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

5678

2015-2016 Regular Sessions

I N S E N A T E

May 27, 2015

Introduced by Sen. BONACIC -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the domestic relations law and the family court act, in relation to the duration and amount of maintenance and of spousal support

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

Section 1. Paragraph a of subdivision 1 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:

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 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] PAYEE'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.

S 2. Subparagraph 7 of paragraph d of subdivision 5 of part B of section 236 of the domestic relations law, as amended by chapter 281 of the laws of 1980 and as renumbered by chapter 229 of the laws of 2009, is amended to read as follows:

(7) any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services as a spouse, parent, wage earner and homemaker, and to the career or career potential of the other party. THE COURT SHALL NOT CONSIDER AS MARITAL PROPERTY SUBJECT TO DISTRIBUTION THE VALUE OF A SPOUSE'S ENHANCED EARNING CAPACITY ARISING FROM A LICENSE, DEGREE,

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

LBD10788-02-5

CELEBRITY GOODWILL, OR CAREER ENHANCEMENT. HOWEVER, IN ARRIVING AT AN EQUITABLE DIVISION OF MARITAL PROPERTY, THE COURT SHALL CONSIDER THE DIRECT OR INDIRECT CONTRIBUTIONS TO THE DEVELOPMENT DURING THE MARRIAGE OF THE ENHANCED EARNING CAPACITY OF THE OTHER SPOUSE;

S 3. 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 PURSUANT TO SUBDIVISION THREE OF THIS PART, in any matrimonial action the court, UPON APPLICATION BY A PARTY, 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] WITHOUT SUBTRACTING ALIMONY OR MAINTENANCE ACTUALLY PAID OR TO BE PAID TO A SPOUSE THAT IS A PARTY TO THE INSTANT ACTION PURSUANT TO SUBCLAUSE (C) OF CLAUSE (VII) OF SUBPARAGRAPH FIVE OF PARAGRAPH (B) OF SUBDIVISION ONE-B OF SECTION TWO HUNDRED FORTY OF THIS ARTICLE AND SUBCLAUSE (C) OF CLAUSE (VII) OF SUBPARAGRAPH FIVE OF PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED THIRTEEN OF THE FAMILY COURT ACT AND WITHOUT SUBTRACTING SPOUSAL SUPPORT PAID PURSUANT TO SECTION FOUR HUNDRED TWELVE OF SUCH ACT.

(5) "Income cap" shall mean up to and including [five hundred] ONE HUNDRED SEVENTY-FIVE thousand dollars of the payor's annual income; provided, however, beginning January thirty-first, two thousand [twelve] SIXTEEN and every two years thereafter, the [payor's annual] income CAP amount shall increase by the [product] SUM 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 PRIOR two [year period] YEARS MULTIPLIED BY THE THEN INCOME CAP AND THEN 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] DOLLAR AMOUNT 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] "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.

(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] "AGREEMENT" SHALL HAVE THE SAME MEANING AS PROVIDED IN SUBDIVISION THREE OF THIS PART.

c. [The] WHERE THE PAYOR'S INCOME IS LOWER THAN OR EQUAL TO THE INCOME CAP, 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] AS FOLLOWS:

(1) Where [the payor's income is up to and including the income cap] CHILD SUPPORT WILL BE PAID FOR CHILDREN OF THE MARRIAGE AND WHERE THE PAYOR AS DEFINED IN THIS SUBDIVISION IS ALSO THE NON-CUSTODIAL PARENT PURSUANT TO THE CHILD SUPPORT STANDARDS ACT:

(a) the court shall subtract [twenty] TWENTY-FIVE percent of the PAYEE'S income [of the payee] from [thirty] TWENTY percent of the PAYOR'S 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 PAYEE'S income [of the payee] from the amount derived from clause (b) of this subparagraph.

(d) the COURT SHALL DETERMINE THE LOWER OF THE TWO AMOUNTS DERIVED BY CLAUSES (A) AND (C) OF THIS SUBPARAGRAPH.

(E) THE guideline amount of temporary maintenance shall be the [lower of the amounts] AMOUNT determined by [clauses (a) and (c) of this subparagraph;] CLAUSE (D) OF THIS SUBPARAGRAPH EXCEPT THAT, if the amount determined by clause [(c) of this subparagraph] (D) OF THIS SUBPARAGRAPH is less than or equal to zero, the guideline amount OF TEMPORARY MAINTENANCE shall be zero dollars.

(F) TEMPORARY MAINTENANCE SHALL BE CALCULATED PRIOR TO CHILD SUPPORT BECAUSE THE AMOUNT OF TEMPORARY MAINTENANCE SHALL BE SUBTRACTED FROM THE PAYOR'S INCOME AND ADDED TO THE PAYEE'S INCOME AS PART OF THE CALCULATION OF THE CHILD SUPPORT OBLIGATION.

