

# **Civil Justice Subcommittee**

February 13, 2013 2:00 PM 404 HOB

**Action Packet** 

# Civil Justice Subcommittee 2/13/2013 2:00:00PM

Location: 404 HOB

#### **Summary:**

#### **Civil Justice Subcommittee**

Print Date: 2/13/2013 6:32 pm

Wednesday February 13, 2013 02:00 pm

HB 229	Favorable With Con	nmittee Substitute	Yeas:	10	Nays:	0
Am	endment 386203	Adopted Without Objection				
HB 231	Favorable With Con	nmittee Substitute	Yeas:	10	Nays:	2
Am	endment 668555	Adopted Without Objection				
HB 267	Favorable		Yeas:	12	Nays:	0
HB 457	Favorable With Con	nmittee Substitute	Yeas:	10	Nays:	2
Am	endment 549405	Adopted Without Objection				
PCB CJS 1	3-02 Favorable		Yeas:	8	Nays: 4	4

# Civil Justice Subcommittee 2/13/2013 2:00:00PM

Location: 404 HOB

Print Date: 2/13/2013 6:32 pm

#### Attendance:

	Present	Absent	Excused
Larry Metz (Chair)	X		
Jim Boyd	X		
Michael Clelland	X		
Daniel Davis	X		
Tom Goodson	X		
Bill Hager	X	·	
Jose Oliva	X		
Kathleen Passidomo	X		
José Rodríguez	X		
Ross Spano			X
Cynthia Stafford	X		
Charlie Stone	. X		
James Waldman	X		
Totals:	12	0	1

#### **Civil Justice Subcommittee**

2/13/2013 2:00:00PM

Location: 404 HOB
HB 229: Land Trusts

X Favorable With Committee Substitute

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Jim Boyd	X				
Michael Clelland	X				
Daniel Davis	X				
Tom Goodson	X				
Bill Hager			X		
Jose Oliva			X		
Kathleen Passidomo	X				
José Rodríguez	X				
Ross Spano			X		
Cynthia Stafford	X				
Charlie Stone	X				
James Waldman	X				
Larry Metz (Chair)	X				
	Total Yeas: 10	Total Nays: 0			

#### **HB 229 Amendments**

#### Amendment 386203

X Adopted Without Objection

# Appearances:

Dunbar, Peter (Lobbyist) - Proponent Real Property, Probate & Trust Law Section c/o The Florida Bar 651 E Jefferson St Tallahassee FL 32399

Phone: (850)222-3533

Print Date: 2/13/2013 6:32 pm



Bill No. HB 229 (2013)

Amendment No. 1

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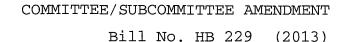
COMMITTEE/SUBCOMMIT	TTEE ACTION	
ADOPTED	(Y/N)	
ADOPTED AS AMENDED	(Y/N)	ble
ADOPTED W/O OBJECTION	(Y/N)	Jarolable
FAILED TO ADOPT	(Y/N)	All 7.13.13
WITHDRAWN	(Y/N)	U d
OTHER		

Committee/Subcommittee hearing bill: Civil Justice Subcommittee Representative Rodríguez, J. offered the following:

#### Amendment (with title amendment)

Remove lines 186-599 and insert: property to the trustee of a land trust and conferring upon the trustee the power and authority prescribed in s. 689.073(1), in this state, including, but not limited to, a leasehold or mortgagee interest, to any person or any corporation, bank, trust company, or other entity duly formed under the laws of its state of qualification, in which recorded instrument the person, corporation, bank, trust company, or other entity is designated "trustee" or "as trustee," whether or not reference is made in the recorded instrument to the beneficiaries of such land trust or to the trust agreement or any separate collateral unrecorded declarations or agreements, is effective to vest, and is hereby declared to have vested, in such trustee both legal and equitable title, and full rights of ownership, over the trust real property or interest therein, with full power and authority as granted and provided in the recorded instrument to deal in

386203 - h0229-line186.docx Published On: 2/12/2013 6:35:04 PM



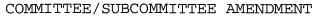


Amendment No. 1 21 and with the tra

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and with the <u>trust</u> property or interest therein or any part thereof. The recorded instrument does not itself create an entity, regardless of whether the relationship among the beneficiaries and the trustee is deemed to be an entity under other applicable law; provided, the recorded instrument confers on the trustee the power and authority to protect, to conserve, to sell, to lease, to encumber, or otherwise to manage and dispose of the real property described in the recorded instrument.

