CHAPTER 310
SB 71 - FINAL VERSION

03/16/2017 0767s
05/23/2018 1944CofC

2018 SESSION

17-0822
05/04

SENATE BILL ***71***

AN ACT **relative to the law governing alimony.**

SPONSORS: **Sen. Carson, Dist 14; Sen. Lasky, Dist 13; Rep. Gargasz, Hills. 27; Rep. P. Long, Hills. 10; Rep. DeSimone, Rock. 14; Rep. Walz, Merr. 23**

COMMITTEE: **Judiciary**

ANALYSIS

This bill establishes criteria for the amount and duration of alimony orders.

Explanation: **Matter added to current law appears in *bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 310
SB 71 - FINAL VERSION

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eighteen

AN ACT relative to the law governing alimony.

Be it Enacted by the Senate and House of Representatives in General Court convened:

310:1 Alimony. RSA 458:19 is repealed and reenacted to read as follows:

458:19 Alimony; Definitions. In RSA 458:19-a and RSA 458:19-aa:

I. "Alimony" means one or more payments made to, or for the benefit of, a spouse or former spouse.

II. "Effective date" means the date when an order takes effect under court rule.

III. "Exclusions from gross income" mean Social Security benefits received on behalf of a minor child; capital gains from property received in the parties' divorce; income of a subsequent spouse, except as provided in RSA 458:19-aa, II; and income from overtime or a second job if the party has a full time job and such overtime or second income began:

(a) After the parties separated or a petition for divorce or legal separation was filed, whichever occurred first; or

(b) In an action for modification, if such income began after the existing alimony award.

IV. "Full retirement age" means the age when the payor is eligible to receive full retirement benefits under the federal Old Age, Survivors, and Disability Insurance Social Security program.

V. "Gross income" means all income from any source, whether earned or unearned, including, but not limited to, wages, salary, commissions, tips, annuities, social security benefits, trust income, lottery or gambling winnings, interest, dividends, investment income, net rental income, self-employment income, business profits, pensions, bonuses, and payments from other government programs (except public assistance programs, including aid to families with dependent children, aid to the permanently and totally disabled, supplemental security income, food stamps, and general assistance received from a county or town), including, but not limited to, workers' compensation, veterans' benefits, unemployment benefits, and disability benefits, but not exclusions from gross income as defined in paragraph III.

VI. "Income assignment" means an alimony order assigning a portion of the payor's income directly to the payee under the provisions of RSA 458-B.

VII. "Length of marriage" means the number of months from the date of marriage to the date of service of the petition for divorce, legal separation, or annulment.

VIII. "Modification" means any increase or decrease in the amount or duration in alimony, other than because of the cohabitation, remarriage, or death of the payee, or the retirement of the payor.

IX. "Payee" means a person who is receiving or is to receive alimony.

X. "Payor" means a person who is paying or is to pay alimony.

XI. "Reimbursement alimony" means one or more payments to a spouse or former spouse to compensate him or her for economic or non-economic contribution to the financial resources of the payor.

XII. "Step-down order" means an order that decreases payments in specified steps.

XIII. "Step-up order" means an order that increases payments in specified steps.

XIV. "Temporary alimony" means periodic support payments to or on behalf of a spouse while a case is pending and ending on the effective date of the divorce, legal separation, or annulment. Such alimony shall not be counted toward or subject to either the formula or the duration limits in RSA 458:19-a, III, unless the court finds that the temporary alimony was of unusually long duration.

XV. "Term alimony" means periodic payments made to a spouse or former spouse after the effective date of the final decree.

310:2 Term and Reimbursement Alimony. RSA 458:19-a is repealed and reenacted to read as follows:

458:19-a Term and Reimbursement Alimony.

I. The court may order term alimony upon agreement of the parties or in the absence of an agreement, at the request of either party by petition or motion in a case for divorce, legal separation, or annulment. Any request for alimony shall be made either before the final decree is effective or not later than 5 years from the effective date. The purpose of term alimony is to allow both parties to maintain a reasonable standard of living. If the issue of term alimony is contested, the court may order term alimony only if it finds that:

(a) The party in need lacks sufficient income, property, or both, including property apportioned in accordance with RSA 458:16-a, to provide for his or her own reasonable needs, taking into account the marital lifestyle and the extent to which the parties must both fairly adjust their standards of living based on the creation and maintenance of separate households; or

(b) The party in need is unable to be self-supporting at a standard of living that meets reasonable needs through appropriate employment, or is allocated parental

rights and responsibilities under RSA 461-A for a child of the parties whose condition or circumstances make it appropriate that the parent not seek employment outside the home or limit the hours of such employment; and

(c) The party from whom alimony is sought is able to meet his or her own reasonable needs, taking into account the marital lifestyle and the extent to which the parties must both fairly adjust their standards of living based on the creation and maintenance of separate households, while meeting the reasonable needs of the party seeking alimony.

