

- 37 other legally required payments that are deducted from income that serve to reduce the amount
- 38 of income available to either party to spend.