

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 843 Dissolution of Marriage
SPONSOR(S): Civil Justice Subcommittee, Andrade and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 1832

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|----------------------------------------|---------------------|---------|------------------------------------------|
| 1) Civil Justice Subcommittee | 10 Y, 5 N, As CS | Frost | Luczynski |
| 2) Justice Appropriations Subcommittee | | | |
| 3) Judiciary Committee | | | |

SUMMARY ANALYSIS

Chapter 61, F.S., governs domestic relations, including actions for dissolution of marriage (DOM), child custody, child support, and alimony. Alimony is a court ordered payment from one spouse to another, most commonly awarded for support or maintenance during a pending action for DOM and after a DOM is final.

Florida currently recognizes five main types of alimony: temporary; bridge-the-gap, rehabilitative, durational, and permanent. In determining the type, amount, duration, and later modification or termination of an alimony award, the court has broad discretion but may only award alimony after initially determining that one spouse needs alimony and the other spouse is able to pay alimony. If a court awards or denies an alimony request, it must also consider enumerated factors and may also consider the adultery of either spouse or any other factor it finds necessary to achieve equity and justice between the parties. An alimony award may be modified or terminated when the circumstances or financial ability of either party changes, including changes due to a receiving spouse's supportive relationship or a paying spouse's retirement.

CS/HB 843 makes a number of changes to ch. 61, F.S. Specifically, the bill:

- Defines alimony as a court-ordered payment of support, not intended to benefit a child.
- Removes the statutory presumptions regarding the length of a short, moderate, or long-term marriage.
- Eliminates court ordered permanent alimony, but allows permanent alimony by the parties' agreement.
- Prioritizes awarding bridge-the-gap alimony, followed by rehabilitative alimony, before any other form.
- Redefines the permissible amount and duration for bridge-the-gap, rehabilitative, and durational alimony.
 - A durational alimony award may not exceed 50 percent of the length of the parties' marriage and is determined as an obligee's reasonable need or 25 percent of the difference between the parties' net incomes.
- Requires written findings when the court awards more than one type of alimony and permits such an award only for rehabilitation.
- Amends and requires written findings relating to the factors the court must consider when awarding alimony.
- Removes the court's authority to order an obligor to purchase life insurance to secure an alimony award, and instead permits an obligee to purchase such a policy.
- Requires an obligee alleging a physical disability to meet the Social Security disability requirements.
- Prohibits ordering a spouse who retired prior to a DOM action to pay any alimony, except temporary alimony, unless the court determines the obligee's needs and necessities of life are not otherwise met.
- Prohibits an obligee or obligor from seeking alimony modification based on an obligor's subsequent relationship.
- Authorizes an obligor to seek an alimony modification up to 12 months before his or her anticipated retirement.
- Amends state policy regarding parental time-sharing to require the court to begin with a presumption that equal time-sharing is in the best interest of any minor children common to the parties in a DOM.
- Prohibits the bill's changes to alimony law from invalidating an award made prior to July 1, 2020, but permits modification of any alimony award based on a substantial change in circumstances under the new law.

The bill may have a fiscal impact on state government, but does not appear to have a fiscal impact on local government.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Chapter 61, F.S., governs domestic relations actions including actions for dissolution of marriage (DOM), alimony, and child custody and support.

While alimony is created and guided by statute, it is also governed by case law. The leading alimony case, *Canakaris v. Canakaris*,¹ set forth many of the general concepts of alimony but confirmed that the ultimate decision in awarding alimony should be within the court's discretion, because:

In considering the appropriate criteria for the award of the different types of alimony, it is important that appellate courts avoid establishing inflexible rules that make the achievement of equity between the parties difficult, if not impossible.²

Dissolution proceedings present a trial judge with the difficult problem of apportioning assets acquired by the parties and providing necessary support. The judge possesses broad discretionary authority to do equity between the parties and has available various remedies to accomplish this purpose As considered by the trial court, these remedies are interrelated; to the extent of their eventual use, the remedies are part of one overall scheme.³

However, the Florida Supreme Court (FSC) also explained that:

[t]he discretionary power that is exercised by a trial judge is not, however, without limitation, and both appellate and trial judges should recognize the concern which arises from substantial disparities in domestic judgments resulting from basically similar factual circumstances The trial court's discretionary power is subject only to the test of reasonableness, but that test requires a determination of whether there is logic and justification for the result. The trial courts' discretionary power was never intended to be exercised in accordance with whim or caprice of the judge nor in an inconsistent manner. Judges dealing with cases essentially alike should reach the same result. Different results reached from substantially the same facts comport with neither logic nor reasonableness.⁴

In the 36 years since *Canakaris*, the Legislature has provided greater statutory guidance by codifying many alimony concepts already applicable through appellate court and FSC decisions and case law has continued to narrow the exercise of judicial discretion. Despite these changes, disagreement exists regarding the court's exercise of broad discretion in determining alimony awards.⁵

Alimony Generally

Background

Alimony, also known as spousal support or spousal maintenance, is a court ordered payment from one spouse to another at any time before, during, and after a DOM. Alimony is most commonly awarded for support or maintenance during a pending action for DOM and after a DOM is final, but may also be awarded without an accompanying DOM action.⁶ A person who receives payment pursuant to an order establishing, enforcing, or modifying an alimony obligation is called an obligee,⁷ and a person

¹ *Canakaris v. Canakaris*, 382 So. 2d 1197 (Fla. 1980).

