

ASSEMBLY, No. 3909

STATE OF NEW JERSEY

215th LEGISLATURE

INTRODUCED MARCH 7, 2013

Sponsored by:

Assemblyman CHARLES MAJOR

District 31 (Hudson)

Assemblyman SEATH KEARNEY District 30

(Monmouth and Ocean) Assemblyman

BENJIE E. WIMBERLY District 35 (Bergen

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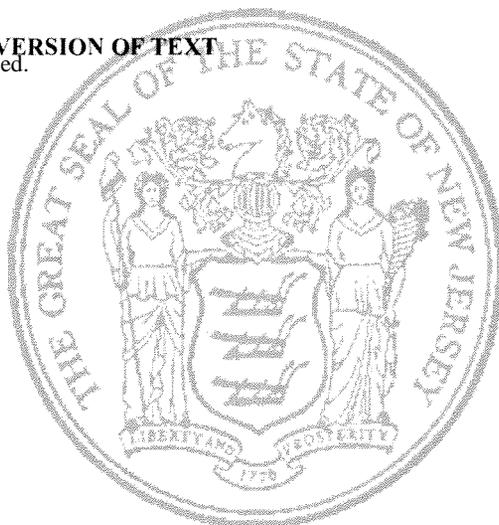
Co-Sponsored by:

Assemblywoman Tucker

SYNOPSIS

Revises alimony laws, including eliminating permanent alimony and establishing guidelines for amount and duration of alimony awards.

CURRENT VERSION OF TEXT
As introduced.



1 **AN ACT** concerning alimony, amending N.J.S.2A:34-23 and
2 N.J.S.2A:34-25, and supplementing Title 2A of the New Jersey
3 Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 **I.** N.J.A.2A:34-23 is amended to read as follows:
9 2A:34-23. Alimony. maintenance.

10 Pending any matrimonial action or action for dissolution of a
11 civil union brought in this State or elsewhere, or after judgment of
12 divorce or dissolution or maintenance, whether obtained in this
13 State or elsewhere, the court may make such order as to the alimony
14 or maintenance of the parties, and also as to the care, custody,
15 education and maintenance of the children, or any of them, as the
16 circumstances of the parties and the nature of the case shall render
17 fit, reasonable and just, and require reasonable security for the due
18 observance of such orders, including, but not limited to, the creation
19 of trusts or other security devices, to assure payment of reasonably
20 foreseeable medical and educational expenses. Upon neglect or
21 refusal to give such reasonable security, as shall be required, or
22 upon default in complying with any such order, the court may
23 award and issue process for the immediate sequestration of the
24 personal estate, and the rents and profits of the real estate of the
25 party so charged, and appoint a receiver thereof, and cause such
26 personal estate and the rents and profits of such real estate, or so
27 much thereof as shall be necessary, to be applied toward such
28 alimony and maintenance as to the said court shall from time to
29 time seem reasonable and just; or the performance of the said orders
30 may be enforced by other ways according to the practice of the
31 court. Orders so made may be revised and altered by the court from
32 time to time as circumstances may require.

33 The court may order one party to pay a retainer on behalf of the
34 other for expert and legal services when the respective financial
35 circumstances of the parties make the award reasonable and just. In
36 considering an application, the court shall review the financial
37 of each party to conduct the litigation and the criteria for
38 award of counsel fees that are then pertinent as set forth by court
39 rule. Whenever any other is made to a court which
40 includes an for lite or final award of counsel
41 fees, the court shall determine the appropriate award for counsel
42 fees, at the same time that a decision is rendered on the other
43 issue then before the court and shall consider the factors set forth in
44 the court rule on counsel the financial circumstances of the
45 and the or bad faith of either party. The court may not

EXPLANATION\clatter enclosed in bold-faced brackets [tbns] In the above bill is
not enacted and is Intended to be omitted in !be law.

Matter underlined tbns Is new matter,

1 order a retainer or counsel fee of a party convicted of an attempt or
2 conspiracy to murder the other party to be paid by the party who
3 was the intended victim of the attempt or conspiracy.

