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

2580--D

2009-2010 Regular Sessions

I N A S S E M B L Y

January 20, 2009

Introduced by M. of A. WEINSTEIN, PAULIN, CYMBROWITZ, JAFFEE, GUNTHER, PERRY, LANCMAN, TITUS, COOK, SKARTADOS -- Multi-Sponsored by -- M. of A. DESTITO, FIELDS, GABRYSZAK, HOOPER, HYER-SPENCER, JOHN, KOON, MARKEY, MILLMAN, NOLAN, PEOPLES-STOKES, REILLY, TOWNS, WEISENBERG -- read once and referred to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the domestic relations law, in relation to enacting the "Divorce Reform Act of 2010"

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

Section 1. Short title. This act shall be known and may be cited as the "Divorce Reform Act of 2010".

S 2. Section 170 of the domestic relations law is amended by adding a new subdivision 7 to read as follows:

(7) THE RELATIONSHIP BETWEEN HUSBAND AND WIFE HAS BROKEN DOWN IRRETRIEVABLY FOR A PERIOD OF AT LEAST SIX MONTHS, PROVIDED THAT ONE PARTY HAS SO STATED UNDER OATH. NO JUDGMENT OF DIVORCE SHALL BE GRANTED UNDER THIS SUBDIVISION UNLESS AND UNTIL THE ECONOMIC ISSUES OF EQUITABLE DISTRIBUTION OF MARITAL PROPERTY, THE PAYMENT OR WAIVER OF SPOUSAL SUPPORT, THE PAYMENT OF CHILD SUPPORT, THE PAYMENT OF COUNSEL AND EXPERTS' FEES AND EXPENSES AS WELL AS THE CUSTODY AND VISITATION WITH THE INFANT CHILDREN OF THE MARRIAGE HAVE BEEN RESOLVED BY THE PARTIES, OR DETERMINED BY THE COURT AND INCORPORATED INTO THE JUDGMENT OF DIVORCE.

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

LBD01545-16-0

S 3. Part B of section 236 of the domestic relations law is amended by adding a new subdivision 5-a to read as follows:

5-A. TEMPORARY MAINTENANCE AWARDS. A. EXCEPT WHERE THE PARTIES HAVE ENTERED INTO AN AGREEMENT PURSUANT TO SUBDIVISION THREE OF THIS PART PROVIDING FOR MAINTENANCE, IN ANY MATRIMONIAL ACTION THE COURT SHALL MAKE ITS AWARD FOR TEMPORARY MAINTENANCE PURSUANT TO THE PROVISIONS OF THIS SUBDIVISION.

B. FOR PURPOSES OF THIS SUBDIVISION, THE FOLLOWING DEFINITIONS SHALL BE USED:

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

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

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

(4) "INCOME" SHALL MEAN:

(A) 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; AND

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

(5) "INCOME CAP" SHALL MEAN UP TO AND INCLUDING FIVE HUNDRED THOUSAND DOLLARS OF THE PAYOR'S ANNUAL INCOME; PROVIDED, HOWEVER, BEGINNING JANUARY THIRTY-FIRST, TWO THOUSAND TWELVE AND EVERY TWO YEARS THEREAFTER, THE PAYOR'S ANNUAL INCOME AMOUNT SHALL INCREASE BY THE PRODUCT OF THE AVERAGE ANNUAL PERCENTAGE CHANGES IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS (CPI-U) AS PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR BUREAU OF LABOR STATISTICS FOR THE TWO YEAR PERIOD ROUNDED TO THE NEAREST ONE THOUSAND DOLLARS. THE OFFICE OF COURT ADMINISTRATION SHALL DETERMINE AND PUBLISH THE INCOME CAP.

(6) "GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE" SHALL MEAN THE SUM DERIVED BY THE APPLICATION OF PARAGRAPH C OF THIS SUBDIVISION.

(7) "GUIDELINE DURATION" SHALL MEAN THE DURATIONAL PERIOD DETERMINED BY THE APPLICATION OF PARAGRAPH D OF THIS SUBDIVISION.

(8) "PRESUMPTIVE AWARD" SHALL MEAN THE GUIDELINE AMOUNT OF THE TEMPORARY MAINTENANCE AWARD FOR THE GUIDELINE DURATION PRIOR TO THE COURT'S APPLICATION OF ANY ADJUSTMENT FACTORS AS PROVIDED IN SUBPARAGRAPH ONE OF PARAGRAPH E OF THIS SUBDIVISION.