² *Id.* at 1200.

³ *Id.* at 1202.

⁴ *Id.* at 1203.

⁵ See *Bacon v. Bacon*, 819 So. 2d 950, 954 (Fla. 4th DCA 2002) (Farmer, J., concurring) (Opining that broad discretion in alimony awards is no longer justifiable and should be discarded in favor of guidelines; proposing that 35 percent of obligor's income is a reasonable range).

⁶ S. 61.09, F.S.

⁷ S. 61.046(12), F.S.

responsible for making payments pursuant to an order establishing, enforcing, or modifying an alimony obligation is called an obligor.⁸

The court may award alimony only after initially determining that one spouse actually needs alimony and the other spouse is able to pay alimony.⁹ As such, alimony may not be awarded when the requesting spouse has no actual need for support or when the other spouse has no ability to pay.

When determining an alimony award, there is a rebuttable presumption that a:

- Short-term marriage lasts less than 7 years;
- Moderate-term marriage lasts more than 7 years but less than 17 years; and
- Long-term marriage lasts 17 years or more.¹⁰

In determining the appropriate amount of alimony, the court's award may not leave an obligor with significantly less net income than the obligee, absent exceptional circumstances.¹¹ The court may order an obligor to pay alimony in periodic payments, lump sum payments, or a combination of the two.¹²

The court may also require an obligor to maintain life insurance or a bond, or to otherwise secure an alimony award, to safeguard an obligee's support in the event the obligor reaches an untimely death. However, in determining whether to order an obligor to secure an alimony award, the court should consider the need for the insurance, the cost and availability of the insurance, and the financial impact on the obligor.¹³ Absent any special circumstances requiring security of an alimony award, the court may not require an obligor to maintain life insurance for the purpose of securing an alimony obligation.¹⁴ While the circumstances demonstrating a special circumstance are not statutorily provided, courts have held that such circumstances exist when an obligee would be left in dire economic straits upon the death of the obligor,¹⁵ and that life insurance should be used "primarily when the recipient spouse is disabled, elderly, or has such limited employment skills that the death of the former spouse would cause the survivor to depend upon welfare or the generosity of others."¹⁶

Effect of Proposed Changes

CS/HB 843 defines alimony as a court-ordered support payment from one spouse to another, and clarifies that the term includes maintenance, spousal support, or separate support, when not intended for the benefit of a child.

The bill removes the court's authority to order an obligor to secure an alimony award by purchasing a life insurance policy or a bond, or to otherwise secure an alimony award with appropriate assets. The bill instead provides an obligee the option to purchase a life insurance policy on the obligor's life in an amount adequate to secure his or her alimony award. The bill provides the court may order an obligor to: cooperate in procuring the policy; and reimburse an obligee for the cost of the policy.

- By placing the burden of purchasing a life insurance policy on the obligee rather than the obligor, the likelihood of an alimony award becoming unsecured due to a lapse in coverage may be less.

The bill eliminates classifying a marriage as one that is short-term, moderate-term, or long-term, and instead treats all marriages, regardless of length, the same for purposes of awarding alimony.

⁸ S. 61.046(13), F.S.

⁹ S. 61.08(2), F.S.

¹⁰ S. 61.08(4), F.S.

¹¹ S. 61.08(9), F.S.

¹² For lump sum alimony to be awarded, there must be a showing of need and ability to pay as well as unusual circumstances which require non-modifiable support and justification that does not substantially endanger the payor's economic status. *Rosario v. Rosario*, 945 So. 2d 629, 632 (Fla. 4th DCA 2006).

¹³ *Plichta v. Plichta*, 899 So. 2d 1283, 1287 (Fla. 2d DCA 2005).

¹⁴ *Pinion v. Pinion*, 818 So. 2d 557 (Fla. 2d DCA 2002). See also *Brunzman v. Brunzman*, 232 So. 3d 1175, 1177 (Fla. 5th DCA 2017). (When ordering a life insurance award to protect alimony recipient, a trial court must make findings as to the cost of insurance, the amount being required, and any special circumstances justifying the need for a former spouse to maintain the policy).

¹⁵ *Richardson v. Richardson*, 722 So. 2d 280, 281 (Fla. 5th DCA 1998). However, the *Richardson* court did not hold that other circumstances would not demonstrate an appropriate need.

¹⁶ *Kearley v. Kearley*, 745 So. 2d 987, 990 (Fla. 2d DCA 1999).

