S T A T E O F N E W Y O R K

S. 7740 A. 10984

S E N A T E - A S S E M B L Y

May 5, 2010

IN SENATE -- Introduced by Sen. HASSELL-THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

IN ASSEMBLY -- Introduced by M. of A. PAULIN -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law, in relation to interim spousal support and post-marital income obligations; and to repeal certain provisions of such law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 6 of part B of section 236 of the domestic relations law is REPEALED and a new subdivision 6 is added to read as follows:

6. INTERIM SPOUSAL SUPPORT AND POST-MARITAL INCOME OBLIGATION. A. EXCEPT WHERE THE PARTIES HAVE ENTERED INTO AN AGREEMENT PURSUANT TO SUBDIVISION THREE OF THIS PART PROVIDING FOR ALIMONY, MAINTENANCE OR POST-MARITAL INCOME, IN ANY MATRIMONIAL ACTION THE COURT MAY ORDER INTERIM SPOUSAL SUPPORT IN SUCH AMOUNT AS JUSTICE REQUIRES, HAVING REGARD FOR THE STANDARD OF LIVING OF THE PARTIES ESTABLISHED DURING THE MARRIAGE, WHETHER THE PARTY IN WHOSE FAVOR INTERIM SPOUSAL SUPPORT IS GRANTED LACKS SUFFICIENT PROPERTY AND INCOME TO PROVIDE FOR HIS OR HER REASONABLE NEEDS AND WHETHER THE OTHER PARTY HAS SUFFICIENT PROPERTY OR INCOME TO PROVIDE FOR THE REASONABLE NEEDS OF THE OTHER AND THE CIRCUMSTANCES OF THE CASE AND OF THE RESPECTIVE PARTIES. SUCH ORDER SHALL BE EFFECTIVE AS OF THE DATE OF THE APPLICATION THEREFOR, AND ANY RETROACTIVE AMOUNT OF INTERIM SPOUSAL SUPPORT DUE SHALL BE PAID IN ONE SUM OR PERIODIC SUMS, AS THE COURT SHALL DIRECT.

B. (1) EXCEPT WHERE THE PARTIES HAVE ENTERED INTO AN AGREEMENT PURSUANT TO SUBDIVISION THREE OF THIS PART PROVIDING FOR ALIMONY, MAINTENANCE OR POST-MARITAL INCOME, THE COURT SHALL MAKE ITS AWARD FOR POST-MARITAL INCOME PURSUANT TO THE PROVISIONS OF THIS PARAGRAPH.

(2) FOR PURPOSES OF THIS SUBDIVISION, THE FOLLOWING DEFINITIONS SHALL BE USED:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(A) "POST-MARITAL INCOME OBLIGATION" SHALL MEAN THE SUM DERIVED BY ADDING THE AMOUNT DETERMINED BY THE APPLICATION OF SUBPARAGRAPH THREE OF THIS PARAGRAPH FOR THE DURATIONAL PERIOD DETERMINED BY THE APPLICATION OF SUBPARAGRAPH FOUR OF THIS PARAGRAPH.

(B) "POST-MARITAL INCOME" SHALL MEAN A SUM TO BE PAID PURSUANT TO A FINAL COURT ORDER OR DECREE DISSOLVING OR ANNULLING A MARRIAGE, DECLARING THE NULLITY OF A MARRIAGE, OR A VALID AGREEMENT, BETWEEN THE PARTIES, BY ONE PARTY TO THE OTHER.

(C) "INCOME" SHALL MEAN:

(I) ALL FORMS OF INCOME AS DEFINED IN THE CHILD SUPPORT STANDARDS ACT AND CODIFIED IN SECTION TWO HUNDRED FORTY OF THIS ARTICLE AND SECTION FOUR HUNDRED THIRTEEN OF THE FAMILY COURT ACT;

(II) INCOME FROM INCOME PRODUCING PROPERTY DISTRIBUTED OR TO BE DISTRIBUTED PURSUANT TO SUBDIVISION FIVE OF THIS PART.

(D) "SELF-SUPPORT RESERVE" SHALL MEAN THE SELF-SUPPORT RESERVE AS IS DEFINED IN THE CHILD SUPPORT STANDARDS ACT AND CODIFIED IN SECTION TWO HUNDRED FORTY OF THIS ARTICLE AND SECTION FOUR HUNDRED THIRTEEN OF THE FAMILY COURT ACT.

(E) "PAYOR" SHALL MEAN THE SPOUSE WITH THE HIGHER INCOME.