(9) "SELF-SUPPORT RESERVE" SHALL MEAN THE SELF-SUPPORT RESERVE 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.

C. THE COURT SHALL DETERMINE THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE IN ACCORDANCE WITH THE PROVISIONS OF THIS PARAGRAPH AFTER DETERMINING THE INCOME OF THE PARTIES:

(1) WHERE THE PAYOR'S INCOME IS UP TO AND INCLUDING THE INCOME CAP:

(A) THE COURT SHALL SUBTRACT TWENTY PERCENT OF THE INCOME OF THE PAYEE FROM THIRTY PERCENT OF THE INCOME UP TO THE INCOME CAP OF THE PAYOR.

(B) THE COURT SHALL THEN MULTIPLY THE SUM OF THE PAYOR'S INCOME UP TO AND INCLUDING THE INCOME CAP AND ALL OF THE PAYEE'S INCOME BY FORTY PERCENT.

(C) THE COURT SHALL SUBTRACT THE INCOME OF THE PAYEE FROM THE AMOUNT DERIVED FROM CLAUSE (B) OF THIS SUBPARAGRAPH.

(D) THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE SHALL BE THE LOWER OF THE AMOUNTS DETERMINED BY CLAUSES (A) AND (C) OF THIS SUBPARAGRAPH; IF THE AMOUNT DETERMINED BY CLAUSE (C) OF THIS SUBPARAGRAPH IS LESS THAN OR EQUAL TO ZERO, THE GUIDELINE AMOUNT SHALL BE ZERO DOLLARS.

(2) WHERE THE INCOME OF THE PAYOR EXCEEDS THE INCOME CAP:

(A) THE COURT SHALL DETERMINE THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE FOR THAT PORTION OF THE PAYOR'S INCOME THAT IS UP TO AND INCLUDING THE INCOME CAP ACCORDING TO SUBPARAGRAPH ONE OF THIS PARAGRAPH, AND, FOR THE PAYOR'S INCOME IN EXCESS OF THE INCOME CAP, THE COURT SHALL DETERMINE ANY ADDITIONAL GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE THROUGH CONSIDERATION OF THE FOLLOWING FACTORS:

(I) THE LENGTH OF THE MARRIAGE;

(II) THE SUBSTANTIAL DIFFERENCES IN THE INCOMES OF THE PARTIES;

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

(IV) THE AGE AND HEALTH OF THE PARTIES;

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

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

(VII) THE WASTEFUL DISSIPATION OF MARITAL PROPERTY;

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

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

(X) ACTS BY ONE PARTY AGAINST ANOTHER THAT HAVE INHIBITED OR CONTINUE TO INHIBIT A PARTY'S EARNING CAPACITY OR ABILITY TO OBTAIN MEANINGFUL EMPLOYMENT. SUCH ACTS INCLUDE BUT ARE NOT LIMITED TO ACTS OF DOMESTIC VIOLENCE AS PROVIDED IN SECTION FOUR HUNDRED FIFTY-NINE-A OF THE SOCIAL SERVICES LAW;

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

(XII) 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 OR ABILITY TO OBTAIN MEANINGFUL EMPLOYMENT;

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

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

(XV) THE TAX CONSEQUENCES TO EACH PARTY;

(XVI) MARITAL PROPERTY SUBJECT TO DISTRIBUTION PURSUANT TO SUBDIVISION FIVE OF THIS PART;

(XVII) THE REDUCED OR LOST EARNING CAPACITY OF THE PARTY SEEKING TEMPORARY MAINTENANCE AS A RESULT OF HAVING FOREGONE OR DELAYED EDUCATION, TRAINING, EMPLOYMENT OR CAREER OPPORTUNITIES DURING THE MARRIAGE;

(XVIII) THE CONTRIBUTIONS AND SERVICES OF THE PARTY SEEKING TEMPORARY MAINTENANCE AS A SPOUSE, PARENT, WAGE EARNER AND HOMEMAKER AND TO THE CAREER OR CAREER POTENTIAL OF THE OTHER PARTY; AND

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

(B) IN ANY DECISION MADE PURSUANT TO THIS SUBPARAGRAPH, 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.

