SJC 11726

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

2014-P-649

GEORGE J. RODMAN
(Plaintiff/Appellant)

v.

ROBERTA RODMAN
(Defendant/Appellee)

BRIEF FOR THE APPELLANT
GEORGE J. RODMAN

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STATEMENT OF ISSUES

I. Whether M.G.L. c. 208 §49(f) is to be applied to ~~the modification of judgments entered before~~ March 1, 2012?

STATEMENT OF THE CASE

Nature of the Case

This case involves a Complaint for Modification filed by the Plaintiff, George J. Rodman (hereinafter "George")[1], to terminate his alimony, health and life insurance obligations to his ex-wife, Roberta Rodman (hereinafter "Roberta"). [RA 25,31][2] In the present matter, the parties were married for thirty-nine (39) years at the time of their divorce. [RA 5] George agreed to pay to Roberta $1,539.00 per week as alimony pursuant to a negotiated Separation Agreement. [RA 12] George is the co-owner of a funeral home, Brezniak Rodman Funeral Directors, Inc. where he worked during

[1] For ease of reference, the parties are referred to in this brief by their first names. The procedure was approved by the Appeals Court in Cooper v. Cooper, 43 Mass.App.Ct. 51, 52 fn.1 (1997).

[2] References in the brief to the Record Appendix are denoted "(RA__)" with the Arabic numeral referring to the page in the record appendix where it can be located.

the marriage. [RA 90] Roberta was employed during the marriage in a dentist's office. [RA 89]

The parties included in their Separation Agreement provisions which would terminate George's obligation to pay alimony upon the death of George, the death of Roberta, or the remarriage of Roberta, whichever occurs first. [RA 12] The Separation Agreement also provided that Roberta would continue to provide health insurance for the parties through her employment and George's company would reimburse her for the cost. [RA 17] The Separation Agreement also contained a provision whereby George is to maintain a life insurance policy with a death benefit of $650,000 so long as he has an alimony obligation to Roberta. [RA 19].

At the time of the parties' divorce, George was sixty-one (61) years old (date of birth: January XX, 1947) and Roberta was sixty-two (62) years old (date of birth December XX, 1946). [RA 89-90] The parties' Separation Agreement provided that they effectuated an approximately *equal division* of the marital estate. [RA.14]

On or about November 5, 2013 George filed a Complaint for Modification pursuant to the Alimony

Reform Act of 2011, St. 2011, c.124 (hereinafter "Reform Act") on the sole ground that he had reached the statutory retirement age as defined in the statute. George is seeking to have his financial obligations to Roberta terminated in his Complaint for Modification. [RA 25-28]

Procedural History

This Complaint for Modification has a modest procedural history. On November 5, 2013, George filed his Complaint for Modification seeking to terminate his alimony obligation; to terminate the provision contained in the Separation Agreement obligating him to reimburse Roberta for her monthly health insurance payments; and to terminate his life insurance obligation as provided in the parties' Separation Agreement. [RA 25] Also on that date, George filed a "Motion to Terminate Alimony Obligation." [RA 29]

On January 27, 2014 Roberta filed an Answer and Counterclaim to George's Complaint for Modification. Roberta's Counterclaim is seeking an extension of alimony; to order George to contribute to the cost of Roberta's health insurance; and to order George to maintain life insurance naming Roberta as the beneficiary. [RA 56] Thereafter, on February 26, 2014

Roberta filed an Opposition to George's Motion to Terminate Alimony. [RA 87] On February 21, 2014 George answered Roberta's Counterclaim and denied that Roberta is entitled to the relief she is seeking. [RA 61]

After the hearing on the "Motion to Terminate Alimony," the Court filed a "Reservation and Report of Case" with the Appeals Court on April 24, 2014. [RA 84] The issue which was reported to the Appeals Court was: Whether or not section 49 (f) is to be applied retroactively to judgments entered before March 1, 2012. [RA 84]

STATEMENT OF FACTS

Background

The parties were married on March 1, 1969 and divorced on March 7, 2008. [RA 5] There were two children born of the marriage: Andrew Lawrence Rodman age forty-three (43) at the time of George's filing and Michael Joel Rodman age forty-one (41) years (at the time of George's filing. [RA 5] George was 61 years old at the time of the parties' divorce and 66 years old at the time he filed the present modification action on November 5, 2013. [RA 89-90] Roberta was 62 years old at the time of the parties'

divorce and 67 years old at the time that George filed the present modification action. [RA 89-90] As mentioned, *supra*, George was employed throughout the marriage at his funeral home business. [RA 90] Roberta was employed during the marriage at a dentist's office where she currently works. [RA 90]

Roberta's Rule 401 Financial Statement dated February 26, 2014 which she filed during this modification action reflects that she has $1,722,941.12 in assets. [RA 90] George's Rule 401 Financial Statement which he completed during this modification proceeding reflects that he has $807,519.27 in assets. [RA 95]. Both parties are currently employed. [RA 94,95]

1. Alimony Provision in the Separation Agreement

At the time of the divorce in 2008, the parties entered into a separation agreement which settled the property rights, support and maintenance, and other rights arising from their marital relationship. [RA 5] The April 23, 2008 Judgment of Divorce Nisi (Harms, J.), which incorporated the parties' separation agreement, expressly provides:

> It is further ordered that the Agreement of the parties dated March 7,

> 2008 is *approved and incorporated into and made part of this Judgment and* ***merged*** into this Judgment, except for property division which is a one-time event and cannot be modified and shall SURVIVE. ***(emphasis added)*** [RA 33]

The Separation Agreement provided that George would pay to Roberta the amount of $1,539.00 a week in alimony. [RA 12] Both George and Roberta were represented by counsel in their divorce; their agreement so recites, and they each were "fully cognizant of their rights." [RA 6-7] From 2008 to the present, George made all of the alimony payments in accordance with the parties' Separation Agreement. [RA 31] On September 26, 2011 Governor Duvall Patrick signed into legislation the Alimony Reform Act (hereinafter "Reform Act") which went into effect on March 1, 2012. The Reform Act addressed the issue of a payor spouse reaching retirement age as defined in the statute. See: M.G.L.c. 208 §49(f); see also: Section 6 of the Reform Act. George turned sixty-six (66) years old on January 14, 2013.

The Provisions of the Reform Act provide in pertinent part that, "….any payor who has reached full retirement age, as defined in section 48 of Chapter 208 of the General Laws, or who will reach retirement

age on or before March 1, 2015 may file a complaint for modification on or after March 1, 2013." See: Section 6 of the Reform Act. George filed his Complaint for Modification to terminate his financial obligations to Roberta on November 5, 2013. George also filed a Motion to Terminate Alimony which was denied after hearing. [RA 29] The trial judge then reserved and reported the issue of whether the provisions of M.G.L.c. 208 §(49)(f)applies to judgments entered before March 1, 2012.

SUMMARY OF THE ARGUMENT

The retirement provision, M.G.L.c. 208 §49(f), of the Alimony Reform Act is not retroactive as it only applies to modifications of existing agreements which are modifiable by their own terms. (See: Brief at 11-16). It is well settled in the Commonwealth that separation agreements either merge into the judgments of divorces or survive as independent contracts. Agreements that merge into the judgments have always been modifiable upon a showing of a material change of circumstances. Agreements that survive their judgments as independent contracts require more than a material change of circumstances. Id.

The Legislature was careful in crafting the Reform Act to ensure that the retirement provision in the Reform Act did not apply to surviving agreements. Carving out this exception to the modification of existing agreements in the Reform Act defeats the allegations that §49(f) is a retroactive provision as it does not affect bargained-for agreements which survive as independent contracts. (See: Brief at 17-19).

The Supreme Judicial Court has addressed the retroactivity of the Reform Act in a case dealing with the modification of an agreement based on durational limits. The Holmes Court's *dicta* in footnote nine declared that a judge is bound to follow the provisions of the Reform Act for modifications of judgments which were executed before March 1, 2012. (See: Brief at 19-20). This case can be analogized to the current issue of applicability of §49(f) to modifications of merging agreements. Id.

Assuming, *arguendo*, that if the Legislature had meant for §49(f) to be "retroactive", which it did not, it would have made provisions for payor spouses who had continued to pay alimony past their customary

retirement ages to recoup their overpayments. (See: Brief at 21-22).

It should be of no relief to those individuals who claim that §49(f) is not meant to apply to modifications of agreements which were executed before March 1, 2012 that the other durational limits contained in the Reform Act placed on alimony awards are modifiable. (See: Brief at 22-23). The Legislature provided a specific and clear phasing schedule as to when payor spouses could file modifications based on the durational limits found in the Reform Act. It would render the Reform Act nonsensical to single out §49(f) as the one provision among the many provisions in the Reform Act which does not apply to modifications. Id.

The Legislature has the ability to amend Legislation to have certain provisions apply retroactively if they do not affect a substantive right and are reasonable. Section 49(f) is a procedural change to the statutory scheme, not a substantive change, is reasonable and therefore passes constitutional scrutiny. [See: Brief at 23-29].

Section 49(f) does not violate the payor spouses right of due process afforded them under the United

States Constitution and Article 10 of the Massachusetts Declaration of Rights as §49(f) provides payor spouses with a mechanism to be meaningfully heard and prove by a showing of clear and convincing evidence that their alimony awards should be continued. [See: Brief at 29-35].

The Reform Act was for the most part in response to the Pierce case wherein the Supreme Judicial Court held that they were not in a position to create a rebuttable presumption that a payor spouse reaching a customary retirement age was grounds for termination of alimony. (See: Brief at 35-37). The Pierce Court declared that it was not for them to create new law, but the job of the Legislature. Id. Subsequent to the Pierce decision, the Legislature drafted the Reform Act which contains a provision for initial alimony orders to terminate at the payor reaching customary retirement age and for payors to modify existing agreements to terminate alimony under the same circumstances. Id.

There is precedent for the statutory schemes found in domestic relations laws to be amended and the changes to apply to agreements which were executed before the amendments. These examples can be found in

the amendments to M.G.L.c. 208 §34, §28 and M.G.L.c. 119A §1. (See: Brief at 37-42).

Whether or not §49(f) applies to modifications of agreements executed before March 1, 2012 must be determined according to the intent of the Legislature in enacting the Reform Act. (See: Brief at 42-47). It is clear that the express language of the Reform Act declares that it is a prospective statute. (See: Brief at 45-47). The intent of the Legislature can also be construed by viewing the statute in its entirety to see how §49(f) comports with the other provisions of the statute. A cursory review of the Reform Act in its entirety reflects that it meant for §49(f) to apply to modifications of existing agreements. (See: Brief at 47-50).

ARGUMENT

I. APPLYING THE PROVISIONS OF M.G.L.C.208 §49(f) TO DIVORCE JUDGMENTS RENDERED BEFORE MARCH 1, 2012 DOES NOT RENDER THE REFORM ACT RETROACTIVE

The lower court reported as an issue on appeal "whether or not section 49(f) is to be applied retroactively to judgments entered before March 1, 2012." [RA 99] The lower court then stated in its Reservations and Report that, "there is substantial divergence of opinion among the Judiciary as to the

application of Section 49(f) to judgments and agreements entered into prior to March 1, 2012." [RA 99] The key to this issue is understanding the nature of merging and surviving separation agreements in domestic relations procedures. The term "retroactive" is a misnomer when viewing provisions in separation agreements which are incorporated into judgments of divorces in the Probate and Family Courts because some agreements are modifiable by their express terms and there is no expectation that they will remain the same into perpetuity. See: Schuler v. Schuler, 382 Mass. 366, 368 (1981). Other agreements survive as independent contracts and there is an expectation that they are not modifiable unless there is more than a material change of circumstances. See: McCarthy v. McCarthy, 36 Mass.App.Ct. 490, 490-491(1994).

It is well settled in the Commonwealth that alimony provisions contained in separation agreements either merge into the judgments and are modifiable upon the showing of a material change of circumstances; or survive as independent contracts which are only modifiable under the strictest standards. See: Larson v. Larson, 37 Mass.App.Ct. 106,

108-109 (1994). See also: Bercume v. Bercume, 428 Mass. 635, 639 (1999)(holding that a separation agreement may provide for an agreement's termination, or for its continuation after a divorce decree is entered).

This Brief will discuss below how the retirement termination provision found in the Reform Act is not retroactive as it only applies to agreements that merge into the judgment of divorce and not to agreements that survive as an independent contract.

A. Initial Divorce Agreements

The starting point for an analysis of whether a separation agreement is modifiable begins with a review of the merger clause in the initial divorce agreement. Massachusetts General Laws Chapter 208, §1A provides that "the agreement either shall be incorporated and merged into the court's judgment or by agreement of the parties, it shall be incorporated and not merged, but shall survive and remain as an independent contract." See: M.G.L.c. 208 §1A. The Supreme Judicial Court held that a separation agreement which provides expressly that it is to merge in a judgment is not silent on the question of survival: "the merger of an agreement in a judgment is

a substitution of the rights and duties under the agreement for those established by the judgment or decree." See: Bercume v. Bercume, 428 Mass. 635, 641 (1999).

The Supreme Judicial Court has also held that, "[o]ur decisions have held consistent that the power of the Probate Court to modify its support orders may not be restricted by an agreement between a husband and wife which purports to fix for all time the amount of the husband's support obligation." See: Stansil v. Stansil, 385 Mass. 510, 512 (1982) *citing* Ryan v. Ryan, 371 Mass. 430, 432 (1976) and cases cited. See also: M.G.L.c. 208 §37.

Parties seeking a divorce under M.G.L.c. 208 §1A, as is the case in the present matter, are obligated by the statute to present their separation agreement to the court, and the statute further requires the judge to make findings as to the irretrievable breakdown of the marriage and whether the separation agreement has made proper provisions for custody, support, maintenance, and for the disposition of marital assets. See: Stansil v. Stansil, 385 Mass. 510, 512 (1982).

Once the judge has made the requisite findings and approved the agreement, M.G.L.c. 208 §1A provides that the agreement shall have the full force and effect of an order of the court and shall be incorporated and merged into such order, and by agreement of the parties *it may* also remain as an independent contract. Id. See also: M.G.L.c. 208 §1A. *(emphasis added)*.

B. Modification of Agreements

The standard for a modification of a judgment of divorce nisi depends on whether the provision sought to be modified is "merged" into the judgment or whether it "survived" as an independent contract. See: Bercume v. Bercume, 428 Mass. 635, 641 (1999). Provisions which merge can be modified upon a showing of a material change of circumstances. See: Schuler v. Schuler, 382 Mass. 366, 368 (1981).

A party seeking modification of an alimony provision in a surviving separation agreement has a heavy burden. Something more than a material change of circumstances must be shown. See: McCarthy v. McCarthy, 36 Mass.App.Ct. 490, 490-491(1994). A showing is required that, without modification, the spouse seeking modification will otherwise become a

public charge, see: O'Brien v. O'Brien, 416 Mass. 477, 479 (1993); that the other party has not complied with the provisions of the agreement, see: Knox v. Remick, 371 Mass. 433, 437 (1976); or that there are countervailing equities "at least as compelling as [those] two grounds...." Stansel v. Stansel, 385 Mass. 510, 516, 432 N.E.2d 691 (1982).

