

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 453 Alimony

SPONSOR(S): Gibbons

TIED BILLS: IDEN./SIM. BILLS: SB 1416

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Constitution &amp; Civil Law</u>	<u>6 Y, 2 N</u>	<u>Davis</u>	<u>Birtman</u>
2) <u>Safety &amp; Security Council</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
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SUMMARY ANALYSIS

The bill allows the court to consider the existence of a supportive relationship between an obligee and a person who is not related by consanguinity or affinity and with whom the obligee resides when determining the initial award of alimony.

The bill does not appear to have a fiscal impact on state or local governments.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Promote Personal Responsibility:** The bill will limit the ability of an ex-spouse to collect alimony when the ex-spouse is found to be living in a supportive relationship with a person the ex-spouse is not related to by consanguinity or affinity.

#### B. EFFECT OF PROPOSED CHANGES:

##### Alimony Law

Alimony is generally used to provide support to a financially dependent spouse.<sup>1</sup> The primary basis for alimony is whether there is need and ability to pay; alimony is not appropriate when the requesting spouse has no need for support or when the other spouse does not have the ability to pay.<sup>2</sup> Before a court can make an award of alimony, equitable distribution of the former spouse's assets must occur.<sup>3</sup> The court then has several options with regard to awarding alimony, including permanent periodic alimony, lump-sum alimony, "bridge-the-gap alimony, rehabilitative alimony, a combination of several different types of alimony, or no alimony at all.<sup>4</sup>

Permanent periodic alimony is usually awarded to meet the needs of a dependent spouse, although this form of alimony can also be used to balance any inequities that might result from the property division of the final judgment.<sup>5</sup> Lump sum alimony can also be used to remedy any inequity that remains as a result of the final division of property.<sup>6</sup> Lump sum alimony can also be accomplished through periodic payments.<sup>7</sup>

In a long-term marriage, there is a presumption in favor of permanent alimony, regardless of the spouse's age or ability to earn income, although the district courts of Florida do not agree as to what constitutes a long-term marriage.<sup>8</sup> Generally, however, a marriage of seventeen years or longer is considered long-term.<sup>9</sup>

Lump sum alimony may also take the form of "bridge-the-gap" alimony, which is alimony intended only for short-term assistance with legitimate, identifiable short-term needs.<sup>10</sup> This form of alimony typically lasts no longer than two years.<sup>11</sup> To receive an award of rehabilitative alimony, the party seeking

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<sup>1</sup> Victoria Ho & Jennifer Johnson, *Overview of Florida Alimony Law*, 78-OCT Fla. B. J. 71, 71 (2004).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 72.

<sup>8</sup> *Young v. Young*, 677 So. 2d 1301 (Fla. 5th D.C.A. 1996).

<sup>9</sup> *Cruz v. Cruz*, 574 So. 2d 1117 (Fla. 3d D.C.A. 1990).

<sup>10</sup> *Borchard v. Borchard*, 730 So.2d 748, 753 (Fla. 2<sup>nd</sup> DCA 1999).

<sup>11</sup> *Borchard v. Borchard*, 730 So.2d 748 (Fla. 2<sup>nd</sup> DCA 1999).

support must 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.<sup>12</sup>

Section 61.08(1), F.S., provides that:

In a proceeding for dissolution of marriage, the court may grant alimony to either party, which alimony may be rehabilitative or permanent in nature. In any award of alimony, the court may order periodic payments or payments in lump sum or both. The court may consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded.

In awarding alimony, the trial court is given broad discretion to consider any factor “necessary to do equity and justice between the parties.”<sup>13</sup> The trial court is to consider “all relevant economic factors” when determining a proper award of maintenance or alimony.<sup>14</sup> These factors include:

- The standard of living established during the marriage.
- The duration of the marriage.
- The age, physical, and emotional condition of each party.
- The financial resources of each party, both marital and nonmarital, and the liabilities of each of them.
- 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.
- All sources of income available to either party.

In addition to the factors listed in s. 61.08(2), F.S., the court may consider any other factor necessary to do equity and justice between the parties.<sup>15</sup>

### **Reducing or Terminating Alimony**

Current law in s. 61.14(1)(b), F.S., provides that the “court may reduce or terminate an award of alimony upon specific written findings by the court 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.” The burden of proving, by a preponderance of the evidence, that a supportive relationship exists is placed upon the obligor.

In determining whether the alleged de facto marriage should result in the reduction or termination of an existing award of alimony, the court is directed to “elicit the nature and extent of the relationship in question.”<sup>16</sup>

**Section 61.14(1)(b)2., F.S.**, requires the court to consider the following non-exclusive list of circumstances, in determining the relationship of an obligee to another person in determining whether to modify an existing award of alimony:

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<sup>12</sup> Id.

<sup>13</sup> Section 61.08(2), F.S.

<sup>14</sup> Id.

<sup>15</sup> Section 61.08(2), F.S.

<sup>16</sup> Section 61.14(1)(b)2., F.S.

- Whether the obligee and the other person hold themselves out as a married couple, engaging in conduct such as using the same last name and a common mailing address, referring to each other as “my husband” or “my wife,” or “otherwise conducting themselves in a manner that evidences a permanent supportive relationship.
- The length of time that the obligee has resided in a permanent place of abode with another person who is not related by blood or affinity.
- The extent to which the obligee and other person have combined their assets or income or have otherwise demonstrated financial interdependence.
- The extent to which either the obligee or the other person supports the other, either in whole or in part.
- “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 other person have worked together to create or enhance anything of value”.
- Whether the obligee and other person have made a joint purchase of real or personal property.
- Whether there is evidence to show that the obligee and the other person have an express or implied agreement regarding property sharing and support.
- Whether the obligee and the other person have supported the children of one another, regardless of any legal obligation to do so.

The statute provides that the statutory authorization of a reduction or termination of alimony due to the existence of a supportive relationship does not abrogate the requirements that every marriage in the state be solemnized under a license, does not recognize a common law marriage as valid, and does not recognize a de facto marriage.<sup>17</sup>

“De facto marriage” is defined as “[a] marriage in which the parties live together as husband and wife under color of validity but which is defective for reasons of form, etc.”<sup>18</sup> Common-law marriage is “[a] marriage that takes legal effect, without license or ceremony, when a couple live together as husband and wife, intend to be married, and hold themselves out to others as a married couple.”<sup>19</sup>

### **The Bill**

The bill requires the court to consider and make a finding of fact concerning the existence of a supportive relationship as defined in s. 61.14(1)(b)2., F.S., between an obligee and a person who is not related by consanguinity or affinity and with whom the obligee resides when determining a initial award of alimony or maintenance.

Essentially the bill is applying the current standard used in modifying alimony and applying it to the initial awarding of alimony.

### C. SECTION DIRECTORY:

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<sup>17</sup> Section 61.14(1)(b)3., F.S.

<sup>18</sup> BLACK’S LAW DICTIONARY, 375 (5<sup>th</sup> ed. 1979).

<sup>19</sup> BLACK’S LAW DICTIONARY, 251 (5<sup>th</sup> ed. 1979).

Section 1: Amends s. 61.08 F.S., permitting consideration of the existence of a supportive relationship meeting specified criteria as a factor in determining an initial award of alimony or maintenance.

Section 2: Provides an effective date of July 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raises revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**