(3) NOTWITHSTANDING THE PROVISIONS OF THIS PARAGRAPH, WHERE THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE WOULD REDUCE THE PAYOR'S INCOME BELOW THE SELF-SUPPORT RESERVE FOR A SINGLE PERSON, THE PRESUMPTIVE AMOUNT OF THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE 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 TEMPORARY MAINTENANCE IS AWARDED.

D. THE COURT SHALL DETERMINE THE GUIDELINE DURATION OF TEMPORARY MAINTENANCE BY CONSIDERING THE LENGTH OF THE MARRIAGE. TEMPORARY MAINTENANCE

SHALL TERMINATE UPON THE ISSUANCE OF THE FINAL AWARD OF MAINTENANCE OR THE DEATH OF EITHER PARTY, WHICHEVER OCCURS FIRST.

E. (1) THE COURT SHALL ORDER THE PRESUMPTIVE AWARD OF TEMPORARY MAINTENANCE IN ACCORDANCE WITH PARAGRAPHS C AND D OF THIS SUBDIVISION, UNLESS THE COURT FINDS THAT THE PRESUMPTIVE AWARD IS UNJUST OR INAPPROPRIATE AND ADJUSTS THE PRESUMPTIVE AWARD OF TEMPORARY MAINTENANCE ACCORDINGLY BASED UPON CONSIDERATION OF THE FOLLOWING FACTORS:

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

(B) THE AGE AND HEALTH OF THE PARTIES;

(C) THE EARNING CAPACITY OF THE PARTIES;

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

(E) THE WASTEFUL DISSIPATION OF MARITAL PROPERTY;

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

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

(H) ACTS BY ONE PARTY AGAINST ANOTHER THAT HAVE INHIBITED OR CONTINUE TO INHIBIT A PARTY'S EARNING CAPACITY OR ABILITY TO OBTAIN MEANINGFUL EMPLOYMENT. SUCH ACTS INCLUDE BUT ARE NOT LIMITED TO ACTS OF DOMESTIC VIOLENCE AS PROVIDED IN SECTION FOUR HUNDRED FIFTY-NINE-A OF THE SOCIAL SERVICES LAW;

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

(J) 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 OR ABILITY TO OBTAIN MEANINGFUL EMPLOYMENT;

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

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

(M) THE TAX CONSEQUENCES TO EACH PARTY;

(N) MARITAL PROPERTY SUBJECT TO DISTRIBUTION PURSUANT TO SUBDIVISION FIVE OF THIS PART;

(O) THE REDUCED OR LOST EARNING CAPACITY OF THE PARTY SEEKING TEMPORARY MAINTENANCE AS A RESULT OF HAVING FOREGONE OR DELAYED EDUCATION, TRAINING, EMPLOYMENT OR CAREER OPPORTUNITIES DURING THE MARRIAGE;

(P) THE CONTRIBUTIONS AND SERVICES OF THE PARTY SEEKING TEMPORARY MAINTENANCE AS A SPOUSE, PARENT, WAGE EARNER AND HOMEMAKER AND TO THE CAREER OR CAREER POTENTIAL OF THE OTHER PARTY; AND

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

(2) WHERE THE COURT FINDS THAT THE PRESUMPTIVE AWARD OF TEMPORARY MAINTENANCE IS UNJUST OR INAPPROPRIATE AND THE COURT ADJUSTS THE PRESUMPTIVE AWARD OF TEMPORARY MAINTENANCE PURSUANT TO THIS PARAGRAPH, THE COURT SHALL SET FORTH, IN A WRITTEN ORDER, THE AMOUNT OF THE UNADJUSTED PRESUMPTIVE AWARD OF TEMPORARY MAINTENANCE, THE FACTORS IT CONSIDERED, AND THE REASONS THAT THE COURT ADJUSTED THE PRESUMPTIVE AWARD OF TEMPORARY MAINTENANCE. SUCH WRITTEN ORDER SHALL NOT BE WAIVED BY EITHER PARTY OR COUNSEL.

(3) WHERE EITHER OR BOTH PARTIES ARE UNREPRESENTED, THE COURT SHALL NOT ENTER A TEMPORARY MAINTENANCE ORDER UNLESS THE UNREPRESENTED PARTY OR PARTIES HAVE BEEN INFORMED OF THE PRESUMPTIVE AWARD OF TEMPORARY MAINTENANCE.