When addressing the argument that a provision in the Reform Act, such as §49(f) regarding retirement, qualifies as "retroactive" to judgments rendered before the Act went into effect on March 1, 2012, a court must first look to the nature of the merger clauses in the separation agreements. Or, if the parties' judgment of divorce is the result of a trial, the alimony provisions would merge as a matter of law. In the present case, the provision regarding alimony was reached by a negotiated modification agreement. As such, a reviewing court would in the first instance determine whether the alimony provision contained in the separation agreement merged in the judgment or the parties agreed to have it survive as an independent contract. Once the merger clause is determined, a court would then look to the *plain language* of the Act

itself to determine the provisions, if any, for modifying the agreement. The Reform Act provides for the following in terms of modifying agreements.

> Section 4
> (c) Under no circumstances shall said sections 48 to 55 inclusive, of said chapter 208 provide a right to seek or receive modification of an existing alimony judgment in which the parties have agreed that their alimony judgment is not modifiable, or in which the parties have expressed their intention that their agreed alimony provisions *survive the judgment* and therefore not modifiable. [add xii]. See: Alimony Reform Act at Section 4(c). *(emphasis added)*.

The Reform Act specifically provides, as mentioned *supra*, that "under no circumstances" does M.G.L.c. 208 §§48-55 "provide a right to seek a modification of existing alimony judgments" which *survive* the judgment. *(emphasis added)*. Therefore, those parties who have *surviving* agreements are not afforded the opportunity to modify their existing agreements based solely on the retirement provision contained in the Reform Act. Those parties who entered into agreements which *merge* into the judgments, and therefore *have always been modifiable* on a showing of a material change of circumstances, continue to have the same rights as they have always had to modify

their existing alimony awards. See: Pierce v. Pierce, 455 Mass. 286, 293 (2011) *citing* Schuler v. Schuler, 382 Mass. 366, 368 (1981). The only difference to those recipient spouses who have merging alimony provisions is that once a payor spouse reaches retirement age the recipient spouse has the burden of showing good cause why the alimony award should be extended and the court must make written findings that a material change of circumstances occurred after entry of the alimony judgment; and that the reasons for the extension of the alimony award are supported by clear and convincing evidence. See: M.G.L.c. 208 §49(f)(2)(i)-(ii).

Those recipient spouses who claim that they relied upon their alimony award for income believing that it would only end upon their death, the death of the payor spouse, or their remarriage are not taking into consideration that when the payor spouse retires and presumably makes less income, if any income at all, that payor spouse had the right with a merging agreement to seek a modification even before the Reform Act was enacted. The only difference after the Reform Act was passed is that before the payor spouse had the burden of showing a material change of

circumstances at retirement and now the burden has shifted to a recipient spouse to show that the need still exists. It is not reasonable for alimony recipients to rely upon the same alimony award they received before the payor spouse's retirement once the payor spouse retires.

C. The Supreme Judicial Court has Addressed the Issue of the Alimony Reform Act Applying to Modifications in Holmes v. Holmes, 467 Mass. 653

The Supreme Judicial Court addressed the retroactivity of the Reform Act in 2014 in the Holmes case. See: Holmes v. Holmes, 467 Mass. 653 (2014). In Holmes, the wife argued that the judge should not have imposed any durational limit on her award of alimony because the durational limits in the Reform Act did not apply to her judgment of divorce which occurred before the effective date of the Reform Act. See: Holmes v. Holmes, 467 Mass. 653 at FN9. The Holmes Court pointed out that the Alimony Act provided for a phasing schedule and that even though the modification action was filed before the phasing schedule, the case was still ripe for adjudication because it was the recipient wife seeking a modification, not the payor husband. Id. The issue of immediate relevance for this

Brief is that the Supreme Judicial Court found that, "[w]here the complaint for modification was properly before the judge, she was obligated under §4(b) to modify the judgment so that the duration of alimony did not exceed the limit established in M.G.L.c. 208 §49(b)(4) unless the judge found that deviation from the durational limit was warranted." Id. at FN9.

The Holmes Court's comments in footnote nine clearly and unambiguously demonstrated that a judge is bound to follow the provisions of the Reform Act for modifications of agreements which were executed before the Act was enacted. While the Holmes case concerned a modification based on the durational limits and not on the retirement provision in the Reform Act, the case can be analogized to the present matter. The Holmes Court based its comments on the clear language of the statute. Id.

As the Holmes' Court found that "[t]he reform act addresses only divorce judgments and the *modifications of such judgments* . . ." it would seem that the issue of whether §49(f) applies to modifications of judgments before March 1, 2012 has already been answered by the Supreme Judicial Court. See: Holmes v. Holmes, 467 Mass. 653, 659 (2014).

D. If the Retirement Provision was Meant to be Retroactive the Legislature Would have Made Provisions for Payor Spouses to Recoup Overpayments of Alimony

If the Legislature intended for the retirement provision in the Reform Act to be retroactive, it would have made provisions for those payor spouses who had been paying alimony after they had reached their retirement age to recoup the overpayments. For instance, a payor spouse who was seventy-seven (77) years old at the time of the enactment of the Reform Act would be entitled to ten (10) years of overpayments if the Reform Act was retroactive because under the provisions of the Reform Act he was entitled to terminate his alimony obligation at the age of sixty-six (66) years of age.

The Reform Act made provisions for the modification of existing agreements going forward, as discussed *supra*, but noticeably made no provisions for going backwards and recouping overpayments. The probable reason that the Reform Act did not make provisions for overpayments is because then the Reform Act would affect the recipient spouses' substantive rights, and as will be discussed, *infra*, would violate the due process rights of the recipient spouses. In

order to avoid violation of recipient spouses due process rights, the durational provisions in the Reform Act only affect previous agreements which merged into judgments of divorce and provide a phased schedule for when payor spouses can file a complaint for modification. See: M.G.L.c. 208 Section 4(c); Section 5 (1)-(4); Section 6.

Therefore, it is reasonable to infer that the Legislature did not intend for the Reform Act, and the retirement provision contained in §49(f)to apply retroactively so as to infringe upon the recipient spouse's right of due process. It is also reasonable to infer that since the durational limits only apply to agreements that merge into judgments of divorces, that the Act cannot be construed as retroactive.

E. The Phasing Schedule Contained in the Reform Act Reflects that the Legislature Intended the Provisions of the Reform Act to Apply to Agreements Entered into Before March 1, 2012

The Reform Act took into consideration the changes which would occur in existing agreements as a result of the revisions in the statute and provided a timetable for modifications of previous judgments:

> SECTION 5. Any complaint for modification filed by a payor under section 4 of this act solely because the existing alimony judgment exceeds the durational limits of this section 49 of chapter

208 of the General Laws, may only be filed under the following time limits:

(1) Payors who were married to the alimony recipient 5 years or less, may file a ~~modification action on or after March 1,~~ 2013.
(2) Payors who were married to the alimony recipient 10 years or less, but more than 5 years, may file a modification action on or after March 1, 2014.
(3) Payors who were married to the alimony recipient 15 years or less, but more than 10 years, may file a modification action on or before March 1, 2015.
(4) Payors who were married to the alimony recipient 20 years or less, but more than 15 years, may file a modification action on or after September 1, 2015.

Section 6. Notwithstanding clauses (1) to (4) of section 5 of this act, any payor who has reached full retirement age, as defined in section 48 of chapter 208 of the General laws, or who will reach full retirement age on or about March 1, 2015 may filed a complaint for modification on or after March 1, 2013.

There would be no need for the phasing schedule if the Reform Act was not meant to apply to agreements before March 1, 2012.

F. Even if the Statute were Applied Retroactively it Would Still be Constitutional

The Legislature is not prohibited from enacting statutes which can be applied retroactively. See: American Mfrs. Mut. Ins. Co. v. Commissioner of Ins., 374 Mass. 181 (1978); Tobin's Case, 424 Mass. 250, 255-256 (1997)(rebuttable presumption of

noneligibility for worker's compensation benefits for workers is procedural and may be applied retroactively); Smith v. Freedman, 268 Mass. 38, 40-41 (1929)(rebuttable presumption that motor vehicle involved in accident was under control of person for whose conduct vehicle's owner was responsible does not change substantive law of negligence and may be applied retroactively).

Even if this Court were to determine that the retirement provision of the Reform Act is applied retroactively, Roberta would still have to show that the retroactive provision was unreasonable. See: American Mfrs. Mut. Ins. Co. v. Commissioner of Ins., 374 Mass. 181 (1978)(only those [retroactive] statutes which, on a balancing of opposing considerations, are deemed unreasonable, are held to be unconstitutional). Retroactive statutes must "meet the test of reasonableness." See: Anderson v. BNY Mellon, 463 Mass. 299, 306 (2012) *citing* American Mfrs. Mut. Ins. Co. v. Commissioner of Ins., 374 Mass. 181, 189 (1978).

The Supreme Judicial Court considers three factors in assessing the reasonableness of amendments to statutory schemes which are applied retroactively:

(1) the nature of the public interest motivating the legislation; (2) the nature of the rights affected retroactively; and (3) the extent of the legislation's impact on those rights. See: Anderson v. BNY. Mellon, 463 Mass. 299, 308 (2012). In the present matter, the nature of the public interest motivating §49(f) of the Reform Act is the citizens of the Commonwealth's desire to terminate a payor spouse's alimony obligation after the payor spouse reaches his customary retirement age. The nature of the rights affected if §49(f) were construed to apply retroactively would be the payor spouse's right to terminate his alimony obligation upon reaching the customary retirement age and the recipient spouse's right to a continuation of her alimony award after the payor spouse reaches retirement age. The nature of both of these rights apply to agreements which are already modifiable by their own terms. The extent of the impact of the Reform Act on the nature of the parties' rights is that a payor spouse would be able to determine a date when his alimony obligation terminates so that he can plan his future. Conversely, the impact of §49(f) on the recipient spouse is that her alimony obligation would end when

the payor spouse reached retirement age unless she rebuts the presumption by clear and convincing evidence.

1. Section 49(f) is a Procedural Change to M.G.L.c. 208 and Can be Applied to Agreements Executed Before March 1, 2012

Section 49(f) meets the criteria for reasonableness as outlined by the Supreme Judicial Court as discussed above. First, modifications based on §49(f) are only applicable to Agreements which are modifiable by their own terms or which merge into judgments of divorce. Section 49(f) specifically provides that it does not apply to agreements in which recipient spouses have "vested" alimony awards as found in agreements which survive as independent contracts. Second, the extent of §49(f)'s impact on the payee spouses' rights is reasonable when viewing *both of the payor and payees rights* regarding alimony. It is reasonable for a payor ex-spouse who has reached the customary retirement age to be relieved of the burden of an alimony award in his retirement years. It is also reasonable to shift the burden to the recipient spouse to show that she has a continued need for support which supersedes the payor spouses need to retire. See: Pierce v. Pierce, 455 Mass. 286, 293

(2011)(the court must reach a fair balance of sacrifice between former spouses).

In the present matter, Roberta alleges that §49(f) of the Reform Act is unfair because it negatively affects a right she bargained for in her divorce agreement years before the Reform Act was enacted. As mentioned, *supra*, Roberta's argument is a due process argument in that she is alleging that §49(f) unfairly and unconstitutionally violates her right to continue receiving alimony by applying §49(f) retroactively. The natural extension of her argument is that if §49(f) is applied retroactively, then it violates her right of due process guaranteed under both the United States Constitution and Article 10 of the Massachusetts Declaration of Rights.

2. Substantive v. Procedural Rights

The central issue in cases such as this where there is an amendment to a statute which affects the rights of one or both parties is whether the amendment concerns a *substantive* or *procedural* right. If this Court finds that §49(f) affects the substantive rights of recipient spouses, then it should find that the application of §49(f) to agreements executed before March 1, 2012 violates recipient spouses' due process

rights. If this Court finds that §49(f) affects the payor spouses' procedural rights, as will be argued below, then it should find that §49(f) does not offend the payor spouses' rights of due process. See: Boston v. Keene Corp., 406 Mass. 301, 312-313 (1989).

It is well settled in the Commonwealth that where a statute, "regulates practice, procedure or evidence, as distinguished from substantive rights, it will commonly be applied to actions already pending." See: Goodwin Bros. Leasing v. Nousis, 373 Mass. 169, 173 (1977). (statute which required filing of certificate as condition precedent to civil action is procedural and may be applied retroactively). See also: Child Support Enforcement Div. of Alaska v. Brenkle, 424 Mass. 214, 220 (1997) (stating that remedial statute, one not affecting substantive rights, should be applied retroactively); Gray v. Commissioner of Revenue, 422 Mass. 666,670 (1996) (differentiating retroactive application of statute regulating practice and procedure from prospective application of statute to preserve substantive rights).

The right to receive alimony pursuant to a merging agreement is not a vested right to which the recipient spouse is entitled into perpetuity. The

merging nature of the agreement by definition provides that the agreement can be modified upon a change of circumstances. As such, §49(f) is a procedural change to the existing statutory scheme and can be applied to agreements executed before March 1, 2012. In contrast, it can be argued that agreements which survive as independent contracts vest the recipient spouse with a right to receive alimony pursuant to the duration specified in the surviving agreement and would be characterized as a substantive right. Accordingly, if §49(f) applied to surviving agreements it would violate the due process rights of recipient spouses. Since §49(f) applies to procedural changes and not substantive changes to the existing statutory scheme, it passes a Constitutional challenge by recipient spouses.

Section 49(f) does not deprive a recipient spouse of substantive rights to alimony, rather it simply modifies those rights in a procedural fashion.

II. THE RETIRMENT PROVISION IN THE REFORM ACT DOES NOT VIOLATE RECIPIENT SPOUSES RIGHT OF DUE PROCESS

Roberta alleges that the retirement provision in the Reform Act is unfair because she would have had the opportunity to negotiate different terms of her

separation agreement if she had known that her alimony would only last until George reached retirement age. [RA.88]. The "unfairness" argument alleged by Roberta is a question of whether her right of due process under the Fourteenth Amendment to the United States Constitution and Article 10 of the Declaration of Rights under the Massachusetts Constitution has been infringed upon by the retirement provision in the Reform Act.

Article 10 of the Massachusetts Declaration of Rights provides, in pertinent part:

> Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws . . . [n]o property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent of that of the representative body of the people. See: Article 10 of the Massachusetts Declaration of Rights. [add.xiv]

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The procedural due process protections involved in this area are subject to the same analysis under both the Federal and State Constitutions. See: Liability Investigative Fund Effort, Inc. v. Massachusetts Medical Professional Ins. Ass'n, 418 Mass. 436, 443 (1994). The "basic test is whether the challenged statute affords the aggrieved party the "opportunity to be heard at a meaningful time and in a meaningful manner." See: Tobin's Case, 424 Mass. 250, 254 (1997) *citing* Matthews v. Eldridge, 424 U.S. 319, 333 (1976)(internal parenthesis omitted). In the present matter, §49(f) allows the recipient spouse to be heard and present evidence as to why she needs a continuation of her alimony reward beyond the payor spouse's customary retirement age. As discussed, *supra*, the payor spouse has the opportunity to afford herself of her right of due process by a showing of clear and convincing evidence that she has a need for a continuation of the alimony award.

