

A Time for Change

Measure Reforming Alimony Is Certainly History in the Making

By MELISSA R. GILLIS, Esq., and THOMAS R. REIDY, Esq.

Get ready, payers and recipients — a new statute is in town, and after so many years, it’s finally about alimony.

In an historic move, Gov. Deval Patrick signed into law “An Act Reforming Alimony in the Commonwealth,” which went into effect March 1. This Massachusetts statutory law, known as M.G.L. c. 208, §§ 48-55 inclusive, defines alimony, classifies it prospectively into four categories, and applies retroactively to existing orders. Gone are the days of unjustified lifetime alimony awards, the extension of alimony past the payer’s retirement age, and the ability of a recipient spouse to receive alimony during their cohabitation with another.

Understandably, judges and lawyers alike are both excited and nervous with such a tremendous new practice tool. From the court’s perspective, the apprehension stems from both its ability to handle the imminent floodgate of litigation and the amount of judicial discretion inherent in the wording of the statute itself. From the lawyers’ perspective, it’s the unknown judicial interpretation of the law to each specific fact pattern, coupled with the technical skill it will take to make effective arguments about how the law applies to each case.

In an attempt to preserve judicial discretion, balance consistency with flexibility, encourage settlement, provide finality, and for the comingled effect of situations where there is child support, this law has potential loopholes and room for creative arguments, much to the dismay of those who seek determinative rules for dealing with the one issue that arguably creates the largest amount of contested divorce litigation.

Specifically, the act is designed to accomplish the following:

- Articulate and define alimony into four separate categories: general-term alimony, rehabilitative alimony, reimbursement alimony, and transitional alimony;
- Set durational time limits that mandate termination of alimony awards no later than a certain date, determined by the length of the

marriage;

- Provide parameters for setting the form, amount, and duration of alimony, including the definition of income;
- Suspend, reduce, or terminate alimony upon the cohabitation of the recipient spouse; and
- Terminate alimony upon the payer attaining retirement age, as defined by Social

Notably, however, if there is a basis for modification in addition to an award exceeding durational limits or the payor reaching the full retirement age, the filing schedule is inapplicable, and March 1, 2012 is the magic date.

Testing the statute in Massachusetts courts will help clarify one of the main questions domestic lawyers receive from clients who are paying alimony: whether a recipient’s

cohabitation with another person post-divorce, in and of itself, is sufficient to warrant termination. Currently, Massachusetts case law allows for alteration or termination of alimony on the basis of cohabitation only when myriad other factors exist, including the economic benefit and change in circumstance received from the non-spouse co-habitator.

Pursuant to the act, however, general-term alimony

will now statutorily 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 for a continuous period of at least three months. Evidence of maintaining a common household will surely be a great source of litigation, and includes sharing a primary residence, economic interdependence of the couple, economic dependence of one person on the other, oral or written statements or representations made to third parties regarding the relationship of the persons, engaging in conduct and collaborative roles in furtherance of their life together, and the benefit in the life of the recipient, both from the new relationship and their community reputation as a couple.

Overall, the time is ripe for alimony payers to pull out their old agreements and consult with a creative attorney who is knowledgeable about this substantive change in Massachusetts law. Before each payer goes through this process, however, it is important to note that, if the effect of the existing agreement provides that it “survives as an independent contract” and is “incorporated but not merged” into the actual divorce judgment,

.....
Testing the statute in Massachusetts courts will help clarify one of the main questions domestic lawyers receive from clients who are paying alimony: whether a recipient’s cohabitation with another person post-divorce, in and of itself, is sufficient to warrant termination.
.....

Security.

Retroactively, all existing alimony awards are considered general-term alimony. These awards can now be modified by termination or reduction, should a change in circumstances occur whereby the payer no longer has the ability to pay and/or the recipient’s need is reduced.

In addition, the act provides per-se (meaning that no other circumstance is required) grounds for termination of alimony upon any of the following circumstances:

- Remarriage of the recipient spouse;
- Death of either spouse;
- No later than a certain date pursuant to the act’s articulated durational limits;
- The payer attaining the full retirement age; or, most anticipated,
- The cohabitation of the recipient spouse.

The act also establishes a schedule setting forth when modifications can be filed, seemingly designed to allow both payer and recipient the opportunity for future financial planning, as well as decreasing the immediate judicial burden relative to the opened floodgates of litigation. Specifically, the schedules are for reaching the age of retirement and exceeding durational limits for payment.

the act specifically states that no modification is allowed. If, however, your agreement “merges and incorporates” into the judgment of divorce, a consult will determine if and when the opportunity is ripe to file a modification action, seeking either a reduction or termination.

To those people who have been paying alimony longer than they were married, or who are paying alimony to an ex-spouse who

has been living with someone else for years, this measure represents true relief. The light at the end of the tunnel is now in sight and burning bright. Although lawyers cannot yet predict how individual judges will interpret the specific language of the act, the message is clear: alimony in marriages fewer than 20 years in duration is no longer forever. ■

Melissa R. Gillis, Esq. is an attorney with Bacon Wilson, P.C. in the domestic, special education, and real estate departments; (413) 781-0560; baconwilson.com/attorneys/gillis. Thomas R. Reidy, Esq. is a member of the domestic relations team; (413) 781-0560; baconwilson.com/attorneys/reidy