F. A VALIDLY EXECUTED AGREEMENT OR STIPULATION VOLUNTARILY ENTERED INTO BETWEEN THE PARTIES IN AN ACTION COMMENCED AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION PRESENTED TO THE COURT FOR INCORPORATION IN AN ORDER SHALL INCLUDE A PROVISION STATING THAT THE PARTIES HAVE BEEN ADVISED OF THE PROVISIONS OF THIS SUBDIVISION, AND THAT THE PRESUMPTIVE AWARD PROVIDED FOR THEREIN RESULTS IN THE CORRECT AMOUNT OF TEMPORARY MAINTENANCE. IN THE EVENT THAT SUCH AGREEMENT OR STIPULATION DEVIATES FROM THE PRESUMPTIVE AWARD OF TEMPORARY MAINTENANCE, THE AGREEMENT OR STIPULATION MUST SPECIFY THE AMOUNT THAT SUCH PRESUMPTIVE AWARD OF TEMPORARY MAINTENANCE 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 PRESUMPTIVE AWARD OF TEMPORARY MAINTENANCE PROVIDED SUCH AGREEMENTS OR STIPULATIONS COMPLY WITH THE PROVISIONS OF THIS SUBDIVISION. THE COURT SHALL, HOWEVER, RETAIN DISCRETION WITH RESPECT TO TEMPORARY, AND POST-DIVORCE MAINTENANCE AWARDS PURSUANT TO THIS SECTION. ANY COURT ORDER INCORPORATING A VALIDLY EXECUTED AGREEMENT OR STIPULATION WHICH DEVIATES FROM THE PRESUMPTIVE AWARD OF TEMPORARY MAINTENANCE SHALL SET FORTH THE COURT'S REASONS FOR SUCH DEVIATION.

G. WHEN A PARTY HAS DEFAULTED AND/OR THE COURT IS OTHERWISE PRESENTED WITH INSUFFICIENT EVIDENCE TO DETERMINE GROSS INCOME, THE COURT SHALL ORDER THE TEMPORARY MAINTENANCE AWARD 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.

H. IN ANY ACTION OR PROCEEDING FOR MODIFICATION OF AN ORDER OF MAINTENANCE OR ALIMONY EXISTING PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVISION, BROUGHT PURSUANT TO THIS ARTICLE, THE TEMPORARY MAINTENANCE GUIDELINES SET FORTH IN THIS SUBDIVISION SHALL NOT CONSTITUTE A CHANGE OF CIRCUMSTANCES WARRANTING MODIFICATION OF SUCH SUPPORT ORDER.

I. IN ANY DECISION MADE PURSUANT TO THIS SUBDIVISION THE COURT SHALL, WHERE APPROPRIATE, CONSIDER THE EFFECT OF A BARRIER TO REMARRIAGE, AS DEFINED IN SUBDIVISION SIX OF SECTION TWO HUNDRED FIFTY-THREE OF THIS ARTICLE, ON THE FACTORS ENUMERATED IN THIS SUBDIVISION.

S 4. Subdivision 6 of part B of section 236 of the domestic relations law, as amended by chapter 884 of the laws of 1986, subparagraph 10 as amended, subparagraph 11 as added and subparagraph 12 of paragraph a as renumbered by chapter 229 of the laws of 2009, paragraph d as added by chapter 415 of the laws of 1992, is amended to read as follows:

6. [Maintenance] POST-DIVORCE MAINTENANCE AWARDS. a. Except where the parties have entered into an agreement pursuant to subdivision three of this part providing for maintenance, in any matrimonial action the court may order [temporary maintenance or] maintenance 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 maintenance 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 maintenance due shall be paid in one sum or periodic sums, as the court shall direct, taking into account any

amount of temporary maintenance which has been paid. In determining the amount and duration of maintenance the court shall consider:

(1) the income and property of the respective parties including marital property distributed pursuant to subdivision five of this part;

(2) the [duration] LENGTH of the marriage [and];

(3) the age and health of both parties;

[(3)] (4) the present and future earning capacity of both parties;

[(4)] (5) THE NEED OF ONE PARTY TO INCUR EDUCATION OR TRAINING EXPENSES;