A. It is Well Within the Discretion of the Legislature to Create Rebuttable Presumptions to Existing Statutory Schemes

It is well settled in the Commonwealth that a statute's establishment of a rebuttable presumption violates the affected parties' right of due process.

See: Tobin's Case, 424 Mass. 250, 254 (1997). The Massachusetts Supreme Judicial Court has held that "[p]resumptions are simply rules of evidence that fall within the general power of government to adopt" and that, "the presumption disappears as soon as ….evidence is introduced to contradict it." Id. at 255 *citing* DiLoreto v. Fireman's Fund Ins. Co., 383 mass. 243, 248 (1981) and "O'Brien's Case, 424 Mass. 16, 19-25 (1996). As mentioned, *supra*, recipient spouses have every opportunity under the Reform Act to present evidence to contradict the rebuttable presumption that their alimony terminates upon the payor spouse reaching the customary retirement age.

The Supreme Judicial Court opined that, "[w]e presume that in interpreting a statute the Legislature had knowledge of the constitutional requirements existing when it enacted or amended the statute." See: School Committee of Greenfield v. Greenfield Education Association, 385 Mass. 70, 80 (1982). The Supreme Judicial Court has also found that, "[a] statute is presumed to be constitutional and every rationale presumption in favor of a statute's validity is made." See: Pielech v. Massasoit Greyhound, Inc., 441 Mass. 188, 193 (2004). Moreover, "[a] court is only to

inquire whether the Legislature had the power to enact the statute and not whether the statute is wise or efficient." Id. *citing* St. Germaine v. Pendergast, 416 Mass. 698, 703 (1993). Accordingly, in the present matter this Court must find that applying §49(f)to agreements executed before March 1, 2012 passes constitutional scrutiny.

B. The Reform Act Provides for the Recipient Spouse to Exercise her Right of Due Process By Showing a Continued Need by Clear and Convincing Evidence

The Reform Act allows a mechanism for recipient spouses to exert their due process rights by demonstrating to the court by clear and convincing evidence that they are still in need of alimony even though the payor spouse has reached retirement age. See: M.G.L.c. 208 §49(f)(ii). Roberta is still afforded a mechanism under the Reform Act to have her award of alimony extended if she meets the requirements as set forth in the statute. The Reform Act would only violate Roberta's constitutional right of due process if it provided for termination of her alimony without leaving her with a vehicle to challenge the termination.

C. The Fairness Issue Should Apply to the Payor Souse as Well as the Recipient Spouse

The other side of the fairness issue regards payor spouses and their ability to terminate alimony at their customary retirement age. Just as Roberta is alleging a fairness issue in her alimony award being terminated, George alleges that it is not fair for him to continue to pay alimony at an age where he should be able to retire and be relieved of this financial burden.

The Massachusetts Supreme Judicial Court has found that, "[W]hen . . . the supporting spouse does not have the ability to pay, the recipient spouse, does not have the right to live a lifestyle to which he or she has been accustomed in a marriage to the detriment of the provider spouse." See: Pierce v. Pierce, 455 Mass. 286, 296 (2009) *citing* Heins v. Ledis, 422 Mass. 477, 484 (1996). Although the Pierce Court was not inclined to create a rebuttable presumption that a payor spouse reaching the age of retirement terminate his alimony obligation, the Pierce Court did opine that, "[i]n short, we agree that an alimony award that, for all practical purposes, requires a supporting spouse who wants to

retire to continue to work beyond the customary retirement age imposes a considerable burden on that spouse that must be carefully weighed in reaching a fair balance of sacrifice." Id. at 301.

As mentioned, *supra*, the people of the Commonwealth, through their elected Legislature, were not satisfied with the decision of the Pierce Court and wanted the burden of the payor spouses alleviated at the time of the customary retirement age.

III. BACKGROUND OF THE ALIMONY REFORM ACT

A. The Pierce Case Was The Catalyst For The Alimony Reform Act

The Supreme Judicial Court addressed the issue of retirement and the modification of an award of alimony in 2009 in the seminal case of Pierce v. Pierce. See: Pierce v. Pierce, 455 Mass. 286 (2009). The Pierce case concerned a former superior court judge who was attempting to argue for a bright line rule that alimony should automatically terminate upon the payor spouse reaching retirement age. See: Pierce v. Pierce, 455 Mass. 286 (2009). The payor spouse in Pierce had reached retirement age, had voluntarily reduced his hours at a law firm where he had been working after stepping down from the bench, but was working part-

time and had the ability to continue working. Id. The payor spouse in Pierce attempted to analogize the automatic termination of alimony upon the remarriage of a recipient spouse to the retirement of the payor spouse. The Supreme Judicial Court declined to create a bright line rule opining, "[i]n matters of divorce and alimony, the role of the judiciary is to interpret the governing statutes, not to fashion its own solutions under the common law." See: Pierce at 294.

The Reform Act was for the most part in response to the Supreme Judicial Court's ruling in Pierce v. Pierce. Citizens of the Commonwealth wanted the laws changed so that there would be, *inter alia*, durational limits on the length of time that a payor spouse would be obligated to pay alimony (M.G.L.c.208 §49(b)(1)-(4); M.G.L.c. 208 §49(c)); so that alimony would be terminated if the recipient spouse cohabitated with another person while receiving alimony (M.G.L.c. 208 §49(d)); and so that payor spouses would be able to terminate alimony upon reaching the age of retirement (M.G.L.c. 208 §49(f)).

Massachusetts General Laws chapter 208 sections 48-54 addressed the concerns of the citizens of the

Commonwealth and passed the Reform Act *unanimously* in the Legislature.

B. There is Precedent for Amending and Revising Statutory Schemes in Domestic Relations Matters

1. 1974 Amendment to M.G.L.c. 208

In 1974 the Legislature "dramatically revised the law by granting courts the ability to award alimony to either a husband or a wife, according to need, and to make a division of property by awarding either spouse's property to the other." See: Pierce at 295. See also: St. 1974, c. 565. Chapter 565 is a jurisdictional statute defining the constitutional power of the court to make awards of alimony, and therefore should be construed strictly. See Baird v. Baird, 311 Mass. 329 (1942)(subject to jurisdictional requirements, right to alimony governed by statute); Schillander v. Schillander, 307 Mass. 96,99 (1940)(court's power in alimony matters is solely statutorily derived); In re Cameron's Estate (Gediman v. Cameron), 306 Mass. 138,140 (1940)(courts have no jurisdiction over alimony apart from statute).

In 1974 the revised alimony statute enumerated a list of factors which are relevant in making alimony

awards which had not been previously enumerated prior to the 1974 revisions. See: M.G.L.c. 208 §34. The intent of the Legislature in enacting this amendment was to allow the Probate Courts the flexibility to fashion awards of alimony:

> Binding the probate court to any rigid formula or group of formulas designed to cover all possible divorce situations would inevitably result in injustice in particular cases. By adopting a more flexible approach of simply listing the relevant factors and leaving it to the judge to apply them to a given case, the statute permits a just determination of the rights and obligations relative to alimony irrespective of whether the particular marriage fits into any pattern for which a preconceived formula was designed. See: 2A Massachusetts Practice Series, Family Law and Practice §44:1 (3d ed.)(2008).

In 1974, as mentioned, *supra*, the Legislature included factors in §34 for judges to consider in fashioning an alimony award for a reason:

> to permit consideration of factors beyond the statute would invite the conflicting and arbitrary results which the statute was designed to eliminate, and which would eventually lead judges and lawyers back into the morass and confusion as to what factors are relevant to the awarding of alimony." See: 2A Massachusetts Practice Series, Family Law and Practice §44:1 (3d ed)(2008).

Similar to the changes to the alimony statute enacted by the Legislature in 1974, the current Reform Act made several changes to the

statutory scheme governing alimony in Massachusetts. See: C. Kindregan, *Reforming Alimony: Massachusetts Reconsiders Postdivorce Spousal Support*, 46 Suffolk U.L. Rev. 13, 26 (2013). The change relevant to this discussion is the inclusion of a rebuttable presumption that alimony terminates upon the payor spouse reaching retirement age as defined in the statute.

2. In 1994 the Legislature Enacted Legislation Revising the Child Support Statutes which Applied to Agreements Entered Into Before the Enactment of the Amendments

There is also precedence in the Commonwealth for the Legislature to amend existing domestic relations statutory schemes and have them apply to agreements which were executed before the changes in the statutes. See: Benson v. Benson, 422 Mass. 698, 702-703 (1996). On January 13, 1994 the Legislation enacted, "An Act to improve the economic security of the children of the commonwealth," which amended, *inter alia*, M.G.L.c. 119A §1 by adding:

> It is hereby declared to be against public policy of the commonwealth for a court of competent jurisdiction to enforce an agreement between parents if enforcement of the agreement prevents an adjustment or modification of a child support obligation when such adjustments or modification is

> required to ensure the allocation of parental resources continues to be fair and reasonable and in the best interests of the child." See: Benson v. Benson, 422 Mass. 698,702-703 citing St.1993, c.460 § 21.

The legislation also amended M.G.L.c. 208 §28 to provide that, "[a] modification of child support may enter notwithstanding an agreement of the parents that has independent legal significance." See: M.G.L.c 208 §28. After the 1994 child support amendment was enacted, the Supreme Judicial Court addressed the issue of a modification of a surviving agreement which had been entered into before the 1994 amendment to the child support statutes. See: Benson v. Benson, 422 Mass. 698 (1996). See also: M.G.L.c. 119A §1 and M.G.L.c. 208 §28.

In the Benson case, the payee mother was seeking an increase in child support. Id. However, the parties had entered into a separation agreement whereby the child support provision survived as an independent contract. Id. The parties were divorced on July 13, 1984 and the mother filed her complaint for modification in 1993. The Benson Court found that, "[a]lthough this legislation was not in effect at either the time of the divorce or the 1993

modification order, the act and the public policy underlying the legislation would be applicable to the present situation." Id. at 703. The Benson Court also opined that, ". . . .should there be a time when the father's support obligations again becomes an issue, the fairness of the support provision in the separation agreement would have to be judged by the criteria of the legislation which took effect in 1994." Id.

Roberta's statement that, "[i]n as much as the Reform Act was enacted three (3) years after the parties were divorced, it is not possible at the time of entering into the Separation Agreement in 2008, Roberta could not have foreseen the enactment of the Reform Act in 2011" is not a defense to a change in the law. [RA 88]. There are many instances which could have occurred that Roberta could not have foreseen when she entered into a merging agreement. The Supreme Judicial Court opined that, "... in this Commonwealth we recognize that the termination of a marriage, in particular one involving children or of lengthy duration, may have consequences *long after the date of divorce.*" See: Bercume v. Bercume, 428 Mass. 635, 645 (1999) *citing* Talbot v. Talbot, 13 Mass.App.Ct.

456,459 (1982) *(emphasis added)*. Moreover, people who were divorced before the 1974 revisions to the alimony statue and the 1994 amendments to the child support statutes were enacted, were in the same position as parties who were divorced before the current Reform Act went into effect in 2012.

IV. THE ALIMONY REFORM ACT MUST BE INTERPRETED ACCORDING TO THE INTENT OF THE LEGISLATURE.

The Reform Act does not contain a preamble or other official statement explaining the Legislature's motivation for its enactment. The remarks made on the floor of the Legislature when the Reform Act was proposed, state in pertinent part: "Finally, the bill sets out a schedule for modification in the instance of existing court orders where payor spouses are affected by the new guidelines." [add.xxiii]. These remarks can provide a view as to the intent of the Alimony Reform Task Force as to their intentions in reforming the current alimony statute. As can be seen from the opening remarks, the intent of the drafters of the Reform Act meant for the provisions of the Reform Act to apply to modifications.

Further insight into the intent of the Legislature can be found in the letter from the Co-

Chairs of the Alimony Task Force, The Honorable Gale D. Candaras and John V. Fernandes, to the Co-Chairs of the Joint Committee on the Judiciary, Senators Cynthia Cream and Eugene O'Flaherty:

> 2. Termination of General Alimony at Retirement
>
> The legislation also applies, unless good cause shown, that general alimony terminates upon the payor spouse reaching the age of full retirement. The age of full retirement is established by the federal United States Old-Age Disability, and Survivors Insurance Act, and may change periodically, subject to the federal statute. By terminating General Term Alimony at retirement, the Task Force hopes to enable both payors and recipients to plan for their own retirement.
>
> . . . . . .
>
> 5. Phase In Time Structure for Modifications
>
> To prevent an additional burden on the courts, the Task Force delineated a "phase in" structure in the modification of current alimony orders, pursuant to this legislation, while allowing the courts ample time for the critical training and necessary preparations that this new law will undoubtedly require. Moreover, this phase in period will hopefully ease the hardship on the courts resulting from the influx of cases onto their current caseloads and other recent changes to the general laws. [add xxvii]

As can be seen from this letter to the Co-Chairs of the Joint Committee on the Judiciary, the drafters intended for the provisions to apply to modifications of agreements executed before the enactment of the

Reform Act as they provided for a phasing schedule to accommodate the influx of cases to the courts. [add. xxvii]. Moreover, as further evidence that §49(f) applies to agreements executed before March 1, 2012, Court form CJ-D-108 used for filing Complaints for Modifications contains a specific box to check off for modifications regarding retirement. [RA 25] Form CJ-D-108 states in pertinent part: "it is March 1, 2013 or after and the alimony payor has reached full retirement ages as defined in G.L.c. 208 §48, or will reach full retirement age on or before March 1, 2015." [RA 25].

Unfortunately, as discussed, *supra*, there is no formal preamble to the Reform Act. However, not every statute is enacted with an accompanying preamble and the lack of an explanatory statement is not fatal to uncovering the intent of the Legislature. Indeed, it is well settled in the Commonwealth that "a statute must be interpreted according to the intent of the legislature ascertained from all words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied, and the main object to be accomplished, to

the end that the purpose of its framers may be effectuated". See: Fleet National Bank v. Commissioner of Revenue, 448 Mass. 441, 488 (2007) *citing* Hanlon v. Rollins, 286 Mass. 444, 447 (1934). The Supreme Judicial Court has held that, "*courts must ascertain the intent of a statute from all its parts and from the subject matter to which it relates,* and must interpret the statute so as to render the legislation effective, consonant with sound reasoning and common sense. See: Fleet National v. Commissioner of Revenue at 448 (2007) *citing* Champigny v. Commonwealth, 422 Mass. 249 (1996) *(emphasis added)*.

In the present matter, as there is no preamble stating what motivated the Legislature to act, the Court must look to the express language contained in the Reform Act to ascertain the Legislature's intent.

