



Committee on Constitution & Civil Law

**Wednesday, March 5, 2008
9:00AM - 9:45AM
24 HOB**

ACTION PACKET

COMMITTEE MEETING REPORT
Committee on Constitution & Civil Law

3/5/2008 9:00:00AM

Location: 24 HOB

AMENDED

Attendance:

	<i>Present</i>	<i>Absent</i>	<i>Excused</i>
Marcelo Llorente (Chair)	X		
Chris Dorworth			X
Anitere Flores	X		
Dorothy Hukill	X		
Maria Sachs	X		
Elaine Schwartz	X		
John Seiler	X		
David Simmons	X		
Nicholas Thompson	X		
Totals:	8	0	1

Committee meeting was reported out: Wednesday, March 05, 2008 11:07:30AM

COMMITTEE MEETING REPORT
Committee on Constitution & Civil Law

3/5/2008 9:00:00AM

Location: 24 HOB
HB 435 : Trust Administration

AMENDED

Favorable With Amendments (1)

	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Chris Dorworth			X		
Anitere Flores	X				
Dorothy Hukill	X				
Maria Sachs	X				
Elaine Schwartz				X	
John Seiler	X				
David Simmons	X				
Nicholas Thompson	X				
Marcelo Llorente (Chair)	X				
Total Yeas: 7		Total Nays: 0			

Appearances:

Trust Administration
Pete Dunbar (Lobbyist) - Proponent
The Real Property, Probate & Trust Law Section of the Florida Bar
P.O. Box 10095
Tallahassee Florida 32302

Trust Administration
Russell B. Hale (Lobbyist) - Proponent
Florida Bankers Association
P.O. Box 231
Orlando Florida 32802

Committee meeting was reported out: Wednesday, March 05, 2008 11:07:30AM

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. HB 435

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
 ADOPTED AS AMENDED _____ (Y/N)
 ADOPTED W/O OBJECTION _____ (Y/N)
 FAILED TO ADOPT _____ (Y/N)
 WITHDRAWN _____ (Y/N)
 OTHER _____

Adopted without objection 3/5/08

1 Council/Committee hearing bill: Committee on Constitution &
 2 Civil Law
 3 Representative Hukill offered the following:
 4

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 90.5021, Florida Statutes, is created to read:

90.5021 Fiduciary lawyer-client privilege.--

(1) For the purpose of this section, a client acts as a fiduciary when serving as a personal representative or a trustee as defined in s. 731.201, an administrator ad litem as described in s. 733.308, a curator as described in s. 733.501, a guardian or guardian ad litem as defined in s. 744.102, a conservator as defined in s. 710.102, or an attorney in fact as described in chapter 709.

(2) A communication between a lawyer and a client acting as a fiduciary is privileged and protected from disclosure under s. 90.502 to the same extent as if the client were not acting as a fiduciary. In applying s. 90.502 to a communication under this

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

22 section, only the person or entity acting as a fiduciary is
23 considered a client of the lawyer.

24 Section 2. Subsection (7) of section 736.0703, Florida
25 Statutes, is amended, and subsection (9) is added to that
26 section, to read:

27 736.0703 Cotrustees.--

28 (7) Except as otherwise provided in subsection (9), each
29 cotrustee shall exercise reasonable care to:

30 (a) Prevent a cotrustee from committing a breach of trust.

31 (b) Compel a cotrustee to redress a breach of trust.

32 (9) If the terms of a trust instrument provide for the
33 appointment of more than one trustee but confer upon one or more
34 of the trustees, to the exclusion of the others, the power to
35 direct or prevent specified actions of the trustees, the
36 excluded trustees shall act in accordance with the exercise of
37 the power. An excluded trustee is not liable, individually or as
38 a fiduciary, for any consequence that results from compliance
39 with the exercise of the power, regardless of the information
40 available to the excluded trustees. The excluded trustees are
41 relieved of any obligation to review, inquire, investigate, or
42 make recommendations or evaluations with respect to the exercise
43 of the power. The trustee or trustees having the power to direct
44 or prevent actions of the trustees shall be liable to the
45 beneficiaries with respect to the exercise of the power as if
46 the excluded trustees were not in office and have the exclusive
47 obligation to account to and defend any action brought by the
48 beneficiaries with respect to the exercise of the power.

49 Section 3. Subsection (10) of section 736.0802, Florida
50 Statutes, is amended to read:

51 736.0802 Duty of loyalty.--

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

52 (10) Payment of costs or attorney's fees incurred in any
53 trust proceeding from the assets of the trust may be made by the
54 trustee without the approval of any person and without court
55 authorization, unless the court orders otherwise as provided in
56 paragraph (a). ~~except that court authorization shall be required~~
57 ~~if an action has been filed~~

58 (a) If a claim or defense asserted against the trustee
59 based upon a breach of trust is made against the trustee in a
60 trust proceeding, a party must obtain a court order to prohibit
61 the trustee from paying costs or attorney's fees from trust
62 assets. To obtain an order prohibiting payment of costs or
63 attorney's fees from trust assets, a party must make a
64 reasonable showing by evidence in the record or by proffering
65 evidence that provides a reasonable basis for a court to
66 conclude that there has been a breach of trust. The trustee may
67 proffer evidence to rebut the evidence submitted by a party.

