SENATE . . . . . No. 822

By Mr. Costello, a petition (accompanied by bill, Senate, No. 822) of Nicholas J. Costello and Thomas G. Palumbo for legislation relative to the support and maintenance of certain children of divorced or separated parents. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Nine.

AN ACT RELATIVE TO THE SUPPORT AND MAINTENANCE OF CERTAIN CHILDREN OF DIVORCED OR SEPARATED PARENTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 209 of the General Laws is hereby amended by inserting after section 1, the following section: —

Section 1A. As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:

"Custodial parent", a party awarded physical custody of a child.

"Deferred sale of home order", an order that temporarily delays the sale and awards the temporary exclusive use and possession of the family home to a custodial parent of minor children, or children for whom support is otherwise authorized whether or not the custodial parent has sole or joint custody.

"Resident parent", a party who has requested or who has already been awarded a deferred sale of home order.

In any case in which one of the parties has requested a deferred sale of home order pursuant to this section, the court shall first determine whether it is economically feasible to maintain the payments of any note secured by a deed of trust, property taxes, insurance for the home during the period the sale of the home is deferred, and the condition of the home comparable to that at the time of trial. In making this determination, the court shall consider the resident parent's income, the availability of spousal support, child support, or both spousal and child support, and any other sources of funds available to make those payments.

24 After making the determination of economic feasibility, the
25 court, in exercising its discretion to grant or deny a sale of home
26 order, shall consider all of the following:
27 1) the length of time the child has resided in the home;
28 2) the child's placement or grade in school;
29 3) the accessibility and convenience of the home to the child's
30 school and other services or facilities used by and available to the
31 child, including child care;
32 4) whether the home has been adapted or modified to
33 accommodate any physical disabilities of a child or a resident
34 parent in a manner such that a change in residence may adversely
35 affect the ability of the resident parent to meet the needs of the
36 child;
37 5) the emotional detriment to the child associated with a change
38 in residence;
39 6) the extent to which the location of the home permits the
40 resident parent to continue his employment;
41 7) the financial ability of each parent to obtain suitable
42 housing;
43 8) the tax consequences to the parents;
44 9) the economic detriment to the nonresident parent in the
45 event of a deferred sale of home order; and
46 10) any other factors the court deems just and equitable.
47 Upon a determination that a deferred sale of home order is
48 necessary in order to minimize the adverse impact of dissolution
49 or legal separation on the child, the court may make such an order
50 to a custodial parent. Such order shall include the legal description
51 and assessor's parcel number of the real property which is subject
52 of the order and the duration of the order, and shall be recorded
53 in the registry of deeds in the county wherein such real property
54 is located. Such an order may be considered to constitute
55 additional child support.
56 The court may make an order specifying the parties respective
57 responsibilities for the payment of the costs of routine
58 maintenance and capital improvements.
59 Except as otherwise agreed to by the parties in writing, the
60 following shall apply:
61 1) a deferred sale of home order may be modified or terminated
62 at any time at the discretion of the court;

63 2) if the party awarded the deferred sale of home order
64 remarries, or if there is otherwise a change in circumstances
65 affecting the determinations made hereunder or affecting the
66 economic status of the parties or the children on which the award
67 is based, a rebuttable presumption, affecting the burden of proof,
68 is created that further deferral of the sale is no longer an equitable
69 method of minimizing the adverse impact of the dissolution or
70 legal separation on the children.
71 In making an order pursuant to this section, the court shall
72 reserve jurisdiction to determine any and all issues that arise with
73 respect to the deferred sale of home order including, but not
74 limited to, the maintenance of the home and the tax consequences
75 to each party.

1 SECTION 2. Notwithstanding the provisions of any other
2 general or special law to the contrary upon the dissolution of a
3 marriage or upon the legal separation of the parties, an order for
4 support and maintenance of a minor child of the parties shall
5 continue in effect until such child attains the age of twenty-one
6 unless such child is married or in the military.