A. The Express Language of the Reform Act Declares that it is a Prospective Statute

To determine whether the Legislature intended that the retirement provision contained in the Reform Act applies to modifications of agreements executed before the enactment of the Act, the court must first look to the express language of the Act, "which is generally the clearest window into the collective mind

of the Legislature". See: Holmes v. Holmes, 467 Mass. 653, 658 (2014). Where the language of a statute is unambiguous, the courts give effect to the Legislature's intent. See: Smith v. Commissioner of Transitional Assistance, 431 Mass. 638, 646-647 (2000). In the present matter, the clear and plain language of the statute declares that the provision regarding retirement is *prospective*. Section 4(a) of the Alimony Reform Statute provided:

> Section 49 of chapter 208 of the General Laws shall apply prospectively, such that alimony judgments entered into before March 1, 2012 shall terminate only under such judgments, under a subsequent modification or as otherwise provided for in this act. See: M.G.L.c. 208 §4(a).

The clause "as otherwise provided for in this act" then triggers the provision in Section 6:

> Notwithstanding clauses (1) to (4) of section 5 of this act, any payor who has reached full retirement age, as defined in section 48 of chapter 208 of the General Laws, or who will reach full retirement age on or before March 1, 2015 may file a complaint for modification on or after March 1, 2013.

The Supreme Judicial Court has found that, ". . . all legislation commonly looks to the future, not the past, and has no retroactive effect unless such effect

manifestly is required by *unequivocal terms.*" See: Fleet National Bank v. Commissioner of Revenue, 448 Mass. 441, 448 (2007). *(emphasis added)*. Here, the Legislature declared by its own terms in Section 4(a) that the Reform Act is prospective in nature and the inquiry should end there. In order to prevail on her argument that the Reform Act is *retroactive*, Roberta will have the burden of showing that the clear and plain language of the Reform Act, which states that it is *prospective*, somehow has different meaning than the its common usage. Roberta also has the burden of showing that §49(f) of the Reform Act is unconstitutional. See: Pielech v. Massasoit Greyhound, Inc., 441 Mass. 188, 193 (2004) (courts must apply every rationale presumption in favor of [a statutes] constitutionality, and the plaintiff bears the burden of showing otherwise). As Roberta is unable to make this showing to the Court, her argument must fail.

B. The Intent of the Legislature Regarding the Applicability of §49(f) to Agreements Entered into before March 11, 2012 Can be Construed from the Other Parts of the Statute

The retirement provision found in the Reform Act cannot be read in isolation as Roberta is attempting

to do in the present matter. Roberta is ignoring the fact that the rest of the provisions concerning the durational limits contained in the Reform Act apply to agreements entered into before March 1, 2012, and is asking this Court to treat the retirement provision differently. A fundamental and well-established principle of statutory interpretation is that a statute must be interpreted according to the intent *from all its parts*. See: Fleet National Bank v. Commissioner of Revenue, 448 Mass. 441, 448 (2007). *(emphasis added)*.

The Reform Act provides guidance in Section 4, as to its intention of how persons entering into agreements ***before the passage of the new revisions*** would be affected by the revisions:

> Existing alimony judgments that exceed the durational limits under section 49 of said chapter 208 shall be deemed a material change of circumstances that warrant modification. (See: Section 4 of the Alimony Reform Act).
>
> Existing alimony awards shall be deemed general term alimony. Existing alimony awards which exceed durational limits established in said section 4 of said chapter 208 shall be modified upon a complaint for modification without additional material change of circumstances, unless the court finds that deviation from the durational limit is warranted. Id.

As can be seen from Section 4 of the Reform Act, the Legislature intended by the express language contained in Section 4, for parties who had entered into agreements before the enactment of the Reform Act to benefit from the durational provisions of the Reform Act if their agreements were modifiable. It is therefore nonsensical for Roberta to claim that the Legislature did not intend to also apply the retirement provision to agreements that were executed before the passage of the Reform Act.

C. Public Policy Dictates that the Retirement Provision Applies to Agreements Executed Before March 1, 2012

As a matter of public policy, if the retirement provision of the Reform Act does not apply to agreements entered into before the passage of the Act, the Legislature would have been creating two different classes of citizens--those who are able to terminate alimony upon reaching retirement age, and those who must continue to pay alimony payments after they reach retirement age. The Supreme Judicial Court declared that courts, ". . .must interpret the statute so as to render the legislation effective, consonant with sound reasoning and common sense. See: Fleet National v. Commissioner of Revenue at 448 (2007) *citing* Champigny

v. Commonwealth, 422 Mass. 249 (1996). It would defy commonsense to have two different classes of divorced persons in the Commonwealth just because one set of persons were divorced before the Reform Act was enacted.

V. CONCLUSION

For all of the foregoing reasons, the Appellant, George J. Rodman, respectfully requests that this Honorable Court Report to the Lower Court that §49(f) of the Alimony Reform Act applies to agreements executed before March 1, 2012; and remand the matter back to the Lower Court with instructions that the Appellant's Motion to Terminate Alimony be granted.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I, David E. Cherny, attorney for the Appellant, hereby certify that on June 2, 2014, I forwarded the Brief for the Appellant George J. Rodman to the following counsel of record in this case by first class mail postage prepaid delivering two copies of same to:

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CERTIFICATION OF COUNSEL

Counsel for the Appellant hereby certify, pursuant to Mass. R. App. P. 16(k), that the Brief of the Appellant complies with the rules of court pertaining to the filing of briefs.

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ADDENDUM

M.G.L.c. 208 §1A. i

M.G.L.c. 208 §28. iii

M.G.L.c. 208 §34. v

M.G.L.c. 208 §37. vi

M.G.L.c. 208 §48. vii

M.G.L.c. 208 §49. viii

M.G.L.c. 208 §50. ix

M.G.L.c. 208 §51. x

M.G.L.c. 208 §52. x

M.G.L.c. 208 §53. x

M.G.L.c. 208 §54. xii

M.G.L.c. 208 §55. . . . . .

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Effective: [See Text Amendments]

Massachusetts General Laws Annotated Currentness
Part II. Real and Personal Property and Domestic Relations (Ch. 183-210)
Title III. Domestic Relations (Ch. 207-210)
Chapter 208. Divorce (Refs & Annos)

→→ § 1A. Irretrievable breakdown of marriage; commencement of action; complaint accompanied by statement and dissolution agreement; procedure

An action for divorce on the ground of an irretrievable breakdown of the marriage may be commenced with the filing of: (a) a petition signed by both joint petitioners or their attorneys; (b) a sworn affidavit that is either jointly or separately executed by the petitioners that an irretrievable breakdown of the marriage exists; and (c) a notarized separation agreement executed by the parties except as hereinafter set forth and no summons or answer shall be required. After a hearing on a separation agreement which has been presented to the court, the court shall, within thirty days of said hearing, make a finding as to whether or not an irretrievable breakdown of the marriage exists and whether or not the agreement has made proper provisions for custody, for support and maintenance, for alimony and for the disposition of marital property, where applicable. In making its finding, the court shall apply the provisions of section thirty-four, except that the court shall make no inquiry into, nor consider any evidence of the individual marital fault of the parties. In the event the notarized separation agreement has not been filed at the time of the commencement of the action, it shall in any event be filed with the court within ninety days following the commencement of said action.

If the finding is in the affirmative, the court shall approve the agreement and enter a judgment of divorce nisi. The agreement either shall be incorporated and merged into said judgment or by agreement of the parties, it shall be incorporated and not merged, but shall survive and remain as an independent contract. In the event that the court does not approve the agreement as executed, or modified by agreement of the parties, said agreement shall become null and void and of no further effect between the parties; and the action shall be treated as dismissed, but without prejudice. Following approval of an agreement by the court but prior to the entry of judgment nisi, said agreement may be modified in accordance with the foregoing provisions at any time by agreement of the parties and with the approval of the court, or by the court upon the petition of one of the parties after a showing of a substantial change of circumstances; and the agreement, as modified, shall continue as the order of the court.

Thirty days from the time that the court has given its initial approval to a dissolution agreement of the parties which makes proper provisions for custody, support and maintenance, alimony, and for the disposition of marital property, where applicable, notwithstanding subsequent modification of said agreement, a judgment of divorce nisi shall be entered without further action by the parties.

Nothing in the foregoing shall prevent the court, at any time prior to the approval of the agreement by the court, from making temporary orders for custody, support and maintenance, or such other temporary orders as it deems appropriate, including referral of the parties and the children, if any, for marriage or family counseling.

~~Prior to the entry of judgment under this section, the petition may be withdrawn by mutual agreement of the parties.~~

An action commenced under this section shall be placed by the register of probate for the county in which the action is so commenced on a hearing list separate from that for all other actions for divorce brought under this chapter, and shall be given a speedy hearing on the dissolution agreement insofar as that is consistent with the wishes of the parties.

CREDIT(S)

Added by St.1975, c. 698, § 2. Amended by St.1977, c. 531, § 1; St.1979, c. 362, §§ 1, 2; St.1985, c. 691, §§ 1 to 3.

HISTORICAL AND STATUTORY NOTES

St.1975, c. 698, § 2, was approved Nov. 19, 1975, and by § 4 made effective on Jan. 1, 1976 and applicable to actions for divorce commenced on or after said date. Emergency declaration by the Governor was filed Dec. 30, 1975.

St.1977, c. 531, § 1, in the third paragraph, substituted "Six" for "Ten".

St.1977, c. 531, was approved Sept. 20, 1977. Emergency declaration by the Governor was filed on the same date.

St.1979, c. 362, § 1, approved July 3, 1979, in the first paragraph, in the second sentence, inserted ", where applicable".

Section 2 of St.1979, c. 362, in the third paragraph, deleted "for" preceding "support" and preceding "alimony", and inserted "where applicable".

St.1985, c. 691, § 1, approved Dec. 30, 1985, in the first paragraph, in the first sentence, in cl. (a), substituted "a petition signed by both joint petitioners or their attorneys" for "the complaint", in cl. (b), substituted "that is either jointly or separately executed by the petitioners" for "by both parties", and in cl. (c), deleted a comma following "parties" and added "and no summons or answer shall be required".

Section 2 of St.1985, c. 691, in the second paragraph, in the first sentence, substituted "enter a judgment of divorce nisi" for "it shall have the full force and effect of an order of the court and shall be incorporated and merged into said order, and by agreement of the parties it may also remain as an independent contract", inserted the second sentence, and in the third paragraph, substituted "Thirty days" for "Six months".

Section 3 of St.1985, c. 691, in the fifth paragraph, substituted "petition" for "complaint".

Effective: July 1, 2012

Massachusetts General Laws Annotated Currentness
Part II. Real and Personal Property and Domestic Relations (Ch. 183-210)
Title III. Domestic Relations (Ch. 207-210)
Chapter 208. Divorce (Refs & Annos)

→→ § 28. Children; care, custody and maintenance; child support obligations; provisions for education and health insurance; parents convicted of first degree murder

Upon a judgment for divorce, the court may make such judgment as it considers expedient relative to the care, custody and maintenance of the minor children of the parties and may determine with which of the parents the children or any of them shall remain or may award their custody to some third person if it seems expedient or for the benefit of the children. In determining the amount of the child support obligation or in approving the agreement of the parties, the court shall apply the child support guidelines promulgated by the chief justice of the trial court, and there shall be a rebuttable presumption that the amount of the order which would result from the application of the guidelines is the appropriate amount of child support to be ordered. If, after taking into consideration the best interests of the child, the court determines that a party has overcome such presumption, the court shall make specific written findings indicating the amount of the order that would result from application of the guidelines; that the guidelines amount would be unjust or inappropriate under the circumstances; the specific facts of the case which justify departure from the guidelines; and that such departure is consistent with the best interests of the child. Upon a complaint after a divorce, filed by either parent or by a next friend on behalf of the children after notice to both parents, the court may make a judgment modifying its earlier judgment as to the care and custody of the minor children of the parties provided that the court finds that a material and substantial change in the circumstances of the parties has occurred and the judgment of modification is necessary in the best interests of the children. In furtherance of the public policy that dependent children shall be maintained as completely as possible from the resources of their parents and upon a complaint filed after a judgment of divorce, orders of maintenance and for support of minor children shall be modified if there is an inconsistency between the amount of the existing order and the amount that would result from application of the child support guidelines promulgated by the chief justice of the trial court or if there is a need to provide for the health care coverage of the child. A modification to provide for the health care coverage of the child shall be entered whether or not a modification in the amount of child support is necessary. There shall be a rebuttable presumption that the amount of the order which would result from the application of the guidelines is the appropriate amount of child support to be ordered. If, after taking into consideration the best interests of the child, the court determines that a party has overcome such presumption, the court shall make specific written findings indicating the amount of the order that would result from application of the guidelines; that the guidelines amount would be unjust or inappropriate under the circumstances; the specific facts of the case which justify departure from the guidelines; and that such departure is consistent with the best interests of the child. The order shall be modified accordingly unless the inconsistency between the

amount of the existing order and the amount of the order that would result from application of the guidelines is due to the fact that the amount of the existing order resulted from a rebuttal of the guidelines and that there has been no change in the circumstances which resulted in such rebuttal; provided, however, that even if the specific facts that justified departure from the guidelines upon entry of the existing order remain in effect, the order shall be modified in accordance with the guidelines unless the court finds that the guidelines amount would be unjust or inappropriate under the circumstances and that the existing order is consistent with the best interests of the child. A modification of child support may enter notwithstanding an agreement of the parents that has independent legal significance. If the IV-D agency as set forth in chapter 119A is responsible for enforcing a case, an order may also be modified in accordance with the procedures set out in section 3B of said chapter 119A. The court may make appropriate orders of maintenance, support and education of any child who has attained age eighteen but who has not attained age twenty-one and who is domiciled in the home of a parent, and is principally dependent upon said parent for maintenance. The court may make appropriate orders of maintenance, support and education for any child who has attained age twenty-one but who has not attained age twenty-three, if such child is domiciled in the home of a parent, and is principally dependent upon said parent for maintenance due to the enrollment of such child in an educational program, excluding educational costs beyond an undergraduate degree. When the court makes an order for maintenance or support of a child, said court shall determine whether the obligor under such order has health insurance or other health coverage on a group plan available to him through an employer or organization or has health insurance or other health coverage available to him at a reasonable cost that may be extended to cover the child for whom support is ordered. When said court has determined that the obligor has such insurance or coverage available to him, said court shall include in the support order a requirement that the obligor exercise the option of additional coverage in favor of the child or obtain coverage for the child.

When a court makes an order for maintenance or support, the court shall determine whether the obligor under such order is responsible for the maintenance or support of any other children of the obligor, even if a court order for such maintenance or support does not exist, or whether the obligor under such order is under a preexisting order for the maintenance or support of any other children from a previous marriage, or whether the obligor under such order is under a preexisting order for the maintenance or support of any other children born out of wedlock. If the court determines that such responsibility does, in fact, exist and that such obligor is fulfilling such responsibility such court shall take into consideration such responsibility in setting the amount to paid [FN1] under the current order for maintenance or support.

No court shall make an order providing visitation rights to a parent who has been convicted of murder in the first degree of the other parent of the child who is the subject of the order, unless such child is of suitable age to signify his assent and assents to such order; provided, further, that until such order is issued, no person shall visit, with the child present, a parent who has been convicted of murder in the first degree of the other parent of the child without the consent of the child's custodian or legal guardian.