- (4) STATUTE OF USES INAPPLICABLE.—Section 689.09 and the statute of uses do not execute a land trust or vest the trust property in the beneficiary or beneficiaries of the land trust, notwithstanding any lack of duties on the part of the trustee or the otherwise passive nature of the land trust.
- (5) DOCTRINE OF MERGER INAPPLICABLE.—The doctrine of merger does not extinguish a land trust or vest the trust property in the beneficiary or beneficiaries of the land trust, regardless of whether the trustee is the sole beneficiary of the land trust.
- (6) PERSONAL PROPERTY.—In all cases in which the recorded instrument or the trust agreement, as hereinabove provided, contains a provision defining and declaring the interests of beneficiaries of a land trust thereunder to be personal property only, such provision is shall be controlling for all purposes when such determination becomes an issue under the laws or in the courts of this state. If no such personal property designation appears in the recorded instrument or in the trust





Bill No. HB 229 (2013)

Amendment No. 1 agreement, the interests of the land trust beneficiaries are real property.

- (7) TRUSTEE LIABILITY.—In addition to any other limitation on personal liability existing pursuant to statute or otherwise, the provisions of ss. 736.08125 and 736.1013 apply to the trustee of a land trust created pursuant to this section.
  - (8) LAND TRUST BENEFICIARIES.-

- (a) Except as provided in this section, the beneficiaries of a land trust are not liable, solely by being beneficiaries, under a judgment, decree, or order of court or in any other manner for a debt, obligation, or liability of the land trust.
- (b) Any beneficiary acting under the trust agreement of a land trust is not liable to the land trust's trustee or to any other beneficiary for the beneficiary's good faith reliance on the provisions of the trust agreement. A beneficiary's duties and liabilities under a land trust may be expanded or restricted in a trust agreement or beneficiary agreement.
- (b)1. If provided in the recorded instrument, in the trust agreement, or in a beneficiary agreement:
- a. A particular beneficiary may own the beneficial interest in a particular portion or parcel of the trust property of a land trust;
- b. A particular person may be the holder of the power of direction with respect to the trustee's actions concerning a particular portion or parcel of the trust property of a land trust; and
- c. The beneficiaries may own specified proportions or percentages of the beneficial interest in the trust property or



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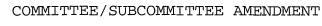
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#### COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 229 (2013)

Amendment No. 1 in particular portions or parcels of the trust property of a land trust.

- 2. Multiple beneficiaries may own a beneficial interest in a land trust as tenants in common, joint tenants with right of survivorship, or tenants by the entireties.
- If a beneficial interest in a land trust is determined to be personal property as provided in subsection (6), chapter 679 applies to the perfection of any security interest in that a beneficial interest in a land trust. If a beneficial interest in a land trust is determined to be real property as provided in subsection (6), then to perfect a lien or security interest against that beneficial interest, the mortgage, deed of trust, security agreement, or other similar security document must be recorded in the public records of the county that is specified for such security documents in the recorded instrument or in a declaration of trust or memorandum of such declaration of trust recorded in the public records of the same county as the recorded instrument. If no county is so specified for recording such security documents, the proper county for recording such a security document against a beneficiary's interest in any trust property is the county where the trust property is located. The perfection of a lien or security interest in a beneficial interest in a land trust does not affect, attach to, or encumber the legal or equitable title of the trustee in the trust property and does not impair or diminish the authority of the trustee under the recorded instrument, and parties dealing with the trustee are not required to inquire into the terms of the





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Bill No. HB 229 (2013)

Amendment No. 1 unrecorded trust agreement or any lien or security interest against a beneficial interest in the land trust.