(F) "PAYEE" SHALL MEAN THE SPOUSE WITH THE LOWER INCOME.

(G) "LENGTH OF MARRIAGE" SHALL MEAN THE PERIOD FROM THE DATE OF MARRIAGE UNTIL THE DATE OF COMMENCEMENT OF ACTION.

(3) THE AMOUNT OF THE POST-MARITAL INCOME OBLIGATION FOR ALL PARTIES SHALL BE DETERMINED IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBPARAGRAPH:

(A) WHERE THE PAYOR'S INCOME IS UP TO AND INCLUDING FIVE HUNDRED THOUSAND DOLLARS:

(I) THE COURT SHALL DETERMINE THE INCOME OF EACH PARTY.

(II) THE COURT SHALL SUBTRACT TWENTY PERCENT OF THE INCOME OF THE PAYEE FROM THIRTY PERCENT OF THE INCOME UP TO FIVE HUNDRED THOUSAND DOLLARS OF THE PAYOR.

(III) THE COURT SHALL THEN MULTIPLY THE SUM OF THE PAYOR'S INCOME UP TO AND INCLUDING FIVE HUNDRED THOUSAND DOLLARS AND ALL OF THE PAYEE'S INCOME BY FORTY PERCENT.

(IV) THE COURT SHALL SUBTRACT THE INCOME OF THE PAYEE FROM THE AMOUNT DERIVED FROM SUBCLAUSE (III) OF THIS CLAUSE.

(V) THE AMOUNT OF THE POST-MARITAL INCOME OBLIGATION SHALL BE THE LOWER OF THE AMOUNTS DETERMINED BY SUBCLAUSES (II) AND (IV) OF THIS CLAUSE; IF THE AMOUNT DETERMINED BY SUBCLAUSE (IV) OF THIS CLAUSE IS LESS THAN OR EQUAL TO ZERO, THE AMOUNT SHALL BE ZERO DOLLARS.

(B) WHERE THE INCOME OF THE PAYOR EXCEEDS FIVE HUNDRED THOUSAND DOLLARS:

(I) THE COURT SHALL DETERMINE THE AMOUNT OF POST-MARITAL INCOME OBLIGATION FOR THAT PORTION OF THE PAYOR'S INCOME THAT IS UP TO AND INCLUDING FIVE HUNDRED THOUSAND DOLLARS ACCORDING TO CLAUSE (A) OF THIS SUBPARAGRAPH, AND FOR THE PAYOR'S INCOME IN EXCESS OF FIVE HUNDRED THOUSAND DOLLARS, THE COURT SHALL DETERMINE ANY ADDITIONAL POST-MARITAL INCOME OBLIGATION THROUGH CONSIDERATION OF THE FOLLOWING FACTORS:

(A) THE DURATION OF THE MARRIAGE;

(B) THE EXTREME DIFFERENCES IN THE INCOMES OF THE PARTIES;

(C) THE STANDARD OF LIVING OF THE PARTIES ESTABLISHED DURING THE MARRIAGE;

(D) THE AGE AND HEALTH OF THE PARTIES;

(E) THE PRESENT AND FUTURE EARNING CAPACITY OF THE PARTIES;

(F) THE NEED OF ONE PARTY TO INCUR EDUCATION OR TRAINING EXPENSES;

(G) THE WASTEFUL DISSIPATION OF MARITAL PROPERTY;

(H) THE TRANSFER OR ENCUMBRANCE MADE IN CONTEMPLATION OF A MATRIMONIAL ACTION WITHOUT FAIR CONSIDERATION;

(I) THE EXISTENCE AND DURATION OF A PRE-MARITAL JOINT HOUSEHOLD OR A PRE-DIVORCE SEPARATE HOUSEHOLD;

(J) ACTS BY ONE PARTY AGAINST ANOTHER THAT CONSTITUTE EGREGIOUS FAULT LIKELY TO SHOCK THE CONSCIENCE;

(K) THE AVAILABILITY AND COST OF MEDICAL INSURANCE FOR THE PARTIES;

(L) THE CARE OF THE CHILDREN OR STEPCHILDREN, DISABLED ADULT CHILDREN OR STEPCHILDREN, ELDERLY PARENTS OR IN-LAWS THAT HAS INHIBITED OR CONTINUES TO INHIBIT A PARTY'S EARNING CAPACITY;

(M) THE INABILITY OF ONE PARTY TO OBTAIN MEANINGFUL EMPLOYMENT DUE TO AGE OR ABSENCE FROM THE WORKFORCE;

