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

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2013-2014 Regular Sessions

I N S E N A T E

May 13, 2013

Introduced by Sen. MARTINS -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the domestic relations law, in relation to modifications of temporary maintenance awards and maintenance obligations

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

Section 1. Subdivision 5-a of part B of section 236 of the domestic relations law, as added by chapter 371 of the laws of 2010, is amended 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)] (4) "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] FOURTEEN and every two years thereafter, the [payor's annual] income CAP amount shall increase by the product of the average annual percentage changes in the consumer

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

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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)] (5) "Guideline amount of temporary maintenance" shall mean the sum derived by the application of paragraph c OR D 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)] (6) "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)] WHEN THE PAYOR'S INCOME IS LOWER THAN OR EQUAL TO THE INCOME CAP, THE COURT SHALL DETERMINE THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE AS FOLLOWS:

(1) THE COURT SHALL SUBTRACT TWENTY PERCENT OF THE PAYEE'S INCOME FROM THIRTY PERCENT OF THE PAYOR'S INCOME.

(2) THE COURT SHALL THEN MULTIPLY THE SUM OF THE PAYOR'S INCOME AND THE PAYEE'S INCOME BY FORTY PERCENT.

(3) THE COURT SHALL SUBTRACT THE PAYEE'S INCOME FROM THE AMOUNT DERIVED FROM SUBPARAGRAPH TWO OF THIS PARAGRAPH.

(4) THE COURT SHALL DETERMINE THE LOWER OF AMOUNTS DERIVED BY SUBPARAGRAPHS ONE AND THREE OF THIS PARAGRAPH.

(5) THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE SHALL BE THE AMOUNT DETERMINED BY SUBPARAGRAPH FOUR OF THIS PARAGRAPH EXCEPT THAT, IF THE AMOUNT DETERMINED BY SUBPARAGRAPH FOUR OF THIS PARAGRAPH IS LESS THAN OR EQUAL TO ZERO, THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE SHALL BE ZERO DOLLARS.

D. WHEN THE PAYOR'S INCOME EXCEEDS THE INCOME CAP, THE COURT SHALL DETERMINE THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE AS FOLLOWS:

(1) THE COURT SHALL PERFORM THE CALCULATIONS SET FORTH IN SUBPARAGRAPHS ONE THROUGH FOUR OF PARAGRAPH C OF THIS SUBDIVISION FOR THE TOTAL INCOMES OF PAYOR AND PAYEE.

(2) THE COURT SHALL PERFORM THE CALCULATIONS SET FORTH IN SUBPARAGRAPHS ONE THROUGH FOUR OF PARAGRAPH C OF THIS SUBDIVISION FOR THE INCOMES OF PAYOR AND PAYEE UP TO AND INCLUDING THE INCOME CAP.

(3) THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE SHALL BE EITHER:

(A) THE CALCULATION DERIVED FROM SUBPARAGRAPH ONE OF THIS PARAGRAPH; OR

(B) THE AMOUNT DERIVED FROM SUBPARAGRAPH TWO OF THIS PARAGRAPH PLUS AN AMOUNT THAT THE COURT SHALL DETERMINE BY CONSIDERATION OF THE FACTORS SET FORTH IN SUBPARAGRAPH ONE OF PARAGRAPH G OF THIS SUBDIVISION.

(4) In any decision made pursuant to CLAUSE (B) OF SUBPARAGRAPH THREE OF this [subparagraph] PARAGRAPH, the court shall set forth the factors it considered and the reasons for its WRITTEN OR ORAL decision. Such written order may not be waived by either party or counsel.

[(3)] E. Notwithstanding the provisions of this [paragraph] SUBDIVISION, 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.]

F. Temporary maintenance shall terminate upon the issuance of the final [award] DETERMINATION of maintenance or the death of either party, whichever occurs first.

