

HOUSE No. 02852

The Commonwealth of Massachusetts

PRESENTED BY:

John H. Rogers

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An act to reform and improve alimony laws in Massachusetts.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>John H. Rogers</i>	<i>12th Norfolk</i>
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>
<i>Walter F. Timilty</i>	<i>7th Norfolk</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>
<i>John P. Fresolo</i>	<i>16th Worcester</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>

HOUSE No. 02852

By Mr. Rogers of Norwood, a petition (accompanied by bill, House, No. 2852) of Andrews and others for legislation to reform and improve alimony laws Joint Committee on the Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An act to reform and improve alimony laws in Massachusetts.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. That this Act shall be known as the Alimony Reform Act of 2011

- 2 SECTION 2. Section 34 of chapter 208 of the General Laws, as appearing in the 2008 Official
- 3 Edition, is hereby amended by inserting, in line 5, after the word “other” the following words:-
- 4 in accordance with Section 48.

- 5 SECTION 3. Said section 34 of said chapter 208, as so appearing, is hereby further amended by
- 6 striking out the third sentence and inserting in the place thereof the following sentence:-

- 7 In fixing the nature and value of the property, if any, to be so assigned, the court, after hearing
- 8 the witnesses, if any, of each of the parties, shall consider the length of the marriage, the conduct
- 9 of the parties during the marriage, the age, health, station, occupation, amount and sources of
- 10 income, vocational skills, employability, estate, liabilities and needs of each of the parties, the

11 opportunity of each for future acquisition of capital assets and income, and the amount and
12 duration of alimony, if any, awarded under Section 48.

13 SECTION 4. Said chapter 208 is hereby further amended by inserting after section 47 the
14 following section:-

15 Section 48. 1. Definitions:

16 (a) "Alimony" is the payment of support from one spouse to another for a reasonable length of
17 time, pursuant to a court order and for the purpose of providing a spouse in need of support
18 periodic payments from a spouse who has the ability to pay it.

19 (b) "General Term Alimony" is the periodic payment of support to a recipient spouse who is
20 economically dependent.

21 (c) "Rehabilitative Alimony" is the periodic payment of support to a recipient spouse who is
22 expected to become economically self-sufficient by a predicted time, such as, without limitation,
23 reemployment; completion of job training; or receipt of a sum due from the payor spouse
24 pursuant to a judgment.

25 (d) "Reimbursement Alimony" is the periodic or one-time payment of support to a recipient
26 spouse after a marriage of not more than five years and for the purpose of compensating the
27 recipient for economic or noneconomic contribution to the financial resources of the payor
28 spouse, such as enabling the payor spouse to complete an education or job training.

29 (e) "Transitional Alimony" is the periodic or one-time payment of support to a recipient spouse
30 after a marriage of not more than five years and for the purpose of transitioning the recipient to
31 an adjusted lifestyle or location as a result of the divorce.

32 (f) "Duration of Marriage" is the number of months from the date of legal marriage to the date of
33 service of a complaint or petition for divorce or separate support duly filed in a court of the
34 Commonwealth of Massachusetts or another court with jurisdiction to terminate the marriage.
35 The court shall have discretion to increase the duration of marriage where there is evidence that
36 the parties' economic marital partnership began during their cohabitation period prior to the
37 marriage.

38 (g) "Full retirement age" shall mean the payor's usual or ordinary retirement age for United
39 States old-age social security benefits. It shall not mean "early retirement age" if early retirement
40 is available to the payor or "maximum benefit retirement age" if additional benefits are available
41 as a result of delayed retirement.

42 2. General Term Alimony.

43 (a) General Term Alimony shall terminate upon the remarriage of the recipient or the death of
44 either spouse, provided that the court may require the payor spouse to provide life insurance or
45 another form of reasonable security for payment of sums due to the recipient in the event of the
46 payor's death during the alimony term.

47 (b) Except upon a court finding that deviation beyond the time limits of this section are required
48 in the interests of justice, where the Duration of Marriage is twenty years or less, General Term
49 Alimony shall terminate no later than a date certain in accordance with durational limits set forth
50 below:

51 (1) If the Duration of Marriage is five years, or less, General Term Alimony shall be no greater
52 than one-half the number of months of the marriage.

53 (2) If the Duration of Marriage is ten years or less, but more than five years, General Term
54 Alimony shall be no greater than to sixty percent of the number of months of the marriage.

55 (3) If the Duration of Marriage is fifteen years or less, but more than ten years, General Term
56 Alimony shall be no greater than seventy percent of the number of months of the marriage.

57 (4) If the Duration of Marriage is twenty years or less, but more than fifteen years, General Term
58 Alimony shall be no greater than eighty percent of the number of months of the marriage.

59 (c) The court shall have discretion to order alimony for an indefinite length of time for marriages
60 longer than twenty years.

61 (d) General Term Alimony shall be suspended, reduced or terminated upon the cohabitation of
62 the recipient spouse when the payor shows that the recipient has maintained a common
63 household, as defined below, with another person for a continuous period of at least three
64 months.