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

(7) ACTS BY ONE PARTY AGAINST ANOTHER THAT HAVE INHIBITED OR CONTINUE TO INHIBIT A PARTY'S EARNING CAPACITY OR ABILITY TO OBTAIN MEANINGFUL EMPLOYMENT. SUCH ACTS INCLUDE BUT ARE NOT LIMITED TO ACTS OF DOMESTIC VIOLENCE AS PROVIDED IN SECTION FOUR HUNDRED FIFTY-NINE-A OF THE SOCIAL SERVICES LAW;

(8) the ability of the party seeking maintenance to become self-supporting and, if applicable, the period of time and training necessary therefor;

[(5)] (9) reduced or lost lifetime earning capacity of the party seeking maintenance as a result of having foregone or delayed education, training, employment, or career opportunities during the marriage;

[(6)] (10) the presence of children of the marriage in the respective homes of the parties;

[(7)] (11) 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;

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

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

(14) the tax consequences to each party;

[(8)] (15) THE EQUITABLE DISTRIBUTION OF MARITAL PROPERTY;

(16) contributions and services of the party seeking maintenance as a spouse, parent, wage earner and homemaker, and to the career or career potential of the other party;

[(9)] (17) the wasteful dissipation of marital property by either spouse;

[(10) any] (18) THE transfer or encumbrance made in contemplation of a matrimonial action without fair consideration;

[(11)] (19) the loss of health insurance benefits upon dissolution of the marriage, AND THE AVAILABILITY AND COST OF MEDICAL INSURANCE FOR THE PARTIES; and

[(12)] (20) any other factor which the court shall expressly find to be just and proper.

b. In any decision made pursuant to this subdivision, the court shall set forth the factors it considered and the reasons for its decision and such may not be waived by either party or counsel.

c. The court may award permanent maintenance, but an award of maintenance shall terminate upon the death of either party or upon the recipient's valid or invalid marriage, or upon modification pursuant to paragraph [(b)] B of subdivision nine of [section two hundred thirty-six of] this part or section two hundred forty-eight of this chapter.

d. In any decision made pursuant to this subdivision the court shall, where appropriate, consider the effect of a barrier to remarriage, as

defined in subdivision six of section two hundred fifty-three of this article, on the factors enumerated in paragraph a of this subdivision.

S 5. Part B of section 236 of the domestic relations law is amended by adding a new subdivision 6-a to read as follows:

6-A. LAW REVISION COMMISSION STUDY. A. THE LEGISLATURE HEREBY FINDS AND DECLARES IT TO BE THE POLICY OF THE STATE THAT IT IS NECESSARY TO ACHIEVE EQUITABLE OUTCOMES WHEN FAMILIES DIVORCE AND IT IS IMPORTANT TO ENSURE THAT THE ECONOMIC CONSEQUENCES OF A DIVORCE ARE FAIRLY SHARED BY DIVORCING COUPLES. SERIOUS CONCERNS HAVE BEEN RAISED THAT THE IMPLEMENTATION OF NEW YORK STATE'S MAINTENANCE LAWS HAVE NOT RESULTED IN EQUITABLE RESULTS. MAINTENANCE IS OFTEN NOT GRANTED AND WHERE IT IS GRANTED, THE RESULTS ARE INCONSISTENT AND UNPREDICTABLE. THIS RAISES SERIOUS CONCERNS ABOUT THE ABILITY OF OUR CURRENT MAINTENANCE LAWS TO ACHIEVE EQUITABLE AND FAIR OUTCOMES.

THE LEGISLATURE FURTHER FINDS A COMPREHENSIVE REVIEW OF THE PROVISIONS OF OUR STATE'S MAINTENANCE LAWS SHOULD BE UNDERTAKEN. IT HAS BEEN THIRTY YEARS SINCE THE LEGISLATURE SIGNIFICANTLY REFORMED OUR STATE'S DIVORCE LAWS BY ENACTING EQUITABLE DISTRIBUTION OF MARITAL PROPERTY AND INTRODUCED THE CONCEPT OF MAINTENANCE TO REPLACE ALIMONY. CONCERNS THAT THE IMPLEMENTATION OF OUR MAINTENANCE LAWS HAVE NOT RESULTED IN EQUITABLE RESULTS COMPEL THE NEED FOR A REVIEW OF THESE LAWS.

