

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 549 Alimony  
**SPONSOR(S):** Civil Justice Subcommittee; Workman  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 748

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 2 N, As CS	Caridad	Bond
2) Judiciary Committee			

### SUMMARY ANALYSIS

Alimony provides financial support to a financially dependent former spouse. The primary basis for determining alimony is whether there is need and ability to pay. There are four different types of alimony: bridge-the-gap alimony, rehabilitative alimony, durational alimony, and permanent alimony.

A court may grant a request to modify alimony where there is a change in circumstances or the financial ability of the parties. It may also reduce or terminate an award of alimony based on its specific written findings that the spouse receiving alimony has entered into a supportive relationship with another person.

The bill amends current law on alimony and divorce to:

- Limit suit money.
- Change the term "permanent alimony" to "long-term" alimony.
- Limit the types of alimony that may be awarded concurrently.
- Remove the statutory authority of a court to consider adultery when determining alimony.
- Require written findings justifying factors regarding an alimony award.
- Modify the factors used in determining alimony.
- Create a presumption that the parties will have a lower standard of living after divorce.
- Require that the cost of security for an alimony award be deducted from the award.
- Modify the line between moderate-term and long-term marriage from 17 to 20 years.
- Create a presumption in favor of durational alimony over long-term alimony.
- Require that an alimony award may not require the person paying the award to have a lower standard of living than the person receiving alimony.
- Require retroactive modification or termination of alimony upon proof of a supportive relationship if the obligee denies the relationship or any material facts related to the relationship.
- Create a rebuttable presumption that alimony terminates upon retirement of the obligor, which may be overcome by a written finding of exceptional circumstances.
- Create a presumptive retirement age of 67.
- Prohibit factoring the income or assets of a new spouse of the obligor.
- Prohibit modification based solely on a reduction in child support.
- Require a person receiving alimony to maximize the potential for rehabilitation.
- Allow bifurcation of a case if the case is pending more than 180 days.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Alimony - In General**

Alimony provides financial support to a financially dependent former spouse.<sup>1</sup> 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.<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>

Section 61.08(2), F.S., provides factors that a court must consider in awarding alimony. 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;
- 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.

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.<sup>4</sup>

Florida law provides for four types of alimony; bridge-the-gap alimony,<sup>5</sup> rehabilitative alimony,<sup>6</sup> durational alimony,<sup>7</sup> and permanent alimony.<sup>8</sup>

- 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.<sup>9</sup>

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

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

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

<sup>4</sup> Section 61.08(4), F.S.

<sup>5</sup> Section 61.08(5), F.S.

<sup>6</sup> Section 61.08(6), F.S.

<sup>7</sup> Section 61.08(7), F.S.

<sup>8</sup> Section 61.08(8), F.S.

<sup>9</sup> Section 60.08(5), F.S.

- 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 employment skills or credentials.<sup>10</sup>
- 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.
- 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 if such an award is appropriate upon consideration of the factors set forth in s. 61.08(2), following a marriage of moderate duration if such an award is appropriate based upon clear and convincing evidence after consideration of the factors set forth in s. 61.08(2), or following a marriage of short duration if there are written findings of exceptional circumstances. In awarding permanent alimony, the court shall include a finding that no other form of alimony is fair and reasonable under the circumstances of the parties.<sup>11</sup>

The bill changes divorce and alimony laws as follows:

### **Alimony Pendente Lite and Suit Money**

Alimony Pendente Lite is temporary alimony awarded to a spouse during pendency of a dissolution of marriage action to furnish said spouse the means of living so he or she may not become a charge upon the state while the case is being adjudicated.<sup>12</sup> Suit money is a spouse's payment to the other spouse to cover his or her reasonable attorney's fees in a divorce action.<sup>13</sup> Current law provides that in every proceeding for dissolution of marriage, a party may claim alimony and suit money. If a court grants a request for alimony or suit money, the only restriction to such a determination is that the award and fees be a reasonable sum.

The bill provides that suit money may not exceed either \$7,000 or the reasonable value of the representation of the party paying the fee, whichever is greater.

### **Award of Multiple Types of Alimony**

Current law at s. 61.08(1), F.S., provides that a court may award multiple forms of alimony. This bill limits awards of multiple forms of alimony to combination of bridge-the-gap and rehabilitative alimony.

### **Adultery**

Section 61.08(1), F.S., provides that a court may also consider the adultery of either party and the circumstances surrounding that adultery in determining an award of alimony.<sup>14</sup> However, adultery is not a bar to entitlement to alimony<sup>15</sup> and marital misconduct may not be used as a basis for alimony unless the misconduct causes a depletion of marital assets.<sup>16</sup> This bill deletes the statutory authorization for a court to consider adultery by either spouse in determining the amount of alimony.

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<sup>10</sup> Section 60.08(6)(a), F.S.

