

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: SB 748

INTRODUCER: Senator Diaz de la Portilla

SUBJECT: Alimony

DATE: January 30, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	Pre-meeting
2.	_____	_____	BC	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill generally limits the amount and duration of alimony awards. The bill also specifies additional grounds that constitute a material change in circumstances which justifies the modification of an alimony award. Specifically, the bill:

- Eliminates the availability of permanent alimony, but authorizes long-term alimony for marriages having a duration of 20 years or longer.
- Limits the duration of long-term alimony to 60 percent of the length of the marriage, unless the alimony recipient was disabled during the marriage.
- Requires the reduction or termination of an award of long-term alimony if the payor becomes disabled.
- Limits the duration of durational alimony to 50 percent of the duration of the marriage for marriages having a duration of greater than 7 but less than 20 years.
- Limits the maximum amount of an alimony payment to 20 percent of the payor's average monthly net income over the past 3 years.
- Requires the findings that a court must make in determining to award alimony be in writing.
- Eliminates the consideration of adultery by either spouse by the court in determining the amount of alimony.
- Eliminates the standard of living established during the marriage from the list of factors a court must consider in awarding alimony.
- Limits the financial resources of each party that a court may consider in awarding alimony to only the assets and liabilities acquired during the marriage, deleting the consideration of nonmarital assets.
- Eliminates the discretion of a court to consider factors in awarding alimony other than the factors expressly stated in s. 61.08(2), F.S.

- Specifies factors a court must consider in requiring a payor to maintain a life insurance policy or bond to secure an alimony award.
- Specifies circumstances under which bridge-the-gap alimony is modifiable.
- Specifies circumstances under which a court must modify an award of rehabilitative alimony, eliminating the discretion of a court in determining whether such an award may be modified.
- Provides that the provisions of the bill may constitute a material change in circumstances justifying the modification of existing alimony awards.
- Requires a court to reduce or terminate an alimony award when the recipient maintains a supportive relationship with another person for a period of at least 3 continuous months in a common household.
- Prohibits the consideration of the assets or income of the payor's spouse or other person with whom the payor resides in the reconsideration or modification of an alimony award. Prohibits the modification of an alimony award when child support payments end.

This bill amends sections 61.08 and 61.14, Florida Statutes.

This bill repeals s. 2, ch. 2010-199, Laws of Florida, relating to the applicability of changes in existing law to initial awards of alimony and modifications thereto and s. 80, ch. 2011-92, Laws of Florida relating to the applicability of changes in existing law to initial awards of alimony and modifications thereto.

II. Present Situation:

Chapter 61, F.S., governs proceedings for the dissolution of marriage in Florida. A judgment of dissolution of marriage may not be granted unless one of the following facts appears, which must be generally pleaded:

- the marriage is irretrievably broken.¹
- mental incapacity of one of the parties. However, a dissolution may not be allowed unless the party alleged to be incapacitated must have been adjudged incapacitated according to the provisions relating to guardianship law for a preceding period of at least 3 years.²

Under s. 61.075, F.S., a court must distribute the marital assets and liabilities based on the premise that the distribution be equal.³ The court must do so unless justification exists for an unequal distribution based on relevant factors specified in s. 61.075(1), F.S. In a contested marital dissolution in which a stipulation and agreement has not been entered and filed, the distribution of marital assets or liabilities must be supported by factual findings in the court order based on competent substantial evidence with reference to the relevant statutory factors.

After a court has equitably distributed the marital assets and liabilities, alimony may be ordered by the court. Alimony is used to provide support to the financially dependent spouse.⁴ In a proceeding for dissolution of marriage, the court may grant alimony to either party, which

¹ Section 61.052(1)(a), F.S.

² Section 61.052(1)(b), F.S.

³ Section 61.075(1), F.S.

⁴ Victoria Ho and Jennifer Johnson, *Overview of Florida Alimony Law*, 78 FLA. B.J. 71 (Oct. 2004).

alimony, may be bridge-the-gap,⁵ rehabilitative,⁶ durational,⁷ or permanent in nature⁸ or any combination these forms of alimony.⁹ The types of alimony are described below:

- Bridge-the-gap alimony may be awarded to assist a party by providing support to allow the party to make a transition from being married to being single.¹⁰
- Rehabilitative alimony may be awarded to assist a party in establishing the capacity for self-support through either the redevelopment of previous skills or credentials; or the acquisition of education, training, or work experience necessary to develop appropriate skills or credentials.¹¹
- Durational alimony may be awarded if permanent periodic alimony is inappropriate. The purpose of durational alimony is to provide a party with economic assistance for a set period of time following a marriage of short or moderate duration.¹²
- Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following dissolution of marriage.¹³