[e.] G. (1) The court shall order the [presumptive award] GUIDELINE AMOUNT of temporary maintenance in accordance with paragraphs c and d of this subdivision, unless the court finds that the [presumptive award] GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE is unjust or inappropriate and adjusts the [presumptive award] GUIDELINE AMOUNT 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)] (B) the PRESENT OR FUTURE earning capacity of the parties, INCLUDING THE HISTORY OF LIMITED PARTICIPATION IN THE WORKFORCE;

[(d) the need of one party to incur education or training expenses;

(e)] (C) the wasteful dissipation of marital property[;

(f) the transfer], INCLUDING TRANSFERS or [encumbrance] ENCUMBRANCES made in contemplation of a matrimonial action without fair consideration;

[(g)] (D) the existence and duration of a pre-marital joint household or a pre-divorce separate household;

[(h)] (E) 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)] OR THAT CONSTITUTE EGREGIOUS CONDUCT;

(F) the availability and cost of medical insurance for the parties;

[(j)] (G) the care of [the] children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws PROVIDED DURING THE MARRIAGE that [has inhibited or continues to inhibit] INHIBITS 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)] (H) the tax consequences to each party;

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

[(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)] (J) 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] GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE is unjust or inappropriate and the court adjusts the [presumptive award] GUIDELINE AMOUNT of temporary maintenance pursuant to this paragraph, the court shall set forth, in a written [order] OR ORAL DECISION, the [amount of the unadjusted presumptive award] GUIDELINE AMOUNT of temporary maintenance, the factors it considered, and the reasons that the court adjusted the [presumptive award] GUIDELINE AMOUNT 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 COURT INFORMS THE unrepresented party or parties [have been informed] of the [presumptive award] GUIDELINE AMOUNT 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.] H. 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.] I. 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 2. Subdivision 6 of part B of section 236 of the domestic relations law, as amended by chapter 371 of the laws of 2010, is amended to read as follows:

6. 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 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 length of the marriage;

(3) the age and health of both parties;

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

(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;

(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;

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

(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;

(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;

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

(18) the transfer or encumbrance made in contemplation of a matrimonial action without fair consideration;

(19) the loss of health insurance benefits upon dissolution of the marriage, and the availability and cost of medical insurance for the parties; and

(20) any other factor which the court shall expressly find to be just and proper] SHALL MAKE THE AWARD FOR POST-DIVORCE MAINTENANCE PURSUANT TO THE PROVISIONS OF THIS SUBDIVISION.

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 of subdivision nine 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.] 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) "INCOME" SHALL MEAN:

(I) 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, EXCEPT THAT TEMPORARY MAINTENANCE PAID PURSUANT TO SUBDIVISION FIVE-A OF THIS PART AND SPOUSAL SUPPORT PAID PURSUANT TO SECTION FOUR HUNDRED TWELVE OF THE FAMILY COURT ACT, SHALL NOT BE DEDUCTED FROM PAYOR'S INCOME; AND

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

(4) "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 FOURTEEN AND EVERY TWO YEARS THEREAFTER, THE INCOME CAP 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.

(5) "GUIDELINE AMOUNT OF POST-DIVORCE MAINTENANCE" SHALL MEAN THE DOLLAR AMOUNT DERIVED BY THE APPLICATION OF PARAGRAPH C OR D OF THIS SUBDIVISION.

(6) "GUIDELINE DURATION OF POST-DIVORCE MAINTENANCE" SHALL MEAN THE DURATIONAL PERIOD DETERMINED BY THE APPLICATION OF PARAGRAPH E OF THIS SUBDIVISION.

(7) "POST-DIVORCE MAINTENANCE GUIDELINE OBLIGATION" SHALL MEAN THE GUIDELINE AMOUNT OF POST-DIVORCE MAINTENANCE AND THE GUIDELINE DURATION OF POST-DIVORCE MAINTENANCE.

(8) "POST-DIVORCE MAINTENANCE" 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.

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

(10) "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.

C. WHEN THE PAYOR'S INCOME IS LOWER THAN OR EQUAL TO THE INCOME CAP, THE COURT SHALL DETERMINE THE GUIDELINE AMOUNT OF POST-DIVORCE MAINTENANCE AS FOLLOWS:

(1) THE COURT SHALL SUBTRACT TWENTY PERCENT OF THE PAYEE'S INCOME FROM THIRTY PERCENT OF THE PAYOR'S INCOME.

