

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1475 Alimony
SPONSOR(S): Civil Justice Subcommittee; Stargel
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1978

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 0 N, As CS	Woodburn	Bond
2) Judiciary Committee	17 Y, 0 N	Woodburn	Havlicak

SUMMARY ANALYSIS

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.

The bill provides an effective date of July 1, 2011 and applies to all initial awards of alimony entered after that date and to all modifications of those initial awards.

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

Alimony is used to provide financial support to a financially dependent former spouse.¹ 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.² Before a court can make an award of alimony, equitable distribution of the former spouse's assets must occur.³

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;
- 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.⁴ A court may also consider the adultery of either party and the circumstances surrounding that adultery in determining an award of alimony.⁵

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.⁶

Florida law provides for four types of alimony; bridge-the-gap alimony,⁷ rehabilitative alimony,⁸ durational alimony,⁹ and permanent alimony.¹⁰

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

² *Id.*

³ *Id.*

⁴ Section 61.08(2), F.S.

⁵ Section 61.08(1), F.S.

⁶ Section 61.08(4), F.S.

⁷ Section 61.08(5), F.S.

⁸ Section 61.08(6), F.S.

⁹ Section 61.08(7), F.S.

¹⁰Section 61.08(8), F.S.

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.¹¹

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, training, or work experience necessary to develop appropriate employment skills or credentials.¹² 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.¹³ 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.¹⁴

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.¹⁵

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.¹⁶

¹¹ Section 60.08(5), F.S.

¹² Section 60.08(6)(a), F.S.

¹³ Section 60.08(6)(b), F.S.

¹⁴ Section 60.08(6)(c), F.S.

¹⁵ Section 60.08(7), F.S.

¹⁶ See s. 61.14, F.S., Enforcement and modification of support, maintenance, or alimony agreements or orders.

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 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

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.

B. SECTION DIRECTORY:

Section 1 amends s. 61.08, F.S., regarding alimony.

Section 2 provides to which alimony awards the amendments to s. 61.08, F.S., are applicable.

Section 3 provides an effective date of July 1, 2011.

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. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 1, 2011, the Civil Justice Subcommittee adopted one amendment. The amendment:

- Provides that durational alimony may be awarded to a marriage of long duration if there is no ongoing need for support on a permanent basis;
- Provides that an award of permanent alimony may be made for a marriage of moderate duration based on clear and convincing evidence;
- Provides that 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 party;
- Provides that the award of alimony 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;
- Provides that the amendments are only applicable to awards of alimony made after the effective date of the act and to modifications of those awards.

The bill was then reported favorably. This bill analysis is drafted to the committee substitute.