



House of Representatives

General Assembly

File No. 632

February Session, 2014

Substitute House Bill No. 5524

House of Representatives, April 17, 2014

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE RECOMMENDATIONS OF THE LAW REVISION COMMISSION WITH RESPECT TO THE ALIMONY STATUTES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 46b-81 of the 2014 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective October 1, 2014*):

4 (a) At the time of entering a decree annulling or dissolving a
5 marriage or for legal separation pursuant to a complaint under section
6 46b-45, the Superior Court may assign to either spouse all or any part
7 of the estate of the other spouse. The court may pass title to real
8 property to either party or to a third person or may order the sale of
9 such real property, without any act by either spouse, when in the
10 judgment of the court it is the proper mode to carry the decree into
11 effect.

12 (b) A conveyance made pursuant to the decree shall vest title in the

13 purchaser, and shall bind all persons entitled to life estates and
14 remainder interests in the same manner as a sale ordered by the court
15 pursuant to the provisions of section 52-500. When the decree is
16 recorded on the land records in the town where the real property is
17 situated, it shall effect the transfer of the title of such real property as if
18 it were a deed of the party or parties.

19 (c) In fixing the nature and value of the property, if any, to be
20 assigned, the court, after considering [all] the evidence presented by
21 each party, shall consider the length of the marriage, the causes for the
22 annulment, dissolution of the marriage or legal separation, the age,
23 health, station, occupation, amount and sources of gross and net
24 income, earning capacity, vocational skills, education, employability,
25 estate, liabilities and needs of each of the parties, [and] the opportunity
26 of each party for future acquisition of capital assets and income and
27 the tax consequences of the court's orders based on the evidence
28 presented. The court shall also consider the contribution of each of the
29 parties in the acquisition, preservation or appreciation in value of their
30 respective estates.

31 Sec. 2. Section 46b-82 of the 2014 supplement to the general statutes
32 is repealed and the following is substituted in lieu thereof (*Effective*
33 *October 1, 2014*):

34 (a) At the time of entering the decree, the Superior Court may order
35 either of the parties to pay alimony to the other, in addition to or in
36 lieu of an award pursuant to section 46b-81, as amended by this act.
37 The order may direct that security be given therefor on such terms as
38 the court may deem desirable, including an order pursuant to
39 subsection (b) of this section or an order to either party to contract with
40 a third party for periodic payments or payments contingent on a life to
41 the other party. The court may order that a party obtain life insurance
42 as such security unless such party proves, by a preponderance of the
43 evidence, that such insurance is not available to such party, such party
44 is unable to pay the cost of such insurance or such party is
45 uninsurable. In determining whether alimony shall be awarded, and

46 the duration and amount of the award, the court shall consider the
47 evidence presented by each party and shall consider the length of the
48 marriage, the causes for the annulment, dissolution of the marriage or
49 legal separation, the age, health, station, occupation, amount and
50 sources of gross and net income, earning capacity, vocational skills,
51 education, employability, estate and needs of each of the parties, [and]
52 the award, if any, which the court may make pursuant to section 46b-
53 81, as amended by this act, the tax consequences of the court's orders
54 based on the evidence presented and, in the case of a parent to whom
55 the custody of minor children has been awarded, the desirability and
56 feasibility of such parent's securing employment.

57 (b) If the court, following a trial or hearing on the merits, enters an
58 order pursuant to subsection (a) of this section, or section 46b-86, as
59 amended by this act, and such order by its terms will terminate only
60 upon the death of either party or the remarriage of the alimony
61 recipient, the court shall articulate with specificity the basis for such
62 order.

63 (c) Any postjudgment procedure afforded by chapter 906 shall be
64 available to secure the present and future financial interests of a party
65 in connection with a final order for the periodic payment of alimony.

