



House of Representatives

General Assembly

File No. 724

January Session, 2015

House Bill No. 6927

House of Representatives, April 20, 2015

The Committee on Judiciary reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

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

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

1 Section 1. Section 46b-81 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2015*):

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

11 (b) A conveyance made pursuant to the decree shall vest title in the
12 purchaser, and shall bind all persons entitled to life estates and
13 remainder interests in the same manner as a sale ordered by the court

14 pursuant to the provisions of section 52-500. When the decree is
15 recorded on the land records in the town where the real property is
16 situated, it shall effect the transfer of the title of such real property as if
17 it were a deed of the party or parties.

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

30 Sec. 2. Section 46b-82 of the general statutes is repealed and the
31 following is substituted in lieu thereof (*Effective October 1, 2015*):

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

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

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

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

64 Sec. 3. Section 46b-65 of the general statutes is repealed and the
65 following is substituted in lieu thereof (*Effective October 1, 2015*):

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

75 (b) If no [declaration] certificate has been filed under subsection (a)
76 of this section, then at any time after the entry of a decree of legal
77 separation, either party may petition the superior court for the judicial
78 district in which the decree of legal separation was entered for a decree

79 dissolving the marriage and the court shall (1) enter the decree
80 dissolving the marriage in the presence of the party seeking the
81 dissolution of marriage, and (2) incorporate the financial terms of the
82 decree of legal separation into the decree dissolving the marriage
83 unless it would be unconscionable to do so.

84 Sec. 4. Section 46b-86 of the general statutes is repealed and the
85 following is substituted in lieu thereof (*Effective October 1, 2015*):

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

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

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

146 (2) (A) If the party paying periodic alimony pursuant to a final

147 judgment files a motion to modify the judgment requiring the payment
148 of periodic alimony on the ground that such party is retired from
149 employment and has attained the age of sixty-five, the burden of
150 proving that such alimony should not be modified shall be on the
151 party receiving the periodic alimony.

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

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

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

171 (c) When one of the parties, or a child of the parties, is receiving or
172 has received aid or care from the state under its aid to families with
173 dependent children or temporary family assistance program, HUSKY
174 Plan, Part A, or foster care program as provided in Title IV-E of the
175 Social Security Act, or when one of the parties has applied for child
176 support enforcement services under Title IV-D of the Social Security
177 Act as provided in section 17b-179, such motion to modify shall be
178 filed with the Family Support Magistrate Division for determination in
179 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, 2015</i>	46b-81
Sec. 2	<i>October 1, 2015</i>	46b-82
Sec. 3	<i>October 1, 2015</i>	46b-65
Sec. 4	<i>October 1, 2015</i>	46b-86

JUD *Joint Favorable*

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 consideration of alimony determination and does not result in a fiscal impact as it involves private parties.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**HB 6927*****AN ACT CONCERNING THE RECOMMENDATIONS OF THE LAW REVISION COMMISSION WITH RESPECT TO 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 cohabits 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 reached age 65.

The bill also makes conforming and technical changes.

EFFECTIVE DATE: October 1, 2015

§ 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 specifies that the court must consider the amount and sources of the parties' gross and net incomes, instead of just "income." It also requires the court to also consider the tax consequences of its orders on each party, based on the evidence presented.

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 to 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 incomes, instead of just "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 for a divorce decree in the district where the legal separation was entered.

By 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 incomes.

Alimony Recipient in Marriage-like Relationship

The bill changes the requirements for alimony modification when the recipient cohabits 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 means cohabiting.)

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 reached 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 turned 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, to consider the same factors required in setting an initial alimony award in determining the alimony modification,

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 29 Nay 15 (04/06/2015)