

ENCLOSURE 2

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The New Art of Alimony

Long viewed as payment for life, divorce settlements are facing strict new limits as some ex-spouses—primarily men—protest the endless support of a former partner. For richer, for poorer, forever?

By JENNIFER LEVITZ

Boston

Paul and Theresa Taylor were married for 17 years. He was an engineer for Boston's public-works department, while she worked in accounting at a publishing company. They had three children, a weekend cottage on the bay and a house in the suburbs, on a leafy street called Cranberry Lane. In 1982, when they got divorced, the split was amicable. She got the family home; he got the second home. Both agreed "to waive any right to past, present or future alimony."

But recently, more than two decades after the divorce, Ms. Taylor, 64, told a Massachusetts judge she had no job, retirement savings or health insurance. Earlier this year, the judge ordered Mr. Taylor, now 68 and remarried, to pay \$400 per week to support his ex-wife.



Everett Collection

"This is insane," Mr. Taylor says, adding that the payments cut his after-tax pension by more than one-third. "Someone can just come back 25 years later and say, 'My life went down the toilet, and you're doing good—so now I want some of your money'?"

The nature of marriage has changed dramatically over the decades. Women now make up almost half of the American work force. But alimony, a concept enshrined in ancient law, has remained remarkably constant. Now, the idea that a husband should continue to support his wife forever, even after the demise of their marriage—long a bedrock of divorce law—is being called into question. Pressures are mounting to change a practice that some see as outdated and unfair.

Adjusting Alimony

Ex-spouses are rethinking alimony agreements amid dwindling job prospects and savings in the

Several U.S. states are battling to place new limits on alimony and rewrite decades-old laws.

economic crunch, even as some states re-evaluate alimony laws. Here are some pending proposals:

Massachusetts House Bill 1785: Alimony typically one-half the length of the marriage and no longer than 12 years, except when the supported party has minor children.

Pennsylvania Senate Bill 953: Alimony can be terminated if the recipient cohabitates with another adult in a romantic relationship.

Oklahoma House Bill 1053: Makes it harder for one spouse to tap another's military retirement pay in a divorce settlement. Currently, military retirement pay is divided like marital property. Under the bill, the portion of military retirement pay an ex-spouse would be entitled to would end if that spouse remarries, making it similar to alimony.

Ohio State Bar Association proposal: Alimony would be temporary for a marriage of 25 years or less, with a suggestion of alimony lasting no longer than seven years for a marriage of 15 years.

Source: WSJ research

when setting alimony payments.

The House bill would end the currently common practice of using the assets of a second spouse to determine the ability of a person to pay alimony. Alimony could only be adjusted upward for cost-of-living increases, and alimony obligations would end upon the retirement of the payer, though judges would still have the flexibility to take into account special circumstances.

State alimony laws, many passed in the 1960s and 1970s, were designed to help nonworking or lesser-earning spouses after divorce. Many states allow for recipients to receive payments for life. Proponents say the money compensates some spouses who have sacrificed careers for families and is particularly vital to low- and middle-income women. Detractors have long called the laws unfair in an age when many women work, with people making payments for years that their former spouses don't really need.

Journal Community

*If you want to get married,
marry an emotional adult, in
the right state, with a
prenup. Period. Or accept
potential liability the rest of
your life.*

—Jeffrey Dugas

In Pennsylvania, New Jersey and Oklahoma, lawmakers are pushing for measures like putting time limits on alimony payments, barring alimony if two divorcing spouses are on equal footing professionally, and ending or reducing alimony if the recipient commits a crime or cohabits with another adult in a romantic relationship. Lobbyists and activists are pressing for similar rules in Ohio, Florida, Arizona, Georgia and North Carolina.

In Massachusetts a bill backed by a group called "Reform Massachusetts Alimony Laws Now!" has 72 sponsors and would require a spouse receiving alimony to become self-sufficient, or attempt to, after a reasonable time. That would establish alimony as a temporary payment instead of a permanent entitlement, as is often the case now. A second bill, in the state Senate, would modify the law less radically by adding "duration" to the factors judges can consider

At the core of alimony debate is whether the payments are viewed as transitional—until the dependent spouse gets back on his or her feet—or a long-term dividend for sacrifices made during a marriage.