66 Sec. 3. Section 46b-65 of the general statutes is repealed and the
67 following is substituted in lieu thereof (*Effective October 1, 2014*):

68 (a) If the parties to a decree of legal separation at any time resume
69 marital relations and file [their written declaration of resumption] a
70 written certificate that the marital relationship has resumed, signed,
71 acknowledged and witnessed by each party, with the clerk of the
72 superior court for the judicial district in which the separation was
73 decreed, the [declaration] certificate shall be entered upon the docket,
74 under the entries relating to the complaint, and the decree shall be
75 vacated and the complaint shall be deemed dismissed.

76 (b) If no [declaration] certificate has been filed under subsection (a)
77 of this section, then at any time after the entry of a decree of legal

78 separation, either party may petition the superior court for the judicial
79 district in which the decree of legal separation was entered for a decree
80 dissolving the marriage and the court shall (1) enter the decree
81 dissolving the marriage in the presence of the party seeking the
82 dissolution of marriage, and (2) incorporate the financial terms of the
83 decree of legal separation into the decree dissolving the marriage
84 unless it would be unconscionable to do so.

85 Sec. 4. Section 46b-86 of the 2014 supplement to the general statutes
86 is repealed and the following is substituted in lieu thereof (*Effective*
87 *October 1, 2014, and applicable to actions pending on or filed on or after said*
88 *date*):

89 (a) Unless and to the extent that the decree precludes modification,
90 any final order for the periodic payment of permanent alimony or
91 support, an order for alimony or support pendente lite or an order
92 requiring either party to maintain life insurance for the other party or a
93 minor child of the parties may, at any time thereafter, be continued, set
94 aside, altered or modified by the court upon a showing of a substantial
95 change in the circumstances of either party or upon a showing that the
96 final order for child support substantially deviates from the child
97 support guidelines established pursuant to section 46b-215a, unless
98 there was a specific finding on the record that the application of the
99 guidelines would be inequitable or inappropriate. There shall be a
100 rebuttable presumption that any deviation of less than fifteen per cent
101 from the child support guidelines is not substantial and any deviation
102 of fifteen per cent or more from the guidelines is substantial.
103 Modification may be made of such support order without regard to
104 whether the order was issued before, on or after May 9, 1991. In
105 determining whether to modify a child support order based on a
106 substantial deviation from such child support guidelines the court
107 shall consider the division of real and personal property between the
108 parties set forth in the final decree and the benefits accruing to the
109 child as the result of such division. After the date of judgment,
110 modification of any child support order issued before, on or after July
111 1, 1990, may be made upon a showing of such substantial change of

112 circumstances, whether or not such change of circumstances was
113 contemplated at the time of dissolution. By written agreement,
114 stipulation or decision of the court, those items or circumstances that
115 were contemplated and are not to be changed may be specified in the
116 written agreement, stipulation or decision of the court. This section
117 shall not apply to assignments under section 46b-81, as amended by
118 this act, or to any assignment of the estate or a portion thereof of one
119 party to the other party under prior law. No order for periodic
120 payment of permanent alimony or support may be subject to
121 retroactive modification, except that the court may order modification
122 with respect to any period during which there is a pending motion for
123 modification of an alimony or support order from the date of service of
124 notice of such pending motion upon the opposing party pursuant to
125 section 52-50. If a court, after hearing, finds that a substantial change in
126 circumstances of either party has occurred, the court shall determine
127 what modification of alimony, if any, is appropriate, considering the
128 criteria set forth in section 46b-82, as amended by this act.

129 (b) (1) In an action for divorce, dissolution of marriage, legal
130 separation or annulment brought by a spouse, in which a final
131 judgment has been entered providing for the payment of periodic
132 alimony by one party to the other spouse, [the Superior Court may, in
133 its discretion and upon notice and hearing, modify such judgment and
134 suspend, reduce or terminate the payment of periodic alimony upon a
135 showing] upon notice and hearing, if the party paying the periodic
136 alimony proves that the party receiving the periodic alimony [is] has
137 been living with another person [under circumstances which the court
138 finds should result in the modification, suspension, reduction or
139 termination of alimony because the living arrangements cause such a
140 change of circumstances as to alter the financial needs of that party. In
141 the event that] in a marriage-like relationship over a period of six
142 months or more, the burden of proving that the judgment requiring
143 the payment of periodic alimony should not be modified, suspended,
144 reduced or terminated shall be on the party receiving the periodic
145 alimony. The Superior Court, after considering the evidence presented
146 by each party and the relevant criteria set forth in section 46b-82, as

147 amended by this act, may, in its discretion, modify such judgment and
148 suspend, reduce or terminate the payment of periodic alimony.