II.(a) The amount of a term alimony order shall be the lesser of the payee's reasonable need, or a formula based on 30 percent of the difference between the parties' gross incomes at the time the order is created, unless the court finds that justice requires an adjustment. In making this calculation, gross income as defined in RSA 458:19, V shall be:

(1) Reduced by subtracting amounts that are ordered and actually paid for:

(A) Child support or alimony, including child support for the parties' joint children; and

(B) Costs for health insurance coverage or other specified expenses for the benefit of the other party; and

(2) As to the payee's income, adding the amount of child support ordered for the parties' joint children.

(b) The court may vary this formula when an equal or approximately equal parenting schedule has resulted in an adjustment to the child support guidelines under RSA 458-C:5. The court may make a step-down or step-up order that begins with the current reasonable need or the formula and decreases or increases over time. If child support is a factor in determining the amount of alimony, alimony may be recalculated when child support is modified or ended, without meeting the tests for modification in RSA 458:19-aa, I.

III. The maximum duration of term alimony shall be 50 percent of the length of the marriage, unless the parties agree otherwise or the court finds that justice requires an adjustment under paragraph IV. If justice requires, the court may use a different beginning or ending date in measuring the length of the marriage. Term alimony shall end on the remarriage of the payee, unless the order is based on an agreement of the parties that provides otherwise.

IV. In any term alimony order, the court may adjust the formula amounts, duration limitations, or both, if the parties agree or if the court finds that justice requires an adjustment. The party seeking an adjustment shall have the burden of

proof. Special circumstances that may justify an adjustment include, but are not limited to, the following:

(a) Health, including disability, chronic or severe mental or physical illness, or other unusual health circumstances of either party.

(b) The degree and duration of any financial dependency of one party on the other.

(c) Vocational skills, occupation, benefits available from employment, and the present and future employability of both parties.

(d) Voluntary unemployment or underemployment of either party.

(e) The special needs of a minor or adult child of the parties.

(f) Property awarded under RSA 458:16-a.

(g) The conduct of either party during the marriage, including abuse as defined in RSA 173-B:1, I or fault as described in RSA 458:16-a, II(l).

(h) Differences in the parties' benefits under the federal Old Age, Survivors, and Disability Insurance Social Security program.

(i) Diminution of significant assets by a party, coupled with a lack of sufficient assets from which property can be equitably divided or recouped under RSA 458:16-a.

(j) Any other reason the court deems material and relevant.

V. The court may order reimbursement alimony upon agreement of the parties or in the absence of an agreement, at the request of either party by petition or motion in a case for divorce, legal separation, or annulment. The request for reimbursement alimony shall be made before the final decree is effective. The purpose of reimbursement alimony is to compensate the payee for economic or non-economic contribution to the financial resources of the payor, where the property subject to division under RSA 458:16-a is either inappropriate or inadequate to provide such compensation. The contribution to the payor's financial resources may include support of education or job training, or an investment of time or money. The following shall apply to reimbursement alimony orders:

(a) The court shall make a finding that the order is equitable;

(b) The maximum time period shall be 5 years from the final decree effective date, unless the parties agree otherwise; and

(c) It shall not be modified, except by agreement.

VI. Each order granting, denying, renewing, modifying, or refusing to renew or modify term or reimbursement alimony shall state:

(a) If alimony is awarded:

(1) The type or types of alimony;

(2) The duration or number of payments, the method or methods of payment, and any limitations imposed;

(3) Whether full retirement age or actual retirement will impact payments;

(4) Whether security under RSA 458:19-aa, VI is required; and

(5) Whether the order is based on an agreement of the parties.

(b) If the proceeding was contested, the order shall include:

(1) Findings supporting the court's decision to order or deny the requested alimony;

(2) Findings as to any special circumstances justifying an adjustment to either the formula amounts or durational limitations; and

(3) Findings supporting any award of reimbursement alimony.

310:3 New Section; Alimony Modification or Termination. Amend RSA 458 by inserting after section 19-a the following new section:

458:19-aa Alimony Modification or Termination.

I.(a) The court may modify the amount or duration of a term alimony order upon agreement of the parties or, in the absence of an agreement, at the request of either party by petition or motion. If the proceeding for modification is contested, any modification shall be supported by findings of the following, based on clear and convincing evidence:

(1) There has been a substantial and unforeseeable change of circumstances since the effective date of the alimony order;

(2) There is no undue hardship on either party; and

(3) Justice requires a change in amount or duration.

(b) The party requesting a modification shall have the burden of proof. Additionally, the order shall include the information required under RSA 458:19-a, VI. If the prior alimony order has ended, reinstatement shall be requested within 5 years after the end of the order.

II. In any modification of an existing alimony order, the earned or unearned income and social security payments of a spouse of the payor shall not be considered a source of income to the payor, unless the payor resigns from or refuses employment or is voluntarily unemployed or underemployed, in which case the income of a subsequent spouse may be imputed to the payor only to the extent that such payor could have earned income in his or her usual employment. In such actions, the court may consider the veteran's disability benefits of a spouse of the payor to the extent permitted by federal law.

