

BILL TEXT:

STATE OF NEW YORK

S. 7740--A
Cal. No. 575

A. 10984--A

SENATE - ASSEMBLY

May 5, 2010

IN SENATE -- Introduced by Sens. HASSELL-THOMPSON, ADAMS, BRESLIN, HUNT-
LEY, KRUEGER, MONTGOMERY, OPPENHEIMER, PERKINS, SAMPSON, SAVINO,
SCHNEIDERMAN, SQUADRON, STAVISKY, STEWART-COUSINS -- read twice and
ordered printed, and when printed to be committed to the Committee on
Judiciary -- reported favorably from said committee, ordered to first
and second report, ordered to a third reading, amended and ordered
reprinted, retaining its place in the order of third reading

IN ASSEMBLY -- Introduced by M. of A. PAULIN -- read once and referred
to the Committee on Judiciary -- committee discharged, bill amended,
ordered reprinted as amended and recommitted to said committee

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

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Subdivision 6 of part B of section 236 of the domestic
2 relations law is REPEALED and a new subdivision 6 is added to read as
3 follows:
4 6. Interim spousal support and post-marital income. a. Except where
5 the parties have entered into an agreement pursuant to subdivision three
6 of this part providing for alimony, maintenance or post-marital income,
7 in any matrimonial action the court may order interim spousal support in
8 such amount as justice requires, having regard for the standard of
9 living of the parties established during the marriage, whether the party
10 in whose favor interim spousal support is granted lacks sufficient prop-
11 erty and income to provide for his or her reasonable needs, whether the
12 other party has sufficient property or income to provide for the reason-
13 able needs of the other, and the circumstances of the case and of the
14 respective parties. Such order shall be effective as of the date of the
15 application therefor, and any retroactive amount of interim spousal
16 support due shall be paid in one sum or periodic sums, as the court
17 shall direct.

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

1 b. (1) Except where the parties have entered into an agreement pursu-
2 ant to subdivision three of this part providing for alimony, maintenance
3 or post-marital income, the court shall make its award for post-marital
4 income pursuant to the provisions of this paragraph.

5 (2) For purposes of this subdivision, the following definitions shall
6 be used:

7 (a) "Payor" shall mean the spouse with the higher income.

8 (b) "Payee" shall mean the spouse with the lower income.

9 (c) "Length of marriage" shall mean the period from the date of
10 marriage until the date of commencement of action.

11 (d) "Income" shall mean:

12 (i) all forms of income as defined in the Child Support Standards Act
13 and codified in section two hundred forty of this article and section
14 four hundred thirteen of the family court act;

15 (ii) income from income producing property distributed or to be
16 distributed pursuant to subdivision five of this part.

17 (e) "Income cap" shall mean up to and including five hundred thousand
18 dollars of the payor's annual income. The amount of five hundred thou-
19 sand dollars shall increase or decrease on March first of each year by
20 any change in the cost of living as defined in the annual Consumer Price
21 Index-All Urban Consumers, New York, New York-Northeastern New Jersey,
22 as published by the bureau of labor statistics of the U.S. department of
23 labor.

24 (f) "Guideline amount" shall mean the sum derived by the application
25 of subparagraph three of this paragraph.

26 (g) "Guideline duration" shall mean the durational period determined
27 by the application of subparagraph four of this paragraph.

28 (h) "Presumptive award" shall mean the guideline amount for the guide-
29 line duration prior to the court's application of any adjustment factors
30 as provided in clause (a) of subparagraph five of this paragraph.

31 (i) "Post-marital income" shall mean the sum to be paid for a desig-
32 nated period of time pursuant to a final court order or decree dissolv-
33 ing or annulling a marriage, declaring the nullity of a marriage, or a
34 valid agreement between the parties, by one party to the other.

35 (j) "Self-support reserve" shall mean the self-support reserve as
36 defined in the Child Support Standards Act and codified in section two
37 hundred forty of this article and section four hundred thirteen of the
38 family court act.

39 (3) The court shall determine the guideline amount in accordance with
40 the provisions of this subparagraph after determining the income of the
41 parties:

42 (a) Where the payor's income is up to and including the income cap:

43 (i) the court shall subtract twenty percent of the income of the payee
44 from thirty percent of the income up to the income cap of the payor.