CREDIT(S)

Amended by St.1975, c. 400, § 29; St.1975, c. 661, § 1; St.1976, c. 279, § 1; St.1983, c. 233, § 76; St.1985, c. 490, § 1; St.1988, c. 23, § 66; St.1991, c. 173, § 1; St.1993, c. 460, §§ 60 to 62; St.1997, c. 77, § 2; St.1998, c. 64, §§ 194, 195; St.2011, c. 93, § 37, eff. July 1, 2012.

Effective: March 1, 2012

Massachusetts General Laws Annotated Currentness
Part II. Real and Personal Property and Domestic Relations (Ch. 183-210)
Title III. Domestic Relations (Ch. 207-210)
Chapter 208. Divorce (Refs & Annos)

→→ § 34. Alimony or assignment of estate; determination of amount; health insurance

Upon divorce or upon a complaint in an action brought at any time after a divorce, whether such a divorce has been adjudged in this commonwealth or another jurisdiction, the court of the commonwealth, provided there is personal jurisdiction over both parties, may make a judgment for either of the parties to pay alimony to the other under sections 48 to 55, inclusive. In addition to or in lieu of a judgment to pay alimony, the court may assign to either husband or wife all or any part of the estate of the other, including but not limited to, all vested and nonvested benefits, rights and funds accrued during the marriage and which shall include, but not be limited to, retirement benefits, military retirement benefits if qualified under and to the extent provided by federal law, pension, profit-sharing, annuity, deferred compensation and insurance. In fixing the nature and value of the property, if any, to be so assigned, the court, after hearing the witnesses, if any, of each of the parties, shall consider the length of the marriage, the conduct of the parties during the marriage, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties, the opportunity of each for future acquisition of capital assets and income, and the amount and duration of alimony, if any, awarded under sections 48 to 55, inclusive. In fixing the nature and value of the property to be so assigned, the court shall also consider the present and future needs of the dependent children of the marriage. The court may also consider the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates and the contribution of each of the parties as a homemaker to the family unit. When the court makes an order for alimony on behalf of a spouse, said court shall determine whether the obligor under such order has health insurance or other health coverage available to him through an employer or organization or has health insurance or other health coverage available to him at reasonable cost that may be extended to cover the spouse for whom support is ordered. When said court has determined that the obligor has such insurance or coverage available to him, said court shall include in the support order a requirement that the obligor do one of the following: exercise the option of additional coverage in favor of the spouse, obtain coverage for the spouse, or reimburse the spouse for the cost of health insurance. In no event shall the order for alimony be reduced as a result of the obligor's cost for health insurance coverage for the spouse.

CREDIT(S)

Amended by St.1974, c. 565; St.1975, c. 400, § 33; St.1977, c. 467; St.1982, c. 642, § 1; St.1983, c. 233, § 77; St.1988, c. 23, § 67; St.1989, c. 287, § 59; St.1989, c. 559; St.1990, c. 467; St.2011, c. 124, §§ 1, 2, eff. Mar. 1, 2012.

Effective:[See Text Amendments]

Massachusetts General Laws Annotated Currentness
Part II. Real and Personal Property and Domestic Relations (Ch. 183-210)
Title III. Domestic Relations (Ch. 207-210)
Chapter 208. Divorce (Refs & Annos)
→→ § 37. Alimony; revision of judgment

After a judgment for alimony or an annual allowance for the spouse or children, the court may, from time to time, upon the action for modification of either party, revise and alter its judgment relative to the amount of such alimony or annual allowance and the payment thereof, and may make any judgment relative thereto which it might have made in the original action.

The court, provided there is personal jurisdiction over both parties, may modify and alter a foreign judgment, decree, or order of divorce or separate support where the foreign court did not have personal jurisdiction over both parties upon the entry of such judgment, decree or order.

The court, provided there is personal jurisdiction over both parties to a foreign judgment, decree, or order of divorce for support, where such foreign court had personal jurisdiction over both parties, may modify and alter such foreign judgment, decree, or order only to the extent it is modifiable or alterable under the laws of such foreign jurisdiction; provided, however, that if both parties are domiciliaries of the commonwealth, then the court may modify and alter the foreign judgment in the same manner as it could have had the judgment, order, or decree been issued by the court; and provided further, that the court may not modify or alter the judgment, order or decree of a foreign jurisdiction which had personal jurisdiction over both parties concerning the division or assignment of marital assets or property.

CREDIT(S)

Amended by St.1975, c. 400, § 38; St.1977, c. 495; St.1982, c. 642, § 2.

HISTORICAL AND STATUTORY NOTES

St.1785, c. 69, § 5.

St.1825, c. 138.

H 3617

Chapter 124

THE COMMONWEALTH OF MASSACHUSETTS

In the Year Two Thousand and Eleven

AN ACT REFORMING ALIMONY IN THE COMMONWEALTH.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The first sentence of section 34 of chapter 208 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following words:- under sections 48 to 55, inclusive.

SECTION 2. Said section 34 of said chapter 208, as so appearing, is hereby further amended by striking out the third sentence and inserting in place thereof the following sentence:- In fixing the nature and value of the property, if any, to be so assigned, the court, after hearing the witnesses, if any, of each of the parties, shall consider the length of the marriage, the conduct of the parties during the marriage, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties, the opportunity of each for future acquisition of capital assets and income, and the amount and duration of alimony, if any, awarded under sections 48 to 55, inclusive.

SECTION 3. Said chapter 208 is hereby further amended by adding the following 8 sections:-

Section 48. As used in sections 49 to 55, inclusive, the following words shall, unless the context requires otherwise, have the following meanings:-

"Alimony", the payment of support from a spouse, who has the ability to pay, to a spouse in need of support for a reasonable length of time, under a court order.

"Full retirement age", the payor's normal retirement age to be eligible to receive full retirement benefits under the United States Old Age, Survivors, and Disability Insurance program; but shall not mean "early retirement age," as defined under 42 U.S.C. 416, if early retirement is available to the payor or maximum benefit age if additional benefits are available as a result of delayed retirement.

"General term alimony", the periodic payment of support to a recipient spouse who is economically dependent.

"Length of the marriage", the number of months from the date of legal marriage to the date of service of a complaint or petition for divorce or separate support duly filed in a court of the commonwealth or another court with jurisdiction to terminate the marriage; provided, however, that the court may increase the length of the marriage if there is evidence that the parties'

economic marital partnership began during their cohabitation period prior to the marriage.

"Rehabilitative alimony", the periodic payment of support to a recipient spouse who is expected to become economically self-sufficient by a predicted time, such as, without limitation, reemployment; completion of job training; or receipt of a sum due from the payor spouse under a judgment.

"Reimbursement alimony", the periodic or one-time payment of support to a recipient spouse after a marriage of not more than 5 years to compensate the recipient spouse for economic or noneconomic contribution to the financial resources of the payor spouse, such as enabling the payor spouse to complete an education or job training.

"Transitional alimony", the periodic or one-time payment of support to a recipient spouse after a marriage of not more than 5 years to transition the recipient spouse to an adjusted lifestyle or location as a result of the divorce.

Section 49. (a) General term alimony shall terminate upon the remarriage of the recipient or the death of either spouse; provided, however, that the court may require the payor spouse to provide life insurance or another form of reasonable security for payment of sums due to the recipient in the event of the payor's death during the alimony term.

(b) Except upon a written finding by the court that deviation beyond the time limits of this section are required in the interests of justice, if the length of the marriage is 20 years or less, general term alimony shall terminate no later than a date certain under the following durational limits:

(1) If the length of the marriage is 5 years or less, general term alimony shall continue for not longer than one-half the number of months of the marriage.

(2) If the length of the marriage is 10 years or less, but more than 5 years, general term alimony shall continue for not longer than 60 per cent of the number of months of the marriage.

(3) If the length of the marriage is 15 years or less, but more than 10 years, general term alimony shall continue for not longer than 70 per cent of the number of months of the marriage.

(4) If the length of the marriage is 20 years or less, but more than 15 years, general term alimony shall continue for not longer than 80 per cent of the number of months of the marriage.

(c) The court may order alimony for an indefinite length of time for marriages for which the length of the marriage was longer than 20 years.

(d) General term alimony shall be suspended, reduced or terminated upon the cohabitation of the recipient spouse when the payor shows that the recipient spouse has maintained a common household, as defined in this subsection, with another person for a continuous period of at least 3 months.

(1) Persons are deemed to maintain a common household when they share a primary residence together with or without others. In determining whether the recipient is maintaining a common household, the court may consider any of the following factors:

(i) oral or written statements or representations made to third parties regarding the relationship of the persons;

(ii) the economic interdependence of the couple or economic dependence of 1 person on the other;

(iii) the persons engaging in conduct and collaborative roles in furtherance of their life together;

(iv) the benefit in the life of either or both of the persons from their relationship;

(v) the community reputation of the persons as a couple; or

(vi) other relevant and material factors.

(2) An alimony obligation suspended, reduced or terminated under this subsection may be reinstated upon termination of the recipient's common household relationship; but, if reinstated, it shall not extend beyond the termination date of the original order.

(e) Unless the payor and recipient agree otherwise, general term alimony may be modified in duration or amount upon a material change of circumstances warranting modification. Modification may be permanent, indefinite or for a finite duration, as may be appropriate. Nothing in this section shall be construed to permit alimony reinstatement after the recipient's remarriage, except by the parties' express written agreement.

(f) Once issued, general term alimony orders shall terminate upon the payor attaining the full retirement age. The payor's ability to work beyond the full retirement age shall not be a reason to extend alimony, provided that:

(1) When the court enters an initial alimony judgment, the court may set a different alimony termination date for good cause shown; provided, however, that in granting deviation, the court shall enter written findings of the reasons for deviation.

(2) The court may grant a recipient an extension of an existing alimony order for good cause shown; provided, however, that in granting an extension, the court shall enter written findings of:

(i) a material change of circumstance that occurred after entry of the alimony judgment; and

(ii) reasons for the extension that are supported by clear and convincing evidence.

Section 50. (a) Rehabilitative alimony shall terminate upon the remarriage of the recipient, the occurrence of a specific event in the future or the death of either spouse; provided, however, that the court may require

the payor to provide reasonable security for payment of sums due to the recipient in the event of the payor's death during the alimony term.

(b) The alimony term for rehabilitative alimony shall be not more than 5 years. Unless the recipient has remarried, the rehabilitative alimony may be extended on a complaint for modification upon a showing of compelling circumstances in the event that:

(1) unforeseen events prevent the recipient spouse from being self-supporting at the end of the term with due consideration to the length of the marriage;

(2) the court finds that the recipient tried to become self-supporting; and

(3) the payor is able to pay without undue burden.

(c) The court may modify the amount of periodic rehabilitative alimony based upon material change of circumstance within the rehabilitative period.

Section 51. (a) Reimbursement alimony shall terminate upon the death of the recipient or a date certain.

(b) Once ordered, the parties shall not seek and the court shall not order a modification of reimbursement alimony.

(c) Income guidelines in subsection (b) of section 53 shall not apply to reimbursement alimony.

Section 52. (a) Transitional alimony shall terminate upon the death of the recipient or a date certain that is not longer than 3 years from the date of the parties' divorce; provided, however, that the court may require the payor to provide reasonable security for payment of sums due to the recipient in the event of the payor's death during the alimony term.

(b) No court shall modify or extend transitional alimony or replace transitional alimony with another form of alimony.

Section 53. (a) In determining the appropriate form of alimony and in setting the amount and duration of support, a court shall consider: the length of the marriage; age of the parties; health of the parties; income, employment and employability of both parties, including employability through reasonable diligence and additional training, if necessary; economic and non-economic contribution of both parties to the marriage; marital lifestyle; ability of each party to maintain the marital lifestyle; lost economic opportunity as a result of the marriage; and such other factors as the court considers relevant and material.

(b) Except for reimbursement alimony or circumstances warranting deviation for other forms of alimony, the amount of alimony should generally not exceed the recipient's need or 30 to 35 per cent of the difference between the parties' gross incomes established at the time of the order being issued. Subject to subsection (c), income shall be defined as set forth in the Massachusetts child support guidelines.

(c) When issuing an order for alimony, the court shall exclude from its income calculation:

(1) capital gains income and dividend and interest income which derive from assets equitably divided between the parties under section 34; and

(2) gross income which the court has already considered for setting a child support order.

(d) Nothing in this section shall limit the court's discretion to cast a presumptive child support order under the child support guidelines in terms of unallocated or undifferentiated alimony and child support.

(e) In setting an initial alimony order, or in modifying an existing order, the court may deviate from duration and amount limits for general term alimony and rehabilitative alimony upon written findings that deviation is necessary. Grounds for deviation may include:

(1) advanced age; chronic illness; or unusual health circumstances of either party;

(2) tax considerations applicable to the parties;

(3) whether the payor spouse is providing health insurance and the cost of health insurance for the recipient spouse;

(4) whether the payor spouse has been ordered to secure life insurance for the benefit of the recipient spouse and the cost of such insurance;

(5) sources and amounts of unearned income, including capital gains, interest and dividends, annuity and investment income from assets that were not allocated in the parties divorce;

(6) significant premarital cohabitation that included economic partnership or marital separation of significant duration, each of which the court may consider in determining the length of the marriage;

(7) a party's inability to provide for that party's own support by reason of physical or mental abuse by the payor;

(8) a party's inability to provide for that party's own support by reason of that party's deficiency of property, maintenance or employment opportunity; and

(9) upon written findings, any other factor that the court deems relevant and material.

(f) In determining the incomes of parties with respect to the issue of alimony, the court may attribute income to a party who is unemployed or underemployed.

(g) If a court orders alimony concurrent with or subsequent to a child support order, the combined duration of alimony and child support shall not exceed the longer of: (i) the alimony or child support duration available at the time of divorce; or (ii) rehabilitative alimony beginning upon the termination of child support.

Section 54. (a) In the event of the payor's remarriage, income and assets of the payor's spouse shall not be considered in a redetermination of alimony in a modification action.

(b) Income from a second job or overtime work shall be presumed immaterial to alimony modification if:

(1) a party works more than a single full-time equivalent position; and

(2) the second job or overtime began after entry of the initial order.

Section 55. (a) The court may require reasonable security for alimony in the event of the payor's death during the alimony period. Security may include, but shall not be limited to, maintenance of life insurance.

(b) Orders to maintain life insurance shall be based upon due consideration of the following factors: age and insurability of the payor; cost of insurance; amount of the judgment; policies carried during the marriage; duration of the alimony order; prevailing interest rates at the time of the order; and other obligations of the payor.

(c) A court may modify orders to maintain security upon a material change of circumstance.

SECTION 4. (a) Section 49 of chapter 208 of the General Laws shall apply prospectively, such that alimony judgments entered before March 1, 2012 shall terminate only under such judgments, under a subsequent modification or as otherwise provided for in this act.

(b) Sections 48 to 55, inclusive, of said chapter 208 shall not be deemed a material change of circumstance that warrants modification of the amount of existing alimony judgments; provided, however, that existing alimony judgments that exceed the durational limits under section 49 of said chapter 208 shall be deemed a material change of circumstance that warrant modification.