(N) THE NEED TO PAY FOR EXCEPTIONAL ADDITIONAL EXPENSES FOR THE CHILD/CHILDREN, INCLUDING BUT NOT LIMITED TO, SCHOOLING, DAY CARE AND MEDICAL TREATMENT;

(O) THE TAX CONSEQUENCES TO EACH PARTY;

(P) THE EQUITABLE DISTRIBUTION OF THE MARITAL PROPERTY;

(Q) THE REDUCED OR LOST LIFETIME EARNING CAPACITY OF THE PARTY SEEKING POST-MARITAL INCOME AS A RESULT OF HAVING FOREGONE OR DELAYED EDUCATION, TRAINING, EMPLOYMENT OR CAREER OPPORTUNITIES DURING THE MARRIAGE;

(R) THE CONTRIBUTIONS AND SERVICES OF THE PARTY SEEKING POST-MARITAL INCOME AS A SPOUSE, PARENT, WAGE EARNER AND HOMEMAKER AND TO THE CAREER OR CAREER POTENTIAL OF THE OTHER PARTY;

(S) ANY OTHER FACTOR WHICH THE COURT SHALL EXPRESSLY FIND TO BE JUST AND PROPER.

(II) IN ANY DECISION MADE PURSUANT TO THIS CLAUSE, THE COURT SHALL SET FORTH THE FACTORS IT CONSIDERED AND THE REASONS FOR ITS DECISION. SUCH WRITTEN ORDER MAY NOT BE WAIVED BY EITHER PARTY OR COUNSEL.

(C) NOTWITHSTANDING THE PROVISIONS OF THIS SUBPARAGRAPH, AND WHERE THE ANNUAL AMOUNT OF THE POST-MARITAL INCOME OBLIGATION WOULD REDUCE THE PAYOR'S INCOME BELOW THE SELF-SUPPORT RESERVE FOR A SINGLE PERSON, THE PRESUMPTIVE AMOUNT OF POST-MARITAL INCOME SHALL BE THE DIFFERENCE BETWEEN THE PAYOR'S INCOME AND THE SELF-SUPPORT RESERVE. IF THE PAYOR'S INCOME IS BELOW THE SELF-SUPPORT RESERVE, THERE IS A REBUTTABLE PRESUMPTION THAT NO POST-MARITAL INCOME IS AWARDED.

(D) THE AMOUNT OF FIVE HUNDRED THOUSAND DOLLARS MAY INCREASE OR DECREASE ON MARCH FIRST OF EACH YEAR BY ANY CHANGE IN THE COST OF LIVING AS DEFINED IN THE ANNUAL CONSUMER PRICE INDEX-ALL URBAN CONSUMERS, NEW YORK, NEW YORK-NORTHEASTERN NEW JERSEY, AS PUBLISHED BY THE BUREAU OF LABOR STATISTICS OF THE U.S. DEPARTMENT OF LABOR.

(4) THE DURATION OF THE POST-MARITAL INCOME OBLIGATION SHALL BE DETERMINED AS FOLLOWS:

(A) THE COURT SHALL DETERMINE THE DURATION OF THE AWARD OF POST-MARITAL INCOME IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:

LENGTH OF THE MARRIAGE	% OF THE LENGTH OF THE MARRIAGE FOR WHICH POST-MARITAL INCOME WILL BE PAYABLE
0 UP TO AND INCLUDING 5 YEARS	30%
MORE THAN 5, UP TO AND INCLUDING 7.5 YEARS	40%
MORE THAN 7.5, UP TO AND INCLUDING 10 YEARS	50%
MORE THAN 10, UP TO AND INCLUDING 12.5 YEARS	60%
MORE THAN 12.5, UP TO AND INCLUDING 15 YEARS	70%

MORE THAN 15, UP TO AND INCLUDING 17.5 YEARS	80%
MORE THAN 17.5, UP TO AND INCLUDING 20 YEARS	90%
MORE THAN 20, UP TO AND INCLUDING 25 YEARS	100%
MORE THAN 25 YEARS	PERMANENT

(B) NOTWITHSTANDING THE PROVISIONS OF CLAUSE (A) OF THIS SUBPARAGRAPH, THE POST-MARITAL INCOME OBLIGATION SHALL TERMINATE UPON THE DEATH OF EITHER PARTY.