Types of Alimony

Background

Florida recognizes five main types of alimony:¹⁷ temporary, bridge-the-gap, rehabilitative, durational, and permanent. Each type of alimony has a defined purpose, duration, and requirements for modification or termination, as generally illustrated below.

| Type | Purpose | Duration | Modification/Termination | Automatic Termination |
|-----------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|
| Temporary (Pendente-Lite) S. 61.071, F.S. | A reasonable sum awarded after initiation of DOM proceedings for support during the pending litigation. | Only during the pending DOM litigation. | Good cause. | Final Judgment in DOM action (including appeals). |
| Bridge-the-Gap S. 61.08(5), F.S. | To provide assistance with legitimate, identifiable short-term needs to help with the transition from being married to being single. | May not exceed 2 years. | Not modifiable in amount or duration. | Remarriage of recipient or death of either party. |
| Rehabilitative S. 61.08(6)(a), F.S. | To assist in establishing the capacity for self-support through: <ul style="list-style-type: none"> • Redevelopment of previous skills or credentials; or • Education, training, or work experience to develop appropriate employment skills or credentials. | Requires a specific, defined plan; duration varies depending on circumstances. | Substantial change in circumstances; Non-compliance with rehabilitation plan; or Completion of rehabilitation plan. | Death of either party. |
| Durational S. 61.08(7), F.S. | Awarded when permanent alimony is not appropriate to assist with economic assistance for a set period of time following a marriage of short or moderate duration, or following a marriage of long duration if there is no ongoing need for support on a permanent basis. ¹⁸ | May not exceed the duration of the marriage; duration varies. | <ul style="list-style-type: none"> • Amount: Substantial change in circumstances. • Duration: Exceptional circumstances. | Remarriage or recipient or death of either party. |
| Permanent S. 61.08(8), F.S. | To provide for needs and necessities of life as established during marriage for a party lacking financial ability to meet such needs on his/her own following a: <ul style="list-style-type: none"> • Long duration marriage; • Moderate duration marriage, if appropriate considering enumerated factors,¹⁹ or • Short duration marriage, in exceptional circumstances.²⁰ | Perpetual (unless modified or terminated) | Substantial change in circumstances, including the existence of a recipient's supportive relationship. ²¹ | Remarriage of recipient or death of either party. |

Equitable Distribution

¹⁷ Alimony may also be awarded to a spouse in an action for support unrelated to a DOM action. If a spouse has the ability to contribute to the maintenance and support of his or her spouse and minor children but fails to do so, the spouse in need may apply to the court for alimony and child support without seeking a DOM. S. 61.09, F.S.

¹⁸ S. 61.08(4), F.S.

¹⁹ S. 61.08(2), F.S., lists these factors.

²⁰ A permanent alimony award is generally inappropriate in a short-term marriage unless DOM created a genuine inequity. *Segall v. Segall*, 708 So. 2d 983 (Fla. 4th DCA 1998).

²¹ S. 61.14(1)(b), F.S.

Except for a temporary alimony award, before awarding alimony, the court must equitably distribute the spouses' assets. When determining the distribution of the parties' marital assets, the court must begin with the presumption that the assets should be distributed equally between the parties, unless there is justification for an unequal distribution based on all relevant factors, including:²²

- The contribution to the marriage by each spouse, including contributions to the care and education of the parties' children and either spouse's services as homemaker.
- The economic circumstances of the parties.
- The duration of the marriage.
- Any interruption of a personal career or educational opportunity by either party.
- The contribution of one spouse to the personal career or educational opportunity of the other spouse.
- The desirability of keeping any asset, such as an interest in a business, corporation, or professional practice, intact and free from any claim or interference by the other party.
- The contribution of each spouse to the acquisition, enhancement, and production of income or the improvement and liabilities associated with the parties' marital and nonmarital assets.
- The desirability of retaining the marital home as a residence for any dependent child of the marriage, or any other party, when doing so is in the best interest of the child or that party and it is financially feasible for the parties to maintain the residence until:
 - The child is emancipated; or
 - Exclusive possession is otherwise terminated by the court.
 - In making this determination, the court must first determine if it would be in the best interest of the dependent child to remain in the marital home; and, if not, whether other equities justify giving any other party exclusive use and possession of the marital home.
- The intentional dissipation, waste, depletion, or destruction of marital assets after the date the initial petition for DOM is filed or within 2 years prior to the filing of the petition.
- "Any other factors necessary" to do equity and justice between the parties.²³

Effect of Proposed Changes

CS/HB 843 calculates the length of a marriage beginning on the date the parties' were married and ending on the date the action for DOM currently pending before the court is filed.

Permanent Alimony

The bill eliminates permanent alimony as a type of alimony the court may award. However, the bill permits the court to grant permanent alimony when the parties enter into an agreement for permanent alimony, to allow parties the continued ability to negotiate the distribution of marital assets and liabilities and alimony outside of the court.

Bridge-the-Gap Alimony

The bill requires the court to prioritize awarding bridge-the-gap alimony, followed by the rehabilitative alimony, before any other type of alimony. The bill does not change the current two year maximum length for a bridge-the-gap alimony award.

²² S. 61.075(8), F.S.

²³ See Effect of Proposed Changes – Equitable Distribution, *infra*, p. 6.

Rehabilitative Alimony

The bill provides that the length of a rehabilitative alimony award is limited to the lesser of:

- 5 years; or
- 50 percent of the duration of the marriage.
 - Under the bill, a rehabilitative alimony award in any marriage lasting 10 years or longer could not exceed 5 years.

When awarding a combination of alimony types, the bill requires the court to make written findings regarding the:

- Basis for awarding more than one type of alimony;
- Type of alimony awarded; and
- Length of time the alimony is awarded.