65 (1) Persons are deemed to maintain a common household when they share a primary residence
66 together with or without others. In determining whether the recipient is maintaining a common
67 household, the court may consider any of the following factors:

68 (i) Oral or written statements or representations made to third parties regarding the relationship
69 of the cohabitants;

70 (ii) The economic interdependence of the couple or economic dependence of one party on the
71 other;

72 (iii) The common household couple engaging in conduct and collaborative roles in furtherance of
73 their life together;

74 (iv) The benefit in the life of either or both of the common household parties from their
75 relationship;

76 (v) The community reputation of the parties as a couple;

77 (vi) Other relevant and material factors.

78 (2) An alimony obligation suspended reduced or terminated under this provision may be
79 reinstated upon termination of the recipients common household relationship; but, if reinstated it
80 shall not extend beyond the termination date of the original order.

81 (e) Unless the payor and recipient agree otherwise, General Term Alimony may be modified in
82 duration or amount upon a material change of circumstances warranting modification.
83 Modification may be permanent, indefinite, or for a finite duration, as may be appropriate under
84 the circumstances before the court. Nothing in this provision shall be construed to permit
85 alimony reinstatement after the recipient's remarriage, except by the parties' express written
86 agreement.

87 (f) Once issued, General Term Alimony orders shall terminate upon the payor attaining the full
88 retirement age when he or she is eligible for the old-age retirement benefit under the United
89 States Old-Age, Disability, and Survivors Insurance Act, 42 U.S.C. 416, as amended and as may
90 be amended in the future. The payor's ability to work beyond said age shall not be a reason to
91 extend alimony, provided that:

92 (1) When the court enters an initial alimony judgment, the court may set a different alimony
93 termination date for good cause shown. In granting deviation, the court must enter written
94 findings of the reasons for deviation.

95 (2) The court may grant a recipient an extension of an existing alimony order for good cause
96 shown. In granting extension, the court must enter written findings of:

97 (i) A material change of circumstance that occurred after entry of the alimony judgment; and

98 (ii) Reasons for the extension that are supported by clear and convincing evidence.

99 (3) The provisions of this section shall be prospective, such that alimony judgments entered
100 before the effective date of this act shall terminate only as set forth in section 7(b) of this chapter.

101 3. Rehabilitative Alimony

102 (a) Rehabilitative Alimony shall terminate upon the remarriage of the recipient, or the occurrence
103 of a specific event in the future, or the death of either spouse, provided that the court may require
104 the payor to provide reasonable security for payment of sums due to the recipient in the event of
105 the payor's death during the alimony term.

106 (b) The alimony term for rehabilitative alimony shall be no more than five years. Unless the
107 recipient has remarried, the Rehabilitative Alimony term may be extended on a complaint for
108 modification upon a showing of compelling circumstances in the event that:

109 (1) Unforeseen events prevent the recipient spouse from being self-supporting at the end of the
110 term with due consideration to the length of the marriage; and

111 (2) The court finds that the recipient endeavored to become self-supporting; and

112 (3) The payor has continuing ability to pay and no undue burden.

113 (c) The court shall have discretion to modify the amount of periodic Rehabilitative Alimony
114 based upon material change of circumstance within the rehabilitative period.

115 4. Reimbursement Alimony

116 (a) Reimbursement Alimony shall terminate upon the death of the recipient or a date certain.

117 (b) Reimbursement alimony may not be modified by either party.

118 (c) Income guidelines set forth in section 6 (b), below, shall not apply to Reimbursement
119 Alimony.

120 5. Transitional Alimony

121 (a) Transitional Alimony shall terminate upon the death of the recipient or a date certain that is
122 not longer than three years from the date of the parties' divorce, provided that the court may
123 require the payor to provide reasonable security for payment of sums due to the recipient in the
124 event of the payor's death during the alimony term

125 (b) Transitional alimony may not be modified, extended or replaced by another form of alimony.

126 6. Considerations for Setting Form, Amount and Duration of Alimony

127 (a) In determining the appropriate form of alimony and in setting the amount and duration of
128 support, a court shall consider: the length of the marriage; age of the parties; health of the parties;
129 both parties' income, employment and employability, including employability through
130 reasonable diligence and additional training, if necessary; economic and non-economic
131 contribution to the marriage; marital lifestyle; ability of each party to maintain the marital
132 lifestyle; lost economic opportunity as a result of the marriage; and such other factors as the
133 court may deem relevant and material.

134 (b) Except for Reimbursement Alimony or circumstances warranting deviation for other forms of
135 alimony, the amount of alimony should generally not exceed the recipient's need or 30 percent to
136 35 percent of the difference between the parties gross incomes established at the time of the
137 order being issued. Subject to section (c) below, income shall be defined as set forth in the
138 Massachusetts Child Support Guidelines, as they may be amended from time-to-time.