68 (b) This subsection does not restrict the remedies a court
69 may employ to remedy a breach of trust, including, but not
70 limited to, ordering appropriate refunds. ~~Court authorization is~~
71 ~~not required if the action or defense is later withdrawn or~~
72 ~~dismissed by the party that is alleging a breach of trust or~~
73 ~~resolved without a determination by the court that the trustee~~
74 ~~has committed a breach of trust.~~

75 Section 4. Subsection (3) of section 736.1008, Florida
76 Statutes, is amended, present subsection (6) of that section is
77 renumbered as subsection (7), and new subsection (6) is added to
78 that section, to read:

79 736.1008 Limitations on proceedings against trustees.--

80 (3) When a trustee has not issued a final trust accounting
81 or has not given written notice to the beneficiary of the
82 availability of the trust records for examination and that

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

83 claims with respect to matters not adequately disclosed may be
84 barred, a claim against the trustee for breach of trust based on
85 a matter not adequately disclosed in a trust disclosure document
86 is barred as provided in chapter 95 and accrues when the
87 beneficiary has actual knowledge of:

88 (a) The facts upon which the claim is based if such actual
89 knowledge is established by clear and convincing evidence; or

90 (b) The trustee's repudiation of the trust or adverse
91 possession of trust assets, and is barred as provided in chapter
92 95.

93
94 Paragraph (a) applies to claims based upon acts or omissions
95 occurring on or after July 1, 2008.

96 (6) (a) Notwithstanding subsections (1), (2), and (3), all
97 claims by a beneficiary against a trustee are barred:

98 1. Upon the later of:

99 a. Ten years after the date the trust terminates, the
100 trustee resigns, or the fiduciary relationship between the
101 trustee and the beneficiary otherwise ends if the beneficiary
102 had actual knowledge of the existence of the trust during the
103 10-year period; or

104 b. Twenty years after the date of the act or omission of
105 the trustee that is complained of if the beneficiary had actual
106 knowledge of the existence of the trust during the 20-year
107 period or;

108 2. Forty years after the date the trust terminates, the
109 trustee resigns, or the fiduciary relationship between the
110 trustee and the beneficiary otherwise ends.

111 (b) For purposes of this subsection, the failure of the
112 trustee to take corrective action is not a separate act or

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

113 omission and does not extend the period of repose established by
114 this subsection.

115 (c) This subsection applies to claims based upon acts or
116 omissions occurring on or after July 1, 2008.

117 Section 5. This act shall take effect July 1, 2008.
118
119

120 -----
121 **T I T L E A M E N D M E N T**

122 Remove the entire title and insert:
123

124 An act relating to fiduciaries; creating s. 90.5021, F.S.;
125 providing a fiduciary lawyer-client privilege for purposes of
126 the Florida Evidence Code; providing that a communication
127 between a lawyer and a client acting as a fiduciary is
128 privileged and protected from disclosure; amending s. 736.0703,
129 F.S.; providing exceptions to duties and liabilities of
130 cotrustees for excluded cotrustees under certain circumstances;
131 providing for liabilities and obligations of included
132 cotrustees; amending s. 736.0802, F.S.; providing an exception
133 for trustee payments of costs and attorney's fees from trust
134 assets except pursuant to court order under certain
135 circumstances; providing requirements for obtaining such a court
136 order; preserving certain court remedies; amending s. 736.1008,
137 F.S.; specifying when a claim accrues against a trustee for
138 breach of trust based on a matter not adequately disclosed;
139 providing for application; specifying periods of repose barring
140 claims by a beneficiary against a trustee; providing for
141 construction; providing for application; providing an effective
142 date.

COMMITTEE MEETING REPORT
Committee on Constitution & Civil Law

3/5/2008 9:00:00AM

Location: 24 HOB
HB 453 : Alimony

AMENDED

<input checked="" type="checkbox"/> Favorable					
	<i>Yea</i>	<i>Nay</i>	<i>No Vote</i>	<i>Absentee Yea</i>	<i>Absentee Nay</i>
Chris Dorworth			X		
Anitere Flores	X				
Dorothy Hukill		X			
Maria Sachs	X				
Elaine Schwartz		X			
John Seiler	X				
David Simmons	X				
Nicholas Thompson	X				
Marcelo Llorente (Chair)	X				
Total Yeas: 6		Total Nays: 2			

Appearances:

Permanent Lifetime Alimony Proposed 3 Year Limit-Co-Hab (Information)
R.C. Lindsey - Proponent
Alliance for Freedom from Alimony, Inc
6368 S.E. Held Court
Stuart Florida 34997
Phone: 772-287-9235

Committee meeting was reported out: Wednesday, March 05, 2008 11:07:30AM

61.08 Alimony.--

(1) In a proceeding for dissolution of marriage, the court may grant alimony to either party, which alimony may be rehabilitative ~~or permanent~~ in nature. In no circumstances shall alimony exceed 3 years in total duration. In any award of alimony, the court may order periodic payments or payments in lump sum or both. The court may consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded. In all dissolution actions, the court shall include findings of fact relative to the factors enumerated in subsection (2) supporting an award or denial of alimony.

(2) In determining a proper award of alimony or maintenance, the court shall consider all relevant economic factors, including but not limited to:

~~(a) The standard of living established during the marriage.~~

~~(ab) The duration of the marriage.~~

~~(be) The age and the physical and emotional condition of each party.~~

~~(cd) The financial resources of each party, the nonmarital and the marital assets and liabilities distributed to each. Imputed income shall not be considered a financial resource for the purposes of this chapter.~~

~~(de) When applicable, the time, not to exceed three years, necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.~~

~~(ef) 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.~~

~~(fg) All sources of income available to either party.~~

~~The court may consider any other factor necessary to do equity and justice between the parties.~~

(3) To the extent necessary to protect an award of alimony, the court may order any party who is ordered to pay alimony to purchase or maintain a life insurance policy or a bond, or to otherwise secure such alimony award with any other assets which may be suitable for that purpose.

(4)(a) With respect to any order requiring the payment of alimony entered on or after January 1, 1985, unless the provisions of paragraph (c) or paragraph (d) apply, the court shall direct in the order that the payments of alimony be made through the appropriate depository as provided in s. 61.181.

INFORMATION PRESENTED TO MEMBERS RE: HB 453 ALIMONY
PRESENTED BY R.C. UNDSEY, CHAIRMAN FOR ALLIANCE
FOR FREEDOM FROM ALIMONY

(b) With respect to any order requiring the payment of alimony entered before January 1, 1985, upon the subsequent appearance, on or after that date, of one or both parties before the court having jurisdiction for the purpose of modifying or enforcing the order or in any other proceeding related to the order, or upon the application of either party, unless the provisions of paragraph (c) or paragraph (d) apply, the court shall modify the terms of the order as necessary to direct that payments of alimony be made through the appropriate depository as provided in s. 61.181.

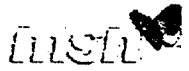
(c) If there is no minor child, alimony payments need not be directed through the depository.

(d)1. If there is a minor child of the parties and both parties so request, the court may order that alimony payments need not be directed through the depository. In this case, the order of support shall provide, or be deemed to provide, that either party may subsequently apply to the depository to require that payments be made through the depository. The court shall provide a copy of the order to the depository. Subsequently, all orders for payment of alimony to the depository shall cease after a period not to exceed three years.

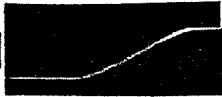
2. If the provisions of subparagraph 1. apply, either party may subsequently file with the depository an affidavit alleging default or arrearages in payment and stating that the party wishes to initiate participation in the depository program. The party shall provide copies of the affidavit to the court and the other party or parties. Fifteen days after receipt of the affidavit, the depository shall notify all parties that future payments shall be directed to the depository. The court may extend the three year limit for deposits for only the time necessary to makeup any arrearages.

3. In IV-D cases, the IV-D agency shall have the same rights as the obligee in requesting that payments be made through the depository.

R.C.
LINDSEY
DE HD 453



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From : Kelly Marsh <kelmarsh@gmail.com>
Reply-To : cfap_org@yahoo.com
Sent : Tuesday, December 12, 2006 8:34 PM
To : cfap_org@yahoo.com
Subject : Re: [cfap_org] Re: State Bill 152 - Cohabitation

Handwritten: SORT MTERS JL

My father-in-law just went through this right before Thanksgiving. His ex-wife has been living with someone for 7 years. They wear rings on their wedding fingers, when the boyfriend was in the hospital he listed her on the hospital records as his wife, they are each other beneficiary if the other dies and the list goes on. My father-in-law pays her \$3K a month which happens to be 50% of his income.

When they divorced she received everything but the house, which had already gone into foreclosure, which he gave it back to the bank. Since they sold it for \$20,000 less than he owed he was responsible for that money. He was responsible for paying all their marital debt. She received 100% of his retirement (\$150,000) which she has spent and she is the beneficiary of a million dollar life insurance policy that she will get when he dies (even though he is now remarried). After her son turned 18 and the child support stopped she took him back to court and had the child support rolled into her alimony and won even though her 18 year old son was living with his father.