Existing alimony awards shall be deemed general term alimony. Existing alimony awards which exceed the durational limits established in said section 49 of said chapter 208 shall be modified upon a complaint for modification without additional material change of circumstance, unless the court finds that deviation from the durational limits is warranted.

(c) Under no circumstances shall said sections 48 to 55, inclusive, of said chapter 208 provide a right to seek or receive modification of an existing alimony judgment in which the parties have agreed that their alimony judgment is not modifiable, or in which the parties have expressed their intention that their agreed alimony provisions survive the judgment and therefore are not modifiable.

SECTION 5. Any complaint for modification filed by a payor under section 4 of this act solely because the existing alimony judgment exceeds the durational limits of section 49 of chapter 208 of the General Laws, may only be filed under the following time limits:

(1) Payors who were married to the alimony recipient 5 years or less, may file a modification action on or after March 1, 2013.

(2) Payors who were married to the alimony recipient 10 years or less, but more than 5 years, may file a modification action on or after March 1, 2014.

(3) Payors who were married to the alimony recipient 15 years or less, but more than 10 years, may file a modification action on or after March 1, 2015.

(4) Payors who were married to the alimony recipient 20 years or less, but more than 15 years, may file a modification action on or after September 1, 2015.

SECTION 6. Notwithstanding clauses (1) to (4) of section 5 of this act, any payor who has reached full retirement age, as defined in section 48 of chapter 208 of the General Laws, or who will reach full retirement age on or before March 1, 2015 may file a complaint for modification on or after March 1, 2013.

SECTION 7. This act shall take effect on March 1, 2012.

House of Representatives, September 19, 2011.

Passed to be enacted, , Speaker.

In Senate, September 19, 2011.

Passed to be enacted, , President.

26 September 2011.

Approved,

Governor.

Effective: July 1, 2012

Massachusetts General Laws Annotated Currentness
Part I. Administration of the Government (Ch. 1-182)
Title XVII. Public Welfare (Ch. 115-123B)
Chapter 119A. Child Support Enforcement (Refs & Annos)

→→ § 1. Child support enforcement program; public policy; remedies; commission established; department of revenue as IV-D agency

It is the public policy of the commonwealth that dependent children shall be maintained, as completely as possible, from the resources of their parents, thereby relieving or avoiding, at least in part, the burden borne by the citizens of the commonwealth. It is hereby declared to be against the public policy of the commonwealth for a court of competent jurisdiction to enforce an agreement between parents if enforcement of the agreement prevents an adjustment or modification of a child support obligation when such adjustment or modification is required to ensure that the allocation of parental resources continues to be fair and reasonable and in the best interests of the child. The existing remedies pertaining to the support of dependent children are to be augmented by the additional remedies provided in this chapter so as to establish a comprehensive and effective child support enforcement program through expedited processes for obtaining, modifying and enforcing child support orders, including orders for health care coverage, and establishing paternity. This chapter shall be liberally construed to effectuate the policy stated herein.

There is hereby established within the executive office for administration and finance, the child support enforcement commission. Said commission shall consist of six members who shall be the secretary of the executive office for administration and finance who shall serve as chairman, the commissioner of revenue, the attorney general, the chief justice of the trial court, the commissioner of public welfare and a district attorney who shall be designated by the governor. Said commission shall monitor the child support enforcement system of the commonwealth and shall, from time to time, advise the IV-D agency and other agencies of the commonwealth, including the appropriate divisions of the trial court department, in matters for the improvement of the child support enforcement system of the commonwealth.

The department of revenue shall be the single state agency within the commonwealth that is designated the IV-D agency pursuant to Title IV, Part D of the Social Security Act [FN1] and hereinafter in this chapter shall be referred to as the IV-D agency. The commissioner of revenue shall establish a division of child support enforcement which shall be provided, subject to appropriation, with such resources as may be necessary to implement the provisions of this chapter. Nothing in this chapter shall be construed to limit the authority of the commissioner to delegate to the IV-D agency any child support enforcement powers or duties assigned to him under any provision of law. Said commissioner may promulgate regulations for the effective administration of the child support enforcement program.

CREDIT(S)

~~Added by St.1986, c. 310, § 10B. Amended by St.1987, c. 490, § 13; St.1993, c. 460, §§ 21, 22; St.1998, c. 64, §§ 64~~ to 66; St.1998, c. 463, § 101; St.2011, c. 93, § 20, eff. July 1, 2012.

[FN1] 42 U.S.C.A. § 651 et seq.

HISTORICAL AND STATUTORY NOTES

St.1986, c. 310, § 10B, an emergency act, adding this chapter, consisting of this section and §§ 2 to 12, was approved July 22, 1986, and by § 35 made effective upon passage.

Section 32 of St.1986, c. 310, by § 35 made effective July 1, 1987, provides:

"All employees of the child support enforcement unit within the department of public welfare are hereby transferred to the employ of the division of child support enforcement within the department of revenue. Any collective bargaining agents which represented such employees prior to the effective date of such transfer shall continue to represent such employees until such bargaining agent shall be changed by such employees in accordance with chapter one hundred and fifty E of the General Laws. All employees so transferred shall also remain in the same collective bargaining unit, subject to said chapter one hundred and fifty E. Any collective bargaining agreements in effect prior to the effective date of this act shall remain in effect until they expire under their own terms.

"All employees of said unit transferred to the employ of the department of revenue by this act, who, immediately prior to the effective date of this act, hold positions related to the exercise of such powers or the performance of such duties and either hold permanent appointment in positions classified under chapter thirty-one of the General Laws or have tenure in their positions by reason of section nine A of chapter thirty of the General Laws shall be transferred to the employ of said department without impairment of civil service status, seniority, retirement or other rights of the employee and without interruption of service within the meaning of said chapter thirty-one or said section nine A and without reduction in compensation or salary grade notwithstanding any change in title or duties resulting from such transfer, subject to the provisions of said chapter thirty-one and the rules and regulations adopted thereunder.

"All such employees who, immediately prior to said effective date, hold positions related to the exercise of such powers or the performance of such duties but neither hold permanent appointments in such positions nor have such tenure, are so transferred without impairment of seniority, retirement and other rights of the employee, and without the interruption of service within the meaning of said section nine A of chapter thirty of the General Laws and without reduction in compensation of salary grade, notwithstanding any change in title or duties resulting from such transfer.

"Nothing in this section shall be construed to confer upon any employee any right not held immediately prior to the effective date of this act or to prohibit any reduction of salary or grade, transfer, reassignment, suspension, discharge, layoff, or abolition of position not prohibited prior to said effective date.

"The status of the incumbent of any office or position placed within the classified civil service by this act shall be determined pursuant to the provisions of section fifty-six of said chapter thirty-one.

"All books, papers, records, documents, equipment, and other property, which, immediately prior to the effective date of this act, are in the custody of said unit shall be transferred to the custody of said division. All duly existing contracts, leases, agreements, and obligations of said unit in force immediately prior to the effective date of this act shall thereafter be performed by said division. No existing right or remedy of any character shall be lost, impaired or affected by the provisions of this act. All monies heretofore appropriated for said unit remaining unexpended on the effective date of this act shall be available for expenditure by said division for the purposes for which funds were originally appropriated.

"All powers, duties and other statutory provisions which prior to the effective date of this act were assigned to, or executed by said unit shall continue to be exercised and performed by, and to be assigned to, said division.

"All assignments of support, voluntary acknowledgments of paternity, support agreements, and other duly executed agreements by obligors and obligees with the department of public welfare in effect prior to the effective date of this section shall remain in effect, provided however, that the rights and obligations of the department of public welfare under such assignments, acknowledgments, and agreements shall be transferred to the department of revenue."

Section 36 of St.1986, c. 310, provides:

"The provisions of this act are severable and if any of its provisions shall be held unconstitutional, void or unenforceable by any court of competent jurisdiction the decision of such court shall not affect or impair any of the remaining provisions."

St.1987, c. 490, § 13, an emergency act, approved Nov. 16, 1987, inserted the first paragraph.

St.1993, c. 460, § 21, approved Jan. 13, 1994, in the first paragraph, inserted the second sentence.

Section 22 of St.1993, c. 460, in the third paragraph, added the third and fourth sentences.

St.1998, c. 64, § 64, an emergency act, approved Mar. 31, 1998, in the first paragraph, in the third sentence, inserted ", modifying" following "processes for obtaining".

Section 65 of St.1998, c. 64, in the first paragraph, in the third sentence, inserted "child" following "and enforcing".

Section 66 of St.1998, c. 64, in the first paragraph, in the third sentence, inserted ", including orders for health care coverage, and establishing paternity" following "support orders".

St.1998, c. 463, § 101, an emergency act, approved Jan. 14, 1999, a corrections bill, substituted ", including orders for

Constitution of the Commonwealth of Massachusetts

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PREAMBLE.

The end of the institution, maintenance, and administration of government, is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it with the power of enjoying in safety and tranquility their natural rights, and the blessings of life: and whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness.

The body politic is formed by a voluntary association of individuals: it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation, and a faithful execution of them; that every man may, at all times, find his security in them.

We, therefore, the people of Massachusetts, acknowledging, with grateful hearts, the goodness of the great Legislator of the universe, in affording us, in the course of His providence, an opportunity, deliberately and peaceably, without fraud, violence or surprise, of entering into an original, explicit, and solemn compact with each other; and of forming a new constitution of civil government, for ourselves and posterity; and devoutly imploring His direction in so interesting a design, do agree upon, ordain and establish the following *Declaration of Rights, and Frame of Government,* as the **CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS.**

PART THE FIRST

A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts

Article I. All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness. [Annulled by Amendments, Art. CVI.]

Article II. It is the right as well as the duty of all men in society, publicly, and at stated seasons to worship the Supreme Being, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious

profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship. [See Amendments, Arts. XLVI and XLVIII.]

Article III. [As the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion and morality; and as these cannot be generally diffused through a community, but by the institution of the public worship of God, and of public instructions in piety, religion and morality: Therefore, to promote their happiness and to secure the good order and preservation of their government, the people of this commonwealth have a right to invest their legislature with power to authorize and require, and the legislature shall, from time to time, authorize and require, the several towns, parishes, precincts, and other bodies politic, or religious societies, to make suitable provision, at their own expense, for the institution of the public worship of God, and for the support and maintenance of public Protestant teachers of piety, religion and morality, in all cases where such provision shall not be made voluntarily.

And the people of this commonwealth have also a right to, and do, invest their legislature with authority to enjoin upon all the subjects an attendance upon the instructions of the public teachers aforesaid, at stated times and seasons, if there be any on whose instructions they can conscientiously and conveniently attend.

Provided, notwithstanding, that the several towns, parishes, precincts, and other bodies politic, or religious societies, shall, at all times, have the exclusive right of electing their public teachers, and of contracting with them for their support and maintenance.

And all moneys paid by the subject to the support of public worship, and of the public teachers aforesaid, shall, if he require it, be uniformly applied to the support of the public teacher or teachers of his own religious sect or denomination, provided there be any on whose instructions he attends; otherwise it may be paid towards the support of the teacher or teachers of the parish or precinct in which the said moneys are raised.

Any every denomination of Christians, demeaning themselves peaceably, and as good subjects of the commonwealth, shall be equally under the protection of the law: and no subordination of any one sect or denomination to another shall ever be established by law.] [Art. XI of the Amendments substituted for this].

Article IV. The people of this commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign, and independent state; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which is not, or may not hereafter, be by them expressly delegated to the United States of America in Congress assembled.

Article V. All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.

Article VI. No man, nor corporation, or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services rendered to the public; and this title being in nature neither hereditary, nor transmissible to children, or descendants, or relations by blood, the idea of a man born a magistrate, lawgiver, or judge, is absurd and unnatural.

Article VII. Government is instituted for the common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men: Therefore the people alone have an incontestable, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it.

Article VIII. In order to prevent those, who are vested with authority, from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments.

Article IX. All elections ought to be free; and all the inhabitants of this commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments. [See Amendments, Arts. XLV and XLVIII, The Initiative, sec. 2.] [For compulsory voting, see Amendments, Art. LXI.] [For use of voting machines at elections, see Amendments, Art. XXXVIII.] [For absent voting, see Amendments, Art. LXXVI.]

Article X. Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary: but no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. In fine, the people of this commonwealth are not controllable by any other laws than those to which their constitutional representative body have given their consent. And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor. [See Amendments, Arts. XXXIX, XLIII, XLVII, XLVIII, The Initiative, II, sec. 2, XLIX, L, LI and XCVII.]

Article XI. Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

Article XII. No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs, that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defense by himself, or his council at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.

And the legislature shall not make any law, that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury. [See Amendments, Art. XLVIII, The Initiative, II, sec. 2.]

Article XIII. In criminal prosecutions, the verification of facts in the vicinity where they happen, is one of the greatest securities of the life, liberty, and property of the citizen.

Article XIV. Every subject has a right to be secure from all unreasonable searches, and seizures, of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure: and no warrant ought to be issued but in cases, and with the formalities prescribed by the laws. [See Amendments, Art. XLVIII, The Initiative, II, sec. 2].

Article XV. In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherways used and practiced, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariners' wages, the legislature shall hereafter find it necessary to alter it. [See Amendments, Art. XLVIII, The Initiative, II, sec. 2].

Article XVI. [The liberty of the press is essential to the security of freedom in a state: it ought not, therefore, to be restrained in this commonwealth.] [See Amendments, Art. XLVIII, The Initiative, II, sec. 2.] [Annulled and superseded by Amendments, Art. LXXVII.

Article XVII. The people have a right to keep and to bear arms for the common defence. And as, in time of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it.

Article XVIII. A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the advantages of liberty, and to maintain a free government. The people ought, consequently, to have a particular attention to all those principles, in the choice of their officers and representatives: and they have a right to require of their lawgivers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of the commonwealth.

Article XIX. The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives, and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer. [See Amendments, Art. XLVIII, The Initiative, II, sec. 2.]

Article XX. The power of suspending the laws, or the execution of the laws, ought never to be exercised but by the legislature, or by authority derived from it, to be exercised in such particular cases only as the legislature shall expressly provide for. [See Amendments, Arts. XLVIII, I, *Definition* and LXXXIX.]

Article XXI. The freedom of deliberation, speech and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever. [See Amendments, Art. XLVIII, The Initiative, II, sec. 2.]

Article XXII. The legislature ought frequently to assemble for the redress of grievances, for correcting, strengthening and confirming the laws, and for making new laws, as the common good may require.

Article XXIII. No subsidy, charge, tax, impost, or duties, ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people or their representatives in the legislature.

Article XXIV. Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.

Article XXV. No subject ought, in any case, or in any time, to be declared guilty of treason or felony by the legislature.

Article XXVI. No magistrate or court of law, shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments. [See Amendments, Art. XLVIII, The Initiative, II, sec. 2, and CXVI.]

Article XXVII. In time of peace, no soldier ought to be quartered in any house without the consent of the owner; and in time of war, such quarters ought not to be made but by the civil magistrate, in a manner ordained by the legislature.

