

FINAL BILL ANALYSIS

BILL #: CS/CS/CS/HB 1111

FINAL HOUSE FLOOR ACTION:

117 Y's 0 N's

SPONSOR: Rep. Mayfield

GOVERNOR'S ACTION: Approved

COMPANION BILLS: CS/SB 1622

SUMMARY ANALYSIS

CS/CS/CS/HB 1111 passed the House on May 2, 2011, and subsequently passed the Senate on May 6, 2011. The bill was approved by the Governor on May 31, 2011, chapter 2011-92, Laws of Florida. Sections 1-78 of the bill are effective upon the earlier of 90 days following Congress amending 42 U.S.C. s. 666(f) to allow or require states to adopt the 2008 version of the Uniform Interstate Family Support Act, or 90 days following the state obtaining a waiver of its state plan requirement under Title IV-D of the Social Security Act. Sections 79-80 of the bill are effective July 1, 2011.

This bill conforms Florida's Uniform Interstate Family Support Act (UIFSA) to the current version of UIFSA, which was amended in 2008. The 2008 UIFSA amendments were made to fully incorporate the provisions promulgated by the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague Convention) that impact existing state laws, including guidelines for the registration, recognition, enforcement, and modification of foreign support orders from other countries that are parties to the Hague Convention. Florida law currently has uniform standards for interstate enforcement of support orders, but not international enforcement.

Alimony is used to provide financial support to a financially dependent former spouse. The primary basis for determining 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. By statute, there are four different types of alimony: bridge-the-gap alimony, rehabilitative alimony, durational alimony, and permanent alimony. The bill provides that a court must consider the four types of alimony listed by statute when deciding which type of alimony is appropriate.

By statute, a marriage is either short-term, moderate-term, or long-term based on the length of the marriage. The length of the marriage is one factor a court considers when determining which type of alimony is appropriate. Current law provides that only short-term and moderate-term marriages may have an award of durational alimony. The bill provides that a long-term marriage may have an award of durational alimony. The bill also provides that an alimony award may not leave the payor with significantly less net income than the net income of the recipient unless there are written findings of exceptional circumstances.

This bill may have a conditional fiscal impact on state government. See fiscal comments. This bill does not appear to have a fiscal impact on local governments.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Hague Convention¹

With the rise of globalization, many families form and extend across national boundaries. In the United States, family law has traditionally been a subject of local or state concern, generating significant conflict of laws problems between states. Global movement further complicates the regulation of family relationships. The United States has a large and mobile population, with an estimated 6.6 million private citizens living abroad, and many of these Americans will face challenging international family law problems. National and local laws are inadequate to manage transnational family issues, especially in cases of international adoption or parental abduction but also in ordinary custody, child support or child protection matters. As the scale and frequency of global movement has increased, family and children's issues have also taken on a new relevance in foreign relations. The Hague Conference on Private International Law (the Conference) has responded to the new realities of globalized families with a series of treaties that foster international cooperation in cases involving children. The Conference is an intergovernmental organization, funded and governed by its members.² Its traditional purpose has been to work for the progressive unification of the rules of private international law, including family and children's law. The United States signed the 2007 Hague Convention on the International Recovery of Child Support and Other Family Maintenance (Hague Convention), and implementing legislation is proceeding toward adoption.³

Uniform Interstate Family Support Act

The Uniform Interstate Family Support Act (UIFSA) was originally enacted in 1996 (and amended subsequently) to address complications in enforcing child support orders across state lines.⁴ In response to a congressional mandate,⁵ all states enacted the original 1996 version of UIFSA. After the United States signed the Hague Convention in 2007, establishing numerous provisions of uniform procedure for processing international child support cases, the National Conference of Commissioners on Uniform State Laws (NCCUSL) amended the 2001 version of UIFSA, which serves as the implementing language for the Hague Convention throughout the states.⁶ The UIFSA provides universal and uniform rules for the enforcement of family support orders by:

¹ Background on the Hague Convention was taken from the article by Ann Laquer Estin, *Families Across Borders: The Hague Children's Conventions and the Case for International Family Law in the United States*, 62 FLA. L. REV. 47 (2010).