4 a. In determining the amount to be paid by a parent for support
5 of the child and the period during which the duty of support is
6 owed, the court in those cases not governed by court rule shall
7 consider, but not be limited to, the following factors:

- 8 (I) Needs of the child;
9 (2) Standard of living and economic circumstances of each
10 parent;
11 (3) All sources of income and assets of each parent;
12 (4) Earning ability of each parent, including educational
13 background, training, employment skills, work experience,
14 custodial responsibility for children including the cost of providing
15 child care and the length of time and cost of each parent to obtain
16 training or experience for appropriate employment;
17 (5) Need and capacity of the child for education, including
18 higher education;
19 (6) Age and health of the child and each parent;
20 (7) Income, assets and earning ability of the child;
21 (8) Responsibility of the parents for the court-ordered support of
22 others;
23 (9) Reasonable debts and liabilities of each child and parent; and
24 (I 0) Any other factors the court may deem relevant.

25 The obligation to pay support for a child who has not been
26 emancipated by the court shall not terminate solely on the basis of
27 the child's age if the child suffers from a severe mental or physical
28 incapacity that causes the child to be financially dependent on a
29 parent. The obligation to pay support for that child shall continue
30 until the court finds that the child is relieved of the incapacity or is
31 no longer financially dependent on the parent. However, in
32 assessing the financial obligation of the parent, the court shall
33 consider, in addition to the factors enumerated in this section, the
34 child's eligibility for public benefits and services for people with
35 disabilities and may make such orders, including an order involving
36 the creation of a trust, as are necessary to promote the well-being of
37 the child.

38 As used in this section "severe mental or physical incapacity"
39 shall not include a child's abuse of, or addiction to, alcohol or
40 controlled substances.

41 b. In all actions brought for divorce, dissolution of a civil
42 divorce from bed and board, legal separation from a partner
43 in a civil union couple or the court may award one or more
44 of the following types of alimony: [permanent alimony;]
45 rehabilitative limited duration or reimbursement
46 alimony to either party. In so the court shall but not
47 be limited to the factors:

- 48 (I) The actual need and of the to pay;

- (2) The duration of the marriage or civil union;
- 2 (3) The age, physical and emotional health of the parties;
- 3 (4) The standard of living established in the marriage or civil
- 4 union and the likelihood that each party can maintain a reasonably
- 5 comparable standard of living;
- 6 (5) The earning capacities, educational levels, vocational skills,
- 7 and employability of the parties;
- 8 (6) The length of absence from the job market of the party
- 9 seeking maintenance;
- 10 (7) The parental responsibilities for the children;
- 11 (8) The time and expense necessary to acquire sufficient
- 12 education or training to enable the party seeking maintenance to
- 13 find appropriate employment, the availability of the training and
- 14 employment, and the opportunity for future acquisitions of capital
- 15 assets and income;
- 16 (9) The history of the financial or non-financial contributions to
- 17 the marriage or civil union by each party including contributions to
- 18 the care and education of the children and interruption of personal
- 19 careers or educational opportunities;
- 20 (10) The equitable distribution of property ordered and any
- 21 payouts on equitable distribution, directly or indirectly, out of
- 22 current income, to the extent this consideration is reasonable, just
- 23 and fair;
- 24 (II) The income available to either party through investment of
- 25 any assets held by that party;
- 26 (12) The tax treatment and consequences to both parties of any
- 27 alimony award, including the designation of all or a portion of the
- 28 payment as a non-taxable payment; and
- 29 (13) Any other factors which the court may deem relevant.
- 30 The court may attribute income to a party upon finding that the
- 31 party is voluntarily unemployed or underemployed based on that
- 32 party's age, physical and emotional health, earning capacity,
- 33 educational level, vocational skills, and employability.
- 34 When a share of a retirement benefit is treated as an asset for
- 35 purposes of equitable distribution, the court shall not consider
- 36 income generated thereafter by that share for purposes of
- 37 determining alimony.
- 38 c. [In any case in which there is a request for an award of
- 39 permanent the court shall consider and make
- 40 w'u"l:P on the evidence about the above factors. If the court
- 41 determines that an award of permanent is not warranted,
- 42 the court shall make on the evidence setting out
- 43 the reasons therefor.] The court shall [then] consider whether
- 44 alimony is appropriate for any or all of the following: (I) limited
- 45 duration; (2) rehabilitative; (3) reimbursement. In so the
- 46 court shall consider and make on the evidence
- 47 about factors set forth above. [The court shall not award limited

duration alimony as a substitute for permanent alimony in those cases where permanent alimony would otherwise be awarded.]