45 (ii) the court shall then multiply the sum of the payor's income up to
46 and including the income cap and all of the payee's income by forty
47 percent.

48 (iii) the court shall subtract the income of the payee from the amount
49 derived from subclause (ii) of this clause.

50 (iv) the guideline amount shall be the lower of the amounts determined
51 by subclauses (i) and (iii) of this clause; if the amount determined by
52 subclause (iii) of this clause is less than or equal to zero, the guide-
53 line amount shall be zero dollars.

54 (b) Where the income of the payor exceeds the income cap:

55 (i) the court shall determine the guideline amount for that portion of
56 the payor's income that is up to and including the income cap according

1 to clause (a) of this subparagraph, and, for the payor's income in
2 excess of the income cap, the court shall determine any additional
3 guideline amount through consideration of the following factors:

4 (A) The length of the marriage;
5 (B) The substantial differences in the incomes of the parties;
6 (C) The standard of living of the parties established during the
7 marriage;

8 (D) The age and health of the parties;

9 (E) The present and future earning capacity of the parties;

10 (F) The need of one party to incur education or training expenses;

11 (G) The wasteful dissipation of marital property;

12 (H) The transfer or encumbrance made in contemplation of a matrimonial
13 action without fair consideration;

14 (I) The existence and duration of a pre-marital joint household or a
15 pre-divorce separate household;

16 (J) Acts by one party against another that constitute egregious fault
17 likely to shock the conscience;

18 (K) The availability and cost of medical insurance for the parties;

19 (L) The care of the children or stepchildren, disabled adult children
20 or stepchildren, elderly parents or in-laws that has inhibited or
21 continues to inhibit a party's earning capacity;

22 (M) The inability of one party to obtain meaningful employment due to
23 age or absence from the workforce;

24 (N) The need to pay for exceptional additional expenses for the
25 child/children, including but not limited to, schooling, day care and
26 medical treatment;

27 (O) The tax consequences to each party;

28 (P) The equitable distribution of the marital property;

29 (Q) The reduced or lost lifetime earning capacity of the party seeking
30 post-marital income as a result of having foregone or delayed education,
31 training, employment or career opportunities during the marriage;

32 (R) The contributions and services of the party seeking post-marital
33 income as a spouse, parent, wage earner and homemaker and to the career
34 or career potential of the other party; and

35 (S) Any other factor which the court shall expressly find to be just
36 and proper.

37 (ii) In any decision made pursuant to this clause, the court shall set
38 forth the factors it considered and the reasons for its decision. Such
39 written order may not be waived by either party or counsel.

40 (c) Notwithstanding the provisions of this subparagraph, where the
41 guideline amount would reduce the payor's income below the self-support
42 reserve for a single person, the presumptive amount of the guideline
43 amount shall be the difference between the payor's income and the self-
44 support reserve. If the payor's income is below the self-support
45 reserve, there is a rebuttable presumption that no post-marital income
46 is awarded.

47 (4) (a) The court shall determine the guideline duration in accordance
48 with the following schedule:

<u>Length of the Marriage</u>	<u>% of the Length of the Marriage for</u> <u>Which Post-Marital Income Will Be</u> <u>Payable</u>
<u>0 up to and including 5 years</u>	<u>30%</u>
<u>more than 5, up to and including</u> <u>7.5 years</u>	<u>40%</u>
<u>more than 7.5, up to and</u>	

56 including 10 years 50%
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1 more than 10, up to and
2 including 12.5 years 60%
3 more than 12.5, up to and
4 including 15 years 70%
5 more than 15, up to and
6 including 17.5 years 80%
7 more than 17.5, up to and
8 including 20 years 90%
9 more than 20, up to and
10 including 25 years 100%
11 more than 25 years permanent

12 (b) Notwithstanding the provisions of clause (a) of this subparagraph,
13 post-marital income shall terminate upon the death of either party.