(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.] CHILD SUPPORT WILL NOT BE PAID FOR CHILDREN OF THE MARRIAGE, OR WHERE CHILD SUPPORT WILL BE PAID FOR CHILDREN OF THE MARRIAGE BUT THE PAYOR AS DEFINED IN THIS SUBDIVISION IS THE CUSTODIAL PARENT PURSUANT TO THE CHILD SUPPORT STANDARDS ACT:
(A) THE COURT SHALL SUBTRACT TWENTY PERCENT OF THE PAYEE'S INCOME FROM THIRTY PERCENT OF THE PAYOR'S INCOME.
(B) THE COURT SHALL THEN MULTIPLY THE SUM OF THE PAYOR'S INCOME AND THE PAYEE'S INCOME BY FORTY PERCENT.
(C) THE COURT SHALL SUBTRACT THE PAYEE'S INCOME FROM THE AMOUNT DERIVED FROM CLAUSE (B) OF THIS SUBPARAGRAPH.
(D) THE COURT SHALL DETERMINE THE LOWER OF THE TWO AMOUNTS DERIVED BY CLAUSES (A) AND (C) OF THIS SUBPARAGRAPH.
(E) THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE SHALL BE THE AMOUNT DETERMINED BY CLAUSE (D) OF THIS SUBPARAGRAPH EXCEPT THAT, IF THE AMOUNT DETERMINED BY CLAUSE (D) OF THIS SUBPARAGRAPH IS LESS THAN OR EQUAL TO ZERO, THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE SHALL BE ZERO DOLLARS.
(F) IF CHILD SUPPORT WILL BE PAID FOR CHILDREN OF THE MARRIAGE BUT THE PAYOR AS DEFINED IN THIS SUBDIVISION IS THE CUSTODIAL PARENT PURSUANT TO THE CHILD SUPPORT STANDARDS ACT, TEMPORARY MAINTENANCE SHALL BE CALCULATED PRIOR TO CHILD SUPPORT BECAUSE THE AMOUNT OF TEMPORARY MAINTENANCE SHALL BE SUBTRACTED FROM THE PAYOR'S INCOME PURSUANT TO THIS SUBDIVISION AND ADDED TO THE PAYEE'S INCOME PURSUANT TO THIS SUBDIVISION AS PART OF THE CALCULATION OF THE CHILD SUPPORT OBLIGATION.
[(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] WHERE THE PAYOR'S INCOME EXCEEDS THE INCOME CAP, THE court shall determine the guideline [duration] AMOUNT 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] AS FOLLOWS:

(1) THE COURT SHALL PERFORM THE CALCULATIONS SET FORTH IN PARAGRAPH C OF THIS SUBDIVISION FOR THE INCOME OF THE PAYOR UP TO AND INCLUDING THE INCOME CAP; AND

(2) FOR INCOME EXCEEDING THE CAP, THE AMOUNT OF ADDITIONAL MAINTENANCE AWARDED, IF ANY, SHALL BE WITHIN THE DISCRETION OF THE COURT WHICH SHALL TAKE INTO CONSIDERATION ANY ONE OR MORE OF THE FACTORS SET FORTH IN SUBPARAGRAPH ONE OF PARAGRAPH H OF THIS SUBDIVISION; AND

(3) THE COURT SHALL SET FORTH THE FACTORS IT CONSIDERED AND THE REASONS FOR ITS DECISION IN WRITING OR ON THE RECORD. SUCH DECISION, WHETHER IN WRITING OR ON THE RECORD, MAY NOT BE WAIVED BY EITHER PARTY OR COUNSEL.

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] NOTWITHSTANDING THE PROVISIONS OF THIS SUBDIVISION, WHERE THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE WOULD REDUCE THE PAYOR'S INCOME BELOW THE SELF-SUPPORT RESERVE FOR A SINGLE PERSON, 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 SHALL BE A REBUTTABLE PRESUMPTION THAT NO TEMPORARY MAINTENANCE IS AWARDED.

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] DETERMINE THE DURATION OF TEMPORARY MAINTENANCE BY CONSIDERING THE LENGTH OF THE MARRIAGE.

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.] TEMPORARY MAINTENANCE SHALL TERMINATE NO LATER THAN THE ISSUANCE OF THE JUDGMENT OF DIVORCE OR THE DEATH OF EITHER PARTY, WHICHEVER OCCURS FIRST.

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] (1) THE COURT SHALL ORDER THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE UP TO THE INCOME CAP IN ACCORDANCE WITH PARAGRAPH C OF THIS SUBDIVISION, UNLESS THE COURT FINDS THAT THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE IS UNJUST OR INAPPROPRIATE, WHICH FINDING SHALL BE BASED UPON CONSIDERATION OF ANY ONE OR MORE OF THE FOLLOWING FACTORS, AND ADJUSTS THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE ACCORDINGLY BASED UPON SUCH CONSIDERATION:

(A) THE AGE AND HEALTH OF THE PARTIES;

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

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

(D) THE TERMINATION OF A CHILD SUPPORT AWARD DURING THE PENDENCY OF THE TEMPORARY MAINTENANCE AWARD WHEN THE CALCULATION OF TEMPORARY MAINTENANCE WAS BASED UPON CHILD SUPPORT BEING AWARDED AND WHICH RESULTED IN A MAINTENANCE AWARD LOWER THAN IT WOULD HAVE BEEN HAD CHILD SUPPORT NOT BEEN AWARDED;

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

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

(G) 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;

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

(I) 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;

(J) THE TAX CONSEQUENCES TO EACH PARTY;

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

(L) THE REDUCED OR LOST EARNING CAPACITY OF THE PAYEE AS A RESULT OF HAVING FORGONE OR DELAYED EDUCATION, TRAINING, EMPLOYMENT OR CAREER OPPORTUNITIES DURING THE MARRIAGE; AND

