

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: CS/SB 748

INTRODUCER: Judiciary Committee and Senator Diaz de la Portilla

SUBJECT: Alimony

DATE: February 13, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	Fav/CS
2.	_____	_____	BC	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill revises laws relating to alimony. Specifically, the bill:

- Revises the factors that a court must consider in awarding alimony to include the net income available to each party after the application of the alimony award.
- Requires the findings that a court must make in determining to award alimony be in writing.
- Revises the circumstances under which a court may consider adultery by either spouse in its determination of the amount of alimony.
- Allows a court in determining the amount of alimony to be awarded to consider the adultery of a party only to the extent to which the adultery caused a depletion of marital assets or a reduction in the income of a party.
- Renames “permanent alimony” to “long-term alimony” and requires the court to make a finding that no other form of alimony will provide for the needs and necessities of life of the recipient as established during the marriage of the parties.
- Requires a court to make written findings regarding regarding all relevant factors under the court’s consideration when ordering an award of alimony.
- Specifies circumstances under which the retirement of the obligor of an alimony award justifies the modification of the alimony award.

- Limits the circumstances in which a court may grant a final dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues.
- Prohibits a court from reserving jurisdiction to reinstate an alimony award if the court terminates the award based on the existence of a supportive relationship.
- Provides that the modification or termination of an alimony award based on the existence of a supportive relationship may be retroactive to the date of the filing of the petition for modification or termination.
- Prohibits a court from awarding long-term alimony unless the court finds that no other form of alimony will provide for the needs and necessities of life of the recipient as established during the marriage.
- Prohibits a court from requiring security, such as a life insurance policy or bond, to secure an alimony award unless special circumstances are shown.

This bill amends the following sections of the Florida Statutes: 61.08, 61.14, and 61.19.

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 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:

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).

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.

- 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.
- (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.

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.*

- (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, or any combination of these forms of alimony.

Under the bill, the court is required to make *written*, specific factual findings in its determination of whether to award alimony or maintenance. Additionally, the court must make written findings regarding all relevant factors.

The bill revises the factors that a court must consider in awarding alimony to include: the designation of all or a portion of the payment of an alimony award as nontaxable to the recipient and nondeductible to the payor; and the net income available to each party after the application of the alimony award. A court may only consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded to the extent that the adultery caused a significant depletion in the marital assets or caused a significant reduction in the income of a party. 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 unless that factor is specifically identified in the award with findings of fact justifying the application of the factor.

The bill renames “permanent alimony” to “long-term alimony” and revises the findings a court must make to award it to a party. Specifically, in order to award long-term alimony, a court must include findings that no other form of alimony will provide for the needs and necessities of life of the recipient as they were established during the marriage of the parties.

A court may order a party who is ordered to pay alimony to provide security in an amount adequate to secure the award but may only do so upon a showing of special circumstances. The court must make specific evidentiary findings regarding the availability, cost, and financial impact on the obligated party. Any security may be modified if the underlying alimony award is modified.

The bill prohibits a court that terminates an alimony award based on the existence of a supportive relationship from reserving jurisdiction to reinstate an alimony award. A modification or termination of an alimony award based on the existence of a supportive relationship may be retroactive to the date of filing of the petition for modification or termination.

Under the bill, the fact that an obligor has reached normal retirement age for his or her profession, has retired, and has no intent to return to work must be considered a substantial change in circumstance as a matter of law. The court must consider the following factors of the obligor in determining whether the obligor's retirement is reasonable: age, health, motivation for retirement, type of work, and normal retirement age for that type of work.

The bill limits the circumstances in which a court may grant a final dissolution of marriage when the court reserves jurisdiction of the matter. During the first 180 days after the date of service of the original petition for the divorce, a court may reserve jurisdiction only when it is clearly necessary for the best interests of the parties or their children. The desire of one of the parties to marry another person does not justify the use of this process. If the more than 180 days have passed after the date of service, the bill specifies the circumstances in which a court may reserve jurisdiction. The court must enter temporary orders that it finds are necessary to protect the interests of the parties and their children. The temporary orders may include, but are not limited to the following substantive issues:

- Restriction on the sale or disposition of property.
- Protection and preservation of the marital assets.
- Establishment of support.
- Provision for maintenance of health insurance.
- Provision for maintenance of life insurance.

The court is not required to enter temporary orders to protect the parties and their children if the court is reserving jurisdiction to address ancillary issues such as the entry of a qualified domestic relations order or the adjudication of attorneys fees and costs.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Although the bill includes many amendments to ch. 61, F.S., relating to dissolution of marriage actions, based on a fiscal note from the Office of the State Courts Administrator on comparable legislation, a major workload impact on the judiciary is not anticipated.

VI. Technical Deficiencies:

The bill has a reference to “permanent periodic alimony” on lines 142-143. It is unclear whether the term should refer to “long-term alimony” to conform to changes in the bill that rename “permanent alimony” to “long-term alimony.”

VII. Related Issues:

The bill renames “permanent alimony” to “long-term alimony” and requires the court to make a finding “that no other form of alimony will provide for the needs and necessities of life of the recipient as established during the marriage of the parties *and* that no other form [of alimony] is fair and reasonable under the circumstances of the parties.” An alimony award may provide for “the needs and necessities of life *of the recipient* as established during the marriage *of the parties*,” but this form of alimony may not be interpreted as “fair and reasonable under the circumstances *of the parties*.” Although reasonable individuals may disagree, in some circumstances the two factors may be interpreted to be inconsistent with each other.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on February 9, 2012:**

The committee substitute makes the following changes that were not in original bill:

- Revises the factors that a court must consider in awarding alimony to include the net income available to each party after the application of the alimony award.
- Revises the circumstances under which adultery by either spouse may be considered by the court in determining the amount of alimony.
- Renames “permanent alimony” to “long-term alimony” and requires the court to make a finding that no other form of alimony will provide for the needs and necessities of life of the recipient as established during the marriage of the parties.
- Requires a court to make written findings regarding all relevant factors under the court’s consideration when ordering an award of alimony.
- Specifies factors the court must consider in determining whether the retirement of the obligor of an alimony award is reasonable.
- Limits the circumstances in which a court may grant a final dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues.

- Removes provisions that would have limited the maximum amount of an alimony award.
- Removes provisions that would have limited the duration of an alimony award.
- Removes provisions that would have terminated an alimony award upon the obligor reaching retirement age.
- Removes provisions that provided that the bill is a material change in circumstances.
- Removes provisions that provided revised criteria for a court to use in determining the existence of a supportive relationship.

B. Amendments:

None.