- (d) The trustee's legal and equitable title to the trust property of a land trust is separate and distinct from the beneficial interest of a beneficiary in the land trust and in the trust property. A lien, judgment, mortgage, security interest, or other encumbrance attaching to the trustee's legal and equitable title to the trust property of a land trust does not attach to the beneficial interest of any beneficiary; and any lien, judgment, mortgage, security interest, or other encumbrance against a beneficiary or beneficial interest does not attach to the legal or equitable title of the trustee to the trust property held under a land trust, unless the lien, judgment, mortgage, security interest, or other encumbrance by its terms or by operation of other law attaches to both the interest of the trustee and the interest of such beneficiary. A beneficiary's duties and liabilities may be expanded or restricted in a trust agreement or beneficiary agreement.
- (e) Any subsequent document appearing of record in which a beneficiary of a <u>land</u> trust transfers or encumbers <u>any</u> the beneficial interest in the <u>land</u> trust <u>does not transfer or encumber the legal or equitable title of the trustee to the trust property and does not diminish or impair the authority of the trustee under the terms of the recorded instrument. Parties dealing with the trustee <u>of a land trust</u> are not required to inquire into the terms of the unrecorded trust agreement.</u>
- (f) The An unrecorded trust agreement giving rise to a recorded instrument for a land trust may provide that one or



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# COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 229 (2013)

Amendment No. 1 more persons or entities have the power to direct the trustee to convey property or interests, execute a mortgage, distribute proceeds of a sale or financing, and execute documents incidental to administration of the land trust. The power of direction, unless provided otherwise in the land trust agreement of the land trust, is conferred upon the holders of the power for the use and benefit of all holders of any beneficial interest in the land trust. In the absence of a provision in the land trust agreement of a land trust to the contrary, the power of direction shall be in accordance with the percentage of individual ownership. In exercising the power of direction, the holders of the power of direction are presumed to act in a fiduciary capacity for the benefit of all holders of any beneficial interest in the land trust, unless otherwise provided in the land trust agreement. A beneficial interest in a land trust is indefeasible, and the power of direction may not be exercised so as to alter, amend, revoke, terminate, defeat, or otherwise affect or change the enjoyment of any beneficial interest in a land trust.

(g) A <u>land</u> trust <u>relating to real estate</u> does not fail, and any use relating to <u>the trust property real estate</u> may not be defeated, because beneficiaries are not specified by name in the recorded <u>instrument deed of conveyance</u> to the trustee or because duties are not imposed upon the trustee. The power conferred by any recorded <u>instrument deed of conveyance</u> on a trustee <u>of a land trust</u> to sell, lease, encumber, or otherwise dispose of property described in the <u>recorded instrument deed</u> is effective, and a person dealing with the trustee of a land trust



Bill No. HB 229 (2013)

Amendment No. 1 is not required to inquire any further into the right of the trustee to act or the disposition of any proceeds.

- (h) The principal residence of a beneficiary shall be entitled to the homestead tax exemption even if the homestead is held by a trustee in a land trust, provided the beneficiary qualifies for the homestead exemption under chapter 196.
- (i) In a foreclosure against trust property or other litigation affecting the title to trust property of a land trust, the appointment of a guardian ad litem is not necessary to represent the interest of any beneficiary.
  - (9) SUCCESSOR TRUSTEE.-

(a) The provisions of s. 736.0705 relating to the resignation of a trustee do not apply to the appointment of a successor trustee under this section.