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

(2) WHERE THE COURT FINDS THAT THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE IS UNJUST OR INAPPROPRIATE AND THE COURT ADJUSTS THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE PURSUANT TO THIS PARAGRAPH, THE COURT SHALL SET FORTH, IN A WRITTEN DECISION OR ON THE RECORD, THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE, THE FACTORS IT CONSIDERED, AND THE REASONS THAT THE COURT ADJUSTED THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE. SUCH DECISION, WHETHER IN WRITING OR ON THE RECORD, 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 OF THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE.

i. [In any decision made pursuant to] NOTHING CONTAINED IN 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] BE CONSTRUED TO ALTER THE RIGHTS OF THE PARTIES TO VOLUNTARILY ENTER INTO AGREEMENTS OR STIPULATIONS AS DEFINED IN SUBDIVISION THREE OF THIS PART WHICH DEVIATE FROM THE PRESUMPTIVE AWARD OF TEMPORARY MAINTENANCE.

J. WHEN A PAYOR HAS DEFAULTED AND/OR THE COURT IS OTHERWISE PRESENTED WITH INSUFFICIENT EVIDENCE TO DETERMINE 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 EVIDENCE.

K. 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.

L. IN ANY ACTION OR PROCEEDING FOR MODIFICATION WHERE THE PARTIES HAVE ENTERED INTO AN AGREEMENT PROVIDING FOR MAINTENANCE PURSUANT TO SUBDIVISION THREE OF THIS PART ENTERED INTO 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.

M. IN DETERMINING TEMPORARY MAINTENANCE, THE COURT SHALL CONSIDER AND ALLOCATE, WHERE APPROPRIATE, THE RESPONSIBILITIES OF THE RESPECTIVE SPOUSES FOR THE FAMILY'S EXPENSES DURING THE PENDENCY OF THE PROCEEDING.

N. THE TEMPORARY MAINTENANCE ORDER SHALL NOT PREJUDICE THE RIGHTS OF EITHER PARTY REGARDING A POST-DIVORCE MAINTENANCE AWARD.

S 4. 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], UPON APPLICATION BY A PARTY, SHALL MAKE ITS AWARD FOR POST-DIVORCE 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] 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] 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:
(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, WITHOUT SUBTRACTING ALIMONY OR MAINTENANCE ACTUALLY PAID OR TO BE PAID TO A SPOUSE THAT IS A PARTY TO THE INSTANT ACTION PURSUANT TO SUBCLAUSE (C) OF CLAUSE (VII) OF SUBPARAGRAPH FIVE OF PARAGRAPH (B) OF SUBDIVISION ONE-B OF SECTION TWO HUNDRED FORTY OF THIS ARTICLE AND SUBCLAUSE (C) OF CLAUSE (VII) OF SUBPARAGRAPH FIVE OF PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED THIRTEEN OF THE FAMILY COURT ACT AND WITHOUT SUBTRACTING SPOUSAL SUPPORT PAID PURSUANT TO SECTION FOUR HUNDRED TWELVE OF SUCH ACT; AND
(B) 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 ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS OF THE PAYOR'S ANNUAL INCOME; PROVIDED, HOWEVER, BEGINNING JANUARY THIRTY-FIRST, TWO THOUSAND SIXTEEN AND EVERY TWO YEARS THEREAFTER, THE INCOME CAP AMOUNT SHALL INCREASE BY THE SUM 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 PRIOR TWO YEARS MULTIPLIED BY THE THEN INCOME CAP AND THEN 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 F 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) "LENGTH OF MARRIAGE" SHALL MEAN THE PERIOD FROM THE DATE OF MARRIAGE UNTIL THE DATE OF COMMENCEMENT OF THE ACTION.

(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.

(10) "AGREEMENT" SHALL HAVE THE SAME MEANING AS PROVIDED IN SUBDIVISION THREE OF THIS PART.

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] WHERE 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) WHERE CHILD SUPPORT WILL BE PAID FOR CHILDREN OF THE MARRIAGE AND WHERE THE PAYOR AS DEFINED IN THIS SUBDIVISION IS ALSO THE NON-CUSTODIAL PARENT PURSUANT TO THE CHILD SUPPORT STANDARDS ACT:

(A) THE COURT SHALL SUBTRACT TWENTY-FIVE PERCENT OF THE PAYEE'S INCOME FROM TWENTY PERCENT OF THE PAYOR'S INCOME.

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

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

(D) THE COURT SHALL DETERMINE THE LOWER OF THE TWO AMOUNTS DERIVED BY CLAUSES (A) AND (C) OF THIS SUBPARAGRAPH.

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

(F) NOTWITHSTANDING THE PROVISIONS OF THIS SUBDIVISION, WHERE THE GUIDELINE AMOUNT OF POST-DIVORCE MAINTENANCE WOULD REDUCE THE PAYOR'S INCOME BELOW THE SELF-SUPPORT RESERVE FOR A SINGLE PERSON, THE GUIDELINE AMOUNT OF POST-DIVORCE 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 SHALL BE A REBUTTABLE PRESUMPTION THAT NO POST-DIVORCE MAINTENANCE IS AWARDED.

(G) MAINTENANCE SHALL BE CALCULATED PRIOR TO CHILD SUPPORT BECAUSE THE AMOUNT OF MAINTENANCE SHALL BE SUBTRACTED FROM THE PAYOR'S INCOME AND ADDED TO THE PAYEE'S INCOME AS PART OF THE CALCULATION OF THE CHILD SUPPORT OBLIGATION.