Alimony pendente lite is temporary alimony awarded to a spouse during pendency of a dissolution of marriage action to furnish that spouse with the means of living so he or she may not become a charge upon the state while the case is being adjudicated.¹⁴ A court may award suit money to cover a spouse's attorney fees in dissolution of marriage action.¹⁵

The court may consider the adultery of either spouse and the circumstances in determining the amount of alimony, if any, to be awarded. In any award of alimony, the court may order periodic or payments in a lump sum or both.¹⁶

Section 61.08(2), F.S., outlines the following factors that a court must consider in awarding alimony:

- (a) The standard of living established during the marriage.
- (b) The duration of the marriage.
- (c) The age and the physical and emotional condition of each party.
- (d) The financial resources of each party, including the nonmarital and the marital assets and liabilities distributed to each.

⁵ Section 61.08(5), F.S.

⁶ Section 61.08(6), F.S.

⁷ Section 61.08(7), F.S.

⁸ Section 61.08(8), F.S.

⁹ Section 61.08(1), F.S.

¹⁰ Section 61.08(5), F.S.

¹¹ Section 61.08(6), F.S.

¹² Section 61.08(7), F.S.

¹³ Section 61.08(8), F.S.

¹⁴ *Grace v. Grace*, 162 So. 2d 314, 320 (Fla. 1st DCA 1964).

¹⁵ "Suit money" is defined to mean "Attorney's fees and court costs allowed or awarded by a court; esp., in some jurisdictions, a husband's payment to his wife to cover her reasonable attorney's fees in a divorce action." BLACK'S LAW DICTIONARY (9th ed. 2009).

¹⁶ *Id.*

- (e) The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.
- (f) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party.
- (g) The responsibilities each party will have with regard to any minor children they have in common.
- (h) The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a nontaxable, nondeductible payment.
- (i) All sources of income available to either party, including income available to either party through investments of any asset held by that party.
- (j) Any other factor necessary to do equity and justice between the parties.

Under s. 61.08(3), F.S., a court may protect an alimony award by requiring the obligor to purchase life insurance or post a bond. Section 61.08(9), F.S., specifies that an award of alimony may not leave the payor with significantly less net income than the net income of the recipient, absent exceptional circumstances.

III. Effect of Proposed Changes:

The bill revises requirements for a court to award alimony. In a proceeding for dissolution of marriage, the court may grant alimony to either party which alimony may be bridge-the-gap, rehabilitative, durational, or long-term in nature. A court will no longer have the discretion to grant a combination of any these forms of alimony. In any award of alimony, the court may order periodic payments or payments in lump sum or both, which may not exceed 20 percent of the payor's monthly net income to include all sources of income averaged over the last 3 years of the marriage.

The court would be required to make *written*, specific factual findings in its determination of whether to award alimony or maintenance. The bill revises the factors that a court must consider in awarding alimony to eliminate the standard of living established during the marriage. A court may no longer consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded. The factors relating to the following are modified so that a court would only consider the financial resources of each party only to include assets and liabilities acquired during the marriage rather than the marital and nonmarital assets the court distributed to each party. Additionally, the bill modifies the factor relating to the tax treatment and consequences to both parties of any alimony award, so that it includes the designation of all of the payment as taxable to the recipient and deductible to the payor. Under the modified factors for the determination of an award of alimony or maintenance, a court must consider all financial resources of each party, including nonmarital assets. The court will no longer have the discretion to look at any other factor necessary to do equity and justice between the parties in awarding alimony or maintenance.

The bill limits a court's discretion to require the payor to maintain a life insurance policy or bond to protect an award of alimony. A court may do so, only if there is a specific factual determination in writing as to whether the recipient has an actual need. The bill lists the

following factors which must be considered by a court in ordering a party to secure a life insurance policy or bond to protect an award of alimony:

- age and insurability of the payor;
- cost of insurance, including decreasing term-life insurance;
- amount of the judgment;
- policies carried during the marriage;
- duration of the alimony order;
- prevailing interest rates at the time of the order; and
- other obligations of the payor.

The bill eliminates the rebuttable presumption applicable to moderate-term or long-term marriage for purposes of awarding alimony. Under the bill, a court must recognize the applicable term of marriage for an award of alimony. Under the bill, for a moderate-term marriage is 7 to 20 years rather than 7 to 17. A long-term marriage is greater than 20 years, rather than 17 years.

