SENATE DOCKET, NO. 107 FILED ON: 1/18/2011

SENATE . . . . . No. 665

The Commonwealth of Massachusetts

PRESENTED BY:

Gale D. Candaras

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 adoption of the accompanying bill:

An Act to reform and improve alimony.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Gale D. Candaras	
Steven M. Walsh	*11th Essex*
John V. Fernandes	*10th Worcester*
Bruce E. Tarr	
Michael J. Rodrigues	
Marc T. Lombardo	*22nd Middlesex*
Frank I. Smizik	*15th Norfolk*
Geraldo Alicea	*6th Worcester*
Lori A. Ehrlich	*8th Essex*
Elizabeth A. Poirier	*14th Bristol*
Angelo J. Puppolo, Jr.	*12th Hampden*
James E. Timilty	
Cleon H. Turner	*1st Barnstable*
F. Jay Barrows	*1st Bristol*
James J. Dwyer	*30th Middlesex*
Alice K. Wolf	*25th Middlesex*
Bradford Hill	*4th Essex*
Jason M. Lewis	*31st Middlesex*

Dennis A. Rosa	*4th Worcester*
David M. Torrisi	*14th Essex*
Brian A. Joyce	*Norfolk, Bristol, and Plymouth*
Linda Campbell	*15th Essex*
Paul Adams	*17th Essex*
James Arciero	*2nd Middlesex*
Brian M. Ashe	*2nd Hampden*
Bruce J. Ayers	*1st Norfolk*
Steven A. Baddour	
Ruth B. Balser	*12th Middlesex*
Carlo Basile	*1st Suffolk*
Richard Bastien	*2nd Worcester*
Matthew A. Beaton	*11th Worcester*
John J. Binienda	*17th Worcester*
Paul Brodeur	*32nd Middlesex*
William N. Brownsberger	
Thomas J. Calter	*12th Plymouth*
Stephen R. Canessa	*12th Bristol*
James M. Cantwell	*4th Plymouth*
Gailanne M. Cariddi	*1st Berkshire*
Harriette L. Chandler	
Sonia Chang-Diaz	
Katherine M. Clark	*Middlesex and Essex*
Nick Collins	*4th Suffolk*
Thomas P. Conroy	*13th Middlesex*
Edward F. Coppinger	*10th Suffolk*
Michael A. Costello	*1st Essex*
Mark J. Cusack	*5th Norfolk*
Viriato Manuel deMacedo	*1st Plymouth*
Angelo L. D'Emilia	*8th Plymouth*
Sal N. DiDomenico	*Middlesex, Suffolk, and Essex*
Geoff Diehl	*7th Plymouth*
Stephen L. DiNatale	*3rd Worcester*
Kenneth J. Donnelly	
Eileen M. Donoghue	
Carolyn C. Dykema	*8th Middlesex*
James B. Eldridge	
Christopher G. Fallon	*33rd Middlesex*
Susan C. Fargo	

Ryan C. Fattman	*18th Worcester*
Robert F. Fennell	*10th Essex*
Kimberly N. Ferguson	*1st Worcester*
Ann-Margaret Ferrante	*5th Essex*
Barry R. Finegold	
Michael J. Finn	*6th Hampden*
Jennifer L. Flanagan	
Linda Dorcena Forry	*12th Suffolk*
John P. Fresolo	*16th Worcester*
Sean Garballey	*23rd Middlesex*
Colleen M. Garry	*36th Middlesex*
Anne M. Gobi	*5th Worcester*
Thomas A. Golden, Jr.	*16th Middlesex*
Patricia A. Haddad	*5th Bristol*
Sheila C. Harrington	*1st Middlesex*
Jonathan Hecht	*29th Middlesex*
Robert L. Hedlund	
Kate Hogan	*3rd Middlesex*
Steven S. Howitt	*4th Bristol*
Donald F. Humason, Jr.	*4th Hampden*
Randy Hunt	*5th Barnstable*
Patricia D. Jehlen	
Bradley H. Jones, Jr.	*20th Middlesex*
Louis L. Kafka	*8th Norfolk*
Michael F. Kane	*5th Hampden*
Jay R. Kaufman	*15th Middlesex*
John F. Keenan	
John D. Keenan	*7th Essex*
Thomas P. Kennedy	
Kay Khan	*11th Middlesex*
Michael R. Knapik	
Peter V. Kocot	*1st Hampshire*
Stephen Kulik	*1st Franklin*
Kevin J. Kuros	*8th Worcester*
Steven L. Levy	*4th Middlesex*
David Paul Linsky	*5th Middlesex*
James J. Lyons, Jr.	*18th Essex*
Timothy R. Madden	*Barnstable, Dukes and Nantucket*
Thomas M. McGee	*Third Essex and Middlesex*

