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Massachusetts needs to divorce its divorce law

The state's reforms were made with good intent, but bad execution. And now there's a chance to fix all that.



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By Louise Sloan | MAY 11, 2017

I never thought I'd take an interest in alimony reform: I've never been married. The deposits that arrive in my bank account come from my employer. I did "get the house" — but only because I paid for it.

But recently I became involved with someone who's divorced. And under Massachusetts law, he's required to send weekly checks to his ex-wife, even though she's been living with another man for years. That doesn't make sense to me. There are situations where alimony is needed, but I thought it was supposed to end when the person receiving the checks set up housekeeping with a new partner.

Turns out I was right — sort of. In 2011, Massachusetts passed the Alimony Reform Act, which was meant to address inequities in the state's existing alimony laws. Under the old law, if your ex moved in with a new partner, even a rich one, but didn't get married, you would likely still be on the hook for the alimony — for as long as you both shall live, as you once said in better times. Almost nothing could change that obligation, including your retirement.

The Alimony Reform Act, which took effect on March 1, 2012, aimed to give payors a light at the end of the tunnel. It stipulates that ex-spouses who live with a partner for a continuous period of at least three months may forfeit their alimony and that alimony may be terminated once the payor reaches the full Social Security retirement age. There are a few exceptions to those rules, but basically, it sounds simple, right?

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morning.

No. It's actually nearly as messy as a Hollywood divorce, thanks to one small turn of phrase that the Supreme Judicial Court of Massachusetts read as ambiguous. "To most lawyers and many judges it was not ambiguous," says Steve Hitner, president of the advocacy group Massachusetts Alimony Reform. "There's a piece of the law that says it's 'prospective,' meaning someone cannot go back and recoup money they've already paid. But the SJC took the word 'prospective' to mean that the reform act only applied to divorces that take place after it went into effect."

The SJC basically negated certain key sections of the reform act in several rulings handed down January 30, 2015 — *Chin v. Merriot*, *Rodman v. Rodman*, and *Doktor v. Doktor*. These rulings have a significant impact: In just the decade before the reform act went into effect, there were nearly 170,000 divorces in Massachusetts. One of them was Peter Premo's. Premo, a 56-year-old engineer from Worcester, and his wife split in 2010, when cohabitation wasn't a reason to end alimony. So even though she moved in with her new beau, Premo was required to keep paying. When his ex and her partner went to a Las Vegas wedding chapel, Premo thought his check-writing days were over, but he was wrong. It turns out the "Just Married" bumper sticker she put on her car wasn't exactly accurate, because the couple never got a marriage license. So under the law, Premo was still required to support her, "husband" and all.

Denise Squillante, a former president of the Massachusetts Bar Association who helped to write the statute, says the alimony revision was in fact intended to apply retroactively. "I was there," she says. "I know what we

meant.”

But because of the SJC rulings, retirement changes nothing and cohabitating ex-spouses who divorced before March 2012 get to treat alimony as the thing no one can put asunder, unless they actually remarry. So at least some of them don't; call them exes with benefits. It's a bit droll to see this once Puritan state continuing to reward people for living in sin. But for payors like my partner, it isn't funny. Worse, Squillante says, “they're not getting equal protection under the law.” Equal protection is the crux of the 14th Amendment to the US Constitution. The equal protection clause has been used to prevent discrimination in housing and was a cornerstone of the Supreme Court's decision to legalize gay marriage — a decision made the same year Massachusetts's SJC effectively decided to create two classes of divorces, depending on when you broke up.

Last year, state lawmakers introduced a bill to fix the language, so the law would cover everyone. It passed unanimously in the House but died in the Senate. Now, legislators are trying again to set things right. The current version of the “re-reform” bill, H.740, is with the Joint Committee on the Judiciary, which has a hearing scheduled for May 15. If it is blocked a second time, Hitner fears it will be years before the issue is revisited. “It will lose momentum,” he says. “That's what typically happens. But if it doesn't pass the second time, we'll be back.”

In the meanwhile, people who divorced before the law took effect must follow the old rules on alimony, for better or worse. “If I lose my job, if I retire, I still have to pay this money every week,” Premo says. “We've been divorced for how long? Let me go. Let me get on with my life.”

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