<sup>11</sup> Section 61.08(8), F.S.

<sup>12</sup> See *Grace v. Grace*, 162 So.2d 314, 320 (Fla. 1st DCA 1964).

<sup>13</sup> Black's Law Dictionary (9th ed. 2009).

<sup>14</sup> Section 61.08(1), F.S.

<sup>15</sup> See *Coltea v. Coltea*, 856 So.2d 1047 (Fla. 4th DCA).

<sup>16</sup> See *Noah v. Noah*, 491 So.2d 1124 (Fla. 1986) (holding that the trial court erred in distributing virtually all assets to the wife on the basis of her husband's adultery where there was no evidence that the adultery depleted the family resources or that the emotional devastation visited on the wife translated into her having a greater financial need).

## **Alimony Awards and Written Findings**

This bill requires that a court awarding alimony must make written findings regarding:

- The need for and ability to pay alimony.
- Application of the factors listed in s. 61.08(2), F.S.
- Additional equitable factors relied upon by the court in making an alimony award.
- The relative incomes and standards of living of the parties.
- Rehabilitation efforts and imputation of income to the spouse during and after rehabilitation.

## **Modification of Factors Regarding Alimony**

Section 61.08(2), F.S., lists 10 factors that a court must consider when determining any alimony award (see above for comprehensive list of the factors). This bill amends the factors as follows:

- The standard of living factor is amended to specify that the standard of living of each party must be considered.
- The financial resources factor is amended to delete the ability of the court to look to nonmarital assets.
- The tax treatment factor is amended to require that an alimony award must be tax deductible by the obligor and taxable to the recipient; however, an award for the cost of the obligee's education or training necessary to establishing the capacity for self support need not be deductible by the obligor.
- The sources of income factor is amended to limit the court to only considering income from assets acquired during the marriage.
- The bill adds a new factor to require that a court must consider the standard of living of each party after the application of the alimony award. In addition, the bill creates a rebuttable presumption that both parties will have a lower standard of living after divorce than the standard of living enjoyed during the marriage.

## **Security for an Alimony Award**

Section 61.08(3), F.S., provides that the court may protect an alimony award by requiring the obligor to purchase life insurance or post a bond. This bill provides that the cost of life insurance or a bond must be deducted from the alimony award, provides that any requirement of insurance or a bond may be modified separately, and specifies that a requirement for life insurance or a bond ends when the term of alimony ends.

## **Length of Marriage**

Section 61.08(4), F.S., utilizes the length of the marriage in years to determine whether the marriage is considered short-term, moderate term, or long-term. The types of alimony available are dependent upon which of these categories applies. This bill:

- Removes the language creating a legal presumption, thereby making the length in years determinative (that is, eliminating judicial discretion).
- Redefines the line between moderate-term marriage and long-term marriage from 17 to 20 years.

## **Changes to Durational Alimony**

The bill:

- Creates a presumption in favor of durational alimony over long-term alimony.
- Provides that durational alimony is not authorized following a short-term marriage.

- Requires modification or termination upon a substantial change in circumstances or upon the existence of a supportive relationship.
- Removes the requirement that a party prove "exceptional circumstances" in order to modify the alimony award. halcyon

### **Changes to Permanent Alimony**

Permanent alimony continues until the death of the obligor, death of the obligee, remarriage of the obligee, or termination by a court. This bill changes the term "permanent alimony" to "long-term" alimony. The bill also:

- Changes the requirement that long-term alimony provide for the needs and necessities of life as they were established during the marriage, to a requirement that such alimony provide for the needs and necessities of life.
- Deletes the requirement that the court must find that no other form of alimony is fair and reasonable.
- Requires a court to modify the award based on a substantial change in circumstances.
- Provides that in awarding long-term alimony, the court must include a finding that no other form of alimony will provide for the needs and necessities of life of the recipient and that no other form of alimony is fair and reasonable under the circumstances of the parties.

### **Evaluation of Relative Standards of Living**

Section 61.08(9), F.S., requires 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. This bill amends this provision to provide that an award may not leave the payor with less net income or with a lower standard of living than the recipient. The bill also removes the ability of a court to consider exceptional circumstances. The court must make written findings regarding the relative incomes and standards of living of the parties.

### **Modification of Alimony Based on the Existence of a Supportive Relationship**

A court may grant a request to modify alimony where the moving party shows "a permanent, unanticipated, substantial change in financial circumstances in one or both of the parties."<sup>17</sup> One form of change of circumstances warranting modification of an alimony award is the existence of a supportive relationship. A court may reduce or terminate an award of alimony based on its specific written findings that, since the granting of a divorce and the award of alimony, the spouse receiving alimony, or the obligee, has entered into a supportive relationship with a person with whom he or she resides. Section 61.14(2), F.S., enumerates factors a court must consider when determining whether a supportive relationship exists between the obligee and the individual with whom said former spouse resides (i.e. the extent to which the obligee and the person hold themselves out as a married couple). The spouse paying spousal support, or the obligor, has the burden to prove that a supportive relationship exists.

