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H.414

Introduced by Representatives Donahue of Northfield and Lewis of Berlin

Referred to Committee on

Date:

Subject: Divorce; property settlement; maintenance

Statement of purpose of bill as introduced: This bill proposes to amend the considerations made by the judge in determining property settlements and judgments of spousal support and maintenance.

An act relating to spousal maintenance

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 15 V.S.A. § 751 is amended to read:

§ 751. PROPERTY SETTLEMENT

(a) Upon motion of either party to a proceeding under this chapter, the Court shall settle the rights of the parties to their property by including in its judgment provisions which ~~equitably~~ equally divide and assign the property. All property owned by either or both of the parties, however and whenever acquired, shall be subject to the jurisdiction of the ~~Court~~ court. Title to the property, whether in the names of either or both parties, or a nominee, shall be immaterial, except where ~~equitable~~ equal distribution can be made without

1 disturbing separate property. If the parties come to a property settlement
2 agreement, the judge has discretion to accept the agreement.

3 ~~(b) In making a property settlement the Court may consider all relevant~~
4 ~~factors, including:~~

5 ~~(1) The length of the civil marriage.~~

6 ~~(2) The age and health of the parties.~~

7 ~~(3) The occupation, source, and amount of income of each of the parties.~~

8 ~~(4) Vocational skills and employability.~~

9 ~~(5) The contribution by one spouse to the education, training, or~~
10 ~~increased earning power of the other.~~

11 ~~(6) The value of all property interests, liabilities, and needs of each~~
12 ~~party.~~

13 ~~(7) Whether the property settlement is in lieu of or in addition to~~
14 ~~maintenance.~~

15 ~~(8) The opportunity of each for future acquisition of capital assets and~~
16 ~~income. For purposes of this subdivision:~~

17 ~~(A) The Court may consider the parties' lifestyle and decisions made~~
18 ~~during the marriage and any other competent evidence as related to their~~
19 ~~expectations of gifts or an inheritance. The Court shall not speculate as to the~~
20 ~~value of an inheritance or make a finding as to its value unless there is~~
21 ~~competent evidence of such value.~~

1 ~~(B) A party's interest in an inheritance that has not yet vested and is~~
2 ~~capable of modification or divestment shall not be included in the marital~~
3 ~~estate.~~

4 ~~(C) Notwithstanding any other provision of this subdivision (8), a~~
5 ~~person who is not a party to the divorce shall not be subject to any subpoena to~~
6 ~~provide documentation or to give testimony about:~~

7 ~~(i) his or her assets, income, or net worth, unless it relates to a~~
8 ~~party's interest in an instrument that is vested and not capable of modification~~
9 ~~or divestment; or~~

10 ~~(ii) his or her revocable estate planning instruments, including~~
11 ~~interests that pass at death by operation of law or by contract, unless a party's~~
12 ~~interest in an instrument is vested and not capable of modification or~~
13 ~~divestment.~~

14 ~~(D) This subdivision (8) shall not be construed to limit the testimony~~
15 ~~given by the parties themselves or what can be obtained through discovery of~~
16 ~~the parties.~~

17 ~~(9) The desirability of awarding the family home or the right to live~~
18 ~~there for reasonable periods to the spouse having custody of the children.~~

19 ~~(10) The party through whom the property was acquired.~~

1 ~~(11) The contribution of each spouse in the acquisition, preservation,~~
2 ~~and depreciation or appreciation in value of the respective estates, including~~
3 ~~the nonmonetary contribution of a spouse as a homemaker.~~

4 ~~(12) The respective merits of the parties.~~

5 Sec. 2. 15 V.S.A. § 752 is amended to read:

6 § 752. MAINTENANCE

7 (a) In an action under this chapter, the court may order either spouse to
8 make maintenance payments, either rehabilitative or permanent in nature, to
9 the other spouse, if it finds that the spouse seeking maintenance:

10 (1) lacks sufficient income; or property, or both, including property
11 apportioned in accordance with section 751 of this title, to provide for his or
12 her reasonable needs; and

13 (2) is unable to support himself or herself, through appropriate
14 employment, at the standard of living established during the civil marriage or
15 is the custodian of a child of the parties.