(2) THE COURT SHALL THEN MULTIPLY THE SUM OF THE PAYOR'S INCOME AND THE PAYEE'S INCOME BY FORTY PERCENT.

(3) THE COURT SHALL SUBTRACT THE PAYEE'S INCOME FROM THE AMOUNT DERIVED FROM SUBPARAGRAPH TWO OF THIS PARAGRAPH.

(4) THE COURT SHALL DETERMINE THE LOWER OF AMOUNTS DERIVED BY SUBPARAGRAPHS ONE AND THREE OF THIS PARAGRAPH.

(5) THE GUIDELINE AMOUNT OF POST-DIVORCE MAINTENANCE SHALL BE THE AMOUNT DETERMINED BY SUBPARAGRAPH FOUR OF THIS PARAGRAPH EXCEPT THAT, IF THE AMOUNT DETERMINED BY SUBPARAGRAPH FOUR OF THIS PARAGRAPH IS LESS THAN OR EQUAL TO ZERO, THE GUIDELINE AMOUNT OF POST-DIVORCE MAINTENANCE SHALL BE ZERO DOLLARS.

(6) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH THREE OF THIS PARAGRAPH, WHERE THE ANNUAL AMOUNT OF POST-DIVORCE MAINTENANCE WOULD REDUCE THE PAYOR'S INCOME BELOW THE SELF-SUPPORT RESERVE FOR A SINGLE PERSON, THE POST-DIVORCE MAINTENANCE GUIDELINE OBLIGATION SHALL BE THE DIFFERENCE BETWEEN THE PAYOR'S INCOME AND THE SELF-SUPPORT RESERVE.

D. WHEN THE PAYOR'S INCOME EXCEEDS THE INCOME CAP, THE COURT SHALL DETERMINE THE GUIDELINE AMOUNT OF POST-DIVORCE MAINTENANCE AS FOLLOWS:

(1) THE COURT SHALL PERFORM THE CALCULATIONS SET FORTH IN SUBPARAGRAPHS ONE THROUGH FOUR OF PARAGRAPH C OF THIS SUBDIVISION FOR THE TOTAL INCOMES OF PAYOR AND PAYEE.

(2) THE COURT SHALL PERFORM THE CALCULATIONS SET FORTH IN SUBPARAGRAPHS ONE THROUGH FOUR OF PARAGRAPH C OF THIS SUBDIVISION FOR THE INCOMES OF PAYOR AND PAYEE UP TO AND INCLUDING THE INCOME CAP.

(3) THE GUIDELINE AMOUNT OF POST-DIVORCE MAINTENANCE SHALL BE EITHER:

(A) THE CALCULATION DERIVED FROM SUBPARAGRAPH ONE OF THIS PARAGRAPH; OR

(B) THE AMOUNT DERIVED FROM SUBPARAGRAPH TWO OF THIS PARAGRAPH PLUS AN AMOUNT THAT THE COURT SHALL DETERMINE BY CONSIDERATION OF THE FACTORS SET FORTH IN SUBPARAGRAPH ONE OF PARAGRAPH F OF THIS SUBDIVISION.

(4) IN ANY DECISION MADE PURSUANT TO CLAUSE (B) OF SUBPARAGRAPH THREE OF THIS PARAGRAPH, THE COURT SHALL SET FORTH THE FACTORS IT CONSIDERED AND THE REASONS FOR ITS WRITTEN OR ORAL DECISION.

E. THE GUIDELINE DURATION OF POST-DIVORCE MAINTENANCE SHALL BE DETERMINED AS FOLLOWS:

(1) THE COURT SHALL DETERMINE THE GUIDELINE DURATION OF POST-DIVORCE MAINTENANCE IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:

LENGTH OF THE MARRIAGE	% OF THE LENGTH OF THE MARRIAGE FOR WHICH MAINTENANCE 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	NONDURATIONAL

(2) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (1) OF THIS PARAGRAPH, MAINTENANCE SHALL TERMINATE UPON THE DEATH OF THE PAYOR OR PAYEE.