Durational Alimony

The bill permits a durational alimony award in any marriage, regardless of length. However, if a court awards durational alimony, the bill requires the court to:

- Make written findings that no other type of alimony or combination of alimony types is appropriate under the circumstances; and
- Modify or terminate the award based on a:
 - Substantial change in circumstances; or
 - Finding that a supportive relationship exists or existed between the obligee and another person.

The bill provides that the length of a durational alimony award may not exceed 50 percent of the length of the marriage.

The bill limits the amount of a durational alimony award to the lesser of:

- An obligee's reasonable need; or
- 25 percent of the difference between the parties' net incomes.
 - The bill provides that net income is calculated by subtracting the following deductions from gross income:²⁴
 - Federal, state, and local income tax deductions, adjusted for actual filing status and allowable dependents and income tax liabilities.
 - Federal insurance contributions or self-employment tax.
 - Mandatory union dues.
 - Mandatory retirement payments.
 - Health insurance payments, excluding payments for coverage of the minor child.
 - Court-ordered support for other children which is actually paid.
 - Spousal support paid pursuant to a court order from a previous marriage.

The bill provides that any support payments, whether voluntary or court-ordered, made to an obligee after a petition for DOM is filed may be considered by the court in determining the amount and length of a rehabilitative or durational alimony award.

- By permitting the court to consider payments made during the pending DOM action, the bill may encourage an obligee to begin rehabilitative efforts during the pending DOM action, when possible.

²⁴ The bill determines gross income in the same manner as gross income is determined for child support payments under S. 61.30, F.S.
STORAGE NAME: h0843b.CJS **PAGE:** 6
DATE: 1/28/2020

Equitable Distribution

While the bill does not change the law regarding equitable distribution, the bill's changes to alimony law may impact how the court determines equitable distribution. By eliminating permanent alimony and otherwise limiting the amount and duration of the remaining forms of alimony, the court may look to equitable distribution in order to equitably and adequately provide support for a lower-earning spouse. Because the court is permitted to consider any factor necessary to do equity and justice between the parties, some courts may award the majority of assets to a lower-earning spouse to compensate for the limitations the bill places on the amount and duration of alimony. Alternatively, the bill's changes to alimony law may result in the court determining there is no authority to keep certain assets, such as a business interest, intact during equitable distribution in exchange for an increase in the amount or duration of an alimony award, even if such an arrangement is equitable. However, the potential implications for equitable distribution under the bill may encourage some parties to reach an agreement outside of the court.

Alimony Factors

Background

After equitably distributing the parties' assets,²⁵ the court must consider the following factors, before awarding alimony:

- The standard of living established during the marriage;
 - However, the award may not be so high as to cause the obligor spouse to be unable to meet his or her own needs,²⁶ and an alimony award that is over 50 percent of the obligor spouse's income is considered too high.²⁷
- The duration of the marriage;²⁸
- 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 to, services rendered in homemaking, child care, education, and career building of the other party;
 - Such as an agreement between the parties that one spouse would stay home with the children, or whether, as a result of the marriage, the requesting spouse's ability to earn enough to support himself or herself has been damaged in any way.²⁹
- The responsibilities each party will have regarding 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 income³⁰ available to either party, including income available to either party through investments of any asset held by that party;

²⁵ Unless the court is awarding temporary alimony, in which case the court may determine the temporary alimony award prior to equitable distribution. S. 61.075(8), F.S.

²⁶ *Rashotsky v. Rashotsky*, 782 So. 2d 542 (Fla. 3d DCA 2001).

²⁷ *O'Conner v. O'Conner*, 782 So. 2d 502 (Fla. 2d D.C.A. 2001).

²⁸ See s. 61.08(4), F.S.

²⁹ *Segall*, 708 So. 2d at 983.

³⁰ Defined very broadly as "any form of payment to an individual, regardless of source, including, but not limited to: wages, salary, commissions and bonuses, compensation as an independent contractor, worker's compensation, disability benefits, annuity and retirement benefits, pensions, dividends, interest, royalties, trusts, and any other payments, made by any person, private entity, federal or state government, or any unit of local government. United States Department of Veterans Affairs disability benefits and reemployment assistance or unemployment compensation, as defined in chapter 443, are excluded from this definition of income except for purposes of establishing an amount of support." S. 61.046(8), F.S. "Support," unless otherwise specified, means: child support and, when the child support obligation is being enforced by the Department of Revenue, spousal support or alimony for the spouse or former spouse of the obligor with whom the child is living; child support only in cases not being enforced by the Department of Revenue. S. 61.046(22), F.S. Case law has expanded the definition to include in-kind payments and regular gifts and clarified that the source of income must be "available" to the party. See *Fitzgerald v. Fitzgerald*, 912 So. 2d 363 (Fla. 2d DCA 2005); *Weiser v. Weiser*, 782 So. 2d 986 (Fla. 4th DCA 2000), and *Zold v. Zold*, 880 So. 2d 779 (Fla. 5th DCA 2004). However, a party may not

- Income may be imputed to a voluntarily unemployed or underemployed spouse, whether the spouse is an obligee or obligor.³¹
- Any other factor necessary to do equity and justice between the parties.

