



Saturday, July 3, 2010

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A10984 Summary:

BILL NO A10984B

SAME AS Same as S 8390

SPONSOR Paulin

COSPNSR Weinstein, Rivera P, Jaffee

MLTSPNSR

Amd S236, Dom Rel L

Establishes the provision of temporary maintenance in matrimonial actions; directs the law revision commission to study the effects of divorce and maintenance.

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A10984 Memo:

BILL NUMBER:A10984B

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.

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S T A T E O F N E W Y O R K

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I N A S S E M B L Y

May 5, 2010

Introduced by M. of A. PAULIN, WEINSTEIN -- read once and referred to

the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

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

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Part B of section 236 of the domestic relations law is
2 amended by adding a new subdivision 5-a to read as follows:
- 3 5-A. TEMPORARY MAINTENANCE AWARDS. A. EXCEPT WHERE THE PARTIES HAVE
4 ENTERED INTO AN AGREEMENT PURSUANT TO SUBDIVISION THREE OF THIS PART
5 PROVIDING FOR MAINTENANCE, IN ANY MATRIMONIAL ACTION THE COURT SHALL
6 MAKE ITS AWARD FOR TEMPORARY MAINTENANCE PURSUANT TO THE PROVISIONS OF
7 THIS SUBDIVISION.
- 8 B. FOR PURPOSES OF THIS SUBDIVISION, THE FOLLOWING DEFINITIONS SHALL
9 BE USED:
- 10 (1) "PAYOR" SHALL MEAN THE SPOUSE WITH THE HIGHER INCOME.
11 (2) "PAYEE" SHALL MEAN THE SPOUSE WITH THE LOWER INCOME.
12 (3) "LENGTH OF MARRIAGE" SHALL MEAN THE PERIOD FROM THE DATE OF
13 MARRIAGE UNTIL THE DATE OF COMMENCEMENT OF ACTION.
14 (4) "INCOME" SHALL MEAN:
15 (A) INCOME AS DEFINED IN THE CHILD SUPPORT STANDARDS ACT AND CODIFIED
16 IN SECTION TWO HUNDRED FORTY OF THIS ARTICLE AND SECTION FOUR HUNDRED
17 THIRTEEN OF THE FAMILY COURT ACT; AND
18 (B) INCOME FROM INCOME PRODUCING PROPERTY TO BE DISTRIBUTED PURSUANT
19 TO SUBDIVISION FIVE OF THIS PART.
20 (5) "INCOME CAP" SHALL MEAN UP TO AND INCLUDING FIVE HUNDRED THOUSAND
21 DOLLARS OF THE PAYOR'S ANNUAL INCOME; PROVIDED, HOWEVER, BEGINNING JANU-
22 ARY THIRTY-FIRST, TWO THOUSAND TWELVE AND EVERY TWO YEARS THEREAFTER,
23 THE PAYOR'S ANNUAL INCOME AMOUNT SHALL INCREASE BY THE PRODUCT OF THE

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

LBD17166-10-0

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- 1 AVERAGE ANNUAL PERCENTAGE CHANGES IN THE CONSUMER PRICE INDEX FOR ALL
2 URBAN CONSUMERS (CPI-U) AS PUBLISHED BY THE UNITED STATES DEPARTMENT OF
3 LABOR BUREAU OF LABOR STATISTICS FOR THE TWO YEAR PERIOD ROUNDED TO THE
4 NEAREST ONE THOUSAND DOLLARS. THE OFFICE OF COURT ADMINISTRATION SHALL
5 DETERMINE AND PUBLISH THE INCOME CAP.
- 6 (6) "GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE" SHALL MEAN THE SUM
7 DERIVED BY THE APPLICATION OF PARAGRAPH C OF THIS SUBDIVISION.
8 (7) "GUIDELINE DURATION" SHALL MEAN THE DURATIONAL PERIOD DETERMINED
9 BY THE APPLICATION OF PARAGRAPH D OF THIS SUBDIVISION.
10 (8) "PRESUMPTIVE AWARD" SHALL MEAN THE GUIDELINE AMOUNT OF THE TEMPO-
11 RARY MAINTENANCE AWARD FOR THE GUIDELINE DURATION PRIOR TO THE COURT'S
12 APPLICATION OF ANY ADJUSTMENT FACTORS AS PROVIDED IN SUBPARAGRAPH ONE OF
13 PARAGRAPH E OF THIS SUBDIVISION.
14 (9) "SELF-SUPPORT RESERVE" SHALL MEAN THE SELF-SUPPORT RESERVE AS
15 DEFINED IN THE CHILD SUPPORT STANDARDS ACT AND CODIFIED IN SECTION TWO