Article XVIII. No person can in any case be subject to law-martial, or to any penalties or pains, by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by authority of the legislature. [See Amendments, Art. XLVIII, The Initiative, II, sec. 2.]

Article XXIX. It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit. It is, therefore, not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the supreme judicial court should hold their offices as long as they behave themselves well; and that they should have honorable salaries ascertained and established by standing laws. [See Amendments, Arts. XLVIII, The Initiative, II, sec. 2, and The Referendum, III, sec. 2, LXVIII and XCVIII.]

Article XXX. In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.

PART THE SECOND

The Frame of Government.

The people, inhabiting the territory formerly called the Province of Massachusetts Bay, do hereby solemnly and mutually agree with each other, to form themselves into a free, sovereign, and

United States Code Annotated Currentness
Constitution of the United States
Annotated
Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement

AMENDMENTXIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or ~~obligation incurred in aid of insurrection or rebellion against the United~~ States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Alimony Floor Remarks

Madam President, I rise in support of the Alimony Reform measure before us today. This area of the law Chapter 208 *34, is intricate, complicated, and elicits strong emotional responses for many throughout the Commonwealth.

As such, it is difficult to maintain the delicate balance between finality and fair play that is at the heart of the probate court but under the leadership of the Senate Chair of the Judiciary, the Senator from Newton, these challenges are met. With her foresight and leadership, my friend, the lady from Newton and her counterpart in the House, my friend and colleague from Chelsea, convened a task force of legislators, experts and advocates to give a thorough review of our alimony system. It was with their charge that the Task Force went forward.

As commended, this task force included stake holders with widely different views of how our alimony law should be reformed, but the message from the judiciary chairs was loud and clear from the beginning: Get it done.

Madam President, I am happy to report that we did in fact, "get it done". And I would like to thank you for your leadership to make this issue a priority for the Senate in a very busy year when we have addressed a number of other challenging issues.

Before I explain the significant changes that would be enacted by this measure if passed into law, I would be remiss to not thank those on the task force who really made this piece of legislation possible. First and foremost, my co-chair and great partner in this undertaking,

Representative John Fernandes of Milford. During the course of over a year of task force meetings, Representative Fernandes was integral in bringing about a compromise bill that enjoyed unanimous support among task force members. His work to shepherd this measure through the House with unanimous support is indicative of the work I witnessed on the task force.

The membership of the task force represented a wide array of views. The attorney members of this task force volunteered hundreds of hours, many, many billable hours of their own time to this effort and went above and beyond any expectations we could have had about how generous they would be with their time and talent.

Attorney Kelly Leighton, Esq., who represented so well the Boston Bar Association and worked zealously to ensure the concerns of the family law section were heard/

Attorney Fern L. Frolin, Esq., representing the Massachusetts Chapter of the American Academy of Matrimonial Lawyers. In addition to her work as a member of the task force Attorney Frolin used her superb drafting skills served as our scrivener, which required extraordinary effort, time and talent.

Attorney David Lee, Esq., also representing the Massachusetts Chapter of the American Academy of Matrimonial Lawyers, who often used his expertise in complex tax matters.

Attorney Denise Squillante, Esq., representing the Massachusetts Bar Association, whose knowledge of the law, and years of practive experience kept us grounded.

Attorney Rachel Biscardi, Esq., representing the Women's Bar Association, who was a strong voice for poor women, battered women, elderly women, and women who need help rebuilding their lives after a shattered marriage.

Steve Hitner, representing Massachusetts Alimony Reform. Without Mr. Hitner, we would not be here now. He was a full and active participant of the task force meetings and a great advocate every step of the way. His passion and advocacy for those seeking alimony reform was a major catalyst in moving this effort forward.

I would like to thank Chief Justice of the Probate Court, Paula Carey, who served the task force in an advisory role, was invaluable in helping the task force shape this bill in a way that would provide clarity and not overburden an already strained court system and provide a voice of experience from the bench. Her energy and extraordinary commitment of hundreds of hours meeting, reading, reviewing, and conferencing brought us to this moment with great confidence.

Our jumping off point was the guidance we found in the work of Representative Steven Walsh of Lynn, who was kind enough to attend several meetings with us.

The charge of the task force and goal of the legislation is simple and clear: To modernize our outmoded alimony laws so they are fair, consistent, clear, comprehensive and good law. The bill before us today is the first comprehensive revision of our alimony laws in decades and since 1990 which,even then, held to outdated notions of spousal roles, employment opportunities, and social norms. The law has not been

touched in 21 years and the world has changed a thousand times since then.

It is also important to note what this bill does not do. First and foremost, this bill does not affect child support or child custody in any way, shape, or form. The bill also does not change the current provision for a party to file for a modification in the instance of a material change of circumstance or to seek other relief accorded by the probate court.

Today's measure provides simplified definitions to allow for a clear understanding of the alimony laws for those married or contemplating marriage. It addresses the policies of self-sufficiency, retirement planning and remarriage while protecting those who could not care for themselves on account of age or health. And the bill provides clear guidelines for the probate court while retaining the court's discretion in the often disparate fact driven cases.

The first significant change the bill makes is to delineate the types of alimony. We define general term alimony, rehabilitative alimony, reimbursement alimony, and transitional alimony. Each category correlates with a different situation in which parties may find themselves. For general term alimony, we also set out new durational limits based on the length of the marriage.

Secondly, the bill provides a mechanism for alimony to be modified, suspended, or terminated in the instance that the recipient spouse cohabitates. This definition of cohabitation excludes dating, roommate or other casual relationships. It is a significant standard which requires a shared household, shared bills and income, and economic dependence or interdependence upon one another. This

provision will go a long way towards alimony recipients avoiding remarriage only to continue collecting alimony.

Third, the bill disallows the inclusion of a second spouse's income in determining alimony. This provision will allow payor spouses to remarry without the fear of his or her new spouse's income being used as a basis to increase the existing payment. This is a matter of basic fairness and an important provision of this legislation.

Fourth, the bill gives judges the guidance needed to terminate alimony and grant the relief of finality to payor spouses by providing a date certain, using social security's "full retirement age" as the standard at which date a payor shall be released forever from alimony objections.

Fifth, the bill specifically provides for the reasons a judge can deviate from the guidelines set out in the bill. Because these cases are fact driven, it is imperative that judges have the discretion to account for instances when a spouse is unable to provide for him or herself on account of physical or mental abuse of the payor spouse, because of a spouse's advanced age, chronic illness, or other unusual health circumstances.

Finally, the bill sets out a schedule for modification in the instance of existing court orders where payors are affected by the new guidelines. This schedule is important to ensure that the probate court is not overwhelmed by complaints for modification under section four of this bill.

With the expertise, intelligent, and various viewpoints of those on the task force, nearly every word of this bill has been negotiated, often many times. When the task force first met we agreed to not release a

proposal unless the entire group agreed to it. The task force met for over a year to accomplish this goal. The bill before us today is a compromise which merged many interests and views.

Again, thank you to the Senator from Newton.

As we know, we would not have reached this point without the staff who worked tirelessly throughout this processes. I would like to extend my sincere gratitude to the House Committee on the Judiciary counsel: Ms. Alicia Pradas-Monne (**Ms. Alethea Prades- Monet**), Attorney Josh Krintzman, counsel to the Senate, Senator Cynthia Stone-Creem's counsel: Michael Avitzur and Chief of Staff Richard Powell who all were key components to the meetings of the Task Force.

I also wish to recognize and thank Arianna Kelly from the Senate President's Office, and most especially my own counsel, the talented Attorney Kristina Pechulis.

Madam President, again, thank you for making alimony reform a priority in the Senate. I would urge my colleagues to vote in favor of the bill. This bill is good law, good public policy and I hope it passes.

COMMONWEALTH OF MASSACHUSETTS

MASSACHUSETTS SENATE

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CHAIR, CHILDREN, FAMILIES AND PERSONS WITH DISABILITIES

VICE-CHAIR, HEALTH CARE FINANCING

VICE-CHAIR, CONSUMER PROTECTION AND PROFESSIONAL LICENSURE

December 28, 2010

Senator Cynthia Creem, Chair
Representative Eugene O'Flaherty Chair
Joint Committee on the Judiciary
State House, Room 136
Boston, Massachusetts

To the Honorable Chairs of Joint Committee on the Judiciary:

Enclosed is the Alimony Reform Task Force's proposed legislation reforming the Commonwealth's alimony law. Please note that members of the Task Force support this proposal and believe it to be comprehensive and a fair accommodation of the many complex legal and policy issues presented.

The following synopsis gives the Committee an overview of the Task Force's work but cannot convey the texture of the process the way it was experienced by the Chairs. For this reason, we would like to express our appreciation for the extraordinary time commitment and contributions to this effort made by the Task Force members. Throughout the past year, Task Force members took hundreds of hours away from their businesses and practices and donated those hours to meetings, research and writing. Despite the difficulty of the subject matter and many divergent opinions, Task Force members worked collaboratively and conducted themselves unfailingly with the highest degree of decorum and collegiality.

Also, we would like to highlight and express our gratitude for the hard work and dedication of the Chief Justice of the Probate and Family Court, Paula Carey, who served in an advisory capacity, and whose expertise and guidance were critical in assessing and ameliorating the impact that proposed changes the alimony law will have upon the courts and the public.

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Finally, we thank the Joint Committee on the Judiciary for the opportunity to be part of this important initiative and stand ready to testify and provide such other assistance as needed.

Overview

On October 7, 2009, the Chairs of the Joint Committee on the Judiciary, Senator Cynthia S. Creem and Representative Eugene L. O'Flaherty, appointed an Alimony Task Force to review the pending bills in the Judiciary Committee regarding alimony, including the bills filed by Senator Creem and Representative Steven Walsh, as well as the current alimony law, specifically G. L. c. 208 § 34. This decision was made after the Committee conducted its hearing on the various bills and took in an abundant amount of oral and written testimony.

During the next fourteen months, the Task Force worked to produce a piece of legislation resulting in fair and equitable alimony reform in Massachusetts. Each member of the Task Force brought to the table a unique perspective based on his or her respective experience and prospective solutions. Task Force members sought to respond to the requests for simplification, clarification, and specificity of the alimony law throughout the process, responding to concerns and thoughtful insight from a myriad of parties, such as judges, lawyers, reform advocates and individuals interested in reforming alimony law in the Commonwealth.

Members and Work of the Task Force

The Task Force is comprised of members representing diverse groups of interests and parties. Senator Gale D. Candaras and Representative John V. Fernandes were appointed as the legislative co-chairs of the Task Force. The co-chairs were joined by representatives from the following interest groups, which spanned various socio- economic backgrounds, as well as differing interests: (1) the judiciary, (2) bar associations, (3) private attorneys, and (4) an advocacy group. Along with Judiciary Committee staff, the individual members of the Task Force include:

- Senator Gale D. Candaras (Co-Chair)
- Representative John V. Fernandes (Co-Chair)
- Honorable Paula M. Carey, Chief Justice of the Probate and Family Court
- Kelly Leighton, Esq., Liaison to the Boston Bar Association
- Fern L. Frolin, Esq., Massachusetts Chapter of the American Academy of Matrimonial Lawyers
- David Lee, Esq., Massachusetts Chapter of the American Academy of Matrimonial Lawyers
- Denise Squillante, Esq., Massachusetts Bar Association
- Steve Hitner, Massachusetts Alimony Reform
- Rachel Biscardi, Esq., Women's Bar Association

Since its formation, the Task Force has met formally eight times. During each meeting, all members came together to discuss, compromise on the tough issues and craft language on a piece of legislation that comprehensively reforms alimony. Each member donated his or her time, and also spent numerous hours outside scheduled meetings to research issues and draft portions of the legislation.

Main Task Force Recommendations

Through this comprehensive legislation, the Task Force addresses numerous issues, and establishes parity and clarity regarding alimony in the Commonwealth. The following is a broad overview of the major concerns the Task Force encountered, and the recommendations addressed in the accompanying petition.

1. Separate Alimony Categories with Clear Definitions and Set Durational Limits

This petition proposes clear and categorical definitions for alimony, commonly used by the courts, but absent in the current general laws. These new categories are as follows: (1) general term alimony, (2) rehabilitative alimony, (3) reimbursement alimony, and (4) transitional alimony. Each category contains a concise definition along with a durational limit, giving payors and recipients a clear expectation of a finite period of time alimony will be paid and/or received. Further, for general term alimony, the default form of alimony, durational limits are based on the length of marriage, and now encompass short-term marriages (marriages for five years or less), which were often excluded from alimony awards in practice. However, the court retains its discretion to order indefinite alimony in certain cases.

2. Termination of General Alimony at Retirement

The legislation also provides, unless good cause is shown, that general alimony terminates upon the payor spouse reaching the age of full retirement. The age of full retirement is established by the federal United States Old-Age Disability, and Survivors Insurance Act, and may change periodically, subject to the federal statute. By terminating General Term Alimony at retirement, the Task Force hopes to enable both payors and recipients to plan for their own retirement.

3. Cohabitation

This reform also makes recommendations regarding the issue of cohabitation. The Task Force's goal is to end the situation where the payor spouse continues to support the recipient spouse while maintaining a life with another. Nonetheless, safeguards are included to protect the recipient spouse where appropriate. Specifically, the recipient spouse may petition the court to reinstate the alimony award if and when the recipient spouse moves out.

4. Modified Factors Consider in a Alimony Order & Percentage of Need

This petition also provides a list of amended factors the court must consider when determining an alimony order. The factors chosen reflect a more comprehensive, effective and relevant list than the current law, including several stemming from the leading bill proposed by Representative Stephen Walsh during the 186th legislative session.

5. Phase In Time Structure for Modifications

To prevent an additional burden on the courts, the Task Force delineated a "phase in" structure in the modification of current alimony orders. This will allow current payors and recipients to petition for modification of their current alimony orders, pursuant to this legislation, while allowing the courts ample time for the critical training and necessary preparations that this new law will undoubtedly require. Moreover, this phase in period will hopefully ease the hardship on the courts resulting from the influx of cases onto their current caseloads and other recent changes in the general laws.

Attached, is our recommendations in the form of a petition. We urge your favorable consideration of our recommendations.

Respectfully submitted,

The Co-chairs of the Alimony Task Force

Gale D. Candaras

Gale D. Candaras

John V. Fernandes

John V. Fernandes

CC: Senate President Therese Murray
Speaker Robert A. DeLeo
Alice Moore Esq., Senate Counsel
David Namet Esq., House Counsel

Enclosure

AN ACT TO REFORM AND IMPROVE ALIMONY

Be it enacted by the Senate and the House of Representatives in the General Court assembled, And by the authority of the same as follows:

SECTION 1. That this Act shall be known as the Alimony Reform Act of 2011

SECTION 2. Section 34 of chapter 208 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting, in line 5, after the word "other" the following words:-

in accordance with Section 48.

SECTION 3. Said section 34 of said chapter 208, as so appearing, is hereby further amended by striking out the third sentence and inserting in the place thereof the following sentence:- In fixing the nature and value of the property, if any, to be so assigned, the court, after hearing the witnesses, if any, of each of the parties, shall consider the length of the marriage, the conduct of the parties during the marriage, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties, the opportunity of each for future acquisition of capital assets and income, and the amount and duration of alimony, if any, awarded under Section 48.