Adultery

In addition to the enumerated factors, the court may also consider the adultery of either spouse and the circumstances surrounding the adultery.³² However, a requesting spouse's adultery is not a complete bar from receiving alimony,³³ and a spouse's adulterous behavior may not be the basis for requiring him or her to pay alimony, unless such adultery contributed to a depletion of marital assets.³⁴ The spouse seeking to prove adultery has the burden of proof.³⁵

These statutory guidelines provide the framework within which the court may exercise its discretion to determine the type, amount, and duration of an alimony award, if any. There are no bright line rules which determine in each unique scenario whether awarding alimony is appropriate and if so, what kind. No single factor justifies an alimony award, rather, all factors must be considered as a whole, and the court is permitted to analyze the entire marital situation, to consider how alimony, child support, and equitable distribution are interrelated, and to exercise its discretion based on knowledge of a total financial snapshot to make an equitable decision regarding an alimony award.

Effect of Proposed Changes

CS/HB 843 amends the factors the court must consider in determining the type and amount of alimony. The bill requires the court to include, in its evaluation of the standard of living established during the parties' marriage, specific consideration of the needs and necessities of life for each party after the marriage is dissolved, including a rebuttable presumption that both parties will inevitably have a lower standard of living than that which they enjoyed during the marriage.

The bill prohibits the court from:

- Awarding alimony to a party with an equal or greater monthly net income than the other party; and
- Imputing income to an obligor or an obligee as demonstrated by a social security retirement benefits entitlement letter.

The bill requires an obligee alleging that a physical disability impairs his or her ability to work must have qualified for benefits under the Social Security Disability Insurance Program (SSDIP), or demonstrate that his or her disability meets the disability qualification standards of the SSDIP.

- Requiring a family court to determine whether an obligee meets certain federal disability requirements may result in increased litigation and unequal results from different judges.

voluntarily make income unavailable in order to reduce his or her annual income. See *Geoghegan v. Geoghegan*, 969 So. 2d 482 (Fla. 5th DCA 2007).

³¹ See *Keyser v. Keyser*, 204 So. 3d 159 (Fla. 1st DCA 2016); *Lostaglio v. Lostaglio*, 199 So. 3d 560 (Fla. 5th DCA 2016); *Kovar v. Kovar*, 648 So. 2d 177 (Fla. 4th DCA 2003); *Rojas v. Rojas*, 656 So. 2d 563 (Fla. 3d DCA 1995).

³² S. 61.08(1), F.S.

³³ See *Coltea v. Coltea*, 856 So. 2d 1047 (Fla. 4th DCA 2003); *Johnson v. Johnson*, 847 So. 2d 1157 (Fla. 5th DCA 2003).

³⁴ See *Haley v. Haley*, 649 So. 2d 332 (Fla. 5th DCA 1995); *Santoro v. Santoro*, 642 So. 2d 86 (Fla. 2d DCA 1994); *Pyle v. Pyle*, 617 So. 2d 1098 (Fla. 3d DCA 1993); *Noah v. Noah*, 491 So. 2d 1124 (Fla. 1986).

³⁵ *Engbretsen v. Engbretsen*, 151 Fla. 372, 11 So. 2d 322 (1942).

STORAGE NAME: h0843b.CJS

DATE: 1/28/2020

PAGE: 8

Modification of Support, Maintenance, or Alimony

Background

When the court orders, or when the parties enter an agreement, requiring payments for – or payments instead of – support, maintenance, or alimony, regardless of whether the agreement or order is connected to a DOM, petition for separate maintenance,³⁶ or voluntary property settlement, either party may ask the court to decrease or increase the amount of support, maintenance, or alimony based on a substantial change in circumstances or financial ability.³⁷ In the case of a support order, a petition for modification may be based on a beneficiary child reaching the age of majority, availability of medical insurance, or the child support guidelines schedule in s. 61.30, F.S.³⁸ If the court finds in favor of the party seeking modification, the court may modify support, maintenance, or alimony retroactively to the date modification was sought, as equity requires.³⁹

Alimony Modification

When the circumstances or financial ability of an obligee or an obligor change, either may petition the court to modify an alimony award, whether the award was agreed to by the parties in a marital settlement agreement⁴⁰ or ordered by the court.⁴¹ The party seeking alimony modification must show:

- A substantial change in circumstances;⁴²
- That the change was not contemplated at the time of the final judgment of DOM; and
- That the change is sufficient, material, involuntary and permanent in nature.⁴³

Supportive Relationships

An obligor may seek modification of his or her alimony obligation if a supportive relationship has existed between the obligee and a person with whom the obligee resides. The court may reduce or terminate an alimony award based on the existence of such a relationship. The obligor has the burden of proving the obligee's supportive relationship by a preponderance of the evidence. If the court finds in favor of the obligor, the court must make specific written findings that, subsequent to the court's granting of a divorce and award of alimony, the obligee entered into a supportive relationship with a person whom he or she is unrelated to by consanguinity or affinity and with whom he or she resides. In determining whether a supportive relationship exists, the court must consider circumstances including, but not limited to:⁴⁴

- The extent to which the obligee and the other person have held themselves out as a married couple, including referring to each other in terms such as “my husband” or “my wife.”
- The period of time that the obligee has resided with the other person in a permanent place of abode.
- The extent to which the obligee and the other person have pooled their assets or income or otherwise exhibited financial interdependence.