16 HUNDRED FORTY OF THIS ARTICLE AND SECTION FOUR HUNDRED THIRTEEN OF THE
17 FAMILY COURT ACT.

18 C. THE COURT SHALL DETERMINE THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE IN ACCORDANCE WITH THE PROVISIONS OF THIS PARAGRAPH AFTER DETERMINING THE INCOME OF THE PARTIES:

21 (1) WHERE THE PAYOR'S INCOME IS UP TO AND INCLUDING THE INCOME CAP:

22 (A) THE COURT SHALL SUBTRACT TWENTY PERCENT OF THE INCOME OF THE PAYEE FROM THIRTY PERCENT OF THE INCOME UP TO THE INCOME CAP OF THE PAYOR.

24 (B) THE COURT SHALL THEN MULTIPLY THE SUM OF THE PAYOR'S INCOME UP TO AND INCLUDING THE INCOME CAP AND ALL OF THE PAYEE'S INCOME BY FORTY PERCENT.

27 (C) THE COURT SHALL SUBTRACT THE INCOME OF THE PAYEE FROM THE AMOUNT DERIVED FROM CLAUSE (B) OF THIS SUBPARAGRAPH.

29 (D) THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE SHALL BE THE LOWER OF THE AMOUNTS DETERMINED BY CLAUSES (A) AND (C) OF THIS SUBPARAGRAPH; IF THE AMOUNT DETERMINED BY CLAUSE (C) OF THIS SUBPARAGRAPH IS LESS THAN OR EQUAL TO ZERO, THE GUIDELINE AMOUNT SHALL BE ZERO DOLLARS.

33 (2) WHERE THE INCOME OF THE PAYOR EXCEEDS THE INCOME CAP:

34 (A) THE COURT SHALL DETERMINE THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE FOR THAT PORTION OF THE PAYOR'S INCOME THAT IS UP TO AND INCLUDING THE INCOME CAP ACCORDING TO SUBPARAGRAPH ONE OF THIS PARAGRAPH, AND, FOR THE PAYOR'S INCOME IN EXCESS OF THE INCOME CAP, THE COURT SHALL DETERMINE ANY ADDITIONAL GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE THROUGH CONSIDERATION OF THE FOLLOWING FACTORS:

40 (I) THE LENGTH OF THE MARRIAGE;

41 (II) THE SUBSTANTIAL DIFFERENCES IN THE INCOMES OF THE PARTIES;

42 (III) THE STANDARD OF LIVING OF THE PARTIES ESTABLISHED DURING THE MARRIAGE;

44 (IV) THE AGE AND HEALTH OF THE PARTIES;

45 (V) THE PRESENT AND FUTURE EARNING CAPACITY OF THE PARTIES;

46 (VI) THE NEED OF ONE PARTY TO INCUR EDUCATION OR TRAINING EXPENSES;

47 (VII) THE WASTEFUL DISSIPATION OF MARITAL PROPERTY;

48 (VIII) THE TRANSFER OR ENCUMBRANCE MADE IN CONTEMPLATION OF A MATRIMONIAL ACTION WITHOUT FAIR CONSIDERATION;

50 (IX) THE EXISTENCE AND DURATION OF A PRE-MARITAL JOINT HOUSEHOLD OR A PRE-DIVORCE SEPARATE HOUSEHOLD;