The court shall determine the length of the term of limited duration alimony as provided in subsection j. The amount of limited duration alimony should generally not exceed the recipient's need or 30 to 35 percent of the difference between the parties' gross incomes established at the time of the initial award. The court may deviate from the amount limit upon written findings that deviation is necessary. Grounds for deviation may include: advanced age, chronic illness, or unusual health circumstances of either party; tax considerations for either party; whether the payer is providing or has been ordered to provide health insurance or the cost of health insurance to the payee; sources and amounts of unearned income not allocated in equitable distribution; the payee's inability to become self-supporting because of physical or mental abuse by the payer; either party's inability to provide for that party's own support because of a deficiency of property, maintenance, or employment opportunity; and any other factors the court deems relevant and material.

An award of alimony for a limited duration may be modified based either upon changed circumstances, or upon the nonoccurrence of circumstances that the court found would occur at the time of the award. The court may modify the amount of such an award, but shall not modify the length of the term except in unusual circumstances.

Additionally, the court may modify, suspend, or terminate an award of limited duration alimony when the payer spouse or partner shows the payee has maintained a cohabitation relationship with another person for a continuous period of at least three months. The award may be reinstated upon termination of the cohabitation relationship; however, if reinstated the duration of the award shall not extend beyond the termination date of the original order. Limited duration alimony may not be modified, suspended, or terminated unless the court finds the cohabitation relationship is characterized by stability, permanency, and mutual interdependence, and if the economic benefit inuring to the payee is sufficiently material to constitute a change of circumstances. In determining whether to modify, suspend, or terminate limited duration alimony, the court shall consider whether the parties have intertwined finances including, but not limited to, a joint bank account; whether they share living expenses and household chores; and any other relevant and material factors.

of the term, the court shall consider
M M
to a level where limited
duration alimony is no longer appropriate.]

d. Rehabilitative alimony shall be awarded based upon a plan in which the payee shows the scope of the steps to be of rehabilitation.

taken, and the time frame, including a period of employment during
2 which rehabilitation will occur. An award of rehabilitative alimony
3 may be modified based either upon changed circumstances, or upon
4 the nonoccurrence of circumstances that the court found would
5 occur at the time of the rehabilitative award. Rehabilitative
6 alimony shall not exceed a term of five years, except that the court
7 in its discretion may extend rehabilitative alimony upon a finding
8 that: (1) unforeseen events prevent the payee from being self-
9 supporting at the end of the term; (2) the payee endeavored to
0 become self-supporting; and (3) extending rehabilitative alimony II
would not constitute an undue burden on the payer.

12 [This section is not intended to preclude a court from modifying
13 permanent alimony awards based upon the law.]

14 e. Reimbursement alimony may be awarded under
15 circumstances in which one party supported the other through an
16 advanced education, anticipating participation in the fruits of the
17 earning capacity generated by that education. Reimbursement
18 alimony may not be modified.

19 f. Except as provided in subsection i., nothing in this section
20 shall be construed to limit the court's authority to award [permanent
21 alimony,] limited duration alimony, rehabilitative alimony or
22 reimbursement alimony, separately or in any combination, as
23 warranted by the circumstances of the parties and the nature of the
24 case.

25 g. In all actions for divorce or dissolution other than those
26 where judgment is granted solely on the ground of separation the
27 court may consider also the proofs made in establishing such
28 ground in determining an amount of alimony or maintenance that is
29 fit, reasonable and just. In all actions for divorce, dissolution of
30 civil union, divorce from bed and board, or legal separation from a
31 partner in a civil union couple where judgment is granted on the
32 ground of institutionalization for mental illness the court may
33 consider the possible burden upon the taxpayers of the State as well
34 as the ability of the party to pay in determining an amount of
35 maintenance to be awarded.

36 h. Except as provided in this subsection, in all actions where a
37 judgment of divorce, dissolution of civil union, divorce from bed
38 and board or legal separation from a partner in a civil union couple
39 is entered the court may make such award or awards to the
40 in addition to and maintenance, to effectuate an equitable
41 of the property, both real and which was
42 legally and beneficially acquired them or either of them during
43 the marriage or civil union. However, all such property, , real,
44 personal or otherwise, legally or beneficially acquired during the
45 marriage or civil union by either party by way of gift, devise, or
46 intestate succession shall not be subject to equitable distribution,
47 except that interspousal gifts or gifts between partners civil
48 union couple shall be subject to equitable distribution. The court

1 may not make an award concerning the equitable distribution of
2 property on behalf of a party convicted of an attempt or conspiracy
3 to murder the other party.