² The Conference was founded as a permanent organization in 1955. Statute of the Hague Conference on Private International Law, July 15, 1955, T.I.A.S. No. 5710, 2997 U.N.T.S. 123.

³ *Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance*, reprinted in 47 I.L.M. (2008).

⁴ National Conference of Commissioners of Uniform State Laws, *2008 Amendments to the Uniform Interstate Family Support Act*, 2 (2008).

⁵ 42 U.S.C. s. 666.

⁶ National Conference of Commissioners of Uniform State Laws, *Interstate Family Support Act Amendments (2008) Summary*, available at [http://www.nccusl.org/ActSummary.aspx?title=Interstate Family Support Act Amendments \(2008\)](http://www.nccusl.org/ActSummary.aspx?title=Interstate%20Family%20Support%20Act%20Amendments%20(2008)) (last visited Mar. 16, 2011).

- Setting jurisdictional standards for state courts;
- Determining the basis for a state to exercise continuing exclusive jurisdiction over child support proceedings;
- Establishing rules to determine which state will issue the controlling order if there are proceedings in multiple jurisdictions; and
- Providing rules to modify or refuse to modify another state's child support order.⁷

The 2008 UIFSA amendments were made to fully incorporate the provisions of the Hague Convention that impact existing state laws, including guidelines for the registration, recognition, enforcement, and modification of foreign support orders from other countries that are parties to the Hague Convention.⁸

State Adoption of Amended UIFSA

Federal implementing legislation pending approval by Congress will require that the 2008 amended version of UIFSA be enacted in every jurisdiction as a condition for federal funds for state child support programs.⁹ To date, Maine, Tennessee, Wisconsin, North Dakota and Nevada are the only states that have enacted the current version of UIFSA.¹⁰ In addition to Florida, several states have introduced UIFSA enacting legislation this year. Those states are: Hawaii, Missouri, New Mexico, Utah, and Washington.¹¹

Florida's UIFSA Statute

Along with the rest of the states, Florida enacted the original 1996 version of the UIFSA, which was codified in ch. 88, F.S., and remains current law. Its provisions provide the infrastructure to enforce child support laws uniformly among states to prevent parents from crossing state lines to avoid their support obligations. Some of the main concepts of UIFSA, as codified under Florida law, are outlined below.

Jurisdiction

Personal jurisdiction is the power of a court over the person of a defendant in contrast to the jurisdiction of a court over a person's property or property interest.¹² Under UIFSA, when a Florida tribunal is exercising personal jurisdiction over a nonresident, that tribunal may apply special rules of evidence to receive evidence from another state and assistance with discovery to obtain discovery through a tribunal of another state.¹³ There are also provisions for Florida courts to exercise jurisdiction to issue a

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*; see also Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, Treaty Doc. 110-21, Exec. Rept. 111-2, 111th Congress 2d. Session (Jan. 22, 2010).

¹⁰ Uniform Law Commission, *Interstate Family Support Act Amendments (2008): Enactment Status Map*, available at [http://www.nccusl.org/Act.aspx?title=Interstate%20Family%20Support%20Act%20Amendments%20\(2008\)](http://www.nccusl.org/Act.aspx?title=Interstate%20Family%20Support%20Act%20Amendments%20(2008)) (last visited Mar. 16, 2011).

¹¹ *Id.*

¹² BLACK'S LAW DICTIONARY 1144 (7th ed. 1990).

¹³ Sections 88.2011, 88.2021, 88.3161, and 88.3181, F.S.

support order during simultaneous proceedings in another state.¹⁴ If support orders are issued by more than one state, there is a process to determine which one controls.¹⁵

General Application

Initiating tribunals have the duty to forward copies of the petition to establish a support order and its accompanying documents to the responding tribunal.¹⁶ When acting as a responding tribunal, courts are directed to apply the procedural and substantive law generally applicable to similar proceedings originating in that state¹⁷ and determine the duty of support and the amount payable in accordance with the law and support guidelines of that state.¹⁸

Establishment of Support Order

If a support order entitled to recognition under UIFSA has not been issued, a responding tribunal may issue a support order under certain conditions.¹⁹

