

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1475 Alimony

**SPONSOR(S):** Stargel

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1978

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Woodburn	Bond
2) Judiciary Committee			

### 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 result in the party receiving the award enjoying a standard of living that is greater than that of the party paying the alimony unless there are written findings of exceptional circumstances.

Several revisions were made to the alimony statute in the 2010 legislative session, including the statutory creation of lengths of marriage and types of alimony. Those revisions only apply to awards of alimony on or after July 1, 2010 and to modifications of awards that were awarded on or after that date. The bill provides that the revisions are applicable to modifications of all awards retroactive to July 1, 2010.

The bill provides an effective date of July 1, 2011 and applies to all initial awards of alimony entered on or after that date and to all modifications of alimony awards for marriages of short or moderate duration made on or after July 1, 2011.

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.<sup>1</sup> 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.<sup>2</sup> Before a court can make an award of alimony, equitable distribution of the former spouse's assets must occur.<sup>3</sup>

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.<sup>4</sup> A court may also consider the adultery of either party and the circumstances surrounding that adultery in determining an award of alimony.<sup>5</sup>

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.<sup>6</sup>

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

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

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Section 61.08(2), F.S.

<sup>5</sup> Section 61.08(1), F.S.

<sup>6</sup> Section 61.08(4), F.S.

<sup>7</sup> Section 61.08(5), F.S.

<sup>8</sup> Section 61.08(6), F.S.

<sup>9</sup> Section 61.08(7), F.S.

<sup>10</sup> Section 61.08(8), F.S.

### **Effect of the Bill: Awarding of Alimony**

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. These subsections refer to the four types of alimony: Bridge-the-gap, rehabilitative, durational, and permanent

#### **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.<sup>11</sup>

#### **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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

#### **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.<sup>15</sup>

### **Effect of the Bill: Durational Alimony**

The bill amends s. 61.08(7), F.S., by deleting the provision that provides that only a marriage of short or moderate may be awarded durational alimony. The deletion of this provision will allow a court to award durational alimony to a party in a long-term marriage.

#### **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

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<sup>11</sup> Section 60.08(5), F.S.

<sup>12</sup> Section 60.08(6)(a), F.S.

<sup>13</sup> Section 60.08(6)(b), F.S.

<sup>14</sup> Section 60.08(6)(c), F.S.

<sup>15</sup> Section 60.08(7), F.S.

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.<sup>16</sup>

### **Effect of the Bill: Permanent Alimony**

The bill amends s. 61.08(8), F.S., to provide that written findings of exceptional circumstances are needed for the award of permanent alimony for a marriage of short duration. The bill also provides that in awarding permanent alimony, the court must include findings regarding the applicability of the needs and necessities of life established during the marriage to the alimony award and must include findings that no other form of alimony, including, but not limited to durational alimony, is adequate.

### **Effect of the Bill: Limit on Alimony**

The bill creates s. 61.08(9), F.S., to provide that an alimony award may not result in the party receiving the alimony award enjoying a standard of living that is greater than that of the party paying the alimony, unless there are written findings of exceptional circumstances.

### **Applicability of Amendments made in 2010 Legislative Session**

Current law provides that the amendments made pursuant to ch. 2010-199, L.O.F., are only applicable to awards of alimony made on or after July 1, 2010 and modifications of those awards. The amendments do not apply to modification of alimony awards in which the original award was made before July 1, 2010.<sup>17</sup>

### **Effect of the Bill: Applicability of Amendments made in 2010 Legislative Session**

The bill also provides that all amendments made in the 2010 Legislative session to s. 61.08, F.S., apply to all modifications of alimony awards made after July 1, 2010.

### **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 on or after the effective date of the act and to all modifications of alimony awards for short or moderation duration made on or after the effective date.

## **B. SECTION DIRECTORY:**

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

Section 2 provides an effective date of July 1, 2011.

Section 3 amends s. 2 of ch. 2010-299, L.O.F., regarding application.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

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

<sup>17</sup> See note in s. 61.08, F.S. "Section 2, ch. 2010-199, provides that '[t]he amendments to s. 61.08, Florida Statutes, by this act apply to all initial awards of alimony entered after July 1, 2010, and modifications of such awards. Such amendments may not serve as a basis to modify awards entered before July 1, 2010, or as a basis to change amounts or duration of awards existing before July 1, 2010. The amendments to s. 61.08, Florida Statutes, by this act are applicable to all cases pending on or filed after July 1, 2010.'"

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:

The bill provides that the amendments to s. 2 of ch. 2010-199, L.O.F., are retroactive to July 1, 2010. Retroactive application of legislation can implicate the due process provisions of the Constitution.<sup>18</sup> As a general matter, statutes which do not alter vested rights but relate only to remedies or procedure can be applied retroactively.<sup>19</sup>

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

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<sup>18</sup> See *State Department of Transportation v. Knowles*, 402 So.2d 1155 (Fla. 1981).

<sup>19</sup> See *Metropolitan Dade County v. Chase Federal Housing Corporation*, 737 So.2d. 494 (Fla. 1999).