

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 Children, Families, and Elder Affairs Committee

BILL: SB 1416

INTRODUCER: Senator Diaz de la Portilla

SUBJECT: Alimony

DATE: March 14, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Jameson	CF	Favorable
2.			JU	
3.				
4.				
5.				
6.				

I. Summary:

Senate Bill 1416 authorizes a court to consider the existence of a supportive relationship between an obligee and a person who is not related to the obligee and with whom the obligee resides when determining the initial award of alimony in a dissolution of marriage proceeding.

This bill substantially amends the following section of the Florida Statutes: 61.08.

II. Present Situation:

Alimony

Under Florida law, in a dissolution of marriage proceeding, the court may grant alimony to either party, either to balance an inequitable property division or to ensure support to a financially dependent spouse.¹ Alimony is based primarily on need and ability to pay, so an alimony award is not appropriate when the requesting spouse has no need for support or when the paying spouse does not have the ability to pay.²

In determining a proper award of alimony, the court is required to consider all relevant factors including:

- The standard of living established during the marriage;

¹ Section 61.08(1), F.S. See also, Victoria Ho & Jennifer Johnson, *Overview of Florida Alimony Law*, 78 Fla. Bar J. 71 (October 2004).

² See *Schlagel v. Schlagel*, 973 So.2d 672, 676 (Fla. 2d DCA 2008). See also, Victoria Ho & Jennifer Johnson, *Overview of Florida Alimony Law*, 78 Fla. Bar J. 71 (October 2004).

- The duration of the marriage;³
- The age, physical, and emotional condition of each party;
- The financial resources and liabilities of each party, both marital and nonmarital;
- If applicable, the time necessary for either party to acquire the education or training necessary for the party to find employment;
- Each party's contribution to the marriage, including, but not limited to, homemaking services, child care, education, and career building of the other party; and
- All sources of income available to either party.⁴

The court may consider any other factor necessary to do equity and justice between the parties,⁵ and may order that the alimony be secured with life insurance or other assets.

Alimony may be temporary or permanent, paid periodically or in a lump sum or both.⁶ Lump sum alimony may take the form of "bridge-the-gap" alimony, which is intended only for short-term assistance with legitimate, identifiable short-term needs, or rehabilitative alimony, which requires the party seeking support to provide the court with a rehabilitative plan including the purpose of the rehabilitation, the areas in which rehabilitation is needed, and the actual amount of money necessary for rehabilitation. Lump sum alimony may be paid in periodic payments.⁷

Modification of Alimony

Section 61.14(1)(b), F.S., provides that the court may reduce or terminate an award of alimony if it finds 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 and who is not related by consanguinity or affinity."⁸ The burden of proving, by a preponderance of the evidence, that a supportive relationship exists is placed upon the obligor.

In determining whether an existing award of alimony should be reduced or terminated because of an alleged "supportive relationship" the court must consider the following factors with respect to the nature and extent of the relationship:

- Whether the obligee and the other person hold themselves out as a married couple;
- The length of time that the obligee has resided with the other person in a permanent place;
- The extent to which the obligee and other person have combined their assets or otherwise demonstrated financial interdependence;
- The extent to which either the obligee or the other person supports each other;

³ In a long-term marriage, there is a presumption in favor of permanent alimony. *See Schlagel v. Schlagel*, 973 So.2d 672, 676 (Fla. 2d DCA 2008). The definition of a long-term marriage is not settled, although several courts have held that seventeen years or longer is long-term. *See Hill v. Hooten*, 776 So.2d 1004, 1007 (Fla. 5th DCA 2001). *See also, Zeigler v. Zeigler*, 635 So.2d 50, 54 (Fla. 1st DCA 1994), holding that a marriage of 13.5 years is "neither a short-term nor a long-term marriage, but rather falls in the 'grey area' where a determination of entitlement to permanent alimony will be decided based upon a review of the other pertinent factors without the benefit of a presumption in favor or against permanent alimony."

⁴ Section 61.08(2), F.S.

⁵ *Id.*

⁶ Section 61.08(1), F.S.

⁷ Victoria Ho & Jennifer Johnson, *Overview of Florida Alimony Law*, 78 Fla. Bar J. 71 (October 2004).

⁸ Consanguinity means "the relationship of persons of the same blood or origin." Affinity means "relationship by marriage." *Black's Law Dictionary* (8th ed. 2004).

- The extent to which the obligee or the other person has performed valuable services for the other's company or employer;
- Whether the obligee and the other person have worked together to create or enhance anything of value;
- Whether the obligee and the other person have made a joint purchase of real or personal property;
- Whether the obligee and the other person have an express or implied agreement regarding property sharing and support; and
- Whether the obligee and the other person have supported the children of one another.⁹

The existence of a conjugal relationship,¹⁰ although relevant to the court's determination, is not necessary for the court to find that a supportive relationship exists and that modification of alimony is, therefore, warranted.¹¹

The statute provides that it does not abrogate the requirement that every marriage in the state be solemnized under a license, and does not recognize a common law marriage¹² or de facto marriage¹³ as valid, but rather only recognizes that certain relationships provide economic support equivalent to marriage and that alimony may be reduced or terminated when such a relationship exists.¹⁴

III. Effect of Proposed Changes:

The bill amends s. 61.08(2), F.S., including among the factors a court must consider when determining an *initial* award of alimony whether there exists a supportive relationship between an obligee and a person who is not related by consanguinity or affinity and with whom the obligee resides, as provided in s. 61.14(1)(b)2, F.S., which lists the factors to be considered by a court in determining whether an existing award of alimony should be reduced or terminated because of the existence of an alleged supportive relationship.

The bill provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁹ Section 61.14(1)(b)2, F.S.

¹⁰ Conjugal is defined as "relating to the married state, often with an implied emphasis on sexual relations between spouses." *Black's Law Dictionary* (8th ed. 2004).

¹¹ Section 61.14(1)(b)3, F.S.

¹² A common-law marriage is defined as "a marriage that takes legal effect, without license or ceremony, when two people capable of marrying live together as husband and wife, intend to be married, and hold themselves out to others as a married couple." *Black's Law Dictionary* (8th ed. 2004).

¹³ A de facto marriage is defined as "a marriage that, despite the parties' living as husband and wife, is defective for some reason." *Black's Law Dictionary* (8th ed. 2004).

¹⁴ *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The bill may lower or preclude alimony awards that otherwise might be awarded upon dissolution of marriage.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

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.