(5) (A) THE COURT SHALL ORDER THE POST-MARITAL INCOME OBLIGATION IN ACCORDANCE WITH SUBPARAGRAPHS THREE AND FOUR OF THIS PARAGRAPH, UNLESS THE COURT FINDS THAT THE POST-MARITAL INCOME OBLIGATION IS UNJUST OR INAPPROPRIATE AND ADJUSTS THE POST-MARITAL INCOME ACCORDINGLY BASED UPON CONSIDERATION OF THE FOLLOWING FACTORS:

(I) THE STANDARD OF LIVING OF THE PARTIES ESTABLISHED DURING THE MARRIAGE;

(II) THE AGE AND HEALTH OF THE PARTIES;

(III) THE PRESENT AND FUTURE EARNING CAPACITY OF THE PARTIES;

(IV) THE NEED OF ONE PARTY TO INCUR EDUCATION OR TRAINING EXPENSES;

(V) THE WASTEFUL DISSIPATION OF MARITAL PROPERTY;

(VI) THE TRANSFER OR ENCUMBRANCE MADE IN CONTEMPLATION OF A MATRIMONIAL ACTION WITHOUT FAIR CONSIDERATION;

(VII) THE EXISTENCE AND DURATION OF A PRE-MARITAL JOINT HOUSEHOLD OR A PRE-DIVORCE SEPARATE HOUSEHOLD;

(VIII) ACTS BY ONE PARTY AGAINST ANOTHER THAT CONSTITUTE EGREGIOUS FAULT LIKELY TO SHOCK THE CONSCIENCE;

(IX) THE AVAILABILITY AND COST OF MEDICAL INSURANCE FOR THE PARTIES;

(X) THE CARE OF THE CHILDREN OR STEPCHILDREN, DISABLED ADULT CHILDREN OR STEPCHILDREN, ELDERLY PARENTS OR IN-LAWS THAT HAS INHIBITED OR CONTINUES TO INHIBIT A PARTY'S EARNING CAPACITY;

(XII) THE INABILITY OF ONE PARTY TO OBTAIN MEANINGFUL EMPLOYMENT DUE TO AGE OR ABSENCE FROM THE WORKFORCE;

(XIII) THE NEED TO PAY FOR EXCEPTIONAL ADDITIONAL EXPENSES FOR THE CHILD/CHILDREN, INCLUDING BUT NOT LIMITED TO, SCHOOLING, DAY CARE AND MEDICAL TREATMENT;

(XIV) THE TAX CONSEQUENCES TO EACH PARTY;

(XV) THE EQUITABLE DISTRIBUTION OF THE MARITAL PROPERTY;

(XVI) THE REDUCED OR LOST LIFETIME EARNING CAPACITY OF THE PARTY SEEKING POST-MARITAL INCOME AS A RESULT OF HAVING FOREGONE OR DELAYED EDUCATION, TRAINING, EMPLOYMENT OR CAREER OPPORTUNITIES DURING THE MARRIAGE;

(XVII) THE CONTRIBUTIONS AND SERVICES OF THE PARTY SEEKING POST-MARITAL INCOME AS A SPOUSE, PARENT, WAGE EARNER AND HOMEMAKER AND TO THE CAREER OR CAREER POTENTIAL OF THE OTHER PARTY;

(XVIII) ANY OTHER FACTOR WHICH THE COURT SHALL EXPRESSLY FIND TO BE JUST AND PROPER.

(B) WHERE THE COURT FINDS THAT THE POST-MARITAL INCOME OBLIGATION IS UNJUST OR INAPPROPRIATE AND THE COURT ADJUSTS THE POST-MARITAL INCOME OBLIGATION PURSUANT TO THIS SUBDIVISION, THE COURT SHALL SET FORTH, IN A WRITTEN ORDER, THE AMOUNT OF THE UNADJUSTED POST-MARITAL INCOME OBLIGATION, THE FACTORS IT CONSIDERED, AND THE REASONS THAT THE COURT ADJUSTED THE POST-MARITAL INCOME OBLIGATION. SUCH WRITTEN ORDER SHALL NOT BE WAIVED BY EITHER PARTY OR COUNSEL.

(C) WHERE EITHER OR BOTH PARTIES ARE UNREPRESENTED, THE COURT SHALL NOT ENTER A POST-MARITAL INCOME OBLIGATION ORDER OR JUDGMENT UNLESS THE

UNREPRESENTED PARTY OR PARTIES HAVE BEEN INFORMED OF THE PRESUMPTIVE AMOUNT OF SUCH POST-MARITAL INCOME OBLIGATION.