(2) WHERE CHILD SUPPORT WILL NOT BE PAID FOR CHILDREN OF THE MARRIAGE, OR WHERE CHILD SUPPORT WILL BE PAID FOR CHILDREN OF THE MARRIAGE BUT THE PAYOR AS DEFINED IN THIS SUBDIVISION IS THE CUSTODIAL PARENT PURSUANT TO THE CHILD SUPPORT STANDARDS ACT:

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

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

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

(D) THE COURT SHALL DETERMINE THE LOWER OF THE TWO AMOUNTS DERIVED BY CLAUSES (A) AND (C) OF THIS SUBPARAGRAPH.

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

(F) IF CHILD SUPPORT WILL BE PAID FOR CHILDREN OF THE MARRIAGE BUT THE PAYOR AS DEFINED IN THIS SUBDIVISION IS THE CUSTODIAL PARENT PURSUANT TO THE CHILD SUPPORT STANDARDS ACT, POST-DIVORCE MAINTENANCE SHALL BE CALCULATED PRIOR TO CHILD SUPPORT BECAUSE THE AMOUNT OF POST-DIVORCE MAINTENANCE SHALL BE SUBTRACTED FROM THE PAYOR'S INCOME PURSUANT TO THIS SUBDIVISION AND ADDED TO THE PAYEE'S INCOME PURSUANT TO THIS SUBDIVISION AS PART OF THE CALCULATION OF THE CHILD SUPPORT OBLIGATION.

(G) NOTWITHSTANDING THE PROVISIONS OF THIS SUBDIVISION, WHERE THE GUIDELINE AMOUNT OF POST-DIVORCE MAINTENANCE WOULD REDUCE THE PAYOR'S INCOME BELOW THE SELF-SUPPORT RESERVE FOR A SINGLE PERSON, THE GUIDELINE AMOUNT OF POST-DIVORCE 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 SHALL BE A REBUTTABLE PRESUMPTION THAT NO POST-DIVORCE MAINTENANCE IS AWARDED.

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] WHERE 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 PARAGRAPH C OF THIS SUBDIVISION FOR THE INCOME OF PAYOR UP TO AND INCLUDING THE INCOME CAP; AND

(2) FOR INCOME EXCEEDING THE CAP, THE AMOUNT OF ADDITIONAL MAINTENANCE AWARDED, IF ANY, SHALL BE WITHIN THE DISCRETION OF THE COURT WHICH SHALL TAKE INTO CONSIDERATION ANY ONE OR MORE OF THE FACTORS SET FORTH IN SUBPARAGRAPH ONE OF PARAGRAPH E OF THIS SUBDIVISION; AND

(3) THE COURT SHALL SET FORTH THE FACTORS IT CONSIDERED AND THE REASONS FOR ITS DECISION IN WRITING OR ON THE RECORD. SUCH DECISION, WHETHER IN WRITING OR ON THE RECORD, MAY NOT BE WAIVED BY EITHER PARTY OR COUNSEL.

E. (1) THE COURT SHALL ORDER THE POST-DIVORCE MAINTENANCE GUIDELINE OBLIGATION UP TO THE INCOME CAP IN ACCORDANCE WITH PARAGRAPH C OF THIS

SUBDIVISION, UNLESS THE COURT FINDS THAT THE POST-DIVORCE MAINTENANCE GUIDELINE OBLIGATION IS UNJUST OR INAPPROPRIATE, WHICH FINDING SHALL BE BASED UPON CONSIDERATION OF ANY ONE OR MORE OF THE FOLLOWING FACTORS, AND ADJUSTS THE POST-DIVORCE MAINTENANCE GUIDELINE OBLIGATION ACCORDINGLY BASED UPON SUCH CONSIDERATION:

(A) THE AGE AND HEALTH OF THE PARTIES;

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

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

(D) THE TERMINATION OF A CHILD SUPPORT AWARD BEFORE THE TERMINATION OF THE MAINTENANCE AWARD WHEN THE CALCULATION OF MAINTENANCE WAS BASED UPON CHILD SUPPORT BEING AWARDED WHICH RESULTED IN A MAINTENANCE AWARD LOWER THAN IT WOULD HAVE BEEN HAD CHILD SUPPORT NOT BEEN AWARDED;

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

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

(G) 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;

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

(I) 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;

(J) THE TAX CONSEQUENCES TO EACH PARTY;

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

(L) THE REDUCED OR LOST EARNING CAPACITY OF THE PAYEE AS A RESULT OF HAVING FORGONE OR DELAYED EDUCATION, TRAINING, EMPLOYMENT OR CAREER OPPORTUNITIES DURING THE MARRIAGE;

(M) THE EQUITABLE DISTRIBUTION OF MARITAL PROPERTY AND THE INCOME OR IMPUTED INCOME ON THE ASSETS SO DISTRIBUTED;

(N) THE CONTRIBUTIONS AND SERVICES OF THE PAYEE AS A SPOUSE, PARENT, WAGE EARNER AND HOMEMAKER AND TO THE CAREER OR CAREER POTENTIAL OF THE OTHER PARTY; AND

(O) 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 DECISION OR ON THE RECORD, THE UNADJUSTED POST-DIVORCE MAINTENANCE GUIDELINE OBLIGATION, THE FACTORS IT CONSIDERED, AND THE REASONS THAT THE COURT ADJUSTED THE POST-DIVORCE MAINTENANCE OBLIGATION. SUCH DECISION SHALL NOT BE WAIVED BY EITHER PARTY OR COUNSEL.

