

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A10984B

SPONSOR: Paulin

TITLE OF BILL:

An act to amend the domestic relations law, in relation to providing for temporary maintenance awards, and revising the factors for final maintenance awards; and directing the law revision commission to study the economic consequences of divorce and maintenance actions

PURPOSE OF BILL:

To take steps toward reforming the state's spousal maintenance awards by providing consistency and predictability in calculating temporary spousal maintenance awards, revising the state's laws on final maintenance awards by incorporating factors that reflect the experiences of divorcing couples, and directing, a review of our maintenance laws and the economic consequences of divorce to enable the legislature to improve the effectiveness of these laws.

SUMMARY OF PROVISIONS OF BILL:

Section 1. Part B of section 236 of the domestic relations law is amended by adding a new subdivision 5-a establishing a process for determining the presumptive amount of temporary maintenance awards with factors for deviation where the award is unjust or inappropriate.

Section 2. Subdivision 6 of part B of section 236 of the domestic relations law is amended by supplementing existing factors for determination of final or post-divorce maintenance awards.

Section 3. Part B of section 236 of the domestic relations law is amended by adding a new subdivision 6-a directing the New York State Law Revision Commission to assess the economic consequences of divorce on married couples, to review the spousal maintenance laws of the state and to submit a preliminary and a final report to the legislature and the governor with recommendations for revisions to spousal maintenance laws.

Section 4. Paragraph a of subdivision 1 of Part B of section 236 of the domestic relations law is amended to update the definition of maintenance by cross-referencing subdivision 5-a that establishes the new process for determining temporary maintenance awards.

Section 5. The Chief administrator of the courts is directed to promulgate all rules necessary to implement the provisions of this act.

Section 6. Provides for the effective date of the various sections of this proposal.

JUSTIFICATION:

Serious concerns have been raised regarding our divorce laws and the ineffectiveness of New York State's spousal maintenance provisions in achieving fair and equitable outcomes for divorcing couples post

divorce. Spousal maintenance is often not granted, and where it is granted, the results are inconsistent and unpredictable. In other cases, individuals forego maintenance because the process of obtaining it is too complex.

In its review of our state's divorce laws, the Matrimonial Commission, established in 2004, by then Chief Judge Judith Kaye, that included in its 32 member body, judges, and members of the private and non-profit bar, found that there was significant dissatisfaction by the public and the bar with respect to maintenance awards and the perception that these awards vary unpredictably from court to court with little or no guidance, often resulting in feelings of injustice and unequal treatment.

Families often do not have substantial assets to divide upon the dissolution of a marriage - the greatest asset of the marriage is frequently the income of the more-monied spouse. The less-monied spouse often invests time and energy supporting his or her spouse's career, raising the children, and taking care of the home. Current law is based on an un-prioritized list of factors and does not provide adequate guidance on how to consider each of these factors, resulting in varying monetary and durational awards for couples with similar incomes and similar length of marriage. This lack of consistency and predictability in maintenance awards undermines confidence in the judicial system and encourages costly litigation by impeding the settlement of cases.

Addressing some of these concerns, some states have adopted numerical guidelines for calculating temporary maintenance awards. Some formulas have a long history; for example, California's formula has been in place since 1977 and Pennsylvania's has been in place since 1989. This measure would create numerical guidelines for calculating the presumptive amount of the temporary maintenance awards with deviation factors to be employed by the court in its discretion where the presumptive amount of the award is unjust or inappropriate. These deviation factors include a catch-all "any other factor" that the court may apply if it chooses to adjust the presumed award. The numerical guidelines proposed in this measure are similar to the recommendations of the American Academy of Matrimonial Lawyers based on their study of approaches in numerous jurisdictions across the country. The duration of the temporary award under this measure would be determined by considering the length of the marriage.

The temporary maintenance guidelines would only result in an award when there is an income gap between the two parties such that the less-monied spouse's income is less than two thirds of the more monied spouse's income. For instance, if the payor's annual income is \$90,000 a year, the guidelines will only result in an award if the payee's annual income is less than \$60,000. The numerical guideline is only applied to the payor's income up to \$500,000 of her/his income, with a set of factors to be applied by the court to determine any additional amount of temporary maintenance on the payor's income above this \$500,000 cap. The guidelines also include protections for individuals whose annual income is less than the self-support reserve (135% of the Federal Poverty Guidelines - currently \$14,620/year).

GUIDELINE AMOUNT:

To determine the guideline amount, the court must compare two calculations of the spouses' annual incomes. For both of these calculations, any income of the payor's that exceeds \$500,000 is not included.

- * 30% of the payor's income minus 20% of the payee's income, OR
- * 40% of the combined income of the two spouses. The payee's income is

then subtracted from this figure.

The court must select the lesser of these two figures as the guideline amount. If the payor has an annual income exceeding \$500,000, the judge may adjust the amount.

This proposal would provide consistency and predictability for temporary maintenance awards similar to the child support guidelines in the Child Support Standards Act. It would also help bring parties to the table and facilitate settlement of cases.

This measure does not make any statutory change to the current law on determining final or post divorce maintenance awards; except for revising the statutory factors to better reflect divorcing couple's life circumstances. The amount and duration of the final or post-divorce maintenance awards would still be determined based on a list of statutory factors.

While adopting numerical guidelines for temporary maintenance awards would be a tremendous step toward addressing the concerns raised about the state's maintenance laws, by providing consistency, predictability and bringing parties to the table as a starting point for settlement, there is a continuing need to assess the state's maintenance laws to ensure that the economic consequences of a divorce are fairly and equitably shared by the divorcing couple upon divorce.

This measure would charge the New York State Law Revision Commission to undertake an in-depth review and assessment of the economic consequences of divorce on the parties, along with an in-depth review and assessment of the maintenance law of our state. This proposal further charges the Commission to make recommendations, including revisions to the law, to help guide the legislature in arriving at a resolution to improve the effectiveness of our spousal maintenance laws in furtherance of achieving the state's policy goals of ensuring that parties and their children do not fall into poverty post divorce and that the economic consequences of a divorce are fairly and equitably shared by a divorcing couple.

LEGISLATIVE HISTORY:

Similar to:

2009-10: A.7269-A Judiciary Committee

2008: A.10446-A Judiciary Committee

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:

None.

EFFECTIVE DATE:

This act shall take effect immediately; provided, however, that the sections on temporary maintenance awards, post-divorce maintenance awards and the section with updates to the definition section of maintenance will be effective 60 days after they shall become a law.