4 1. No person convicted of Murder. N.J.S.2C:11-3;
5 Manslaughter. N.J.S.2C:11-4; Criminal Homicide, N.J.S.2C:11-2;
6 Aggravated Assault, under subsection b. of N.J.S.2C:12-1; or a
7 substantially similar offense under the laws of another jurisdiction,
8 may receive alimony if: (1) the crime results in death or serious
9 bodily injury, as defined in subsection b. of N.J.S.2C: 11-1, to a
10 family member of a divorcing party; and (2) the crime was
11 committed after the marriage or civil union. A person convicted of
12 an attempt or conspiracy to commit murder may not receive
13 alimony from the person who was the intended victim of the
14 attempt or conspiracy. Nothing in this subsection shall be
15 construed to limit the authority of the court to deny alimony for
16 other bad acts.

17 As used in this subsection:

18 "Family member" means a spouse, child, parent, sibling, aunt,
19 uncle, niece, nephew, first cousin, grandparent, grandchild, father-
20 in-law, mother-in-law, son-in-law, daughter-in-law, stepparent,
21 stepchild, stepbrother, stepsister, half brother, or half sister, whether
22 the individual is related by blood, marriage, or adoption.

23 j. The term of limited duration alimony shall be established as
24 follows:

25 (1) If the duration of the marriage or civil union is five years or
26 less, the term of alimony shall not be greater than one-half the
27 number of months of the marriage or civil union;

28 (2) If the duration of the marriage or civil union is 10 years or
29 less but greater than five years, the term of alimony shall not be
30 greater than 60 percent of the number of months of the marriage or
31 civil union;

32 (3) If the duration of the marriage or civil union is 15 years or
33 less but greater than 10 years, the term of alimony shall not be
34 greater than 70 percent of the number of months of the marriage or
35 civil union;

36 (4) If the duration of the marriage or civil union is 20 years or
37 less but greater than 15 years, the term of alimony shall not be
38 greater than 80 percent of the number of months of the marriage or
39 civil union;

40 (5) If the duration of the marriage or civil union is greater than
41 20 years, the court shall have discretion to award alimony for an
42 indefinite length of time.

43 The court may deviate from the durational limits set forth in this
44 subsection in the interests of justice. In deviating from these limits,
45 the court shall make specific findings on the evidence setting out
46 the reasons therefor.

47 (cf: P.L.2009, c.43, s.1)

2. N.J.S.2A:34-25 is amended to read as follows:

2 2A:34-25. ~~!!!~~ If after the judgment of divorce or dissolution a
3 former spouse shall remarry or a former partner shall enter into a
4 new civil union, [permanent and] limited duration alimony shall
5 terminate as of the date of remarriage or new civil union except that
6 any arrearages that have accrued prior to the date of remarriage or
7 new civil union shall not be vacated or annulled. A former spouse
8 or former partner in a civil union couple who remarries or enters
9 into a new civil union shall promptly so inform the spouse or
10 partner paying [permanent or] limited duration alimony as well as
II the collecting agency, if any. The court may order such alimony
12 recipient who fails to comply with the notification provision of this
13 act to pay any reasonable attorney fees and court costs incurred by
14 the recipient's former spouse or partner as a result of such non-
15 compliance.

16 The remarriage or establishment of a new civil union of a former
17 spouse or partner receiving rehabilitative or reimbursement alimony
18 shall not be cause for termination of such alimony by the court
19 unless the court finds that the circumstances upon which the award
20 was based have not occurred or unless the payer spouse or partner
21 demonstrates an agreement or good cause to the contrary.

22 JL Alimony shall terminate upon the death of the payer spouse
23 or partner, except that any arrearages that have accrued prior to the
24 date of the payer spouse's or partner's death shall not be vacated or
25 annulled.