B. THE LAW REVISION COMMISSION IS HEREBY DIRECTED TO:

(1) REVIEW AND ASSESS THE ECONOMIC CONSEQUENCES OF DIVORCE ON THE PARTIES;

(2) REVIEW THE MAINTENANCE LAWS OF THE STATE, INCLUDING THE WAY IN WHICH THEY ARE ADMINISTERED TO DETERMINE THE IMPACT OF THESE LAWS ON POST MARITAL ECONOMIC DISPARITIES, AND THE EFFECTIVENESS OF SUCH LAWS AND THEIR ADMINISTRATION IN ACHIEVING THE STATE'S POLICY GOALS AND OBJECTIVES OF ENSURING THAT THE ECONOMIC CONSEQUENCES OF A DIVORCE ARE FAIRLY AND EQUITABLY SHARED BY THE DIVORCING COUPLE; AND

(3) MAKE RECOMMENDATIONS TO THE LEGISLATURE, INCLUDING SUCH PROPOSED REVISIONS OF SUCH LAWS AS IT DETERMINES NECESSARY TO ACHIEVE THESE GOALS AND OBJECTIVES.

C. THE LAW REVISION COMMISSION SHALL MAKE A PRELIMINARY REPORT TO THE LEGISLATURE AND THE GOVERNOR OF ITS FINDINGS, CONCLUSIONS, AND ANY RECOMMENDATIONS NOT LATER THAN NINE MONTHS FROM THE EFFECTIVE DATE OF THIS SUBDIVISION, AND A FINAL REPORT OF ITS FINDINGS, CONCLUSIONS AND RECOMMENDATIONS NOT LATER THAN DECEMBER THIRTY-FIRST, TWO THOUSAND ELEVEN.

S 6. Paragraph a of subdivision 1 of part B of section 236 of the domestic relations law, as amended by chapter 884 of the laws of 1986, is amended to read as follows:

a. The term "maintenance" shall mean payments provided for in a valid agreement between the parties or awarded by the court in accordance with the provisions of [subdivision] SUBDIVISIONS FIVE-A AND six of this part, to be paid at fixed intervals for a definite or indefinite period of time, but an award of maintenance shall terminate upon the death of either party or upon the recipient's valid or invalid marriage, or upon modification pursuant to paragraph (b) of subdivision nine of section two hundred thirty-six of this part or section two hundred forty-eight of this chapter.

S 7. Subdivisions (a) and (b) of section 237 of the domestic relations law, subdivision (a) as amended by chapter 482 of the laws of 1987 and subdivision (b) as amended by chapter 892 of the laws of 1986, are amended to read as follows:

(a) In any action or proceeding brought (1) to annul a marriage or to declare the nullity of a void marriage, or (2) for a separation, or (3) for a divorce, or (4) to declare the validity or nullity of a judgment of divorce rendered against a spouse who was the defendant in any action outside the State of New York and did not appear therein where such spouse asserts the nullity of such foreign judgment, or (5) TO OBTAIN MAINTENANCE OR DISTRIBUTION OF PROPERTY FOLLOWING A FOREIGN JUDGMENT OF DIVORCE, OR (6) to enjoin the prosecution in any other jurisdiction of an action for a divorce, the court may direct either spouse or, where an action for annulment is maintained after the death of a spouse, may direct the person or persons maintaining the action, to pay [such sum or sums of money] COUNSEL FEES AND FEES AND EXPENSES OF EXPERTS directly to the attorney of the other spouse to enable [that spouse] THE OTHER PARTY to carry on or defend the action or proceeding as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties. [Such direction must be made in the final judgment in such action or proceeding, or by one or more orders from time to time before final judgment, or by both such order or orders and the final judgment; provided, however, such direction shall be made prior to final judgment where it is shown that such order is required to enable the petitioning party to properly proceed] THERE SHALL BE REBUTTABLE PRESUMPTION THAT COUNSEL FEES SHALL BE AWARDED TO THE LESS MONIED SPOUSE. IN EXERCISING THE COURT'S DISCRETION, THE COURT SHALL SEEK TO ASSURE THAT EACH PARTY SHALL BE ADEQUATELY REPRESENTED AND THAT WHERE FEES AND EXPENSES ARE TO BE AWARDED, THEY SHALL BE AWARDED ON A TIMELY BASIS, PENDENTE LITE, SO AS TO ENABLE ADEQUATE REPRESENTATION FROM THE COMMENCEMENT OF THE PROCEEDING. APPLICATIONS FOR THE AWARD OF FEES AND EXPENSES MAY BE MADE AT ANY TIME OR TIMES PRIOR TO FINAL JUDGMENT. BOTH PARTIES TO THE ACTION OR PROCEEDING AND THEIR RESPECTIVE ATTORNEYS, SHALL FILE AN AFFIDAVIT WITH THE COURT DETAILING THE FINANCIAL AGREEMENT BETWEEN THE PARTY AND THE ATTORNEY. SUCH AFFIDAVIT SHALL INCLUDE THE AMOUNT OF ANY RETAINER, THE AMOUNTS PAID AND STILL OWING THEREUNDER, THE HOURLY AMOUNT CHARGED BY THE ATTORNEY, THE AMOUNTS PAID, OR TO BE PAID, ANY EXPERTS, AND ANY ADDITIONAL COSTS, DISBURSEMENTS OR EXPENSES. Any applications for [counsel] fees and expenses may be maintained by the attorney for either spouse in his own name in the same proceeding. PAYMENT OF ANY RETAINER FEES TO THE ATTORNEY FOR THE PETITIONING PARTY SHALL NOT PRECLUDE ANY AWARDS OF FEES AND EXPENSES TO AN APPLICANT WHICH WOULD OTHERWISE BE ALLOWED UNDER THIS SECTION.