The bill authorizes a court to modify a bridge-the-gap alimony award. Durational alimony may be awarded for a moderate-term or long-term marriage as redefined under the bill. Under specified circumstances, if the payee receiving the alimony is certified as disabled during the marriage the duration of support may be extended. Likewise, if the payor is certified as disabled by the Florida Department of Health, the award of alimony must be significantly reduced or terminated.

An award of alimony terminates upon the payor attaining retirement age as provided in the bill. The award of alimony may not leave the payor with less net income than the net income of the recipient. If an alimony award has been modified to terminate due to a supportive relationship and that relationship does not produce a marriage, the recipient is not entitled to reinstatement of alimony from the payor.

The bill provides that the changes to s. 61.08, F.S., as amended by the bill constitute a material change of circumstance that warrants modification of existing alimony judgments that exceed durational limits as modified by the bill. The bill provides for the applicability of its changes to existing alimony awards.

The bill requires a court to reduce or terminate an award of alimony if it determines that since the granting of a divorce and the award of alimony a supportive relationship has existed between the obligee and a person with whom the obligee resides. The court must make specific written findings that support such a determination. A person is deemed to maintain a supportive relationship when he or she shares a primary residence together with or without another person for a period of at least 3 continuous months in a common household. The court may consider various factors outlined in the bill:

- oral or written statements or representations made to third parties regarding the relationship of the cohabitants;
- the economic interdependence of the couple or economic dependence of one party on the other;

- the benefit in the life of either or both of the common household parties from their relationship;
- the reputations of the parties in the community as a couple; and
- other relevant and material factors.

If the obligor remarries or resides with another person, the income and assets of the obligor's spouse or person with whom the obligor resides may not be considered in the redetermination in a modification action. If the court orders alimony concurrent with a child support order, the alimony award may not be modified due to the termination of child support when the child support payments end.

The bill provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

A court may modify a judgment of alimony due to changed circumstances or financial ability of either party to the marital dissolution action.¹⁷ The basis of the modification is due to the facts presented at trial on the matter and is determined by the applicable substantive law.

Sections 2 and 3 of the bill imply a retroactive application of the bill's changes to laws affecting existing alimony judgments that exceed the durational limits set forth in s. 61.08 (4)-(9), F.S., as amended by the bill. To the extent that such legislative changes affect the finality of existing alimony judgments, it potentially calls into question an invasion of the authority of the judicial branch for the Legislature to pass a law that interferes with the final judicial determination in a case. *See Bush v. Schiavo*, 885 So. 2d 321, 332 (Fla. 2004).

¹⁷ "Judgments dissolving the bonds of marriage may be modified in the same manner as other judgments." Henry P. Trawick Jr., *Trawick's Florida Practice and Procedure*, s. 30:7 (2007 ed.).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the State Courts Administrator indicates that the fiscal impact of the bill cannot be accurately determined due to the unavailability of data needed to establish the increase in judicial workload. The Office of the State Courts Administrator reports that although the bill includes many amendments to ch. 61, F.S., relating to dissolution of marriage actions, a major workload impact on the judiciary is not anticipated.

The fiscal impact of the bill on revenues to the State Courts' trust fund from civil filing fees cannot be accurately determined due to the unavailability of data needed to establish the increase in filings resulting from mandatory modification of specific types of alimony. The Office of the State Courts Administrator does not anticipate that the increase will be significant.

VI. Technical Deficiencies:

Section 2 of the bill states the types of alimony available in a proceeding for dissolution of marriage "under s. 61.052(1)(a)." Section 61.052(1), F.S., provides that a divorce may not be granted by a court unless one of two grounds exist. The first ground, which is specified under s. 61.052(1)(a), F.S., is that the marriage is irretrievably broken. The second ground, which is specified under s. 61.052(1)(b), F.S., is the mental incapacity of one of the parties. Thus, section 2 appears to eliminate the application of law to divorces based on the mental incapacity of one of the parties. The Legislature may wish to revise the bill to clarify what alimony should be available in divorces based on mental incapacity.

Lines 47-51 of the bill state: "In an award of alimony, the court may order periodic payments or payments in lump sum or both, which may not exceed 20 percent of the payor's monthly net income to include all sources of income averaged over the last 3 years of the marriage." The new language appears to modify "periodic payments" and "lump sum payments." The Legislature may wish to revise the bill to clarify to what the 20 percent limitation applies. The intent may have been to state that a monthly alimony payment may not exceed 20 percent of the payor's monthly average net income over the last 3 years of the marriage.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