(6) A VALIDLY EXECUTED AGREEMENT OR STIPULATION VOLUNTARILY ENTERED INTO BETWEEN THE PARTIES AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION PRESENTED TO THE COURT FOR INCORPORATION IN AN ORDER OR JUDGMENT SHALL INCLUDE A PROVISION STATING THAT THE PARTIES HAVE BEEN ADVISED OF THE PROVISIONS OF THIS SUBDIVISION, AND THAT THE POST-MARITAL INCOME PROVIDED FOR THEREIN WOULD PRESUMPTIVELY RESULT IN THE CORRECT AMOUNT OF POST-MARITAL INCOME. IN THE EVENT THAT SUCH AGREEMENT OR STIPULATION DEVIATES FROM THE POST-MARITAL INCOME OBLIGATION, THE AGREEMENT OR STIPULATION MUST SPECIFY THE AMOUNT THAT SUCH POST-MARITAL INCOME OBLIGATION WOULD HAVE BEEN AND THE REASON OR REASONS THAT SUCH AGREEMENT OR STIPULATION DOES NOT PROVIDE FOR PAYMENT OF THAT AMOUNT. SUCH PROVISION MAY NOT BE WAIVED BY EITHER PARTY OR COUNSEL. NOTHING CONTAINED IN THIS SUBDIVISION SHALL BE CONSTRUED TO ALTER THE RIGHTS OF THE PARTIES TO VOLUNTARILY ENTER INTO VALIDLY EXECUTED AGREEMENTS OR STIPULATIONS WHICH DEVIATE FROM THE POST-MARITAL INCOME OBLIGATION PROVIDED SUCH AGREEMENTS OR STIPULATIONS COMPLY WITH THE PROVISIONS OF THIS PARAGRAPH. THE COURT SHALL, HOWEVER, RETAIN DISCRETION WITH RESPECT TO POST-MARITAL INCOME PURSUANT TO THIS SECTION. ANY COURT ORDER OR JUDGMENT INCORPORATING A VALIDLY EXECUTED AGREEMENT OR STIPULATION WHICH DEVIATES FROM THE POST-MARITAL INCOME OBLIGATION SHALL SET FORTH THE COURT'S REASONS FOR SUCH DEVIATION.

(7) IN ADDITION TO FINANCIAL DISCLOSURE REQUIRED IN THIS SECTION, THE COURT MAY REQUIRE THAT THE INCOME AND/OR EXPENSES OF EITHER PARTY BE VERIFIED WITH DOCUMENTATION INCLUDING, BUT NOT LIMITED TO, PAST AND PRESENT INCOME TAX RETURNS, EMPLOYER STATEMENTS, PAY STUBS, CORPORATE, BUSINESS, OR PARTNERSHIP BOOKS AND RECORDS, CORPORATE AND BUSINESS TAX RETURNS, AND RECEIPTS FOR EXPENSES OR SUCH OTHER MEANS OF VERIFICATION AS THE COURT DETERMINES APPROPRIATE. NOTHING HEREIN SHALL AFFECT ANY PARTY'S RIGHT TO PURSUE DISCOVERY PURSUANT TO THIS CHAPTER OR THE CIVIL PRACTICE LAW AND RULES.

(8) WHEN A PARTY HAS DEFAULTED AND/OR THE COURT IS OTHERWISE PRESENTED WITH INSUFFICIENT EVIDENCE TO DETERMINE GROSS INCOME, THE COURT SHALL ORDER THE POST-MARITAL INCOME OBLIGATION BASED UPON THE NEEDS OF THE PAYEE OR THE STANDARD OF LIVING OF THE PARTIES PRIOR TO COMMENCEMENT OF THE DIVORCE ACTION, WHICHEVER IS GREATER. SUCH ORDER MAY BE RETROACTIVELY MODIFIED UPWARD WITHOUT A SHOWING OF CHANGE IN CIRCUMSTANCES UPON A SHOWING OF NEWLY DISCOVERED OR OBTAINED EVIDENCE.

(9) POST-MARITAL INCOME MAY BE MODIFIED PURSUANT TO PARAGRAPH B OF SUBDIVISION NINE OF THIS SECTION.

(10) IN ANY ACTION OR PROCEEDING FOR MODIFICATION OF AN ORDER OF MAINTENANCE OR ALIMONY EXISTING PRIOR TO THE EFFECTIVE DATE OF THIS PARAGRAPH, BROUGHT PURSUANT TO THIS ARTICLE, THE POST-MARITAL INCOME STANDARDS SET FORTH IN THIS SUBDIVISION SHALL NOT CONSTITUTE A CHANGE OF CIRCUMSTANCES WARRANTING MODIFICATION OF SUCH SUPPORT ORDER.

S 2. This act shall take effect on the sixtieth day after it shall have become a law.