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

(A) THE AGE AND HEALTH OF THE PARTIES;

(B) THE PRESENT OR FUTURE EARNING CAPACITY OF THE PARTIES, INCLUDING THE HISTORY OF LIMITED PARTICIPATION IN THE WORKFORCE;

(C) THE WASTEFUL DISSIPATION OF MARITAL PROPERTY, INCLUDING TRANSFERS OR ENCUMBRANCES OF PROPERTY MADE IN CONTEMPLATION OF A MATRIMONIAL ACTION WITHOUT FAIR CONSIDERATION;

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

(E) ACTS BY ONE PARTY AGAINST ANOTHER THAT HAVE INHIBITED OR CONTINUE TO INHIBIT A PARTY'S EARNING CAPACITY OR ABILITY TO OBTAIN MEANINGFUL EMPLOYMENT OR THAT CONSTITUTE EGREGIOUS CONDUCT;

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

(G) THE CARE OF CHILDREN OR STEPCHILDREN, DISABLED ADULT CHILDREN OR STEPCHILDREN, ELDERLY PARENTS OR IN-LAWS PROVIDED DURING THE MARRIAGE THAT INHIBITS A PARTY'S EARNING CAPACITY;

(H) THE TAX CONSEQUENCES TO EACH PARTY;

(I) THE EQUITABLE DISTRIBUTION OF THE MARITAL PROPERTY;

(J) THE EFFECT OF A BARRIER TO REMARRIAGE, AS DEFINED IN SUBDIVISION SIX OF SECTION TWO HUNDRED FIFTY-THREE OF THIS ARTICLE;

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

(2) WHERE THE COURT FINDS THAT THE POST-DIVORCE MAINTENANCE GUIDELINE OBLIGATION IS UNJUST OR INAPPROPRIATE AND THE COURT ADJUSTS THE POST-DIVORCE MAINTENANCE GUIDELINE OBLIGATION PURSUANT TO THIS PARAGRAPH, THE COURT SHALL SET FORTH, IN A WRITTEN OR ORAL DECISION, THE AMOUNT OF THE UNADJUSTED POST-DIVORCE MAINTENANCE GUIDELINE OBLIGATION, THE FACTORS IT CONSIDERED, AND THE REASONS THAT THE COURT ADJUSTED THE POST-DIVORCE MAINTENANCE OBLIGATION.

G. WHERE EITHER OR BOTH PARTIES ARE UNREPRESENTED, THE COURT SHALL NOT ENTER A MAINTENANCE ORDER OR JUDGMENT UNLESS THE COURT INFORMS THE UNREPRESENTED PARTY OR PARTIES OF THE POST-DIVORCE MAINTENANCE GUIDELINE OBLIGATION.

H. A VALIDLY EXECUTED AGREEMENT OR STIPULATION VOLUNTARILY ENTERED INTO BETWEEN THE PARTIES IN AN ACTION COMMENCED AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH 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 PARAGRAPH, AND THAT THE POST-DIVORCE MAINTENANCE PROVIDED FOR THEREIN WOULD PRESUMPTIVELY RESULT IN THE AMOUNT OF POST-DIVORCE MAINTENANCE GUIDELINE OBLIGATION. IN THE EVENT THAT SUCH AGREEMENT OR STIPULATION DEVIATES FROM THE POST-DIVORCE MAINTENANCE GUIDELINE OBLIGATION, THE AGREEMENT OR STIPULATION MUST SPECIFY THE AMOUNT THAT SUCH POST-DIVORCE MAINTENANCE GUIDELINE 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 PARAGRAPH SHALL BE CONSTRUED TO ALTER THE RIGHTS OF THE PARTIES TO VOLUNTARILY ENTER INTO VALIDLY EXECUTED AGREEMENTS OR STIPULATIONS WHICH DEVIATE FROM THE POST-DIVORCE MAINTENANCE GUIDELINE OBLIGATION PROVIDED SUCH AGREEMENTS OR STIPULATIONS COMPLY WITH THE PROVISIONS OF THIS PARAGRAPH.