F. THE DURATION OF POST-DIVORCE MAINTENANCE MAY BE DETERMINED AS FOLLOWS:

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

LENGTH OF THE MARRIAGE	PERCENT OF THE LENGTH OF THE MARRIAGE FOR WHICH MAINTENANCE WILL BE PAYABLE
0 UP TO AND INCLUDING 15 YEARS	15% - 30%

MORE THAN 15 UP TO AND INCLUDING 20 YEARS	30% - 40%
MORE THAN 20 YEARS	35% - 50%

(2) IN DETERMINING THE DURATION OF POST-DIVORCE MAINTENANCE, WHETHER OR NOT THE COURT UTILIZES THE ADVISORY SCHEDULE, IT SHALL CONSIDER THE FACTORS LISTED IN SUBPARAGRAPH ONE OF PARAGRAPH E OF THIS SUBDIVISION AND SHALL SET FORTH, IN A WRITTEN DECISION OR ON THE RECORD, THE FACTORS IT CONSIDERED. SUCH DECISION SHALL NOT BE WAIVED BY EITHER PARTY OR COUNSEL. NOTHING HEREIN SHALL PREVENT THE COURT FROM AWARDING NON-DURATIONAL MAINTENANCE IN AN APPROPRIATE CASE.

(3) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH ONE OF THIS PARAGRAPH, POST-DIVORCE MAINTENANCE SHALL TERMINATE UPON THE DEATH OF EITHER PARTY OR UPON THE PAYEE'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 ARTICLE.

(4) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH ONE OF THIS PARAGRAPH, WHEN DETERMINING DURATION OF POST-DIVORCE MAINTENANCE, THE COURT SHALL TAKE INTO CONSIDERATION ANTICIPATED RETIREMENT ASSETS, BENEFITS, AND RETIREMENT ELIGIBILITY AGE OF BOTH PARTIES IF ASCERTAINABLE AT THE TIME OF DECISION. IF NOT ASCERTAINABLE AT THE TIME OF DECISION, THE ACTUAL FULL OR PARTIAL RETIREMENT OF THE PAYOR WITH SUBSTANTIAL DIMINUTION OF INCOME SHALL BE A BASIS FOR A MODIFICATION OF THE AWARD.

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. 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-DIVORCE MAINTENANCE GUIDELINE OBLIGATION.

I. WHEN A PAYOR HAS DEFAULTED AND/OR THE COURT MAKES A FINDING AT THE TIME OF TRIAL THAT IT WAS 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. SUCH ORDER MAY BE RETROACTIVELY MODIFIED UPWARD WITHOUT A SHOWING OF CHANGE IN CIRCUMSTANCES UPON A SHOWING OF SUBSTANTIAL NEWLY DISCOVERED 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 THE CHAPTER OF THE LAWS OF TWO THOUSAND FIFTEEN WHICH AMENDED THIS SUBDIVISION, BROUGHT PURSUANT TO THIS ARTICLE, THE GUIDELINES FOR POST-DIVORCE MAINTENANCE SET FORTH IN THIS SUBDIVISION SHALL NOT CONSTITUTE A CHANGE OF CIRCUMSTANCES WARRANTING MODIFICATION OF SUCH SUPPORT ORDER.

L. IN ANY ACTION OR PROCEEDING FOR MODIFICATION WHERE THE PARTIES HAVE ENTERED INTO AN AGREEMENT PROVIDING FOR MAINTENANCE PURSUANT TO SUBDIVISION THREE OF THIS PART ENTERED INTO PRIOR TO THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND FIFTEEN WHICH AMENDED THIS SUBDIVISION, BROUGHT PURSUANT TO THIS ARTICLE, THE GUIDELINES FOR POST-DIVORCE MAINTENANCE SET FORTH IN THIS SUBDIVISION SHALL NOT CONSTITUTE A CHANGE OF CIRCUMSTANCES WARRANTING MODIFICATION OF SUCH AGREEMENT.

M. IN ANY ACTION OR PROCEEDING FOR MODIFICATION OF AN ORDER OF MAINTENANCE OR ALIMONY EXISTING PRIOR TO THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND FIFTEEN WHICH AMENDED THIS SUBDIVISION, BROUGHT

PURSUANT TO THIS ARTICLE, THE GUIDELINES FOR POST-DIVORCE MAINTENANCE SET FORTH IN PARAGRAPHS C, D AND E OF THIS SUBDIVISION SHALL NOT APPLY.

N. IN ANY ACTION OR PROCEEDING FOR MODIFICATION WHERE THE PARTIES HAVE ENTERED INTO AN AGREEMENT PROVIDING FOR MAINTENANCE PURSUANT TO SUBDIVISION THREE OF THIS PART ENTERED INTO PRIOR TO THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND FIFTEEN WHICH AMENDED THIS SUBDIVISION, BROUGHT PURSUANT TO THIS ARTICLE, THE GUIDELINES FOR POST-DIVORCE MAINTENANCE SET FORTH IN PARAGRAPHS C, D AND E OF THIS SUBDIVISION SHALL NOT APPLY.