149 (2) (A) If the party paying periodic alimony pursuant to a final
150 judgment files a motion to modify the judgment requiring the payment
151 of periodic alimony on the ground that such party is retired from
152 employment and has attained the age of sixty-five, the burden of
153 proving that such alimony should not be modified shall be on the
154 party receiving the periodic alimony.

155 (B) If the party paying periodic alimony files a motion to modify the
156 judgment requiring the payment of periodic alimony on the ground
157 that such party is retired from employment, and such party has not
158 attained the age of sixty-five, the burden of proving that such alimony
159 should be modified shall be on the party paying periodic alimony. The
160 Superior Court shall consider the evidence presented by each party
161 concerning the relevant facts and circumstances concerning the
162 retirement.

163 (C) In any modification proceeding under subparagraph (A) or (B)
164 of this subdivision, the court, after notice and hearing, shall determine
165 what modification of alimony, if any, is appropriate after considering
166 the evidence presented by each party and the relevant criteria set forth
167 in section 46b-82, as amended by this act.

168 (3) If a final judgment incorporates a provision of an agreement in
169 which the parties agree to circumstances, other than as provided in this
170 subsection, under which alimony will be modified, including the
171 suspension, reduction, or termination of alimony, the court shall
172 enforce the provision of such agreement and enter orders in
173 accordance [therewith] with such agreement.

174 (c) When one of the parties, or a child of the parties, is receiving or
175 has received aid or care from the state under its aid to families with
176 dependent children or temporary family assistance program, HUSKY
177 Plan, Part A, or foster care program as provided in Title IV-E of the
178 Social Security Act, or when one of the parties has applied for child

179 support enforcement services under Title IV-D of the Social Security
180 Act as provided in section 17b-179, such motion to modify shall be
181 filed with the Family Support Magistrate Division for determination in
182 accordance with subsection (m) of section 46b-231.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2014</i>	46b-81
Sec. 2	<i>October 1, 2014</i>	46b-82
Sec. 3	<i>October 1, 2014</i>	46b-65
Sec. 4	<i>October 1, 2014, and applicable to actions pending on or filed on or after said date</i>	46b-86

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill makes changes to divorce, annulment, and legal separation laws and does not result in a fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 5524*****AN ACT CONCERNING THE RECOMMENDATIONS OF THE LAW REVISION COMMISSION WITH RESPECT TO THE ALIMONY STATUTES.*****SUMMARY:**

This bill makes numerous changes to the divorce, annulment, and legal separation laws. It:

1. expands the factors a court must consider in determining property division, alimony award, and alimony modification, by (a) requiring the court to also consider the tax consequences of its orders and (b) specifying that both gross and net income must be considered;
2. requires the court, under certain circumstances, to incorporate the financial terms of a legal separation decree into a divorce decree, unless it would be unconscionable to do so;
3. changes the requirements for alimony modification when the recipient cohabitates with another person and, under specified circumstances, shifts the burden of proving that alimony should not be modified to the alimony recipient; and
4. allows an alimony payor to petition for alimony modification when he or she retires from employment and determines who has the burden of proving whether alimony should be modified based on whether the retired payor has attained age 65.

The bill also makes conforming and technical changes.

EFFECTIVE DATE: October 1, 2014, with the alimony modification provision applicable to actions pending or filed on or after that date.

§ 1 — PROPERTY DIVISION

The bill expands the list of factors a court must consider when dividing property in a divorce, legal separation, or annulment case. It requires the court to also consider the tax consequences of its orders based on the evidence the parties presented. The bill also specifies that the court must consider the amount and sources of the parties' gross and net income.