52 (X) ACTS BY ONE PARTY AGAINST ANOTHER THAT HAVE INHIBITED OR CONTINUE TO INHIBIT A PARTY'S EARNING CAPACITY OR ABILITY TO OBTAIN MEANINGFUL EMPLOYMENT. SUCH ACTS INCLUDE BUT ARE NOT LIMITED TO ACTS OF DOMESTIC VIOLENCE AS PROVIDED IN SECTION FOUR HUNDRED FIFTY-NINE-A OF THE SOCIAL SERVICES LAW;

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1 (XI) THE AVAILABILITY AND COST OF MEDICAL INSURANCE FOR THE PARTIES;

2 (XII) THE CARE OF THE CHILDREN OR STEPCHILDREN, DISABLED ADULT CHILDREN OR STEPCHILDREN, ELDERLY PARENTS OR IN-LAWS THAT HAS INHIBITED OR CONTINUES TO INHIBIT A PARTY'S EARNING CAPACITY OR ABILITY TO OBTAIN MEANINGFUL EMPLOYMENT;

6 (XIII) THE INABILITY OF ONE PARTY TO OBTAIN MEANINGFUL EMPLOYMENT DUE TO AGE OR ABSENCE FROM THE WORKFORCE;

8 (XIV) THE NEED TO PAY FOR EXCEPTIONAL ADDITIONAL EXPENSES FOR THE CHILD OR CHILDREN, INCLUDING, BUT NOT LIMITED TO, SCHOOLING, DAY CARE AND MEDICAL TREATMENT;

11 (XV) THE TAX CONSEQUENCES TO EACH PARTY;

12 (XVI) MARITAL PROPERTY SUBJECT TO DISTRIBUTION PURSUANT TO SUBDIVISION FIVE OF THIS PART;

14 (XVII) THE REDUCED OR LOST EARNING CAPACITY OF THE PARTY SEEKING

15 TEMPORARY MAINTENANCE AS A RESULT OF HAVING FOREGONE OR DELAYED EDUCA-
 16 TION, TRAINING, EMPLOYMENT OR CAREER OPPORTUNITIES DURING THE MARRIAGE;
 17 (XVIII) THE CONTRIBUTIONS AND SERVICES OF THE PARTY SEEKING TEMPORARY
 18 MAINTENANCE AS A SPOUSE, PARENT, WAGE EARNER AND HOMEMAKER AND TO THE
 19 CAREER OR CAREER POTENTIAL OF THE OTHER PARTY; AND
 20 (XIX) ANY OTHER FACTOR WHICH THE COURT SHALL EXPRESSLY FIND TO BE JUST
 21 AND PROPER.

22 (B) IN ANY DECISION MADE PURSUANT TO THIS SUBPARAGRAPH, THE COURT
 23 SHALL SET FORTH THE FACTORS IT CONSIDERED AND THE REASONS FOR ITS DECI-
 24 SION. SUCH WRITTEN ORDER MAY NOT BE WAIVED BY EITHER PARTY OR COUNSEL.

25 (3) NOTWITHSTANDING THE PROVISIONS OF THIS PARAGRAPH, WHERE THE GUIDE-
 26 LINE AMOUNT OF TEMPORARY MAINTENANCE WOULD REDUCE THE PAYOR'S INCOME
 27 BELOW THE SELF-SUPPORT RESERVE FOR A SINGLE PERSON, THE PRESUMPTIVE
 28 AMOUNT OF THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE SHALL BE THE
 29 DIFFERENCE BETWEEN THE PAYOR'S INCOME AND THE SELF-SUPPORT RESERVE. IF
 30 THE PAYOR'S INCOME IS BELOW THE SELF-SUPPORT RESERVE, THERE IS A REBUTT-
 31 ABLE PRESUMPTION THAT NO TEMPORARY MAINTENANCE IS AWARDED.

32 D. THE COURT SHALL DETERMINE THE GUIDELINE DURATION OF TEMPORARY MAIN-
 33 TENANCE BY CONSIDERING THE LENGTH OF THE MARRIAGE. TEMPORARY MAINTENANCE
 34 SHALL TERMINATE UPON THE ISSUANCE OF THE FINAL AWARD OF MAINTENANCE OR
 35 THE DEATH OF EITHER PARTY, WHICHEVER OCCURS FIRST.