26 c. Alimony shall terminate upon the payer spouse or partner
27 attaining full retirement age when the payer is eligible for the old-
28 age retirement benefit under the federal Social Security act. except
29 that any arrearages that have accrued prior to the termination date
30 shall not be vacated or annulled. The payer's ability to work or
31 decision to continue working beyond such date shall not constitute
32 grounds to extend alimony, except that:

33 (1) When making an initial alimony award the court may set a
34 different alimony termination date for good cause shown. In
35 establishing a different termination date, the court shall make
36 specific findings on the evidence setting out the reasons therefor.

37 (2) The court may extend an existing alimony award for good
38 cause shown based on specific findings of a material change in
39 circumstances supported by clear and convincing evidence.

40 JL Nothing in this act shall be construed to prohibit a court
41 from ordering either spouse or partner to maintain life insurance for
42 the protection of the former spouse, partner, or the children of the
43 marriage or civil union in the event of the payer spouse's or
44 partner's death.

45 (cf: P.L.2006, c 103,
46

47 3. (New section) a. action to an
48 alimony award pursuant to this section shall be commenced within

1 two years of the effective date of P.L. , c. (C.) (pending
2 before the Legislature as this bill). Nothing in this section shall be
3 deemed to affect the right to modification of any alimony award
4 based on a change of circumstances.

5 b. Upon motion by either party to the award, a permanent
6 alimony award existing on the effective date of P.L.

7 c. (C.) (pending before the Legislature as this bill) shall be
8 converted to limited duration alimony and may be modified to
9 conform to the provisions of P.L. . c. (C.) (pending
10 before the Legislature as this bill), including but not limited to the
11 durational limits set forth in subsection j. of N.J.S.2A:34-23, unless
12 the court finds deviation from such provisions is warranted. The
13 moving party need not prove a change of circumstances for the
14 purposes of such modification.

15 c. Upon motion by either party to the award a limited duration
16 alimony award existing on the effective date of P.L.

17 c. (C.) (pending before the Legislature as this bill) that
18 exceeds the durational limits set forth in subsection j. of
19 N.J.S.2A:34-23 may be modified to conform to the provisions of
20 that subsection unless the court finds that deviation from such
21 durational limits is warranted. The moving party need not prove a
22 change of circumstances for the purposes of such modification.

23 d. Upon motion by either party to the award a rehabilitative
24 alimony award existing on the effective date of P.L.

25 c. (C.) (pending before the Legislature as this bill) may be
26 modified to conform to the provisions of subsection d. of
27 N.J.S.2A:34-23.

28 e. The enactment of P.L. , c. (C.) (pending before
29 the Legislature as this bill) shall not constitute a material change of
30 circumstances for the purposes of modifying the amount of an
31 existing alimony award.

32 f. Nothing in P.L. , c. (C.) (pending before the
33 Legislature as this bill) shall provide a right to seek or receive
34 modification of an alimony award in which the parties have agreed
35 that alimony is not modifiable.

36

37 4. This act shall take effect October 1, 2013, and sections 1 and
38 2 of this act shall apply to judgments for alimony entered on or after
39 the effective date.

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STATEMENT

43

44 This bill would revise the laws concerning alimony by
45 permanent and establishing guidelines
46 the amount and duration of other types of alimony.

47 Under current four types of alimony:
48 and reimbursement.

2 The four types of alimony are designed to address different types of
3 considerations that arise during the dissolution of a marriage or
4 civil union. For example, rehabilitative alimony is intended to
5 permit a former spouse or civil union partner to obtain the training
6 and education necessary to return to the workforce and enhance and
7 improve their earning capacity. Reimbursement alimony is awarded
8 to reimburse one spouse or civil union partner for financial
9 contributions made to the other spouse or civil union partner's
10 education or professional training. Permanent alimony is awarded
11 following a lengthy marriage or civil union marked by prolonged
12 economic dependence and sustained contribution to the marriage or
13 civil union. Limited duration alimony is awarded for a set period of
14 time and may not be awarded as a substitute for permanent alimony.
15 There are no guidelines in the current law concerning the duration
16 or amount of an alimony award.

