23.0327.01000

Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2069

Introduced by

Senator Luick

A BILL for an Act to amend and reenact section 14-05-24.1 of the North Dakota Century Code, relating to spousal support; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-05-24.1 of the North Dakota Century Code is amended and reenacted as follows:

14-05-24.1. Spousal support.

1. As used in this section:
   a. "Length of marriage" means from the date of the marriage until the service of a summons for an action for legal separation or divorce.
   b. "Material change in circumstances" means a change that substantially affects the financial abilities or needs of the parties and which was not contemplated by the parties at the time of the original award.
2. ~~Taking into consideration the circumstances of the parties, the~~The court may not award permanent spousal support. Upon consideration of the provisions of this section, the court may require one party to pay spousal support to the other party for a limited period of time ~~in accordance with this section~~upon expressly finding:
   a. The recipient lacks sufficient property or income or the property or income is insufficient to enable the recipient to provide for the recipient's reasonable needs, considering the marital standard of living; and
   b. The payor has the ability to supply those means without undue economic hardship. ~~The court may modify its spousal support orders.~~
3. In addition to any other factors the court considers relevant in determining the amount and duration of spousal support, the court shall consider:
   a. The age of the parties;

b. The earning ability of each party;

c. The duration of the marriage;

d. The conduct of the parties during the marriage;

e. The station in life of each party;

f. The circumstances and necessities of each party;

g. The health and physical condition of each party; and

h. The financial circumstances of the parties as shown by the property owned at the time of the divorce, including the value of the property at the time of the divorce, the income-producing capacity of the property, and whether the property was acquired before or after the marriage.

4. After considering the factors in subsection 3, the court may award:

a. Rehabilitative spousal support when it is possible to restore a spouse to independent economic status or to equitably divide the burden of the divorce by increasing that spouse's earning capacity.

b. General term spousal support when a spouse is not capable of rehabilitation, self-support, or to minimize the burden of the divorce.

c. Lump sum spousal support as additional marital property to a spouse or the court may otherwise adjust the distribution of the marital property and debt to eliminate the need for spousal support or to reduce the amount or the duration of the spousal support.

5. Except upon written findings by the court which require a deviation beyond the time limits of this section is necessary, spousal support terminates upon the following:

Length of marriage	Duration of spousal support award as percentage of the number of months of the length of the marriage
Less than 5 years	Up to 50%
Between 5 and 10 years	Up to 60%
Between 10 and 15 years	Up to 70%
Between 15 and 20 years	Up to 80%
20 years or more	Duration agreed upon by parties

6. The court may modify its spousal support order, subject to the following limitations:

a. If a material change in circumstances occurs during the rehabilitative period, rehabilitative spousal support may be modified.

b. If a material change in circumstances occurs, general term spousal support may be modified.

7. Upon the filing of a judgment, the parties may not seek and the court may not order a modification of lump sum spousal support.

8. The parties may expressly preclude or limit the modification of spousal support through a written agreement that is part of the judgment for divorce.

9. Unless otherwise agreed ~~to~~ by the parties in writing, spousal support is terminated upon the remarriage or death of the spouse receiving support. The court may require reasonable security from the payor spouse in the event of the payor's death. Immediately upon remarriage, the spouse receiving support shall provide notice of the remarriage to the payor spouse at the last known address of the payor spouse.

~~3~~10. Unless otherwise agreed to by the parties in writing, upon an order of the court based upon a preponderance of the evidence that the spouse receiving support has been habitually cohabiting with another individual in a relationship analogous to a marriage for one year or more, the court shall terminate spousal support.

~~4. Subsections 2 and 3 do not apply to rehabilitative spousal support.~~

11. There is a rebuttable presumption that spousal support terminates upon the payor's attaining full retirement age for social security purposes. The rebuttable presumption may be overcome if the court determines spousal support should continue based on the following factors:

a. The ages of the parties at the time of the marriage, the time of the entry of the spousal support award, and the time of the application for retirement;

b. The degree and duration of the economic dependency of the recipient upon the payor during the marriage;

c. Whether the recipient has foregone, relinquished, or otherwise sacrificed claims, rights, or property in exchange for a more substantial or longer spousal support award;

d. The duration or amount of spousal support already paid;

e. The health of the parties at the time of the retirement application;

f. Assets of the parties at the time of the retirement application;

g. Sources of income, both earned and unearned, of the parties, including whether the payor spouse intends to continue employment;

h. The ability of the recipient to have saved adequately for retirement; and

i. Any other factors the court deems relevant.

SECTION 2. APPLICATION. It is the intent of the sixty-eighth legislative assembly that this Act applies to any spousal support order, regardless of date of issuance, but applies only to spousal support payments accruing after the effective date of this Act.