III. For the purpose of modification of an existing alimony order, any income from a second job or overtime shall be presumed to be irrelevant to an alimony

modification, if the party works more than a single full time position, and the second job or overtime began after the entry of the initial order.

IV. Except as provided in paragraph V, term alimony orders shall end upon the payor reaching full retirement age or actual retirement by the payor, whichever is later, unless the parties agree otherwise or the court finds that justice requires a different termination date based on special circumstances under RSA 458:19-a, IV. The payor's ability to work beyond full retirement shall not of itself be a reason to extend alimony. The payor shall provide the payee reasonable notice in advance of retirement. Sixty days' notice shall be presumed to be reasonable.

V. If justice requires, the court may extend alimony past full retirement age or actual retirement up to an amount that equalizes the parties' gross benefits under the federal Old Age, Survivors, and Disability Insurance Social Security program. The requirements of paragraph I shall not apply.

VI. Unless otherwise ordered by the court, the obligation to pay alimony ends on the death of the payee and is a charge against the estate of the payor, except to the extent that it is covered by life insurance or other security. The court may require reasonable security for the payments due the payee in the event of the payor's death prior to the completion of payments.

VII. At the request of either party by petition or motion, the court may make orders for the modification or termination of term alimony upon a finding of the payee's cohabitation as described in paragraph VIII. The requirements of paragraph I shall not apply.

VIII. The court shall find that cohabitation exists, if there is a relationship between an alimony payee and another unrelated adult resembling that of a marriage, under such circumstances that it would be unjust to make an order for alimony, to continue any existing alimony order, or to continue the amount of an existing alimony order. In making this finding, the court shall consider evidence of any of the following concerning the payee and the other person:

(a) Living together on a continual basis in a primary residence;

(b) Sharing of expenses;

(c) The economic interdependence of the couple, or economic dependence of one upon the other;

(d) Joint ownership or use of real or personal property, including financial accounts;

(e) The existence of an intimate relationship between the persons;

(f) Holding themselves out to be a couple through statements or representations made to third parties or are generally reputed to be a couple; and

(g) Any other factors that the court finds material and relevant.

IX. If an alimony order is terminated because of cohabitation or marriage, the court may reinstate the original alimony award upon finding that the payee's cohabitation has ceased or that the marriage has ended in divorce, provided that the request is made within 5 years of the effective date of the termination order. If the alimony order being reinstated had a specific termination date, reinstatement shall not extend the termination date, however, if the order specified a number of payments, the reinstatement may be for up to the number of payments remaining in the order. If the order has both a specific termination date and a number of payments, the termination date shall control. The requirements of paragraph I shall not apply.

310:4 Sections Renumbered by Reenactment; Divorce in Another Jurisdiction; Medical Assistance Recipient. RSA 458:19-b is repealed and reenacted to read as follows:

458:19-b Divorce in Another Jurisdiction. The circuit court shall have jurisdiction to make such orders or temporary orders of alimony to a divorced wife or divorced husband, or of support to the children of divorced parents as justice shall require in cases where the decree of divorce was not granted in this jurisdiction, even though said divorce decree makes provision for alimony and support, subject to the provisions of RSA 546-B.

458:19-c Medical Assistance Recipient; Notice of Petition for Spousal Support.

I. If the petitioner or respondent is a recipient of medical assistance under the state Medicaid program, the petitioner shall serve the department of health and human services with a copy of any petition for spousal support filed under this chapter.

II. The department of health and human services shall have the opportunity to address the court in any proceeding under this section if the court has concerns relative to:

(a) The impact on the recipient of any period of Medicaid ineligibility that would result from the allocation of income or assets;

(b) Whether the ward has been the victim of a crime or has been or is at risk of being abused, neglected, or exploited within the meaning of RSA 161-F:43; or

(c) The cost of the recipient's care to be paid by Medicaid as the result of the proposed allocation of income or assets.

310:5 Revision of Orders; Reference Change. RSA 458:14 is repealed and reenacted to read as follows:

458:14 Revision of Orders, etc. The court, upon proper application and notice to the adverse party, may revise and modify any order made by it, may make such new orders as may be necessary, and may award costs as justice may require, except as otherwise provided in RSA 458:19-aa.

310:6 Applicability.

I. This act shall apply to all cases filed on or after January 1, 2019.

II. Cases filed between the effective date of this section and January 1, 2019 shall be controlled by the law in effect on the effective date of this section unless the court in its discretion finds that adopting any or all of the provisions due to take effect on January 1, 2019 would be both equitable and consistent with the law existing as of the date of passage.

III. Parties to any case filed prior to January 1, 2019 may agree to adopt some or all of the provisions of this act.

310:7 Effective Date.

I. Section 6 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect January 1, 2019.

Approved: June 25, 2018
Effective Date:
I. Section 6 shall take effect June 25, 2018.
II. Remainder shall take effect January 1, 2019.