³⁶ S. 61.09, F.S.

³⁷ S. 61.14(1)(a), F.S.

³⁸ *Id.*

³⁹ S. 61.14(1)(a), F.S.

⁴⁰ Despite such statutory authorization, a marital settlement agreement becomes a contractual duty which, when endorsed by court order, may not be set aside or revisited, according to principles of collateral estoppel and res judicata. Florida courts do not take lightly agreements made by husband and wife concerning spousal support. A marital settlement agreement as to alimony or property rights which is entered before the dissolution of marriage is binding upon the parties. See, e.g., *Perry v. Perry*, 976 So. 2d 1151 (Fla. 4th DCA 2008) and *Griffith v. Griffith*, 860 So. 2d 1069, 1073 (Fla. 1st DCA 2003).

⁴¹ S. 61.14, F.S.

⁴² The change in circumstances alleged must have occurred after the last judgment or order awarding alimony. *Johnson v. Johnson*, 537 So. 2d 637 (Fla. 2d DCA 1998).

⁴³ *Townsend v. Townsend*, 585 So. 2d 468 (Fla. 2d DCA 1991); Courts have found a substantial change in circumstance where: an obligor's health deteriorated due to two heart attacks, he was unable to continue gainful employment, and received social security disability income as his full income (*Scott v. Scott*, 109 So. 3d 804 (Fla. 5th DCA 2012)); an obligor demonstrated a substantial change in financial circumstances resulting from a detrimental impact on his business of manufacturing cathode ray television tubes due to advancing technology that made his product obsolete. The court noted that the obligor was forced to remove money from family trust accounts to meet his alimony obligation. (*Shawfrank v. Shawfrank*, 97 So. 3d 934, 937 (Fla. 1st DCA 2012)); Financial affidavits showed the obligee's income increased from \$1,710 to \$4,867 a month, making her income higher than the obligor's income of \$3,418 a month. (*Koski v. Koski*, 98 So. 3d 93, 94 (Fla. 4th DCA 2012)).

⁴⁴ S. 61.14, F.S.

- The extent to which the obligee or the other person has supported the other, in whole or in part.
- The extent to which the obligee or the other person has performed valuable services for the other.
- The extent to which the obligee or the other person has performed valuable services for the other's company or employer.
- Whether the obligee and the other person have worked together to create or enhance anything of value.
- Whether the obligee and the other person have jointly contributed to the purchase of any real or personal property.
- Evidence in support of a claim that the obligee and the other person have an express agreement regarding property sharing or support.
- Evidence in support of a claim that the obligee and the other person have an implied agreement regarding property sharing or support.
- Whether the obligee and the other person have provided support to the children of one another, regardless of any legal duty to do so.

Obligor's Subsequent Relationships

The financial status of an obligor's successor spouse is generally irrelevant in a modification proceeding, and it is improper for the court to consider the income of the obligor's current spouse in an action to modify the obligor's alimony obligation. However, an exception exists if the court determines that the obligor deliberately limits his or her income for the purpose of reducing an alimony obligation and is instead living off the income of a successor spouse.⁴⁵

Retirement

While there are no statutory standards relating to modification or termination of alimony based on an obligor's retirement, the Florida Supreme Court, in *Pimm v. Pimm*, provides guidance the court must follow in exercising its discretion to grant a modification based on retirement.⁴⁶ An obligor's retirement may be considered by the court among the totality of circumstances in determining if a substantial change in circumstances exists warranting a modification of alimony. The Florida Supreme Court has directed that in modification cases based on the obligor's retirement, the court should consider the:⁴⁷

- Obligor's age, health, and motivation for retirement;
- Type of work the obligor performs and the age at which others engaged in that line of work normally retire; and
- Obligee's needs and the impact a termination or reduction of alimony would have on him or her.
 - In assessing those needs, the court should consider any assets the receiving spouse has accumulated or received since the DOM, as well as any income generated by those assets and whether the retirement places the obligee in peril of poverty.

Effect of Proposed Changes

CS/HB 843 authorizes the court to reduce, terminate, or order reimbursement to an obligor for any amount the court determines is equitable based on an obligee's supportive relationship which exists or existed at any time during the 180 days leading up to an obligor's modification petition.

- The bill may increase modification litigation by allowing an obligor to petition for alimony modification each time an obligee enters into a relationship which may qualify as supportive.

⁴⁵ *Harmon v. Harmon*, 523 So. 2d 187 (Fla. 2d DCA 1988); *Hayden v. Hayden*, 662 So. 2d 714 (Fla. 4th DCA 1995).

⁴⁶ *Pimm v. Pimm*, 601 So. 2d 534 (Fla. 1992).

⁴⁷ *Id.* at 537.