16 (b) ~~The~~ Subject to the limitations set forth in subsection (c) of this section,
17 the maintenance order shall be in such amounts and for such periods of time as
18 the court deems just, after considering all relevant factors, ~~including, but not~~
19 ~~limited to:~~

20 (1) the financial resources of the party seeking maintenance, ~~the~~
21 ~~property apportioned to the party,~~ and the party's ability to meet his or her

1 needs independently ~~and the extent to which a provision for support of a child~~
2 ~~living with the party contains a sum for that party as custodian;~~

3 (2) the time and expense necessary to acquire sufficient education or
4 training to enable the party seeking maintenance to find appropriate
5 employment;

6 (3) the standard of living established during the civil marriage;

7 (4) the duration of the civil marriage;

8 (5) the age and the physical and emotional condition of each spouse;

9 (6) the ability of the spouse from whom maintenance is sought to meet
10 his or her reasonable needs while meeting those of the spouse seeking
11 maintenance; ~~and~~

12 (7) inflation with relation to the cost of living; ~~and~~

13 (8) the following guidelines:

	<u>% of the difference</u>	<u>Duration of alimony award</u>
<u>Length of marriage</u>	<u>between parties'</u>	<u>as % length of marriage</u>
	<u>gross income</u>	
		<u>Presumption of no alimony</u>
18 <u>0 to <5 years</u>	<u>0–20%</u>	<u>or short-term alimony</u>
19		<u>up to one year</u>
20 <u>5 to <10 years</u>	<u>15–35%</u>	<u>20–50% (1–5 yrs)</u>
21 <u>10 to <15 years</u>	<u>20–40%</u>	<u>40–60% (3–9 yrs)</u>

1 (h) Order upon finding of contempt. Upon a finding of contempt, the ~~Court~~
2 court shall determine appropriate sanctions to obtain compliance with the court
3 order. The ~~Court~~ court may order any of the following:

4 (1) The person to perform a work search and report the results of his or
5 her search to the ~~Court~~ court or to the Office of Child Support, or both.

6 (2) The person to participate in an employment services program, which
7 may provide referrals for employment, training, counseling, or other services,
8 including those listed in section 658 of this title. Any report provided from
9 such a program shall be presumed to be admissible without the appearance of a
10 witness from the program in accordance with the provisions in 4 V.S.A.

11 § 466(f).

12 (3) The person to appear before a reparative board. The person shall
13 return to court for further orders if:

14 (A) the reparative board does not accept the case; or

15 (B) the person fails to complete the Reparative Board Program to the
16 satisfaction of the board in a time deemed reasonable by the board.

17 (4) Incarceration of the person unless he or she complies with purge
18 conditions established by the ~~Court~~ court. A court may order payment of all or
19 a portion of the unpaid financial obligation as a purge condition, providing that
20 the ~~Court~~ court finds that the person has the present ability to pay the amount
21 ordered and sets a date certain for payment. If the purge conditions are not met

1 by the date established by the ~~Court~~ court and the date set for payment is
2 within 30 days of finding of ability to pay, the ~~Court~~ court may issue a
3 mittimus placing the contemnor in the custody of the Commissioner of
4 Corrections.

5 (A) As long as the person remains in the custody of the
6 Commissioner of Corrections, the ~~Court~~ court shall schedule the case for a
7 review hearing every 15 days.

8 (B) The Commissioner shall immediately release such a person from
9 custody upon the contemnor's compliance with the purge conditions ordered
10 by the ~~Court~~ court.

11 (C) The Commissioner may, in his or her sole discretion, place the
12 contemnor on home confinement furlough or work crew furlough without prior
13 approval of the ~~Court~~ court.

14 (5) Orders and conditions as the ~~Court~~ court deems appropriate, except
15 that the court shall not order interest on spousal maintenance payments that
16 exceeds the prime rate charged by banks, as that term is defined in 32 V.S.A.
17 § 3108(a).

18 (i) Finding of present ability to pay. A finding of present ability to pay a
19 purge condition shall be effective for up to 30 days from the date of the
20 finding. In determining present ability to pay for purposes of imposing

1 necessary and appropriate coercive sanctions to bring the noncomplying person
2 into compliance and purge the contempt, the ~~Court~~ court may consider:

3 (1) ~~A~~ a person's reasonable ability to use or access available funds or
4 other assets to make all or a portion of the amount due by a date certain set by
5 the ~~Court~~. Court;

6 (2) ~~A~~ a person's reasonable ability to obtain sufficient funds necessary
7 to pay all or a portion of the amount due by a date certain set by the ~~Court~~
8 court, as demonstrated by the person's prior payment history and ability to
9 comply with previous contempt orders.

10 Sec. 5. EFFECTIVE DATE

11 This act shall take effect on passage.