(b) Upon any application to ENFORCE, annul or modify an order or judgment for alimony, MAINTENANCE, DISTRIBUTIVE AWARD, DISTRIBUTION OF MARITAL PROPERTY or for custody, visitation, or maintenance of a child, made as in section two hundred thirty-six or section two hundred forty OF THIS ARTICLE provided, or upon any application by writ of habeas corpus or by petition and order to show cause concerning custody, visitation or maintenance of a child, the court may direct a spouse or parent to pay [such sum or sums of money for the prosecution or the defense of] COUNSEL FEES AND FEES AND EXPENSES OF EXPERTS DIRECTLY TO THE ATTORNEY OF THE OTHER SPOUSE OR PARENT TO ENABLE THE OTHER PARTY TO CARRY ON OR DEFEND the application or proceeding by the other spouse or parent as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties. [With respect to any such application or proceeding, such direction may be made in the order or judgment by which the particular application or proceeding is finally determined, or by one or more orders from time to time before the final order or judgment, or by both such order or orders and the

final order or judgment] THERE SHALL BE A REBUTTABLE PRESUMPTION THAT COUNSEL FEES SHALL BE AWARDED TO THE LESS MONIED SPOUSE. IN EXERCISING THE COURT'S DISCRETION, THE COURT SHALL SEEK TO ASSURE THAT EACH PARTY SHALL BE ADEQUATELY REPRESENTED AND THAT WHERE FEES AND EXPENSES ARE TO BE AWARDED, THEY SHALL BE AWARDED ON A TIMELY BASIS, PENDENTE LITE, SO AS TO ENABLE ADEQUATE REPRESENTATION FROM THE COMMENCEMENT OF THE PROCEEDING. APPLICATIONS FOR THE AWARD OF FEES AND EXPENSES MAY BE MADE AT ANY TIME OR TIMES PRIOR TO FINAL JUDGMENT. BOTH PARTIES TO THE ACTION OR PROCEEDING AND THEIR RESPECTIVE ATTORNEYS, SHALL FILE AN AFFIDAVIT WITH THE COURT DETAILING THE FINANCIAL AGREEMENT, BETWEEN THE PARTY AND THE ATTORNEY. SUCH AFFIDAVIT SHALL INCLUDE THE AMOUNT OF ANY RETAINER, THE AMOUNTS PAID AND STILL OWING THEREUNDER, THE HOURLY AMOUNT CHARGED BY THE ATTORNEY, THE AMOUNTS PAID, OR TO BE PAID, ANY EXPERTS, AND ANY ADDITIONAL COSTS, DISBURSEMENTS OR EXPENSES. Any applications for [counsel] fees and expenses may be maintained by the attorney for either spouse in counsel's own name in the same proceeding. [Representation by an attorney pursuant to paragraph (b) of subdivision nine of section one hundred eleven-b of the social services law shall not preclude an award of counsel fees to an applicant which would otherwise be allowed under this section.] PAYMENT OF ANY RETAINER FEES TO THE ATTORNEY FOR THE PETITIONING PARTY SHALL NOT PRECLUDE ANY AWARDS OF FEES AND EXPENSES TO AN APPLICANT WHICH WOULD OTHERWISE BE ALLOWED UNDER THIS SECTION.