139 (c) For purposes of setting an alimony order, the court shall exclude from its income calculation:

140 (1) Capital gain income and dividend and interest income which derives from assets equitably
141 divided between the parties under Section 34; and

142 (2) Gross income which the court has already considered for setting a child support order
143 whether pursuant to the Massachusetts Child Support Guidelines or otherwise; provided that
144 nothing in this section shall limit the court's discretion to cast a presumptive child support order
145 under the Child Support Guidelines in terms of unallocated or undifferentiated alimony and child
146 support.

147 (d) In setting an initial alimony order, or in modifying an existing order, the court may deviate
148 from duration and amount limits for General Term Alimony and Rehabilitative Alimony upon
149 written findings that deviation is necessary. Grounds for deviation may include:

150 (1) Advanced age; chronic illness; or unusual health circumstances of either party;

151 (2) Tax considerations applicable to the parties;

152 (3) Whether the payor spouse is providing health insurance and the cost of health insurance for
153 the recipient spouse;

154 (4) Whether the payor spouse has been ordered to secure life insurance for the benefit of the
155 recipient spouse and the cost of such insurance;

156 (5) Sources and amounts of unearned income, including capital gains, interest and dividends,
157 annuity and investment income from assets that were not allocated in the parties divorce;

158 (6) Significant premarital cohabitation that included economic partnership and/or marital
159 separation of significant duration, each of which the court may consider in determining the
160 length of the marriage;

161 (7) A party's inability to provide for his or her own support by reason of physical or mental
162 abuse by the payor;

163 (8) A party's inability to provide for his or her own support by reason of a party's deficiency's of
164 property, maintenance or employment opportunity; and

165 (9) Upon written findings, any other factor that the court deems relevant and material.

166 (e) In determining the incomes of parties with respect to the issue of alimony, the Court may
167 attribute income to a party who is unemployed or underemployed.

168 (f) Where the Court orders alimony concurrent with or subsequent to a child support order, the
169 combined duration of alimony and child support shall not exceed the longer of: (i) the alimony
170 duration available at the time of divorce; or (ii) rehabilitative alimony commencing upon the
171 termination of child support.

172 7. Modifications

173 (a) Enactment of this chapter shall not be deemed a material change of circumstance that
174 warrants modification of the amount of existing alimony judgments.

175 (b) Enactment of this chapter shall be deemed a material change of circumstance that warrants
176 modification of existing alimony judgments that exceed the durational limits set forth in section
177 2, above. Existing alimony awards shall be deemed General Term Alimony, and shall be
178 modified upon a complaint for modification without additional material change of circumstance,
179 unless the court finds that deviation from the durational limits is warranted.

180 (c) Any complaint for modification filed by a payor pursuant to this section solely because the
181 existing alimony judgment exceeds the durational limits set forth in section 2, above, may only
182 be filed pursuant to the following time line:

183 (1) Payors who were married to the alimony recipient five (5) years or less, may file a
184 modification action one (1) year after the effective date of the remaining provisions of this law.

185 (2) Payors who were married to the alimony recipient ten (10) years or less but more than five
186 (5) years may file a modification action two (2) years after the effective date of the remaining
187 provisions of this law.

188 (3) Payors who were married to the alimony recipient fifteen (15) years or less but more than ten
189 (10) years may file a modification action three (3) years after the effective date of the remaining
190 provisions of this law.

191 (4) Payors who were married to the alimony recipient twenty (20) years or less but more than
192 fifteen (15) years may file a modification action three and one-half (3 ½) years after the effective
193 date of the remaining provisions of this law.

194 (5) Notwithstanding the provisions of subsections (1) through (4) above, any payor who is
195 eligible for the full old age benefit under the United States Old Age, Disability, and Survivor
196 Insurance Act, 42 U.S.C. 416, or who will become eligible for said benefit within 3 years from
197 the date this act takes effect, may file a complaint for modification one year after this act takes
198 effect,

199 (e) Under no circumstances shall the enactment of this chapter provide a right to seek or receive
200 modification of an existing alimony judgment in which the parties have agreed that their alimony
201 judgment is not modifiable, or in which the parties have expressed their intention that their
202 agreed alimony provisions survive the judgment and therefore are not modifiable.

203 (f) In the event of the payor's remarriage, income and assets of the payor's spouse shall not be
204 considered in a redetermination of alimony in a modification action.

205 (g) Income from a second job or overtime work shall be presumed immaterial to alimony
206 modification if:

207 (1) A party works more than a single full-time equivalent position; and

208 (2) The second job or overtime commenced after entry of the initial order.

209 8. Security

210 (a) The court may require reasonable security for alimony in the event of the payor's death
211 during the alimony period. Security may include, but is not limited to, maintenance of life
212 insurance.

213 (b) Orders to maintain life insurance shall be based upon due consideration of the following
214 factors: age and insurability of the payor; cost of insurance; amount of the judgment; policies

215 carried during the marriage; duration of the alimony order; prevailing interest rates at the time of
216 the order; other obligations of the payor.

217 (c) Orders to maintain security shall be modifiable upon a material change of circumstance.

218 SECTION 5. Sections 1 through 4, inclusive, shall take effect 90 days from the effective date of
219 this act.