Anyway, he tried negotiating, but she would not settle for a reduction of alimony. So, based on the sb152 they went to court. My husband and his brother testified on his father's behalf. We watch him struggle while she is going on numerous extravagant vacations (california, vegas and a 5 day cruise all in 4 months), her boyfriends 2004 crown victorian is paid for, she had a brand new home built then remodeled it 2 years later. She makes \$11/hr working 25-30 hours a week (this is a healthy woman perfectly capable of working a FT job) and the boyfriend makes 30K. Her defense.....he pays rent and she is his landlord. They even relocated to Orlando together.

The ruling went to the ex-wife. So, he is still paying the \$3k a month and now he is also responsible for paying her attorneys fees which are \$10,000. This poor man is supporting not only his ex-wife, but his ex-wife's boyfriend and the courts are allowing it. We were sure that he would win and we were terribly mistaken.

I wish you the best of luck and I truly hope things work out better for you!

On 12/12/06, Andrew Kondoleon <andyk0123@yahoo.com> wrote:

Do you have any update to your situation? Have you filed for a modification based upon sb152?

--- noalimony81232 <bossman81232@cfi.rr.com> wrote:

> --- In cfap_org@yahoo.com, "joelkjera"
> <joel.kjera@...> wrote:
> >
> > I am currently in the process of filing for
> termination or reduction
> > of alimony under SB 152. My exwife has been
> living with her boy
> > friend for the past 8 years while I have been
> paying \$2k per month
> > alimony. The main problem my attorney and I am
> having is proving that
> > my exwife is in a supportive arrangement because

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Handwritten: R.C. HB 453 UNDOSEY

> her boy friend does
 > > not earn alot of money, although he does pay part
 > of the mortgage.
 > > Does anyone know of any other cases based on SB
 > 152 that have gone
 > > through the Florida courts other than the one by
 > David French that is
 > > currently in process.
 > >
 > Hello
 > Iam in the process of trying too.But it not going to
 > good.I have
 > almost the same thing here X wife lives with boy
 > friend but clams he
 > rent from her (right)
 >
 >
 >
 >

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 The Alliance For Freedom From Alimony, Inc.
<http://www.alimonyreform.org>
 email: info@alimonyreform.org

The Center for Liberty and Privacy
<http://www.cflap.org>
 email: info@cflap.org

Abolish Alimony.org
<http://www.abolish-alimony.org>
 email: info@abolish-alimony.org

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*R.C. LINDSEY
 RE HB453*



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From : Kelly Marsh <kelmarsh@gmail.com>
Reply-To : cflap_org@yahoogroups.com
Sent : Wednesday, December 13, 2006 2:31 AM
To : cflap_org@yahoogroups.com
Subject : Re: [cflap_org] Re: State Bill 152 - Cohabitation

Inbox

Good Luck! We had plenty of documentation stating that she was lying. There were joint checking accounts, they admitted to sleeping in the same bed. They even wear diamond rings on their wedding finger. When she was notified that he was taking her for alimony reduction and/or termination. She took the boyfriends name off the checking and savings accounts. Then every month after that she had deposits in her checking account for the amount of \$800 which was "his rent". They had 3 years of checking account statements and only the months after the motion was filed were the \$800 deposits. This was brought up in court, but it didn't make a difference to the judge. Her own sons testified that she had even stated that she wasn't getting married in order to keep receiving the alimony. They even had a hospital document that gave the boyfriends name, but was stated as being her Husband.

None of this matter to the judge. The focus of the court was on the financing of my husbands father. That was it!

On 12/12/06, bossman <bossman81232@cfl.rr.com> wrote:

Hello
I tried to get my alimony stopped under 152 and ran into same thing she claims her boyfriend rents a room from her. Try to prove she is lying

Original Message
From: Andrew Kondoleon
To: cflap_org@yahoogroups.com
Sent: Tuesday, December 12, 2006 2:34 PM
Subject: Re: [cflap_org] Re: State Bill 152 - Cohabitation

Do you have any update to your situation? Have you filed for a modification based upon sb152?

--- noalimony81232 < bossman81232@cfl.rr.com > wrote:

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R.C. Lindsey
Re: HB 453

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 >
 >
 >
 >

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Feedback
 RE: HB453
 RCLINDEF

COMMITTEE MEETING REPORT
Committee on Constitution & Civil Law

3/5/2008 9:00:00AM

Location: 24 HOB

AMENDED

Summary:

Committee on Constitution & Civil Law

Wednesday March 05, 2008 09:00 am

HB 435 Favorable With Amendments (1)

Yeas: 7 Nays: 0

HB 453 Favorable

Yeas: 6 Nays: 2

Committee meeting was reported out: Wednesday, March 05, 2008 11:07:30AM