36 E. (1) THE COURT SHALL ORDER THE PRESUMPTIVE AWARD OF TEMPORARY MAIN-
 37 TENANCE IN ACCORDANCE WITH PARAGRAPHS C AND D OF THIS SUBDIVISION,
 38 UNLESS THE COURT FINDS THAT THE PRESUMPTIVE AWARD IS UNJUST OR INAPPRO-
 39 PRIATE AND ADJUSTS THE PRESUMPTIVE AWARD OF TEMPORARY MAINTENANCE
 40 ACCORDINGLY BASED UPON CONSIDERATION OF THE FOLLOWING FACTORS:

41 (A) THE STANDARD OF LIVING OF THE PARTIES ESTABLISHED DURING THE
 42 MARRIAGE;

43 (B) THE AGE AND HEALTH OF THE PARTIES;

44 (C) THE EARNING CAPACITY OF THE PARTIES;

45 (D) THE NEED OF ONE PARTY TO INCUR EDUCATION OR TRAINING EXPENSES;

46 (E) THE WASTEFUL DISSIPATION OF MARITAL PROPERTY;

47 (F) THE TRANSFER OR ENCUMBRANCE MADE IN CONTEMPLATION OF A MATRIMONIAL
 48 ACTION WITHOUT FAIR CONSIDERATION;

49 (G) THE EXISTENCE AND DURATION OF A PRE-MARITAL JOINT HOUSEHOLD OR A
 50 PRE-DIVORCE SEPARATE HOUSEHOLD;

51 (H) ACTS BY ONE PARTY AGAINST ANOTHER THAT HAVE INHIBITED OR CONTINUE
 52 TO INHIBIT A PARTY'S EARNING CAPACITY OR ABILITY TO OBTAIN MEANINGFUL
 53 EMPLOYMENT. SUCH ACTS INCLUDE BUT ARE NOT LIMITED TO ACTS OF DOMESTIC
 54 VIOLENCE AS PROVIDED IN SECTION FOUR HUNDRED FIFTY-NINE-A OF THE SOCIAL
 55 SERVICES LAW;

56 (I) THE AVAILABILITY AND COST OF MEDICAL INSURANCE FOR THE PARTIES;

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1 (J) THE CARE OF THE CHILDREN OR STEPCHILDREN, DISABLED ADULT CHILDREN
 2 OR STEPCHILDREN, ELDERLY PARENTS OR IN-LAWS THAT HAS INHIBITED OR
 3 CONTINUES TO INHIBIT A PARTY'S EARNING CAPACITY OR ABILITY TO OBTAIN
 4 MEANINGFUL EMPLOYMENT;

5 (K) THE INABILITY OF ONE PARTY TO OBTAIN MEANINGFUL EMPLOYMENT DUE TO
 6 AGE OR ABSENCE FROM THE WORKFORCE;

7 (L) THE NEED TO PAY FOR EXCEPTIONAL ADDITIONAL EXPENSES FOR THE CHILD
 8 OR CHILDREN, INCLUDING, BUT NOT LIMITED TO, SCHOOLING, DAY CARE AND
 9 MEDICAL TREATMENT;

10 (M) THE TAX CONSEQUENCES TO EACH PARTY;

11 (N) MARITAL PROPERTY SUBJECT TO DISTRIBUTION PURSUANT TO SUBDIVISION
 12 FIVE OF THIS PART;

13 (O) THE REDUCED OR LOST EARNING CAPACITY OF THE PARTY SEEKING TEMPO-

14 RARY MAINTENANCE AS A RESULT OF HAVING FOREGONE OR DELAYED EDUCATION,
15 TRAINING, EMPLOYMENT OR CAREER OPPORTUNITIES DURING THE MARRIAGE;

16 (P) THE CONTRIBUTIONS AND SERVICES OF THE PARTY SEEKING TEMPORARY
17 MAINTENANCE AS A SPOUSE, PARENT, WAGE EARNER AND HOMEMAKER AND TO THE
18 CAREER OR CAREER POTENTIAL OF THE OTHER PARTY; AND

19 (Q) ANY OTHER FACTOR WHICH THE COURT SHALL EXPRESSLY FIND TO BE JUST
20 AND PROPER.