Paul McMurtry	*11th Norfolk*
Mark C. Montigny	
Richard T. Moore	
Kevin J. Murphy	*18th Middlesex*
David M. Nangle	*17th Middlesex*
Rhonda Nyman	*5th Plymouth*
Shaunna O'Connell	*3rd Bristol*
James J. O'Day	*14th Worcester*
Alice Hanlon Peisch	*14th Norfolk*
George N. Peterson, Jr.	*9th Worcester*
Anthony W. Petruccelli	
Denise Provost	*27th Middlesex*
John H. Rogers	*12th Norfolk*
Richard J. Ross	*Norfolk, Bristol, and Middlesex*
Michael F. Rush	*Suffolk and Norfolk*
Jeffrey Sánchez	*15th Suffolk*
Tom Sannicandro	*7th Middlesex*
Paul A. Schmid, III	*8th Bristol*
John W. Scibak	*2nd Hampshire*
Stephen Stat Smith	*28th Middlesex*
Todd M. Smola	*1st Hampden*
Joyce A. Spiliotis	*12th Essex*
Karen E. Spilka	
Thomas M. Stanley	*9th Middlesex*
William M. Straus	*10th Bristol*
David B. Sullivan	*6th Bristol*
Benjamin Swan	*11th Hampden*
Nicholas A. Boldyga	*3rd Hampden*
Walter F. Timilty	*7th Norfolk*
Steven A. Tolman	
Timothy J. Toomey, Jr.	*26th Middlesex*
James E. Vallee	*10th Norfolk*
David T. Vieira	*3rd Barnstable*
Martha M. Walz	*8th Suffolk*
Daniel K. Webster	*6th Plymouth*
James T. Welch	
Daniel B. Winslow	*9th Norfolk*

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SENATE . . . . . No. 665

By Ms. Candaras, petition (accompanied by bill, Senate, No. 665) of Gale D. Candaras, Steven M. Walsh, John V. Fernandes, Bruce E. Tarr and other members of the General Court for legislation to reform and improve alimony [Joint Committee on the Judiciary].

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to reform and improve alimony.

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.

13 SECTION 4. Said chapter 208 is hereby further amended by inserting after section 47
14 the following section:-

15 Section 48. 1. Definitions:

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

19 (b) "General Term Alimony" is the periodic payment of support to a recipient
20 spouse who is economically dependent.

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

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

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

32 (f) "Duration of Marriage" is the number of months from the date of legal
33 marriage to the date of service of a complaint or petition for divorce or separate support duly

34 filed in a court of the Commonwealth of Massachusetts or another court with jurisdiction to
35 terminate the marriage. The court shall have discretion to increase the duration of marriage
36 where there is evidence that the parties' economic marital partnership began during their
37 cohabitation period prior to the marriage.

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

42 2. General Term Alimony.

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

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

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

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

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

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

62 (c) The court shall have discretion to order alimony for an indefinite length of
63 time for 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
69 share a primary residence together with or without others. In determining whether the recipient is
70 maintaining a common household, the court may consider any of the following factors:

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

73 (ii) The economic interdependence of the couple or economic

74 dependence of one party on the other;

75 (iii) The common household couple engaging in conduct and

76 collaborative roles in furtherance of their life together;

77 (iv) The benefit in the life of either or both of the common

78 household parties from their 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

82 provision may be reinstated upon termination of the recipients common household relationship;

83 but, if reinstated it shall not extend beyond the termination date of the original order.

84 (e) Unless the payor and recipient agree otherwise, General Term Alimony may

85 be 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

91 attaining the full retirement age when he or she is eligible for the old-age retirement benefit

92 under the United States Old-Age, Disability, and Survivors Insurance Act, 42 U.S.C. 416, as

93 amended and as may be amended in the future. The payor's ability to work beyond said age shall
94 not be a reason to extend alimony, provided that:

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

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

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

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

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

107 3. Rehabilitative Alimony

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

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

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

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

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

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

123 4. Reimbursement Alimony

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

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

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

129 5. Transitional Alimony

130 (a) Transitional Alimony shall terminate upon the death of the recipient or a date
131 certain that is not longer than three years from the date of the parties' divorce, provided that the

132 court may require the payor to provide reasonable security for payment of sums due to the
133 recipient in the event of the payor's death during the alimony term

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

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

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

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

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

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

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

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

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

163 (2) Tax considerations applicable to the parties;

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

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

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

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

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

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

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

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

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

186 7. Modifications

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

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

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

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

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

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

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

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

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

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

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

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

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

226 8. Security

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

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

234 (c) Orders to maintain security shall be modifiable upon a material change of

235 circumstance.

236 SECTION 5. Sections 1 through 4, inclusive, shall take effect 90 days from the effective

237 date of this act.