O. 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 E OF THIS SUBDIVISION.

S 5. 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 MADE AFTER TRIAL as to maintenance, upon a showing of the [recipient's] PAYEE'S inability to be self-supporting or UPON A SHOWING OF a substantial change in circumstance [or termination of child support awarded pursuant to section two hundred forty of this article], including financial hardship OR UPON ACTUAL FULL OR PARTIAL RETIREMENT OF THE PAYOR IF THE RETIREMENT RESULTS IN A SUBSTANTIAL CHANGE IN FINANCIAL CIRCUMSTANCES. Where, after the effective date of this part, [a separation] AN agreement remains in force, no modification of [a prior] AN 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 6. Section 248 of the domestic relations law, as amended by chapter 604 of the laws of 1975, is amended to read as follows:

S 248. Modification of judgment or order in action for divorce or annulment. Where an action for divorce or for annulment or for a declaration of the nullity of a void marriage is brought by a [husband or wife] SPOUSE, and a final judgment of divorce or a final judgment annulling the marriage or declaring its nullity has been rendered, the court, by order upon the application of the [husband] PAYOR on notice, and on proof of the marriage of the [wife] PAYEE after such final judgment, must modify such final judgment and any orders made with respect thereto by annulling the provisions of such final judgment or orders, or

of both, directing payments of money for the support of the [wife] PAYEE. The court in its discretion upon application of the [husband] PAYOR on notice, upon proof that the [wife] PAYEE is habitually living with another [man] PERSON and holding HIMSELF OR herself out as [his wife] THE SPOUSE OF SUCH OTHER PERSON, although not married to such [man] OTHER PERSON, may modify such final judgment and any orders made with respect thereto by annulling the provisions of such final judgment or orders or of both, directing payment of money for the support of such [wife] PAYEE.

S 7. Section 412 of the family court act, as amended by chapter 281 of the laws of 1980, is amended to read as follows:

S 412. Married person's duty to support spouse. 1. A married person is chargeable with the support of his or her spouse and, [if possessed of sufficient means or able to earn such means, may be required to pay for his or her support a fair and reasonable sum, as] EXCEPT WHERE THE PARTIES HAVE ENTERED INTO AN AGREEMENT PURSUANT TO SECTION FOUR HUNDRED TWENTY-FIVE OF THIS ARTICLE PROVIDING FOR SUPPORT, the court [may determine, having due regard to the circumstances of the respective parties], UPON APPLICATION BY A PARTY, SHALL MAKE ITS AWARD FOR SPOUSAL SUPPORT PURSUANT TO THE PROVISIONS OF THIS PART.

2. FOR PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS SHALL BE USED:

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

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

(C) "INCOME" SHALL MEAN INCOME AS DEFINED IN THE CHILD SUPPORT STANDARDS ACT AND CODIFIED IN SECTION TWO HUNDRED FORTY OF THE DOMESTIC RELATIONS LAW AND SECTION FOUR HUNDRED THIRTEEN OF THIS ARTICLE WITHOUT SUBTRACTING SPOUSAL SUPPORT ACTUALLY PAID OR TO BE PAID TO A SPOUSE THAT IS A PARTY TO THE INSTANT ACTION PURSUANT TO SUBCLAUSE (C) OF CLAUSE (VII) OF SUBPARAGRAPH FIVE OF PARAGRAPH (B) OF SUBDIVISION ONE-B OF SECTION TWO HUNDRED FORTY OF THE DOMESTIC RELATIONS LAW AND SUBCLAUSE (C) OF CLAUSE (VII) OF SUBPARAGRAPH FIVE OF PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED THIRTEEN OF THIS ARTICLE.

(D) "INCOME CAP" SHALL MEAN UP TO AND INCLUDING ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS OF THE PAYOR'S ANNUAL INCOME; PROVIDED, HOWEVER, BEGINNING JANUARY THIRTY-FIRST, TWO THOUSAND SIXTEEN AND EVERY TWO YEARS THEREAFTER, THE INCOME CAP AMOUNT SHALL INCREASE BY THE SUM 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 PRIOR TWO YEARS MULTIPLIED BY THE THEN INCOME CAP AND THEN ROUNDED TO THE NEAREST ONE THOUSAND DOLLARS. THE OFFICE OF COURT ADMINISTRATION SHALL DETERMINE AND PUBLISH THE INCOME CAP.

(E) "GUIDELINE AMOUNT OF SPOUSAL SUPPORT" SHALL MEAN THE SUM DERIVED BY THE APPLICATION OF SUBDIVISION THREE OR FOUR OF THIS SECTION.

(F) "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 THE DOMESTIC RELATIONS LAW AND SECTION FOUR HUNDRED THIRTEEN OF THIS ARTICLE.

(G) "AGREEMENT" SHALL HAVE THE SAME MEANING AS PROVIDED IN SUBDIVISION THREE OF PART B OF SECTION TWO HUNDRED THIRTY-SIX OF THE DOMESTIC RELATIONS LAW.