The bill provides that an obligor's subsequent relationship or cohabitation may not be the sole basis for either party to seek alimony modification. The bill prevents an:

- Obligee from seeking modification to increase an award of alimony based on the income and assets of the obligor's subsequent spouse or person with whom the obligor resides; and
- Obligor from seeking modification to reduce an award of alimony based on the obligor's reliance on the income and assets of the subsequent spouse or person with whom the obligor resides.
 - The bill may still allow a court to consider the income and assets of an obligor's subsequent spouse under the limited circumstance when the court determines an obligor is deliberately limiting his or her income for the purpose of reducing an alimony obligation and is instead living off the income of a successor spouse.⁴⁸ However, even under this limited circumstance, the bill still prohibits the obligor's relationship from being the sole factor for seeking modification.

Retirement

The bill provides that an alimony award may be modified when an obligor reaches full retirement age as determined by the Social Security Administration or reaches reasonable retirement age for his or her line of work. However, modification of alimony awarded pursuant to an agreement between the parties requires the court to make written findings of fact indicating exceptional circumstances requiring the court to modify the agreed upon alimony award when based on the obligor's retirement.

The bill provides factors, mirroring current case law, that the court must consider in determining if an obligor's retirement is reasonable, including the:

- Obligor's age and health;
- Obligor's motivation for retirement;
- Obligor's type of work and the typical retirement age for that type of work;
- Obligee's needs and necessities of life; and
- Impact a termination or reduction of alimony would have on the obligee, with specific consideration of any assets accumulated or received by the obligee since the final judgment of dissolution of marriage.

The bill allows an obligor to file a petition to modify his or her alimony obligation up to 12 months prior to his or her anticipated retirement, and allows the modification to take effect on the obligor's actual retirement date. The bill requires the court to modify an award when an obligor retires, unless it makes written findings that the obligor's retirement is not reasonable.

The bill provides that an obligee's receipt of social security or disability benefits or retirement payments subsequent to an initial award of alimony is a change in circumstances for which an obligor may seek modification of an alimony award.

Retroactivity

The bill prohibits the changes to alimony law from invalidating an award made prior to July 1, 2020, but permits modification of any alimony award based on a substantial change in circumstances under the new law.

Child Support, Parenting, and Time-Sharing

Background

Florida courts have consistently ruled that a parent's desire and right to the companionship, care, custody, and management of his or her children is an important interest that warrants deference and, absent a powerful countervailing interest, protection. Although the right to integrity of the family is among the most fundamental rights, when married parents divorce or separate, the parents' rights are subject to the overriding concern for the ultimate welfare or best interests of their children.

⁴⁸ *Harmon*, 523 So. 2d at 187.
STORAGE NAME: h0843b.CJS
DATE: 1/28/2020

Time-Sharing

Section 61.13, F.S., provides guidelines to assist courts in determining matters related to parenting⁴⁹ and time-sharing⁵⁰ of minor children in actions under ch. 61, F.S., in accordance with the best interests of the child while balancing the rights of parents. As a threshold consideration, the Legislature has declared that:⁵¹

It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. There is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when creating or modifying the parenting plan of the child.

To that end, current law presumes⁵² that parental responsibility be shared by both parents, unless shared responsibility would be detrimental to the child.⁵³ However, current law does not provide a presumption in favor of a specific time-sharing schedule, thus when the parties are unable to agree, the court sets a time-sharing schedule.

In establishing time-sharing, the court must consider the best interests of the child,⁵⁴ and the court must evaluate all factors affecting the welfare and interests of the child and the circumstances of the family, including, but not limited to the:

- Demonstrated capacity and disposition of each parent to facilitate and encourage a continuing parent-child relationship, honor the time-sharing schedule, and accommodate necessary changes.
- Anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties.
- Demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child.
- Length of time the child has lived in a stable environment and the desirability of maintaining continuity.
- Geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan.
- Mental health, physical health, and moral fitness of the parents.
- Home, school, and community record of the child.
- Reasonable preference of the child.
- Demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child, including, the child's friends, teachers, and daily activities.
- Demonstrated capacity and disposition of each parent to:
 - Provide a consistent routine; and
 - Communicate with and keep the other parent informed of issues and activities regarding the minor child, and the willingness of each parent to adopt a unified front on all major issues when dealing with the child.
- Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, or that either parent has ever knowingly provided false information about such matters.
- Particular parenting tasks customarily performed by each parent, including the extent to which parenting responsibilities were undertaken by third parties.

⁴⁹ Parenting or parental responsibility refers to the responsibility and right to make important decisions about the child's welfare, such as education and medical care after the parents separate.

⁵⁰ Time-sharing refers to the time, including overnights and holidays, which the child spends with each parent. S. 61.046(23), F.S.

⁵¹ S. 61.13(2)(c)1., F.S.

⁵² A presumption is an assumption of fact which the law makes from the existence of another fact or group of facts found or otherwise established. S. 90.301, F.S.

⁵³ S. 61.13(2)(c)2., F.S. "Evidence that a parent has been convicted of a misdemeanor of the first degree or higher involving domestic violence, as defined in s. 741.28 and chapter 775, or meets the criteria of s. 39.806(1)(d), creates a rebuttable presumption of detriment to the child."

⁵⁴ S. 61.13(2)(c), F.S.

- Demonstrated capacity and disposition of each parent to participate and be involved in the child's school and extracurricular activities.
- Demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.
- Capacity and disposition of each parent to protect the child from the ongoing litigation regarding child custody.
- Developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child's developmental needs.