The bill amends the statutory guidelines regarding enforcement and modification of an alimony award relating to instances where an obligee enters into a supportive relationship following an award of alimony. Current law provides that modification is discretionary, the bill provides that a court must reduce or terminate an award upon specific written findings by the court that a supportive relationship has existed between the obligee and a person with whom the obligee resides.

If the obligee denies or fails to admit any material fact regarding the existence of a supportive relationship when he or she knew or should have known about the material fact, and the obligor subsequently proves the existence of the material fact the court must:

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<sup>17</sup> *Townsend v. Townsend*, 585 So.2d 468 (Fla. 2d DCA 1991).

- Enter an order modifying the alimony award retroactive to the beginning of the supportive relationship;
- Award the obligor a refund of all alimony the obligor actually paid to the obligee from the beginning of the supportive relationship; and
- Award the obligor reasonable costs and attorneys fees incurred in providing the fact.

If the obligee denied the existence of a supportive relationship and the obligor subsequently proves the existence of a supportive relationship, the court must:

- Order termination of the alimony award retroactive to the beginning of the supportive relationship;
- Award the obligor a refund of all the alimony the obligor actually paid to the obligee from the beginning of the supportive relationship; and
- Award to the obligor reasonable costs and attorneys fees incurred in proving the existence of the supportive relationship.

In addition, a court may not reserve jurisdiction to later reinstate alimony when it terminates alimony based on the existence of a supportive relationship.

### **Retirement of the Obligor**

The bill creates a rebuttable presumption that alimony terminates upon retirement of the obligor, which may be overcome by a written finding of exceptional circumstances. The obligor may file a petition for termination or modification of the alimony award effective upon the retirement date. If the presumption is overcome, the court must modify the alimony award based on the circumstances of the parties after retirement of the obligor and the factors set out in s. 61.08(2), F.S. The bill also creates a rebuttable presumption that the normal retirement age is 67.

### **Other Changes Regarding Alimony Awards**

Regarding alimony awards, the bill also requires that:

- If an 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 a modification action regarding such obligor.
- If a court orders alimony payable concurrent with a child support order, the alimony award may not be modified solely because of a later modification or termination of child support payments.
- A court must require a person receiving alimony to maximize the reasonable potential for rehabilitation and impute all income to the obligee that could be reasonably earned both before and after rehabilitation. In addition, it must make written findings concerning the reasonable potential of the obligee for rehabilitation and the amount of income that should be imputed to the obligee.

### **Bifurcation of Divorce Action**

Bifurcation is a split procedure in which the court grants a dissolution of marriage and reserves jurisdiction regarding property settlement, debts, alimony and child support. A party might petition the court for bifurcation of a case where the party would like to expedite the divorce so he or she can remarry. Current case law discourages the use of bifurcation. Specifically, in *Cloughton v. Cloughton*, the Florida Supreme Court explained:

[W]e believe trial judges should avoid this split procedure. The general law and our procedural rules at both the trial and appellate levels are designed for one final judgment and one appeal. Splitting the process can cause multiple legal and procedural problems which result in delay and additional expense to the litigants. This split procedure should be used only when it is clearly necessary for the best

interests of the parties or their children. The convenience of one of the parties for an early remarriage does not justify its use.<sup>18</sup>

The bill provides that a court must grant a request to bifurcate the divorce, thus dissolving the marriage and reserving jurisdiction to determine all issues other than dissolution, if more than 180 days have elapsed since the action of dissolution was filed.

**B. SECTION DIRECTORY:**

Section 1 amends s. 61.071, F.S., regarding suit money.

Section 2 amends s. 61.08, F.S., relating to alimony.

Section 3 amends s. 61.14, F.S., regarding supportive relationships.

Section 4 amends s. 61.19, F.S., relating to bifurcation.

Section 5 provides an effective date of July 1, 2012.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

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

The bill does not appear to have any direct economic impact on the private sector.

**D. FISCAL COMMENTS:**

This bill may increase the courts' workload in dissolution of marriage cases. For instance, the bill requires written findings for determinations of alimony.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

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<sup>18</sup> *Cloughton v. Cloughton*, 393 So.2d 1061, 1062 (Fla. 1981).

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.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On December 7, 2011, the Civil Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute.

- Amendment 1 provides that an alimony award must be deductible by the obligor and taxable to the obligee; however, an award for the cost of the obligee's education or training necessary to establishing the capacity for self support need not be deductible by the obligor.
- Amendment 2 provides that in awarding long-term alimony, the court must include a finding that no other form of alimony will provide for the needs and necessities of life of the recipient and that no other form of alimony is fair and reasonable under the circumstances of the parties.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.