S 8. Section 238 of the domestic relations law, as amended by chapter 529 of the laws of 1978, is amended to read as follows:

S 238. Expenses in enforcement AND MODIFICATION proceedings. In any action or proceeding to [compel the payment of any sum of money required to be paid by] ENFORCE OR MODIFY ANY PROVISION OF a judgment or order entered in an action for divorce, separation, annulment [or], declaration of nullity of a void marriage, DECLARATION OF VALIDITY OR NULLITY OF A JUDGEMENT OF DIVORCE RENDERED AGAINST A SPOUSE WHO WAS THE DEFENDANT IN ANY ACTION OUTSIDE THE STATE OF NEW YORK AND DID NOT APPEAR THEREIN WHERE SUCH SPOUSE ASSERTS THE NULLITY OF SUCH FOREIGN JUDGMENT, OR AN INJUNCTION RESTRAINING THE PROSECUTION IN ANY OTHER JURISDICTION OF AN ACTION FOR A DIVORCE, or in any proceeding pursuant to section two hundred forty-three, two hundred forty-four, two hundred forty-five, or two hundred forty-six OF THIS ARTICLE, the court may in its discretion require either party to pay [the expenses of the other in bringing, carrying on, or defending such action or proceeding] COUNSEL FEES AND FEES AND EXPENSES OF EXPERTS DIRECTLY TO THE ATTORNEY OF THE OTHER PARTY TO ENABLE THE OTHER PARTY TO CARRY ON OR DEFEND THE ACTION OR PROCEEDING AS, IN THE COURT'S DISCRETION, JUSTICE REQUIRES HAVING REGARD TO THE CIRCUMSTANCES OF THE CASE AND OF THE RESPECTIVE PARTIES. THERE SHALL BE A REBUTTABLE PRESUMPTION THAT COUNSEL FEES SHALL BE AWARDED TO THE LESS MONIED SPOUSE. In any such action or proceeding, applications for [counsel] fees and expenses may be maintained by the attorney for the respective parties in counsel's own name and in counsel's own behalf. IN EXERCISING THE COURT'S DISCRETION, THE COURT SHALL SEEK TO ASSURE THAT EACH PARTY SHALL BE ADEQUATELY REPRESENTED AND THAT WHERE FEES AND EXPENSES ARE TO BE AWARDED, THEY SHALL BE AWARDED ON A TIMELY BASIS, PENDENTE LITE, SO AS TO ENABLE ADEQUATE REPRESENTATION FROM THE COMMENCEMENT OF THE PROCEEDING. APPLICATIONS FOR THE AWARD OF FEES AND EXPENSES MAY BE MADE AT ANY TIME OR TIMES PRIOR TO FINAL JUDGMENT. BOTH PARTIES TO THE ACTION OR PROCEEDING AND THEIR REPRESENTATIVE ATTORNEYS, SHALL FILE AN AFFIDAVIT WITH THE COURT DETAILING THE FINANCIAL AGREEMENT BETWEEN THE PARTY AND THE ATTORNEY. SUCH AFFIDAVIT SHALL INCLUDE THE AMOUNT OF ANY RETAINER, THE AMOUNTS PAID AND STILL OWING THEREUNDER, THE HOURLY AMOUNT

CHARGED BY THE ATTORNEY, THE AMOUNTS PAID, OR TO BE PAID, ANY EXPERTS, AND ANY ADDITIONAL COSTS, DISBURSEMENTS OR EXPENSES. PAYMENT OF ANY RETAINER FEES TO THE ATTORNEY FOR THE PETITIONING PARTY SHALL NOT PRECLUDE ANY AWARDS OF FEES AND EXPENSES TO AN APPLICANT WHICH WOULD OTHERWISE BE ALLOWED UNDER THIS SECTION.

S 9. The chief administrator of the courts shall promulgate all rules necessary to implement the provisions of this act.

S 10. This act shall take effect immediately; provided, however, that sections two, three, four, six, seven and eight of this act shall take effect on the one hundred twentieth day after this act shall have become a law and shall apply to matrimonial actions commenced on or after the effective date of such sections.