21 (2) WHERE THE COURT FINDS THAT THE PRESUMPTIVE AWARD OF TEMPORARY
22 MAINTENANCE IS UNJUST OR INAPPROPRIATE AND THE COURT ADJUSTS THE
23 PRESUMPTIVE AWARD OF TEMPORARY MAINTENANCE PURSUANT TO THIS PARAGRAPH,
24 THE COURT SHALL SET FORTH, IN A WRITTEN ORDER, THE AMOUNT OF THE UNAD-
25 JUSTED PRESUMPTIVE AWARD OF TEMPORARY MAINTENANCE, THE FACTORS IT
26 CONSIDERED, AND THE REASONS THAT THE COURT ADJUSTED THE PRESUMPTIVE
27 AWARD OF TEMPORARY MAINTENANCE. SUCH WRITTEN ORDER SHALL NOT BE WAIVED
28 BY EITHER PARTY OR COUNSEL.

29 (3) WHERE EITHER OR BOTH PARTIES ARE UNREPRESENTED, THE COURT SHALL
30 NOT ENTER A TEMPORARY MAINTENANCE ORDER UNLESS THE UNREPRESENTED PARTY
31 OR PARTIES HAVE BEEN INFORMED OF THE PRESUMPTIVE AWARD OF TEMPORARY
32 MAINTENANCE.

33 F. A VALIDLY EXECUTED AGREEMENT OR STIPULATION VOLUNTARILY ENTERED
34 INTO BETWEEN THE PARTIES IN AN ACTION COMMENCED AFTER THE EFFECTIVE DATE
35 OF THIS SUBDIVISION PRESENTED TO THE COURT FOR INCORPORATION IN AN ORDER
36 SHALL INCLUDE A PROVISION STATING THAT THE PARTIES HAVE BEEN ADVISED OF
37 THE PROVISIONS OF THIS SUBDIVISION, AND THAT THE PRESUMPTIVE AWARD
38 PROVIDED FOR THEREIN RESULTS IN THE CORRECT AMOUNT OF TEMPORARY MAINTE-
39 NANCE. IN THE EVENT THAT SUCH AGREEMENT OR STIPULATION DEVIATES FROM THE
40 PRESUMPTIVE AWARD OF TEMPORARY MAINTENANCE, THE AGREEMENT OR STIPULATION
41 MUST SPECIFY THE AMOUNT THAT SUCH PRESUMPTIVE AWARD OF TEMPORARY MAINTE-
42 NANCE WOULD HAVE BEEN AND THE REASON OR REASONS THAT SUCH AGREEMENT OR
43 STIPULATION DOES NOT PROVIDE FOR PAYMENT OF THAT AMOUNT. SUCH PROVISION
44 MAY NOT BE WAIVED BY EITHER PARTY OR COUNSEL. NOTHING CONTAINED IN THIS
45 SUBDIVISION SHALL BE CONSTRUED TO ALTER THE RIGHTS OF THE PARTIES TO
46 VOLUNTARILY ENTER INTO VALIDLY EXECUTED AGREEMENTS OR STIPULATIONS WHICH
47 DEVIATE FROM THE PRESUMPTIVE AWARD OF TEMPORARY MAINTENANCE PROVIDED
48 SUCH AGREEMENTS OR STIPULATIONS COMPLY WITH THE PROVISIONS OF THIS
49 SUBDIVISION. THE COURT SHALL, HOWEVER, RETAIN DISCRETION WITH RESPECT TO
50 TEMPORARY, AND POST-DIVORCE MAINTENANCE AWARDS PURSUANT TO THIS SECTION.
51 ANY COURT ORDER INCORPORATING A VALIDLY EXECUTED AGREEMENT OR STIPU-
52 LATION WHICH DEVIATES FROM THE PRESUMPTIVE AWARD OF TEMPORARY MAINTE-
53 NANCE SHALL SET FORTH THE COURT'S REASONS FOR SUCH DEVIATION.