Under current law, after considering each party's evidence, the court must consider the:

1. length of the marriage;
2. causes for the divorce, annulment, or legal separation;
3. parties' age, health, station, occupation, amount and sources of income, earning capacity, vocational skills, education, employability, estate, liabilities, and needs; and
4. each party's opportunity for future acquisition of capital assets and income.

The law, unchanged by the bill, requires the court to also consider each party's contribution in the acquisition, preservation, or appreciation in value of their respective estates.

§ 2 — ALIMONY AWARD

The bill expands the list of factors a court must consider when deciding whether to award alimony and the duration and amount of the award in a divorce, legal separation, or annulment case. It requires the court to also consider the tax consequences of its orders based on the evidence the parties presented. The bill also specifies that the court must consider the amount and sources of the parties' gross and net income.

Under current law, in determining an initial alimony award, the court must consider the:

1. evidence presented by each party;
2. length of the marriage;
3. causes for the divorce, annulment, or legal separation;
4. parties' age, health, station, occupation, amount and sources of income, earning capacity, vocational skills, education, employability, estate, and needs;
5. property division, if any, made by the court; and
6. custodial parent's desirability and feasibility of securing employment, in the case of a parent who was awarded custody of a minor child.

The law, unchanged by the bill, requires the court to specify the basis for any lifetime or indefinite alimony award.

§ 3 — LEGAL SEPARATION DECREE'S FINANCIAL TERMS INCORPORATED IN DIVORCE DECREE

By law, after a legal separation, if neither party has filed a written certificate that the marriage has resumed, either party can petition the Superior Court in the district where the legal separation was entered, for a divorce decree.

Under current law, the court must enter the divorce decree in the presence of the party seeking the divorce. The bill requires the court to incorporate the financial terms of the legal separation decree into the divorce decree, unless it would be unconscionable to do so.

§ 4 — ALIMONY MODIFICATION

Substantial Change in Circumstances

By law, either party may file a motion for alimony modification.

Under current law, if after a hearing the court finds that there has been a substantial change in circumstances, it must determine the appropriate modification using the same factors required in setting an

initial alimony award. The bill expands the list of factors by requiring the court to also consider the tax consequences of its orders based on the evidence the parties presented. The bill also specifies that the court must consider the amount and sources of the parties' gross and net income.

Alimony Recipient in Marriage-like Relationship

The bill changes the requirements for alimony modification when the recipient cohabitates with another person; and, under specified circumstances, requires the alimony recipient to prove that alimony should not be modified, suspended, reduced, or terminated.

Under the bill, if the alimony payor proves at a hearing that the alimony recipient has been living with another person in a marriage-like relationship for more than six months, the alimony recipient has the burden of proving that alimony should not be modified, suspended, reduced, or terminated. (The bill does not specify what a "marriage-like relationship" is. Presumably it is a non-familial relationship.)

Under current law, the Superior Court has discretion to suspend, reduce, or terminate alimony payments if there has been a showing that the recipient is living with another person and the court finds that the living arrangement changes the financial needs of the alimony recipient and should result in suspension, reduction, or termination of alimony.

The bill requires the Superior Court in determining modification, after hearing all the evidence, to consider the same factors used in determining an initial alimony award. It allows the court, in its discretion, to modify, suspend, reduce, or terminate alimony.

Alimony Payor Retires from Employment

The bill allows the alimony payor to file a motion for alimony modification when he or she retires from employment and has attained age 65. In this case, the alimony recipient has the burden of proving that alimony should not be modified.

Under the bill, if the retired alimony payor petitions for modification but has not attained age 65, then he or she has the burden of proving that alimony should be modified. The Superior Court must consider the evidence presented by the parties regarding the relevant facts and circumstances of the retirement.

The bill requires the court, after notice and hearing, in determining the alimony modification, to consider the same factors required in setting an initial alimony award.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 40 Nay 0 (04/02/2014)