3. WHERE THE PAYOR'S INCOME IS LOWER THAN OR EQUAL TO THE INCOME CAP, THE COURT SHALL DETERMINE THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT AS FOLLOWS:

(A) WHERE CHILD SUPPORT WILL BE PAID FOR CHILDREN OF THE MARRIAGE AND WHERE THE PAYOR AS DEFINED IN THIS SECTION IS ALSO THE NON-CUSTODIAL PARENT PURSUANT TO THE CHILD SUPPORT STANDARDS ACT:

(1) THE COURT SHALL SUBTRACT TWENTY-FIVE PERCENT OF THE PAYEE'S INCOME FROM TWENTY 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 THE TWO AMOUNTS DERIVED BY SUBPARAGRAPHS ONE AND THREE OF THIS PARAGRAPH.

(5) THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT 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 SPOUSAL SUPPORT SHALL BE ZERO DOLLARS.

(6) SPOUSAL SUPPORT SHALL BE CALCULATED PRIOR TO CHILD SUPPORT BECAUSE THE AMOUNT OF SPOUSAL SUPPORT SHALL BE SUBTRACTED FROM THE PAYOR'S INCOME AND ADDED TO THE PAYEE'S INCOME AS PART OF THE CALCULATION OF THE CHILD SUPPORT OBLIGATION.

(B) WHERE CHILD SUPPORT WILL NOT BE PAID FOR CHILDREN OF THE MARRIAGE, OR WHERE CHILD SUPPORT WILL BE PAID FOR CHILDREN OF THE MARRIAGE BUT THE PAYOR AS DEFINED IN THIS SECTION IS THE CUSTODIAL PARENT PURSUANT TO THE CHILD SUPPORT STANDARDS ACT:

(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 SPOUSAL SUPPORT 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 SPOUSAL SUPPORT SHALL BE ZERO DOLLARS.

(6) IF CHILD SUPPORT WILL BE PAID FOR CHILDREN OF THE MARRIAGE BUT THE PAYOR AS DEFINED IN THIS SECTION IS THE CUSTODIAL PARENT PURSUANT TO THE CHILD SUPPORT STANDARDS ACT, SPOUSAL SUPPORT SHALL BE CALCULATED PRIOR TO CHILD SUPPORT BECAUSE THE AMOUNT OF SPOUSAL SUPPORT SHALL BE SUBTRACTED FROM THE PAYOR'S INCOME AND ADDED TO THE PAYEE'S INCOME AS PART OF THE CALCULATION OF THE CHILD SUPPORT OBLIGATION.

4. WHERE THE PAYOR'S INCOME EXCEEDS THE INCOME CAP, THE COURT SHALL DETERMINE THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT AS FOLLOWS:

(A) THE COURT SHALL PERFORM THE CALCULATIONS SET FORTH IN SUBDIVISION THREE OF THIS SECTION FOR THE INCOME OF THE PAYOR UP TO AND INCLUDING THE INCOME CAP; AND

(B) FOR INCOME EXCEEDING THE CAP, THE AMOUNT OF ADDITIONAL SPOUSAL SUPPORT AWARDED, IF ANY, SHALL BE WITHIN THE DISCRETION OF THE COURT WHICH SHALL TAKE INTO CONSIDERATION ANY ONE OR MORE OF THE FACTORS SET FORTH IN PARAGRAPH (A) OF SUBDIVISION SIX OF THIS SECTION; AND

(C) THE COURT SHALL SET FORTH THE FACTORS IT CONSIDERED AND THE REASONS FOR ITS DECISION IN WRITING OR ON THE RECORD. SUCH DECISION, WHETHER IN WRITING OR ON THE RECORD, MAY NOT BE WAIVED BY EITHER PARTY OR COUNSEL.

5. NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, WHERE THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT WOULD REDUCE THE PAYOR'S INCOME BELOW THE

SELF-SUPPORT RESERVE FOR A SINGLE PERSON, THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT 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 SHALL BE A REBUTTABLE PRESUMPTION THAT NO SPOUSAL SUPPORT IS AWARDED.

6. (A) THE COURT SHALL ORDER THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT UP TO THE CAP IN ACCORDANCE WITH SUBDIVISION THREE OF THIS SECTION, UNLESS THE COURT FINDS THAT THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT IS UNJUST OR INAPPROPRIATE, WHICH FINDING SHALL BE BASED UPON CONSIDERATION OF ANY ONE OR MORE OF THE FOLLOWING FACTORS, AND ADJUSTS THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT ACCORDINGLY BASED UPON CONSIDERATION OF THE FOLLOWING FACTORS:

(1) THE AGE AND HEALTH OF THE PARTIES;

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

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

(4) THE TERMINATION OF A CHILD SUPPORT AWARD DURING THE PENDENCY OF THE SPOUSAL SUPPORT AWARD WHEN THE CALCULATION OF SPOUSAL SUPPORT WAS BASED UPON CHILD SUPPORT BEING AWARDED WHICH RESULTED IN A SPOUSAL SUPPORT AWARD LOWER THAN IT WOULD HAVE BEEN HAD CHILD SUPPORT NOT BEEN AWARDED;

(5) THE WASTEFUL DISSIPATION OF MARITAL PROPERTY, INCLUDING TRANSFERS OR ENCUMBRANCES MADE IN CONTEMPLATION OF A SUPPORT PROCEEDING WITHOUT FAIR CONSIDERATION;

(6) THE EXISTENCE AND DURATION OF A PRE-MARITAL JOINT HOUSEHOLD OR A PRE-SUPPORT PROCEEDINGS 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 AVAILABILITY AND COST OF MEDICAL INSURANCE FOR THE PARTIES;