54 G. WHEN A PARTY HAS DEFAULTED AND/OR THE COURT IS OTHERWISE PRESENTED
55 WITH INSUFFICIENT EVIDENCE TO DETERMINE GROSS INCOME, THE COURT SHALL
56 ORDER THE TEMPORARY MAINTENANCE AWARD BASED UPON THE NEEDS OF THE PAYEE

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1 OR THE STANDARD OF LIVING OF THE PARTIES PRIOR TO COMMENCEMENT OF THE
2 DIVORCE ACTION, WHICHEVER IS GREATER. SUCH ORDER MAY BE RETROACTIVELY
3 MODIFIED UPWARD WITHOUT A SHOWING OF CHANGE IN CIRCUMSTANCES UPON A
4 SHOWING OF NEWLY DISCOVERED OR OBTAINED EVIDENCE.

5 H. IN ANY ACTION OR PROCEEDING FOR MODIFICATION OF AN ORDER OF MAINTE-
6 NANCE OR ALIMONY EXISTING PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVI-
7 SION, BROUGHT PURSUANT TO THIS ARTICLE, THE TEMPORARY MAINTENANCE GUIDE-
8 LINES SET FORTH IN THIS SUBDIVISION SHALL NOT CONSTITUTE A CHANGE OF
9 CIRCUMSTANCES WARRANTING MODIFICATION OF SUCH SUPPORT ORDER.

10 I. IN ANY DECISION MADE PURSUANT TO THIS SUBDIVISION THE COURT SHALL,
11 WHERE APPROPRIATE, CONSIDER THE EFFECT OF A BARRIER TO REMARRIAGE, AS
12 DEFINED IN SUBDIVISION SIX OF SECTION TWO HUNDRED FIFTY-THREE OF THIS

13 ARTICLE, ON THE FACTORS ENUMERATED IN THIS SUBDIVISION.

14 S 2. Subdivision 6 of part B of section 236 of the domestic relations
15 law, as amended by chapter 884 of the laws of 1986, subparagraph 10 as
16 amended, subparagraph 11 as added and subparagraph 12 of paragraph a as
17 renumbered by chapter 229 of the laws of 2009, paragraph d as added by
18 chapter 415 of the laws of 1992, is amended to read as follows:

19 6. [Maintenance] POST-DIVORCE MAINTENANCE AWARDS. a. Except where the
20 parties have entered into an agreement pursuant to subdivision three of
21 this part providing for maintenance, in any matrimonial action the court
22 may order [temporary maintenance or] maintenance in such amount as
23 justice requires, having regard for the standard of living of the
24 parties established during the marriage, whether the party in whose
25 favor maintenance is granted lacks sufficient property and income to
26 provide for his or her reasonable needs and whether the other party has
27 sufficient property or income to provide for the reasonable needs of the
28 other and the circumstances of the case and of the respective parties.
29 Such order shall be effective as of the date of the application there-
30 for, and any retroactive amount of maintenance due shall be paid in one
31 sum or periodic sums, as the court shall direct, taking into account any
32 amount of temporary maintenance which has been paid. In determining the
33 amount and duration of maintenance the court shall consider:

34 (1) the income and property of the respective parties including mari-
35 tal property distributed pursuant to subdivision five of this part;

36 (2) the [duration] LENGTH of the marriage [and];

37 (3) the age and health of both parties;

38 [(3)] (4) the present and future earning capacity of both parties;

39 [(4)] (5) THE NEED OF ONE PARTY TO INCUR EDUCATION OR TRAINING
40 EXPENSES;

41 (6) THE EXISTENCE AND DURATION OF A PRE-MARITAL JOINT HOUSEHOLD OR A
42 PRE-DIVORCE SEPARATE HOUSEHOLD;

43 (7) ACTS BY ONE PARTY AGAINST ANOTHER THAT HAVE INHIBITED OR CONTINUE
44 TO INHIBIT A PARTY'S EARNING CAPACITY OR ABILITY TO OBTAIN MEANINGFUL
45 EMPLOYMENT. SUCH ACTS INCLUDE BUT ARE NOT LIMITED TO ACTS OF DOMESTIC
46 VIOLENCE AS PROVIDED IN SECTION FOUR HUNDRED FIFTY-NINE-A OF THE SOCIAL
47 SERVICES LAW;