Direct Enforcement of Income Withholding

An obligor is an individual who owes a duty of support and is liable under a support order.²⁰ An obligor may have his or her income withheld in order to make up for unpaid support. Employers are required to treat income-withholding orders from another state as if it had been issued by the state where he or she lives.²¹

Modification

After a child support order has been issued in one state, another state has the ability to modify the order if certain conditions are met.²²

Determination of Parentage

A state court may serve as an initiating or responding tribunal in a proceeding to determine whether a petitioner or a respondent is the parent of a particular child.²³

¹⁴ Section 88.2041, F.S.

¹⁵ Section 88.2071, F.S.

¹⁶ Section 88.3041, F.S.

¹⁷ Section 88.3031(1), F.S.

¹⁸ Section 88.3031(2), F.S.

¹⁹ Section 88.4011, F.S.

²⁰ Section 88.1011(13)(a)-(c), F.S.

²¹ Section 88.50211, F.S.

²² Section 88.6111, F.S.

²³ Section 88.7011, F.S.

Grounds for Rendition

The Governor has the ability to demand that the Governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to pay child support.²⁴

Effect of the Bill: UIFSA

This bill conforms Florida's Uniform Interstate Family Support Act (UIFSA) under ch. 88, F.S., to the current version of UIFSA, which was amended in 2008 and is pending ratification in Congress to be adopted by each state. The 2008 UIFSA amendments were made to fully incorporate the provisions promulgated by the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague Convention) that impact existing state laws, including guidelines for the registration, recognition, enforcement, and modification of foreign support orders from other countries that are parties to the Hague Convention. Florida law accounts for interstate enforcement of support orders, but not international enforcement.

The bill provides that the amendments to Florida's UIFSA are effective upon Congress amending 42 U.S.C. s. 666(f) to allow or require states to adopt the 2008 version of the Uniform Interstate Family Support Act, or 90 days following the state obtaining a waiver of its state plan requirement under Title IV-1920 D of the Social Security Act.

Alimony

Alimony is used to provide financial support to a financially dependent former spouse.²⁵ In Florida, the primary basis for determining 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.²⁶ Before a court can make an award of alimony, equitable distribution of the former spouse's assets must occur.²⁷

Section 61.08(2), F.S., provides factors that a court must consider in awarding alimony in a dissolution of marriage case. These factors include:

- The standard of living established during the marriage;
- The duration of the marriage;
- The age and the physical and emotional condition of each party;
- The financial resources of each party, including the nonmarital and the marital assets and liabilities distributed to each;
- 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;

²⁴ Section 88.8011, F.S.

²⁵ Victoria Ho & Jennifer Johnson, *Overview of Florida Alimony Law*, 78 Fla.B.J. 71, 71 (Oct. 2004).

²⁶ *Id.*

²⁷ *Id.*

- The contribution of each party to the marriage, including, but not limited, services rendered in homemaking, child care, education, and career building of the other party;
- The responsibilities each party will have with regard to any minor children they have in common;
- 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;
- All sources of income available to either party, including income available to either party through investments of any asset held by that party; and
- Any other factor necessary to do equity and justice between the parties.

In addition, the trial court is given broad discretion to consider any other factor necessary to do equity and justice between the parties.²⁸ A court may also consider the adultery of either party and the circumstances surrounding that adultery in determining an award of alimony.²⁹

For purposes of determining alimony, there is a rebuttable presumption that:

- A short-term marriage is a marriage having a duration of less than seven years;
- A moderate-term marriage is a marriage having a duration of greater than seven years but less than seventeen years; and
- A long-term marriage is a marriage having a duration of seventeen years or greater.³⁰

Florida law provides for four types of alimony; bridge-the-gap alimony,³¹ rehabilitative alimony,³² durational alimony,³³ and permanent alimony.³⁴

Bridge-the-Gap Alimony

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. Bridge-the-gap alimony is designed to assist a party with legitimate identifiable short-term needs, and the length of an award may not exceed 2 years. An award of bridge-the-gap alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award of bridge-the-gap alimony is not modifiable in amount or duration.³⁵

Rehabilitative Alimony

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,

²⁸ Section 61.08(2), F.S.