14 (5) (a) The court shall order the presumptive award in accordance with
15 subparagraphs three and four of this paragraph, unless the court finds
16 that the presumptive award is unjust or inappropriate and adjusts the
17 presumptive award accordingly based upon consideration of the following
18 factors:

19 (i) The standard of living of the parties established during the
20 marriage;

21 (ii) The age and health of the parties;

22 (iii) The present and future earning capacity of the parties;

23 (iv) The need of one party to incur education or training expenses;

24 (v) The wasteful dissipation of marital property;

25 (vi) The transfer or encumbrance made in contemplation of a matrimoni-
26 al action without fair consideration;

27 (vii) The existence and duration of a pre-marital joint household or a
28 pre-divorce separate household;

29 (viii) Acts by one party against another that constitute egregious
30 fault likely to shock the conscience;

31 (ix) The availability and cost of medical insurance for the parties;

32 (x) The care of the children or stepchildren, disabled adult children
33 or stepchildren, elderly parents or in-laws that has inhibited or
34 continues to inhibit a party's earning capacity;

35 (xi) The inability of one party to obtain meaningful employment due to
36 age or absence from the workforce;

37 (xii) The need to pay for exceptional additional expenses for the
38 child/children, including but not limited to, schooling, day care and
39 medical treatment;

40 (xiii) The tax consequences to each party;

41 (xiv) The equitable distribution of the marital property;

42 (xv) The reduced or lost lifetime earning capacity of the party seek-
43 ing post-marital income as a result of having foregone or delayed educa-
44 tion, training, employment or career opportunities during the marriage;

45 (xvi) The contributions and services of the party seeking post-marital
46 income as a spouse, parent, wage earner and homemaker and to the career
47 or career potential of the other party; and

48 (xvii) Any other factor which the court shall expressly find to be
49 just and proper.

50 (b) Where the court finds that the presumptive award is unjust or
51 inappropriate and the court adjusts the presumptive award pursuant to
52 this subparagraph, the court shall set forth, in a written order, the
53 amount of the unadjusted presumptive award, the factors it considered,
54 and the reasons that the court adjusted the presumptive award. Such

1 (c) Where either or both parties are unrepresented, the court shall
2 not enter a post-marital income order or judgment unless the unrepre-
3 sented party or parties have been informed of the presumptive award.

4 (6) A validly executed agreement or stipulation voluntarily entered
5 into between the parties in an action commenced after the effective date
6 of this subdivision presented to the court for incorporation in an order
7 or judgment shall include a provision stating that the parties have been
8 advised of the provisions of this subdivision, and that the presumptive
9 award provided for therein results in the correct amount of post-marital
10 income. In the event that such agreement or stipulation deviates from
11 the presumptive award, the agreement or stipulation must specify the
12 amount that such presumptive award would have been and the reason or
13 reasons that such agreement or stipulation does not provide for payment
14 of that amount. Such provision may not be waived by either party or
15 counsel. Nothing contained in this subdivision shall be construed to
16 alter the rights of the parties to voluntarily enter into validly
17 executed agreements or stipulations which deviate from the presumptive
18 award provided such agreements or stipulations comply with the
19 provisions of this paragraph. The court shall, however, retain
20 discretion with respect to post-marital income pursuant to this section.
21 Any court order or judgment incorporating a validly executed agreement
22 or stipulation which deviates from the presumptive award shall set forth
23 the court's reasons for such deviation.

24 (7) In addition to financial disclosure required in this section, the
25 court may require that the income and/or expenses of either party be
26 verified with documentation including, but not limited to, past and
27 present income tax returns, employer statements, pay stubs, corporate,
28 business, or partnership books and records, corporate and business tax
29 returns, and receipts for expenses or such other means of verification
30 as the court determines appropriate. Nothing herein shall affect any
31 party's right to pursue discovery pursuant to this chapter or the civil
32 practice law and rules.

33 (8) When a party has defaulted and/or the court is otherwise presented
34 with insufficient evidence to determine gross income, the court shall
35 order the post-marital income obligation based upon the needs of the
36 payee or the standard of living of the parties prior to commencement of
37 the divorce action, whichever is greater. Such order may be retroactive-
38 ly modified upward without a showing of change in circumstances upon a
39 showing of newly discovered or obtained evidence.

40 (9) Post-marital income may be modified pursuant to paragraph b of
41 subdivision nine of this section.

42 (10) In any action or proceeding for modification of an order of main-
43 tenance or alimony existing prior to the effective date of this subdivi-
44 sion, brought pursuant to this article, the post-marital income stand-
45 ards set forth in this subdivision shall not constitute a change of
46 circumstances warranting modification of such support order.

47 § 2. This act shall take effect on the sixtieth day after it shall
48 have become a law and shall apply to matrimonial actions commenced on or
49 after such effective date.