Now this simmering debate is boiling over. As divorced baby boomers reach retirement age, recession has decimated nest eggs and erased millions of jobs. The American Academy of Matrimonial Lawyers reported a "big spike" this year in clients seeking to modify their alimony arrangements. In a March survey, 42% of the

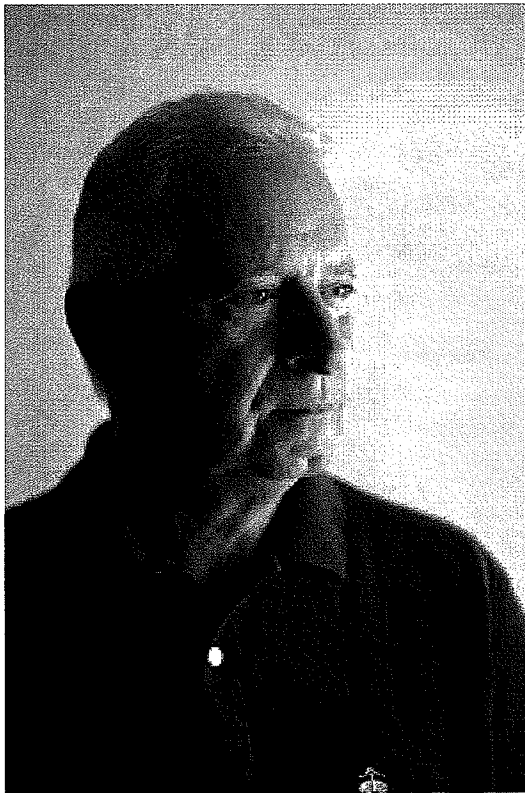
group's divorce attorneys reported an "unusual" increase in such cases, with 6% reporting a drop.

In Los Angeles, Family Court Judge Marjorie Steinberg also reports a "dramatic" surge in these requests. She says petitioners include one-time high earners who've lost their jobs, a group she says she'd "rarely seen before."

The bill in Massachusetts' House of Representatives has gained the support of a group called the 2nd Wives Club. Club co-founder Jeanie Hitner, who is 59 and lives in Marlborough, Mass., testified to state legislators last month that she is working a second job—tutoring math four nights a week—to help her husband make alimony payments to his first wife.

Ms. Hitner says she wishes she had just stayed his girlfriend. "If I had known about this before we got married, I never would have married him," says Ms. Hitner. Her husband, Steve Hitner, is the head of Reform Massachusetts Alimony Laws Now!, a grass-roots group that consists mostly of alimony-paying men, and supports the same bill. "I don't blame her; I never would have put her through this if I had known what she was going to be in for," Mr. Hitner says.

Opponents of the bill say it may not adequately protect those who rely on alimony payments. Massachusetts State Sen. Cynthia Stone Creem, a Democrat and a divorce lawyer who co-chairs the joint judiciary committee, has called for a commission to study all the alimony legislation, a move that could delay a vote until next summer. Sen. Stone Creem filed her own bill, which would modify the state's law slightly, giving judges greater leeway in setting the duration of alimony payments.



Jason Henry for The Wall Street Journal

In their 1982 divorce agreement, Paul and Theresa Taylor agreed 'to waive any right to past, present or future alimony.' A Massachusetts judge recently

Many states put formal alimony laws into place in the 1960s and 1970s, amid rising divorce rates and concerns that women earned less than men. States such as California and Massachusetts passed laws that included provisions for indefinite alimony. More-conservative Texas, by comparison, generally limited payments to three years.

Many divorce agreements provide for alimony or spouse-support payments, which is separate from child-support payments. Americans gave \$9.4 billion to former spouses in 2007, up from \$5.6 billion a decade earlier, according to the Internal Revenue Service. Men accounted for 97% of alimony-payers last year, according to the U.S. Census Bureau, although the share of women supporting ex-husbands is on the rise.

Critics argue that in the decades since alimony guidelines were set, the U.S. has changed much: Women made up 46.7% of the work force last year, up from 41.2% in 1978, according to the Department of Labor. Others counter that

America hasn't changed enough: Women in the 45-to-54-year-old age group earn 75% as much as men the same age.

But the momentum appears to be with those who seek to guard alimony payers' shrinking resources. Legislation may be gaining traction in part because powerful citizens and lawmakers, themselves divorced, are getting a close-up view of what they see as a flawed alimony system, says retired Judge Robert D. Frank, who handled divorce cases in Tulsa, Okla.

In April, for example, Palm Beach County Circuit Court Judge David French prevailed following a 16-year battle to stop or reduce his alimony payments. A state appeals court ruled that Mr. French should not be forced to pay \$3,400 a month to his ex-wife, who has lived for nearly 20 years with another man. The judge ordered the ex-wife to pay Mr. French \$151,000, the amount she had received from him since he filed a previous case in 2005. Ms. French's lawyer did not return a call seeking comment. Amy Shield, Mr. French's lawyer, said he was pleased with the decision.

A Florida group has hired a lobbyist to push a bill limiting alimony payments to three years. Ohio's bar association, meanwhile, is lining up legislative sponsors for a bill that could shorten alimony terms—ending support after seven years, for example, following a marriage that lasted 15. Pennsylvania's Senate is considering a bill that could cut alimony to recipients who live in a romantic relationship with another adult.

Last month, Massachusetts representatives heard testimony from Brenda Caggiano, a 70-year-old retired first-grade teacher who supports her ex-husband, Robert, a certified public accountant. When the Caggianos divorced in 2003, they split their assets. He got their home on Cape Cod. She got their home in a Boston suburb, and paid him the \$57,000 difference in the value of the homes.