²⁹ Section 61.08(1), F.S.

³⁰ Section 61.08(4), F.S.

³¹ Section 61.08(5), F.S.

³² Section 61.08(6), F.S.

³³ Section 61.08(7), F.S.

³⁴ Section 61.08(8), F.S.

³⁵ Section 60.08(5), F.S.

training, or work experience necessary to develop appropriate employment skills or credentials.³⁶ In order to award rehabilitative alimony, there must be a specific and defined rehabilitative plan which shall be included as a part of any order awarding rehabilitative alimony.³⁷ An award of rehabilitative alimony may be modified or terminated in accordance with s. 61.14, F.S., based upon a substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan.³⁸

Durational Alimony

Durational alimony may be awarded when 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. An award of durational alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. The amount of an award of durational alimony may be modified or terminated based upon a substantial change in circumstances in accordance with s. 61.14, F.S. However, the length of an award of durational alimony may not be modified except under exceptional circumstances and may not exceed the length of the marriage.³⁹

Effect of the Bill: Durational Alimony

The bill amends s. 61.08(7), F.S., to provide that durational alimony may be awarded after a marriage of long duration if there no ongoing need for support on a permanent basis.

Permanent Alimony

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. Permanent alimony may be awarded following a marriage of long duration, following a marriage of moderate duration if such an award is appropriate upon consideration of the factors set forth in subsection (2), or following a marriage of short duration if there are exceptional circumstances. An award of permanent alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award may be modified or terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship in accordance with s. 61.14, F.S.⁴⁰

Effect of the Bill: Permanent Alimony

The bill amends s. 61.08(8), F.S., to require written findings of exceptional circumstances for the award of permanent alimony for a marriage of short duration. The bill provides that the awarding of permanent alimony for a marriage of moderate duration must be based upon clear and convincing evidence. The

³⁶ Section 60.08(6)(a), F.S.

³⁷ Section 60.08(6)(b), F.S.

³⁸ Section 60.08(6)(c), F.S.

³⁹ Section 60.08(7), F.S.

⁴⁰ See s. 61.14, F.S., Enforcement and modification of support, maintenance, or alimony agreements or orders.

bill also provides that in awarding permanent alimony, the court must include a finding that no other form of alimony is fair and reasonable under the circumstances of the party.

Effect of the Bill: Limit on Alimony

The bill creates s. 61.08(9), F.S., to provide that an alimony award may not leave the payor with significantly less net income than the net income of the recipient unless there are written findings of exceptional circumstances.

Effect of the Bill: Effective Date and Applicability for Alimony

The bill provides that the amendments to s. 61.08, F.S., apply to all initial awards of alimony entered after the effective date of the act and to all modifications of those initial alimony.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the Department of Revenue (DOR or department), the bill will create an operational workload because DOR will have to prepare and submit a formal request for an exemption from Federal Title IV-D requirements to the Federal Office of Child Support Enforcement. The department will also have to revise its procedures for interstate case processing and retrain staff. The bill may also affect DOR's IV-D automated system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may have a positive fiscal impact on Florida residents who are owed child support from foreign obligors who currently face great difficulties in collecting.

D. FISCAL COMMENTS:

The Department of Revenue reports that amendments to UIFSA (such as this bill) can result in the state being out of compliance with federal law and losing federal funding. However, according to DOR, the Federal Office of Child Support Enforcement (OCSE) has stated that if a state adopts UIFSA, as amended in 2008, “verbatim” and with a provision that the effective date is delayed until the Hague Convention is ratified, then OCSE will approve the state’s IV-D state plan.⁴¹ Therefore the state would not lose federal funding by passing this law.

⁴¹ Office of Child Support Enforcement, Administration for Children and Families, U.S. Dep’t of Health and Human Servs., *Dear Colleague Letter DCL-08-41, Subject: Uniform Interstate Family Support Act 2008*, available at <http://www.acf.hhs.gov/programs/cse/pol/DCL/2008/dcl-08-41.htm> (last visited Mar. 24, 2011).