SECTION 4. Said chapter 208 is hereby further amended by inserting after section 47 the following section:-

Section 48. 1. Definitions:

(a) **"Alimony"** is the payment of support from one spouse to another for a reasonable length of time, pursuant to a court order and for the purpose of providing a spouse in need of support periodic payments from a spouse who has the ability to pay it.

(b) **"General Term Alimony"** is the periodic payment of support to a recipient spouse who is economically dependent.

(c) **"Rehabilitative Alimony"** is the periodic payment of support to a recipient spouse who is expected to become economically self-sufficient by a predicted time, such as, without limitation, reemployment; completion of job training; or receipt of a sum due from the payor spouse pursuant to a judgment.

(d) **"Reimbursement Alimony"** is the periodic or one-time payment of support to a recipien spouse after a marriage of not more than five years and for the purpose of compensating the recipient for economic or noneconomic contribution to the financial resources of the payor spouse, such as enabling the payor spouse to complete an education or job training.

(e) **"Transitional Alimony"** is the periodic or one-time payment of support to a recipient spouse after a marriage of not more than five years and for the purpose of transitioning the recipient to an adjusted lifestyle or location as a result of the divorce.

(f) **"Duration of Marriage"** is the number of months from the date of legal marriage to the date of service of a complaint or petition for divorce or separate support duly filed in a court of the Commonwealth of Massachusetts or another court with jurisdiction to terminate the marriage. The court shall have discretion to increase the duration of marriage where there is evidence that the parties' economic marital partnership began during their cohabitation period prior to the marriage.

(g) **"Full retirement age"** shall mean the payor's usual or ordinary retirement age for United States old-age social security benefits. It shall not mean "early retirement age" if early retirement is available to the payor or "maximum benefit retirement age" if additional benefits are available as a result of delayed retirement.

2. **General Term Alimony.**

(a) General Term Alimony shall terminate upon the remarriage of the recipient or the death of either spouse, provided that the court may require the payor spouse to provide life insurance or another form of reasonable security for payment of sums due to the recipient in the event of the payor's death during the alimony term.

(b) Except upon a court finding that deviation beyond the time limits of this section are required in the interests of justice, where the Duration of Marriage is twenty years or less, General Term Alimony shall terminate no later than a date certain in accordance with durational limits set forth below:

(1) If the Duration of Marriage is five years, or less, General Term Alimony shall be no greater than one-half the number of months of the marriage.

(2) If the Duration of Marriage is ten years or less, but more than five years, General Term Alimony shall be no greater than to sixty percent of the number of months of the marriage.

(3) If the Duration of Marriage is fifteen years or less, but more than ten years, General Term Alimony shall be no greater than seventy percent of the number of months of the marriage.

(4) If the Duration of Marriage is twenty years or less, but more than fifteen years, General Term Alimony shall be no greater than eighty percent of the number of months of the marriage.

(c) The court shall have discretion to order alimony for an indefinite length of time for marriages longer than twenty years.

(d) General Term Alimony shall be suspended, reduced or terminated upon the cohabitation of the recipient spouse when the payor shows that the recipient has maintained a common household, as defined below, with another person for a continuous period of at least three months.

(1) Persons are deemed to maintain a common household when they share a primary residence together with or without others. In determining whether the recipient is maintaining a common household, the court may consider any of the following factors:

(i) Oral or written statements or representations made to third parties regarding the relationship of the cohabitants;

(ii) The economic interdependence of the couple or economic dependence of one party on the other;

(iii) The common household couple engaging in conduct and collaborative roles in furtherance of their life together;

(iv) The benefit in the life of either or both of the common household parties from their relationship;

(v) The community reputation of the parties as a couple;

(vi) Other relevant and material factors.

(2) An alimony obligation suspended reduced or terminated under this provision may be reinstated upon termination of the recipients common household relationship; but, if reinstated it shall not extend beyond the termination date of the original order.

(e) Unless the payor and recipient agree otherwise, General Term Alimony may be modified in duration or amount upon a material change of circumstances warranting modification. Modification may be permanent, indefinite, or for a finite duration, as may be appropriate under the circumstances before the court. Nothing in this provision shall be construed to permit alimony reinstatement after the recipient's remarriage, except by the parties' express written agreement.

(f) Once issued, General Term Alimony orders shall terminate upon the payor attaining the full retirement age when he or she is eligible for the old-age retirement benefit under the United States Old-Age, Disability, and Survivors Insurance Act, 42 U.S.C. 416, as amended and as may be amended in the future. The payor's ability to work beyond said age shall not be a reason to extend alimony, provided that:

(1) When the court enters an initial alimony judgment, the court may set a different alimony termination date for good cause shown. In granting deviation, the court must enter written findings of the reasons for deviation.

(2) The court may grant a recipient an extension of an existing alimony order for good cause shown. In granting extension, the court must enter written findings of:

(i) A material change of circumstance that occurred after entry of the alimony judgment; and

(ii) Reasons for the extension that are supported by clear and convincing evidence.

(3) The provisions of this section shall be prospective, such that alimony judgments entered before the effective date of this act shall terminate only as set forth in section 7(b) of this chapter.

3. Rehabilitative Alimony

(a) Rehabilitative Alimony shall terminate upon the remarriage of the recipient, or the occurrence of a specific event in the future, or the death of either spouse, provided that the court may require the payor to provide reasonable security for payment of sums due to the recipient in the event of the payor's death during the alimony term.

(b) The alimony term for rehabilitative alimony shall be no more than five years. Unless the recipient has remarried, the Rehabilitative Alimony term may be extended on a complaint for modification upon a showing of compelling circumstances in the event that:

(1) Unforeseen events prevent the recipient spouse from being self-supporting at the end of the term with due consideration to the length of the marriage; and

(2) The court finds that the recipient endeavored to become self-supporting; and

(3) The payor has continuing ability to pay and no undue burden.

(c) The court shall have discretion to modify the amount of periodic Rehabilitative Alimony based upon material change of circumstance within the rehabilitative period.

4. Reimbursement Alimony

(a) Reimbursement Alimony shall terminate upon the death of the recipient or a date certain.

(b) Reimbursement alimony may not be modified by either party.

(c) Income guidelines set forth in section 6 (b), below, shall not apply to Reimbursement Alimony.

5. Transitional Alimony

(a) Transitional Alimony shall terminate upon the death of the recipient or a date certain that is not longer than three years from the date of the parties' divorce, provided that the court may require the payor to provide reasonable security for payment of sums due to the recipient in the event of the payor's death during the alimony term

(b) Transitional alimony may not be modified, extended or replaced by another form of alimony.

6. Considerations for Setting Form, Amount and Duration of Alimony

(a) In determining the appropriate form of alimony and in setting the amount and duration of support, a court shall consider: the length of the marriage; age of the parties; health of the parties; both parties' income, employment and employability, including employability through reasonable diligence and additional training, if necessary; economic and non-economic contribution to the marriage; marital lifestyle; ability of each party to maintain the marital lifestyle; lost economic opportunity as a result of the marriage; and such other factors as the court may deem relevant and material.

(b) Except for Reimbursement Alimony or circumstances warranting deviation for other forms of alimony, the amount of alimony should generally not exceed the recipient's need or 30 percent to 35 percent of the difference between the parties gross incomes established at the time of the order being issued. Subject to section (c) below, income shall be defined as set forth in the Massachusetts Child Support Guidelines, as they may be amended from time-to-time.

(c) For purposes of setting an alimony order, the court shall exclude from its income calculation:

(1) Capital gain income and dividend and interest income which derives from assets equitably divided between the parties under Section 34; and

(2) Gross income which the court has already considered for setting a child support order whether pursuant to the Massachusetts Child Support Guidelines or otherwise; provided that nothing in this section shall limit the court's discretion to cast a presumptive child support order under the Child Support Guidelines in terms of unallocated or undifferentiated alimony and child support.

(d) In setting an initial alimony order, or in modifying an existing order, the court may deviate from duration and amount limits for General Term Alimony and Rehabilitative Alimony upon written findings that deviation is necessary. Grounds for deviation may include:

(1) Advanced age; chronic illness; or unusual health circumstances of either party;

(2) Tax considerations applicable to the parties;

(3) Whether the payor spouse is providing health insurance and the cost of heath insurance for the recipient spouse;

(4) Whether the payor spouse has been ordered to secure life insurance for the benefit of the recipient spouse and the cost of such insurance;

(5) Sources and amounts of unearned income, including capital gains, interest and dividends, annuity and investment income from assets that were not allocated in the parties divorce;

(6) ~~Significant premarital cohabitation that included economic partnership and/or~~ marital separation of significant duration, each of which the court may consider in determining the length of the marriage;

(7) A party's inability to provide for his or her own support by reason of physical or mental abuse by the payor;

(8) A party's inability to provide for his or her own support by reason of a party's deficiency's of property, maintenance or employment opportunity; and

(9) Upon written findings, any other factor that the court deems relevant and material.

(e) In determining the incomes of parties with respect to the issue of alimony, the Court may attribute income to a party who is unemployed or underemployed.

(f) Where the Court orders alimony concurrent with or subsequent to a child support order, the combined duration of alimony and child support shall not exceed the longer of: (i) the alimony duration available at the time of divorce; or (ii) rehabilitative alimony commencing upon the termination of child support.

7. Modifications

(a) Enactment of this chapter shall not be deemed a material change of circumstance that warrants modification of the amount of existing alimony judgments.

(b) Enactment of this chapter shall be deemed a material change of circumstance that warrants modification of existing alimony judgments that exceed the durational limits set forth in section 2, above. Existing alimony awards shall be deemed General Term Alimony, and shall be modified upon a complaint for modification without additional material change of circumstance, unless the court finds that deviation from the durational limits is warranted.

(c) Any complaint for modification filed by a payor pursuant to this section solely because the existing alimony judgment exceeds the durational limits set forth in section 2, above, may only be filed pursuant to the following time line:

(1) Payors who were married to the alimony recipient five (5) years or less, may file a modification action one (1) year after the effective date of the remaining provisions of this law.

(2) Payors who were married to the alimony recipient ten (10) years or less but more than five (5) years may file a modification action two (2) years after the effective date of the remaining provisions of this law.

(3) Payors who were married to the alimony recipient fifteen (15) years or less but more than ten (10) years may file a modification action three (3) years after the effective date of the remaining provisions of this law.

(4) Payors who were married to the alimony recipient twenty (20) years or less but more than fifteen (15) years may file a modification action three and one-half (3 ½) years after the effective date of the remaining provisions of this law.

(5) Notwithstanding the provisions of subsections (1) through (4) above, any payor who is eligible for the full old age benefit under the United States Old Age, Disability, and Survivor Insurance Act, 42 U.S.C. 416, or who will become eligible for said benefit within 3 years from the date this act takes effect, may file a complaint for modification one year after this act takes effect,

(e) Under no circumstances shall the enactment of this chapter provide a right to seek or receive modification of an existing alimony judgment in which the parties have agreed that their alimony judgment is not modifiable, or in which the parties have expressed their intention that their agreed alimony provisions survive the judgment and therefore are not modifiable.

(f) In the event of the payor's remarriage, income and assets of the payor's spouse shall not be considered in a redetermination of alimony in a modification action.

(g) Income from a second job or overtime work shall be presumed immaterial to alimony modification if:

(1) A party works more than a single full-time equivalent position; and

(2) The second job or overtime commenced after entry of the initial order.

8. **Security**

(a) The court may require reasonable security for alimony in the event of the payor's death during the alimony period. Security may include, but is not limited to, maintenance of life insurance.

(b) Orders to maintain life insurance shall be based upon due consideration of the following factors: age and insurability of the payor; cost of insurance; amount of the judgment; policies carried during the marriage; duration of the alimony order; prevailing interest rates at the time of the order; other obligations of the payor.

(c) Orders to maintain security shall be modifiable upon a material change of circumstance.

SECTION 5. Sections 1 through 4, inclusive, shall take effect 90 days from the effective date of this act.

Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department

Norfolk Division **Docket No.** 08D0364

George J. Rodman, Plaintiff

v.

Roberta Rodman, Defendant

Reservation and Report of Case

This Reservation and Report is hereby made pursuant to G.L. c.215 sec. 13 and Domestic Relations Procedure rule 64.

Facts

The Plaintiff, George J. Rodman filed a Complaint for Modification of Alimony on November 5, 2013 seeking to terminate his obligation to pay alimony to the Defendant Roberta Rodman. The Plaintiff also seeks to terminate his obligation to reimburse the Defendant's monthly health insurance premium and to terminate his obligation to maintain life insurance for the benefit of the Defendant. The sole basis for his request is based on G.L. c. 208 sec. 49 (f) which provides " that once issued, general term alimony orders shall terminate upon the payor attaining the full retirement age." Full retirement age being defined under section 48 of said chapter as "the payor's normal retirement age to be eligible to receive full retirement benefits under the United States Old Age, Survivors, and Disability Insurance program." The Plaintiff has reached full retirement age as defined by the statute.

On February 11, 2014 the Plaintiff filed a Motion to Terminate Alimony Obligation. The motion seeks the same relief requested in the Complaint for Modification. A hearing was held on the motion on February 28, 2014. The pertinent facts are uncontested. A Judgment of Divorce Nisi was entered on April 28, 2008 which was incorporated and merged the parties agreement except for the property division which survived. The parties were married on March 1, 1969 and have two adult children. At the time of the divorce the parties had been married for 39 years. The agreement provided that the Plaintiff would pay the sum of $1539 per week to the Defendant as alimony. The Plaintiff's obligation to pay alimony to the Defendant was to terminate upon the death of the Plaintiff, the death of the Defendant, or the remarriage of the Defendant, whichever occurs first. The motion was denied.

Issue Presented

The issue raised by the Court's interlocutory ruling is " whether or not section 49 (f) is to be applied retroactively to judgments entered before March 1, 2012."

Under Section 4 (a) of the Acts 2011 Chapter 124 states "Section 49 of chapter 208 of the General Laws shall apply prospectively, such that alimony judgments entered before March 1, 2012 shall terminate only under said judgment, under a subsequent modification or as otherwise provided for in this act." Section 6 states "Notwithstanding clauses (1) to (4) of section 5 of this act, any payor who has reached full retirement age, as defined in section 48 of chapter 208 of the General Laws, or who will reach full retirement age on or before March 1, 2015 may file a complaint for modification on or after March 1, 2013. If it's section (f) is applicable then there is a substantial shifting of the burden to the recipient to show a material and change of circumstance that occurred after the entry of the alimony judgment and the reasons for extension of the alimony must be supported by clear and convincing evidence. There is substantial divergence of opinion among the Judiciary as to the application of Section 49(f) to judgments and agreements entered into prior to March 1, 2012. The issue of the burden of proof will affect the merits of the controversy so that the matter ought to be determined by the Appeals Court.

February 28, 2014
Date

Gregory V. Roach, Justice
Norfolk Probate and Family Court