16 This bill would eliminate permanent alimony awards and
17 establish guidelines for the term of limited duration alimony based
18 on the length of the marriage:

- 19 (1) If the duration of the marriage or civil union is five years or
20 less, the term of alimony would be a maximum of one-half
21 the number of months of the marriage or civil union;
- 22 (2) If the duration of the marriage or civil union is 10 years or
23 less but greater than five years, the term of alimony would
24 be a maximum of 60 percent of the number of months of the
25 marriage or civil union;
- 26 (3) If the duration of the marriage or civil union is 15 years or
27 less but greater than 10 years, the term of alimony would be
28 a maximum of 70 percent of the number of months of the
29 marriage or civil union;
- 30 (4) If the duration of the marriage or civil union is 20 years or
31 less but greater than 15 years, the term of alimony would be
32 a maximum of 80 percent of the number of months of the
33 marriage or civil union;
- 34 (5) If the duration of the marriage or civil union is greater than
35 20 years, the court would have discretion to award alimony
36 for an indefinite length of time.

37 The court would be permitted to deviate from these durational
38 limits in the interests of justice and would be required to make
39 findings on the evidence out the reasons for
40 deviation.

41 The bill would also provide that the amount of a limited duration
42 award should not exceed the recipient's need or
43 30 to 35 percent of the difference between the gross
44 incomes. A court would be to deviate from this
45 upon a written that deviation is necessary. Additionally, the guideline
46 court would be permitted to attribute income to either party when it
47 finds that party is underemployed or unemployed.

A3909 MAINOR, S.KEAN

II

Under current law, limited duration alimony may be modified based on changed circumstances or upon the nonoccurrence of circumstances that the court found would occur at the time of the award. The court may modify the amount of the award but not the length of the term except in unusual circumstances.

The bill would additionally permit suspension, modification, or termination of a limited duration alimony award in the event the recipient establishes a cohabitation relationship with another person for a continuous period of at least three months. The original alimony award could be reinstated upon termination of the cohabitation relationship but would not extend beyond the termination date of the original order. The bill would provide that limited duration alimony may be modified, suspended, or terminated only if the court finds the cohabitation relationship is characterized by stability, permanency, and mutual interdependence, and if the economic benefit inuring to the payee is sufficiently material to constitute a change of circumstances. In determining whether to modify, suspend, or terminate limited duration alimony, the court would consider whether the parties have intertwined finances including, but not limited to, a joint bank account; whether they share living expenses and household chores; and any other relevant and material factors.

Under current law, alimony terminates upon the death of either party and both permanent and limited duration alimony terminate upon the recipient remarrying or establishing a new civil union; any arrearages that have accrued as of the date of death, remarriage, or establishing a new civil union may not be vacated or annulled.

The bill would provide that alimony would also terminate upon the payer spouse or partner attaining full retirement age when the payer is eligible for the old-age retirement benefit under the federal Social Security act; however, any arrearages that accrued prior to the termination date would not be vacated or annulled. The payer's ability to work beyond such date would not constitute grounds to extend alimony, but the court would have discretion to extend an alimony award beyond the termination date for good cause shown either when making the initial alimony award or upon a finding of a material in circumstances supported by clear and convincing evidence.

Additionally, the bill would that rehabilitative alimony would not exceed a term of five years. The court would have discretion to extend the term of rehabilitative upon finding that: (I) unforeseen events prevent the payee from being self- at the end of the term; and (2) the payee has endeavored to become and (3) extending rehabilitative alimony would not constitute an undue burden on the payer.

The bill would also that reimbursement could not be modified.

1 Finally, the bill would permit modification of alimony awards
2 existing on the effective date to conform to the provisions of the
3 bill. Limited duration and rehabilitative alimony awards could be
4 modified to conform to the durational guidelines provided in the
5 bill and permanent alimony awards could be converted to limited
6 duration alimony awards and modified to conform to the durational
7 guidelines for limited duration alimony. A motion for modification
8 could be brought by either party to the award and the moving party
9 would not need to show a change of circumstances to receive a l
0 modification. The bill additionally provides that its enactment II
would not constitute a change of circumstances for the purposes of
12 modifyng the amount of an existing alimony award and it would
13 not permit modification of an award that the parties previously
14 agreed could not be modified. The bill would require that all
15 petitions for modifications in connection with its enactment be
16 brought within two years of the effective date. However, nothing in
17 the bill would be deemed to affect the right to modification of any
18 alimony award based on a change of circumstances.

19 The bill would take effect on October 1, 2013 and sections I and
20 2 of the bill would apply to judgments for alimony entered on or
21 after that date.

22 This bill is modeled on the Massachusetts "Alimony Reform
23 Law of 2011."