Time-sharing and Child Support

A court's time-sharing order may impact the child support obligation of the parents. In a ch. 61, F.S., proceeding, the court may order either or both parents to pay child support in accordance with the child support guidelines provided in s. 61.30, F.S. These guidelines use a mathematical formula to develop the basic child support obligation of each parent. The court may not deviate from the basic child support obligation provided under the guidelines by more than 5 percent when establishing the child support award except in very limited circumstances, such as when substantial time-sharing is ordered.

Section 61.30(11)(b), F.S., provides that a court must adjust the basic child support obligation if the parenting plan, a court-ordered time-sharing schedule, or a time-sharing arrangement agreed upon by the parties provides that a child spend a substantial amount of time with each parent.⁵⁵ The adjustment of a child support award based on substantial time-sharing, usually results in a lower child support obligation for both parents and a reduction in the child support payment.⁵⁶ Failure to regularly exercise a substantial time-sharing schedule that caused the adjustment of child support pursuant to s. 61.30(11)(b), F.S., constitutes grounds to modify the adjusted child support award, and the modification is retroactive to the date of non-compliance with the time-sharing schedule.⁵⁷

Effect of Proposed Changes

CS/HB 843 deletes the statutory provision that there is no presumption for or against the father or mother of a child or for or against any specific time-sharing schedule when creating or modifying a parenting plan, and instead requires the court, when there is no agreement between the parties, to begin with the presumption that equal time-sharing is in the best interest of all minor children common to the parties in a DOM.

- The bill requires the court to begin with a premise that a parent must overcome in order to ensure the best interest of his or her child is met. By shifting the burden of proof to a parent, the bill requires him or her to prove a lack of involvement or unfitness of the other parent, which may result in increased litigation.

⁵⁵ A substantial amount of time means exercising time-sharing at least 20 percent of overnights per year. S. 61.30(11)(b)8., F.S.

⁵⁶ The court may deviate from the child support amount calculated under the required "substantial time-sharing" adjustment based upon a number of factors, including the "likelihood that either parent will actually exercise the time-sharing schedule." S. 61.30(11)(b)7., F.S.

⁵⁷ S. 61.30(11)(c), F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 61.08, F.S., relating to alimony.

Section 2: Amends s. 61.13, F.S., relating to support of children; parenting and time-sharing; powers of court.

Section 3: Amends s. 61.14, F.S., relating to enforcement and modification of support, maintenance, or alimony agreement or orders.

Section 4: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

By eliminating permanent alimony and otherwise substantially limiting the court's authority to award alimony, the bill may result in a significant increase in lower-earning former spouses need for state benefits.

The bill's changes to ch. 61, F.S., will require the Florida State Court System to create new family law self-help forms.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The full fiscal impact of the bill is unknown, as the number of current alimony obligor's who may seek modification based on the new law cannot be determined.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 485-487: While these lines clearly indicate that an alimony award ordered before July 1, 2020, may not be invalidated under the new modification provisions of the bill, clarification that a party may still seek modification of an award ordered prior to that time may be needed.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 22, 2020, the Civil Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all:

- Defines alimony, gross income, and net income.
- Allows the court to consider adultery in awarding alimony, but prohibits adultery from being the sole basis for an award or denial of alimony.
- Requires the court to consider a rebuttable presumption that both parties will have a lower standard of living after the marriage is dissolved.
- Allows an obligee to obtain a life insurance policy on the obligor's life to protect an alimony award, and allows the court to order an obligor to cooperate in obtaining the policy and to reimburse the obligee for the cost of the policy.
- Clarifies that when a party's retirement is reasonable, the court may not order that party to pay bridge-the-gap, rehabilitative, or durational alimony, unless the court determines the needs and necessities of life for the party seeking alimony are not otherwise adequately provided for.
- Clarifies that social security retirement benefits may not be imputed to an obligor or an obligee as demonstrated by a social security retirement benefits entitlement letter.
- Allows the court to consider any support payments made by an obligor during a pending action for dissolution of marriage in determining the amount and length of an award of rehabilitative or durational alimony.
- Leaves intact the general guidelines for seeking a modification.
- Allows the court to reduce, terminate, or order reimbursement to the obligor for any amount the court determines is equitable, based on an obligee's supportive relationship.
- Clarifies that an obligor's subsequent relationship or cohabitation may not be the basis for either party to seek a modification of alimony.
- Provides that an alimony award may be modified when the obligor reaches retirement.
 - However, modification of an alimony award based upon an agreement between the parties requires written findings of exceptional circumstances.
- Requires the court to consider the effect an obligor's retirement may have on the obligee, with specific consideration of any assets the obligee obtained since the marriage was dissolved.
- Allows an obligor to file a petition to modify his or her alimony obligation up to 12 months prior to his or her anticipated retirement, to be effective upon the obligor's actual retirement date.
- Provides that an obligee's receipt of certain benefits after an initial alimony award constitutes a change in circumstances permitting modification.
- Provides that all portions of the bill are effective July 1, 2020, but nothing in the bill may be interpreted to invalidate an award for support, maintenance, or alimony, including permanent alimony, which was ordered prior to July 1, 2020.

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