Ms. Caggiano earned more at the time, so the court ordered her to pay \$125 in weekly alimony until her death or her former husband's remarriage. Since Massachusetts is a "no-fault" divorce state, it made no difference that it was, as both parties acknowledge, Mr. Caggiano who left home.

Ms. Caggiano says she's living pension-check-to-pension-check and has had to tap a home-equity line of credit to fix her roof. "It's a disgrace that this man is taking my money when he's perfectly capable of supporting himself," she says.

Mr. Caggiano, who is 68, said in an interview he has no mortgage and that his girlfriend, who works full-time, has moved in. He says the couple recently traveled to Italy, and that he spent \$60,000 to install hardwood floors, granite countertops and big windows "to get a beautiful view of the water." He keeps his accounting practice to a few clients: "I'm not going out there trying to develop new business."

Asked why he should receive alimony, Mr. Caggiano said he sees it as reimbursement for a time early in their marriage when he paid most expenses, including the down payments on the two homes that were divided at the divorce. Ms. Caggiano says she wants a court to modify her payments but can't afford an attorney.

Another Massachusetts pair, Rudolph and Carneice Pierce, have taken their battle to the state's

Supreme Judicial Court. As soon as next month, the court is expected to issue its decision, which could have broad implications for retirement-aged baby boomers.



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Jodi Hilton for The Wall Street Journal

Brenda Caggiano, a retired first-grade teacher, pays weekly alimony to her ex-husband. She says she lives pension-check-to-pension-check.

The Pierces were divorced in 1999 after 32 years of marriage. He was a partner at a Boston law firm and a former state judge. She had worked at International Business Machines Corp. for 27 years. They equally divided \$1.4 million in assets, and the court ordered him to pay her annual alimony of \$110,000 until her remarriage or the death of either.

In March 2008, Mr. Pierce retired from his law firm and cited this change of circumstance in a request to terminate the alimony. He said his income had already fallen to about \$225,000 in 2007, about half its level at the time of the

divorce. A probate court reduced the annual alimony obligation to \$42,000 but refused to terminate it, arguing that Mr. Pierce had ample earning power and could find another job, such as teaching.

Mr. Pierce, now 67, argues that the court was telling him, in effect, that he couldn't retire. He appealed to the state's supreme court.

Ms. Pierce, meanwhile, left her \$95,000-a-year fund-raiser job last summer, her lawyer said, after her territory was expanded to require more travel without additional pay. In briefs filed with the supreme court, Ms. Pierce said she had been pinched by the downturn and that her retirement funds were down almost 50%. Her lawyer, David Cherny, said that while Mr. Pierce's income had also fallen, there was still a financial disparity between the couple because she devoted more time to her family than her career during the marriage.

"She had given up a lot to this relationship," Mr. Cherny says, adding that it would be wrong to change a divorce agreement they'd already made.

Divorce agreements can get rewritten even decades later, as retired Boston engineer Mr. Taylor has learned.

In 2003, more than two decades after agreeing to end a 17-year marriage without alimony, Ms. Taylor was diagnosed with melanoma. She lost her publishing job when her employer of 38 years filed for bankruptcy protection. She'd recently surrendered her home to the bank and filed for personal bankruptcy to resolve \$27,000 in medical and credit-card debts.

Mr. Taylor, meanwhile, had retired after 33 years working for the city of Boston, with an annual pension of \$56,000.

In a September 2007 complaint filed in a state probate court, Ms. Taylor cited "changes in circumstances" and sued her former husband for support payments. She wrote that Mr. Taylor owned homes in Florida and Cape Cod and traveled to Europe.

In court, Mr. Taylor said he was sensitive to his former wife's plight, but that too much time had

passed and that their divorce was final 25 years ago. His second wife, he said, had inherited the Cape Cod house from her father. Their trips were financed through home-swaps and reduced-fare tickets from his stepson, an airline employee.

In June 2008, a probate judge ordered Mr. Taylor to pay temporary alimony based on Ms. Taylor's "dire immediate need" and his "ability to pay." In its January final order, the court, citing Mr. Taylor's income from his pension, told Mr. Taylor to pay his ex-wife \$400 per week for five years. The payment will eventually fall to about \$250 a week for the rest of her life.

Virginia Connelly, Ms. Taylor's lawyer, says she can see how Mr. Taylor could find the situation unfair. But under Massachusetts law, she said, judges who want to keep a person off public services can turn to the ex-spouse.

In May, to seek relief from legal and other bills, Mr. Taylor declared personal bankruptcy. He is still responsible for supporting his ex-wife. "If she loses all her money, so what? She can just take me back to court," he says. "Somewhere along the line I should have peace of mind."

Write to Jennifer Levitz at jennifer.levitz@wsj.com

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