(9) 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;

(10) THE TAX CONSEQUENCES TO EACH PARTY;

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

(12) THE REDUCED OR LOST EARNING CAPACITY OF THE PAYEE AS A RESULT OF HAVING FORGONE OR DELAYED EDUCATION, TRAINING, EMPLOYMENT OR CAREER OPPORTUNITIES DURING THE MARRIAGE;

(13) THE CONTRIBUTIONS AND SERVICES OF THE PAYEE AS A SPOUSE, PARENT, WAGE EARNER AND HOMEMAKER AND TO THE CAREER OR CAREER POTENTIAL OF THE OTHER PARTY;

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

(B) WHERE THE COURT FINDS THAT THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT IS UNJUST OR INAPPROPRIATE AND THE COURT ADJUSTS THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT PURSUANT TO THIS SUBDIVISION, THE COURT SHALL SET FORTH, IN A WRITTEN DECISION OR ON THE RECORD, THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT, THE FACTORS IT CONSIDERED, AND THE REASONS THAT THE COURT ADJUSTED THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT. SUCH DECISION, WHETHER IN WRITING OR ON THE RECORD, SHALL NOT BE WAIVED BY EITHER PARTY OR COUNSEL.

(C) WHERE EITHER OR BOTH PARTIES ARE UNREPRESENTED, THE COURT SHALL NOT ENTER A SPOUSAL SUPPORT ORDER UNLESS THE COURT INFORMS THE UNREPRESENTED PARTY OR PARTIES OF THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT.

7. WHEN A PARTY HAS DEFAULTED AND/OR THE COURT MAKES A FINDING AT THE TIME OF TRIAL THAT IT WAS PRESENTED WITH INSUFFICIENT EVIDENCE TO DETERMINE INCOME, THE COURT SHALL ORDER THE SPOUSAL SUPPORT AWARD BASED UPON THE NEEDS OF THE PAYEE OR THE STANDARD OF LIVING OF THE PARTIES PRIOR TO COMMENCEMENT OF THE SPOUSAL SUPPORT PROCEEDING, WHICHEVER IS GREATER. SUCH ORDER MAY BE RETROACTIVELY MODIFIED UPWARD WITHOUT A SHOWING OF CHANGE IN CIRCUMSTANCES UPON A SHOWING OF SUBSTANTIAL NEWLY DISCOVERED EVIDENCE.

8. IN ANY ACTION OR PROCEEDING FOR MODIFICATION OF AN ORDER OF SPOUSAL SUPPORT EXISTING PRIOR TO THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND FIFTEEN WHICH AMENDED THIS SECTION, BROUGHT PURSUANT TO THIS ARTICLE, THE SPOUSAL SUPPORT GUIDELINES SET FORTH IN THIS SECTION SHALL NOT CONSTITUTE A CHANGE OF CIRCUMSTANCES WARRANTING MODIFICATION OF SUCH SPOUSAL SUPPORT ORDER.

9. IN ANY ACTION OR PROCEEDING FOR MODIFICATION WHERE SPOUSAL SUPPORT OR MAINTENANCE WAS ESTABLISHED IN A WRITTEN AGREEMENT PROVIDING FOR SPOUSAL SUPPORT MADE PURSUANT TO SECTION FOUR HUNDRED TWENTY-FIVE OF THIS ARTICLE OR MADE PURSUANT TO SUBDIVISION THREE OF PART B OF SECTION TWO HUNDRED THIRTY-SIX OF THE DOMESTIC RELATIONS LAW ENTERED INTO PRIOR TO THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND FIFTEEN WHICH AMENDED THIS SECTION, BROUGHT PURSUANT TO THIS ARTICLE, THE SPOUSAL SUPPORT GUIDELINES SET FORTH IN THIS SECTION SHALL NOT CONSTITUTE A CHANGE OF CIRCUMSTANCES WARRANTING MODIFICATION OF SUCH SPOUSAL SUPPORT ORDER.

10. THE COURT MAY MODIFY AN ORDER OF SPOUSAL SUPPORT UPON A SHOWING OF A SUBSTANTIAL CHANGE IN CIRCUMSTANCES. UNLESS SO MODIFIED, ANY ORDER FOR SPOUSAL SUPPORT ISSUED PURSUANT TO THIS SECTION SHALL CONTINUE UNTIL THE EARLIEST TO OCCUR OF THE FOLLOWING:

(A) A WRITTEN STIPULATION OR AGREEMENT BETWEEN THE PARTIES;

(B) AN ORAL STIPULATION OR AGREEMENT BETWEEN THE PARTIES ENTERED INTO ON THE RECORD IN OPEN COURT;

(C) ISSUANCE OF A JUDGMENT OF DIVORCE OR OTHER ORDER IN A MATRIMONIAL PROCEEDING;

(D) THE DEATH OF EITHER PARTY.

S 8. This act shall take effect on the one hundred twentieth day after it shall have become a law and shall apply to matrimonial actions and family court actions for spousal support commenced on or after such effective date; provided however that section three of this act shall take effect on the thirtieth day after it shall have become a law and shall apply to matrimonial actions commenced on or after such effective date. Nothing in this act shall be deemed to affect the validity of any agreement made pursuant to subdivision 3 of part B of section 236 of the domestic relations law or section 425 of the family court act prior to the effective date of this act.