

1 or where the court finds the separation agreement of the parties
2 not to be fair and reasonable or clear and unambiguous, the court
3 shall proceed to resolve the issues outstanding between the
4 parties.

5 (b) The court shall consider the following factors in
6 determining the amount of spousal support, child support or
7 separate maintenance, if any, to be ordered under the provisions of
8 parts five and six, article five of this chapter, as a supplement
9 to or in lieu of the separation agreement:

10 (1) The length of time the parties were married;

11 (2) The period of time during the marriage when the parties
12 actually lived together as husband and wife;

13 (3) The present employment income and other recurring earnings
14 of each party from any source except that income or earnings
15 derived from an asset that was the subject of equitable
16 distribution may not be considered;

17 (4) The income-earning abilities of each of the parties based
18 upon such factors as educational background, training, employment
19 skills, work experience, length of absence from the job market and
20 custodial responsibilities for children;

21 (5) The distribution of marital property to be made under the
22 terms of a separation agreement or by the court under the
23 provisions of article seven of this chapter insofar as the

1 distribution affects or will affect the earnings of the parties and
2 their ability to pay or their need to receive spousal support,
3 child support or separate maintenance. ~~Provided, That~~ For the
4 purposes of determining a spouse's ability to pay spousal support,
5 the court may not consider the income generated by property
6 allocated to the payor spouse in connection with the division of
7 marital property; ~~unless the court makes specific findings that a~~
8 ~~failure to consider income from the allocated property would result~~
9 ~~in substantial inequity;~~

10 (6) The ages and the physical, mental and emotional condition
11 of each party;

12 (7) The educational qualifications of each party;

13 (8) Whether either party has foregone or postponed economic,
14 education or employment opportunities during the course of the
15 marriage;

16 (9) The standard of living established during the marriage;

17 (10) The likelihood that the party seeking spousal support,
18 child support or separate maintenance can substantially increase
19 his or her income-earning abilities within a reasonable time by
20 acquiring additional education or training;

21 (11) Any financial or other contribution made by either party
22 to the education, training, vocational skills, career or earning
23 capacity of the other party;

1 (12) The anticipated expense of obtaining the education and
2 training described in subdivision (10) above;

3 (13) The costs of educating minor children;

4 (14) The costs of providing health care for each of the
5 parties and their minor children;

6 (15) The tax consequences to each party;

7 (16) The extent to which it would be inappropriate for a
8 party, because ~~said~~ the party will be the custodian of a minor
9 child or children, to seek employment outside the home;

10 (17) The financial need of each party;

11 (18) The legal obligations of each party to support himself or
12 herself and to support any other person;

13 (19) Costs and care associated with a minor or adult child's
14 physical or mental disabilities; and

15 (20) Such other factors as the court deems necessary or
16 appropriate to consider in order to arrive at a fair and equitable
17 grant of spousal support, child support or separate maintenance.

18 (c) A court may not consider the use or consideration of an
19 income-producing asset for purposes of spousal support if the asset
20 was the subject of equitable distribution pursuant to article seven
21 of this chapter.

NOTE: The purpose of this bill is to prohibit courts from

using or considering an income-producing asset for purposes of spousal support if the asset was the subject of equitable distribution.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.