48 (8) the ability of the party seeking maintenance to become self-sup-
49 porting and, if applicable, the period of time and training necessary
50 therefor;

51 [(5)] (9) reduced or lost lifetime earning capacity of the party seek-
52 ing maintenance as a result of having foregone or delayed education,
53 training, employment, or career opportunities during the marriage;

54 [(6)] (10) the presence of children of the marriage in the respective
55 homes of the parties;

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1 [(7)] (11) THE CARE OF THE CHILDREN OR STEPCHILDREN, DISABLED ADULT
2 CHILDREN OR STEPCHILDREN, ELDERLY PARENTS OR IN-LAWS THAT HAS INHIBITED
3 OR CONTINUES TO INHIBIT A PARTY'S EARNING CAPACITY;

4 (12) THE INABILITY OF ONE PARTY TO OBTAIN MEANINGFUL EMPLOYMENT DUE TO
5 AGE OR ABSENCE FROM THE WORKFORCE;

6 (13) THE NEED TO PAY FOR EXCEPTIONAL ADDITIONAL EXPENSES FOR THE
7 CHILD/CHILDREN, INCLUDING BUT NOT LIMITED TO, SCHOOLING, DAY CARE AND
8 MEDICAL TREATMENT;

9 (14) the tax consequences to each party;

10 [(8)] (15) THE EQUITABLE DISTRIBUTION OF MARITAL PROPERTY;

11 (16) contributions and services of the party seeking maintenance as a
12 spouse, parent, wage earner and homemaker, and to the career or career

13 potential of the other party;
 14 [(9)] (17) the wasteful dissipation of marital property by either
 15 spouse;

16 [(10) any] (18) THE transfer or encumbrance made in contemplation of a
 17 matrimonial action without fair consideration;

18 [(11)] (19) the loss of health insurance benefits upon dissolution of
 19 the marriage, AND THE AVAILABILITY AND COST OF MEDICAL INSURANCE FOR THE
 20 PARTIES; and

21 [(12)] (20) any other factor which the court shall expressly find to
 22 be just and proper.

23 b. In any decision made pursuant to this subdivision, the court shall
 24 set forth the factors it considered and the reasons for its decision and
 25 such may not be waived by either party or counsel.

26 c. The court may award permanent maintenance, but an award of mainte-
 27 nance shall terminate upon the death of either party or upon the recipi-
 28 ent's valid or invalid marriage, or upon modification pursuant to para-
 29 graph [(b)] B of subdivision nine of [section two hundred thirty-six of]
 30 this part or section two hundred forty-eight of this chapter.

31 d. In any decision made pursuant to this subdivision the court shall,
 32 where appropriate, consider the effect of a barrier to remarriage, as
 33 defined in subdivision six of section two hundred fifty-three of this
 34 article, on the factors enumerated in paragraph a of this subdivision.

35 S 3. Part B of section 236 of the domestic relations law is amended by
 36 adding a new subdivision 6-a to read as follows:

37 6-A. LAW REVISION COMMISSION STUDY. A. THE LEGISLATURE HEREBY FINDS
 38 AND DECLARES IT TO BE THE POLICY OF THE STATE THAT IT IS NECESSARY TO
 39 ACHIEVE EQUITABLE OUTCOMES WHEN FAMILIES DIVORCE AND IT IS IMPORTANT TO
 40 ENSURE THAT THE ECONOMIC CONSEQUENCES OF A DIVORCE ARE FAIRLY SHARED BY
 41 DIVORCING COUPLES. SERIOUS CONCERNS HAVE BEEN RAISED THAT THE IMPLEMEN-
 42 TATION OF NEW YORK STATE'S MAINTENANCE LAWS HAVE NOT RESULTED IN EQUITA-
 43 BLE RESULTS. MAINTENANCE IS OFTEN NOT GRANTED AND WHERE IT IS GRANTED,
 44 THE RESULTS ARE INCONSISTENT AND UNPREDICTABLE. THIS RAISES SERIOUS
 45 CONCERNS ABOUT THE ABILITY OF OUR CURRENT MAINTENANCE LAWS TO ACHIEVE
 46 EQUITABLE AND FAIR OUTCOMES.

