

Alimony Reform Bill Passes Legislature And Is Awaiting Action By Governor

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The New Jersey Legislature recently addressed the issue of alimony reform. At the end of June 2014, a bill that addresses alimony passed both houses of the New Jersey Legislature and the bill has been submitted to Governor Chris Christie for signature.

The Governor may sign the bill into law, veto the bill or send the bill back to the Legislature on a conditional veto with suggested changes. Many believe that Governor Christie will take action on the bill in mid-August. However, he could take action as late as September as a result of the Legislature's summer recess.

The bill amends the present law and establishes "open durational" alimony to replace "permanent" alimony. Under the current law, the concept of permanent alimony generally means that support is paid until the earliest of the death or remarriage of the recipient or the death of the payor or there is a substantial change in circumstance in the parties' income and finances. The current law gives courts discretion when determining the amount and duration of spousal support, which has led to varied results throughout the State because the facts of each case are different.

The present bill attempts to address issues that have arisen in many cases regarding when alimony can be modified or terminated. The bill specifically addresses when alimony can be modified or terminated when the person paying the alimony retires or loses employment. The bill also addresses when alimony can be terminated or suspended as a result of the recipient's cohabitation with another person.

With regard to the retirement of the person paying alimony, under current law, a court has wide discretion in deciding whether someone's alimony obligation should be modified or terminated as a

result of retirement. In some cases under current law, it was held that when the person paying alimony was capable of working beyond the “age of retirement,” that person’s alimony obligation was not terminated.

The bill attempts to establish a clear standard for modification or termination of alimony based on the retirement of the payor. Under the bill, a court will assume that alimony should be terminated when the person paying alimony reaches the full retirement age, which means the age when the person is eligible to receive full retirement benefits under the federal Social Security Act. This assumption by the court can be overcome by the alimony recipient based on good cause or other factors listed in the bill. This change which is set forth in the bill means that at the time the payor reaches full retirement age, the burden shifts to the recipient to prove to the Court why alimony should not be modified or terminated.

With regard to the modification of alimony resulting from an involuntary reduction in income by the payor, current law does not set forth a specific time-period when a party can apply for a modification or termination of alimony as a result of loss of employment. As a result, under current law there have been wide variations in the opinions of the courts throughout the State regarding this issue. A significant change in the bill is that a person is allowed to file an application for a change in circumstances based on loss of employment after s/he has been unemployed, or has not been able to return to or attain employment at prior income levels, or both, for a period of 90 days. Accordingly, the bill would create a state-wide 90-day time period for when someone with an alimony obligation may make an application with the court as a result of involuntary loss of employment. However, the new 90-day time-period set forth in the bill does not guarantee that an applicant seeking to modify or terminate alimony will be successful. A court will still consider the relevant facts regarding whether a modification or termination is appropriate, such as whether the payor has undertaken a reasonable and thorough job search since becoming involuntarily unemployed.

Another significant change in the bill addresses how alimony is impacted when the alimony recipient cohabits with another person. Currently, a party who wants to terminate alimony as a result of cohabitation generally must prove that the person receiving support is living with someone in a relationship similar to marriage and the alimony recipient is financially supported by or is financially

supporting the person with whom s/he cohabits. Under this bill, cohabitation can be proven even in cases where the person receiving support is not living with another person full time. In addition, the pending bill specifically allows for alimony to be suspended, rather than terminated, if the recipient is cohabiting. Current law does not create a suspension of alimony based on cohabitation.

Einhorn Barbarito is closely monitoring the status of the amended bill and will post an update to the Einhorn Barbarito website when the Governor takes action regarding the bill.

If the bill is signed into law while a divorce case is pending, the changes as set forth above may impact the potential outcome of the case. The facts of every case are different, and as such, consultation with an attorney is recommended.