I. WHEN A PARTY HAS DEFAULTED AND/OR THE COURT IS OTHERWISE PRESENTED WITH INSUFFICIENT EVIDENCE TO DETERMINE INCOME, THE COURT SHALL ORDER THE POST-DIVORCE MAINTENANCE 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, AND UPON THE FACTORS SET FORTH IN SUBPARAGRAPH ONE OF PARAGRAPH F OF THIS SUBDIVISION. SUCH ORDER MAY BE RETROACTIVELY MODIFIED UPWARD WITHOUT A SHOWING OF CHANGE IN CIRCUMSTANCES UPON A SHOWING OF NEWLY DISCOVERED OR OBTAINED EVIDENCE.

J. POST-DIVORCE MAINTENANCE MAY BE MODIFIED PURSUANT TO PARAGRAPH B OF SUBDIVISION NINE OF THIS PART.

K. IN ANY ACTION OR PROCEEDING FOR MODIFICATION OF AN ORDER OF MAINTENANCE OR ALIMONY EXISTING PRIOR TO THE EFFECTIVE DATE OF THIS PARAGRAPH, THE GUIDELINES FOR POST-DIVORCE MAINTENANCE SET FORTH IN PARAGRAPHS C, D AND E OF THIS SUBDIVISION SHALL NOT CONSTITUTE A CHANGE OF CIRCUMSTANCES WARRANTING MODIFICATION OF SUCH SUPPORT ORDER.

L. IN ANY ACTION OR PROCEEDING FOR MODIFICATION OF AN ORDER OF MAINTENANCE OR ALIMONY EXISTING PRIOR TO THE EFFECTIVE DATE OF THIS PARAGRAPH, THE GUIDELINES FOR POST-DIVORCE MAINTENANCE SET FORTH IN PARAGRAPHS C, D AND E OF THIS SUBDIVISION SHALL APPLY.

S 3. Subparagraph 1 of paragraph b of subdivision 9 of part B of section 236 of the domestic relations law, as amended by chapter 182 of the laws of 2010, is amended to read as follows:

(1) Upon application by either party, the court may annul or modify any prior order or judgment as to maintenance, upon a showing of the recipient's inability to be self-supporting [or a substantial change in circumstance or], THE termination of child support awarded pursuant to section two hundred forty of this article, A SUBSTANTIAL CHANGE IN CIRCUMSTANCES including financial hardship, REMARRIAGE OF THE PAYEE IF THE REMARRIAGE RESULTS IN A SUBSTANTIAL CHANGE IN FINANCIAL CIRCUMSTANCES, OR ACTUAL RETIREMENT OF THE PAYOR IF THE RETIREMENT RESULTS IN SUBSTANTIAL CHANGE IN FINANCIAL CIRCUMSTANCES. Where, after the effective date of this part, a separation agreement remains in force no modification of a prior order or judgment incorporating the terms of said agreement shall be made as to maintenance without a showing of extreme hardship on either party, in which event the judgment or order as modified shall supersede the terms of the prior agreement and judgment for such period of time and under such circumstances as the court determines. The court shall not reduce or annul any arrears of maintenance which have been reduced to final judgment pursuant to section two hundred forty-four of this article. No other arrears of maintenance which have accrued prior to the making of such application shall be subject to modification or annulment unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing such payment prior to the accrual of such arrears and the facts and circumstances constituting good cause are set forth in a written memorandum of decision. Such modification may increase maintenance nunc pro tunc as of the date of application based on newly discovered evidence. Any retroactive amount of maintenance due shall, except as provided for herein, be paid in one sum or periodic sums, as the court directs, taking into account any temporary or partial payments which have been made. The provisions of this subdivision shall not apply to a separation agreement made prior to the effective date of this part.

S 4. This act shall take effect immediately.