47 THE LEGISLATURE FURTHER FINDS A COMPREHENSIVE REVIEW OF THE PROVISIONS
 48 OF OUR STATE'S MAINTENANCE LAWS SHOULD BE UNDERTAKEN. IT HAS BEEN THIRTY
 49 YEARS SINCE THE LEGISLATURE SIGNIFICANTLY REFORMED OUR STATE'S DIVORCE
 50 LAWS BY ENACTING EQUITABLE DISTRIBUTION OF MARITAL PROPERTY AND INTRO-
 51 DUCED THE CONCEPT OF MAINTENANCE TO REPLACE ALIMONY. CONCERNS THAT THE
 52 IMPLEMENTATION OF OUR MAINTENANCE LAWS HAVE NOT RESULTED IN EQUITABLE
 53 RESULTS COMPEL THE NEED FOR A REVIEW OF THESE LAWS.

54 B. THE LAW REVISION COMMISSION IS HEREBY DIRECTED TO:

55 (1) REVIEW AND ASSESS THE ECONOMIC CONSEQUENCES OF DIVORCE ON THE
 56 PARTIES;

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1 (2) REVIEW THE MAINTENANCE LAWS OF THE STATE, INCLUDING THE WAY IN
 2 WHICH THEY ARE ADMINISTERED TO DETERMINE THE IMPACT OF THESE LAWS ON
 3 POST MARITAL ECONOMIC DISPARITIES, AND THE EFFECTIVENESS OF SUCH LAWS
 4 AND THEIR ADMINISTRATION IN ACHIEVING THE STATE'S POLICY GOALS AND
 5 OBJECTIVES OF ENSURING THAT THE ECONOMIC CONSEQUENCES OF A DIVORCE ARE
 6 FAIRLY AND EQUITABLY SHARED BY THE DIVORCING COUPLE; AND

7 (3) MAKE RECOMMENDATIONS TO THE LEGISLATURE, INCLUDING SUCH PROPOSED
 8 REVISIONS OF SUCH LAWS AS IT DETERMINES NECESSARY TO ACHIEVE THESE GOALS
 9 AND OBJECTIVES.

10 C. THE LAW REVISION COMMISSION SHALL MAKE A PRELIMINARY REPORT TO THE
 11 LEGISLATURE AND THE GOVERNOR OF ITS FINDINGS, CONCLUSIONS, AND ANY

12 RECOMMENDATIONS NOT LATER THAN NINE MONTHS FROM THE EFFECTIVE DATE OF
13 THIS SUBDIVISION, AND A FINAL REPORT OF ITS FINDINGS, CONCLUSIONS AND
14 RECOMMENDATIONS NOT LATER THAN DECEMBER THIRTY-FIRST, TWO THOUSAND ELEV-
15 EN.

16 S 4. Paragraph a of subdivision 1 of part B of section 236 of the
17 domestic relations law, as amended by chapter 884 of the laws of 1986,
18 is amended to read as follows:

19 a. The term "maintenance" shall mean payments provided for in a valid
20 agreement between the parties or awarded by the court in accordance with
21 the provisions of [subdivision] SUBDIVISIONS FIVE-A AND six of this
22 part, to be paid at fixed intervals for a definite or indefinite period
23 of time, but an award of maintenance shall terminate upon the death of
24 either party or upon the recipient's valid or invalid marriage, or upon
25 modification pursuant to paragraph (b) of subdivision nine of section
26 two hundred thirty-six of this part or section two hundred forty-eight
27 of this chapter.

28 S 5. The chief administrator of the courts shall promulgate all rules
29 necessary to implement the provisions of this act.

30 S 6. This act shall take effect immediately; provided, however, that
31 sections one, two and four of this act shall take effect on the sixtieth
32 day after this act shall have become a law and shall apply to matrimoni-
33 al actions commenced on or after the effective date of such sections.

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