

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 1978

INTRODUCER: Judiciary Committee and Senator Bogdanoff

SUBJECT: Alimony

DATE: April 14, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Connor	Maclure	JU	Fav/CS
2.	_____	_____	CF	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill revises Florida law relating to alimony to:

- Provide that the court determine the proper type and amount of alimony or maintenance pursuant to statutory provisions that contain descriptions of the different types of alimony;
- Specify that durational alimony can be awarded following a long-term marriage if there is no need for permanent support;
- Require a showing of clear-and-convincing evidence to award permanent alimony in the case of a marriage of moderate duration;
- Require written findings of exceptional circumstances to award permanent alimony after a short-term marriage;
- Require the court to find that no other form of alimony is fair and reasonable before awarding permanent alimony;
- Specify that an alimony award may not leave the paying party with significantly less income than the receiving party unless there are written findings of exceptional circumstances; and
- Specify that the bill applies to all alimony awards and modifications of awards entered after the effective date.

This bill substantially amends section 61.08, Florida Statutes.

II. Present Situation:

Alimony

Traditionally, alimony was more often awarded to a woman based on the premise that she was the dependent spouse, having foregone or sacrificed career opportunities to fulfill the dual role of homemaking and child rearing. Today, alimony is considered to be gender-neutral.¹

Under Florida law, the court may grant alimony to either party in a dissolution of marriage proceeding, either to balance an inequitable property division or to ensure support to a financially dependent spouse.² Alimony is based primarily on need and ability to pay; thus, an alimony award is not appropriate when the requesting spouse has no need for support or when the paying spouse does not have the ability to pay.³ Before a court may make an award of any type of alimony, the court must first make a specific factual determination as to whether there is an actual need for alimony or maintenance by either party and whether either party has the ability to pay.⁴

Pursuant to s. 61.08(2), F.S., in determining a proper award of alimony, the court is required to consider all relevant factors, including:

- 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.

¹ Comm. on Judiciary, The Florida Senate, *Review of Alimony Payments*, 1 (Interim Report 2005-146) (Nov. 2004), available at http://archive.flsenate.gov/data/Publications/2005/Senate/reports/interim_reports/pdf/2005-146ju.pdf (last visited April 8, 2011).

² Section 61.08(1), F.S.; see also Victoria M. Ho and Jennifer L. Johnson, *Overview of Florida Alimony*, 78 FLA. B.J. 71, 71 (Oct. 2004).

³ *Schlagel v. Schlagel*, 973 So. 2d 672, 676 (Fla. 2d DCA 2008); Ho and Johnson, *supra* note 2, at 71.

⁴ Section 61.08(2), F.S.

The court is given broad discretion to consider any other factor necessary to do equity and justice between the parties.⁵ A court may also consider the adultery of either party, and the circumstances surrounding that adultery in determining an award of alimony.⁶

The length of a marriage is the period of time from the date of marriage until the date of filing of an action for dissolution of marriage.⁷ 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 17 years; and
- A long-term marriage is a marriage having a duration of 17 years or greater.⁸

Florida law provides for four types of alimony: bridge-the-gap,⁹ rehabilitative,¹⁰ durational,¹¹ and permanent.¹²

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. The length of an award may not exceed two 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.¹³

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.¹⁴ 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.¹⁵ An award of rehabilitative alimony can be modified or terminated based on a substantial change in circumstances, noncompliance with the rehabilitative plan, or completion of the rehabilitative plan.¹⁶

⁵ Section 61.08(2)(j), F.S.

⁶ Section 61.08(1), F.S.

⁷ Section 61.08(4), F.S.

⁸ *Id.*

⁹ Section 61.08(5), F.S.

¹⁰ Section 61.08(6), F.S.

¹¹ Section 61.08(7), F.S.

¹² Section 61.08(8), F.S.

¹³ Section 61.08(5), F.S.

¹⁴ Section 61.08(6)(a), F.S.

¹⁵ Section 61.08(6)(b), F.S.

¹⁶ Section 61.08(6)(c), F.S.

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. 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.¹⁷

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, a marriage of moderate duration if such an award is appropriate upon consideration of the factors set forth in s. 61.08(2), F.S., or 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.¹⁸

III. Effect of Proposed Changes:

The bill amends s. 61.08, F.S., to provide that the court determine the proper type and amount of alimony or maintenance pursuant to subsections (5)-(8) of that section. These subsections refer to the four types of alimony: bridge-the-gap, rehabilitative, durational, and permanent. The bill specifies that durational alimony can be awarded following a marriage of long duration “if there is no ongoing need for support on a permanent basis.” Currently, the statutory provision regarding permanent alimony is the only one that specifically states an application to long-term marriages.

The bill provides that permanent alimony may be awarded following a marriage of long duration upon consideration of the enumerated factors in s. 61.08(2), F.S. Currently, the court is directed to consider these factors when deciding whether or not to award any form of alimony, but is not specifically directed to consider the factors in relation to the appropriateness of a permanent alimony award for a long-term marriage. The bill specifies that an award of permanent alimony following a marriage of moderate duration must be based on clear-and-convincing evidence after consideration of the same enumerated factors mentioned previously. Under current law, the court must consider the statutory factors when considering permanent alimony following a moderate-term marriage, but no degree of proof is specified. Additionally, the bill maintains the current

¹⁷ Section 61.08(7), F.S.

¹⁸ Section 61.08(8), F.S. See s. 61.14, F.S., Enforcement and modification of support, maintenance, or alimony agreements or orders.

standard of requiring exceptional circumstances to award permanent alimony following a short-term marriage, but also requires written findings of such circumstances. In all cases where the court awards permanent alimony, the bill requires a finding that no other form of alimony is reasonable under the circumstances.

The bill prohibits an award of alimony leaving the paying party with significantly less income than the receiving party unless there are written findings of exceptional circumstances.

The bill provides an effective date of July 1, 2011, and specifies that it applies to all initial awards of alimony and all modifications of alimony awards entered after that date. The bill specifies that it does not serve as a basis to modify awards entered before the effective date.

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:

Indeterminate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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 April 12, 2011:

The committee substitute:

- Specifies that durational alimony can be awarded following a long-term marriage if there is no need for permanent support;
- Requires a showing of clear-and-convincing evidence to award permanent alimony in the case of a marriage of moderate duration;
- Requires written findings of exceptional circumstances to award permanent alimony after a short-term marriage;
- Requires the court to find that no other form of alimony is fair and reasonable before awarding permanent alimony;
- Specifies that an alimony award may not leave the paying party with significantly less income than the receiving party unless there are written findings of exceptional circumstances; and
- Specifies that the bill applies to all alimony awards and modifications of awards entered after the effective date.

- B. **Amendments:**

None.