(a) (b) If the recorded instrument and the unrecorded land trust agreement are silent as to the appointment of a successor trustee of a land trust in the event of the death, incapacity, resignation, or termination due to dissolution of a land trustee or if a land trustee is unable to serve as trustee of a land trust, one or more persons or entities having the power of direction of the land trust agreement may appoint a successor trustee or trustees of the land trust by filing a declaration of appointment of a successor trustee or trustees in the public records of office of the recorder of deeds in the county in which the trust property is located. The declaration must be signed by a beneficiary or beneficiaries of the land trust and by the each successor trustee or trustees, must be acknowledged



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# COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 229 (2013)

Amendment No. 1 in the manner provided for acknowledgment of deeds, and must contain:

- 1. The legal description of the trust property.
- 2. The name and address of the former trustee.
- 3. The name and address of  $\underline{\text{the}}$  each successor trustee  $\underline{\text{or}}$  trustees.
- 4. A statement that each successor trustee has been appointed by one or more persons or entities having the power of direction of the land trust appointed the successor trustee or trustees, together with an acceptance of appointment by the each successor trustee or trustees.

(b) (e) If the recorded instrument is silent as to the appointment of a successor trustee or trustees of a land trust but an unrecorded land trust agreement provides for the appointment of a successor trustee or trustees in the event of the death, incapacity, resignation, or termination due to dissolution of the land trustee, of a land trust, then upon the appointment of any successor trustee pursuant to the terms of the unrecorded land trust agreement, the each successor trustee or trustees shall file a declaration of appointment of a successor trustee in the public records of office of the recorder of deeds in the county in which the trust property is located. The declaration must be signed by both the former trustee and the each successor trustee or trustees, must be acknowledged in the manner provided for acknowledgment of deeds, and must contain:

- 1. The legal description of the trust property.
- 2. The name and address of the former trustee.



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Amendment No. 1

- 3. The name and address of the successor trustee <u>or</u> <u>trustees</u>.
- 4. A statement of resignation by the former trustee and a statement of acceptance of appointment by  $\underline{\text{the}}$  each successor trustee or trustees.
- 5. A statement that the each successor trustee or trustees were was duly appointed under the terms of the unrecorded land trust agreement.

If the appointment of any successor trustee of a land trust is due to the death or incapacity of the former trustee, the declaration need not be signed by the former trustee and a copy of the death certificate or a statement that the former trustee is incapacitated or unable to serve must be attached to or included in the declaration, as applicable.

(c)(d) If the recorded instrument provides for the appointment of any successor trustee of a land trust and any successor trustee is appointed in accordance with the recorded instrument, no additional declarations of appointment of any successor trustee are required under this section.

(d) (e) Each successor land trustee appointed with respect to a land trust is fully vested with all the estate, properties, rights, powers, trusts, duties, and obligations of the predecessor land trustee, except that any successor land trustee of a land trust is not under any duty to inquire into the acts or omissions of a predecessor trustee and is not liable for any act or failure to act of a predecessor trustee. A person dealing with any successor trustee of a land trust pursuant to a



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Amendment No. 1

declaration filed under this section is not obligated to inquire into or ascertain the authority of the successor trustee to act within or exercise the powers granted under the recorded instruments or any unrecorded <u>trust agreement</u> declarations or agreements.

- (e)(f) A land trust agreement may provide that the trustee of a land trust, when directed to do so by the holder of the power of direction or by the beneficiaries of the land trust or legal representatives of the beneficiaries, may convey the trust property directly to another trustee on behalf of the beneficiaries or to another representative named in such directive others named by the beneficiaries.
  - (10) TRUSTEE AS CREDITOR.-
- mortgage against in a beneficial interest in a land trust or by a mortgage on land trust property of a land trust, the validity or enforceability of the debt, security interest, or mortgage and the rights, remedies, powers, and duties of the creditor with respect to the debt or the security are not affected by the fact that the creditor and the trustee are the same person or entity, and the creditor may extend credit, obtain any necessary security interest or mortgage, and acquire and deal with the property comprising the security as though the creditor were not the trustee.
- (b) A trustee of a land trust does not breach a fiduciary duty to the beneficiaries, and it is not evidence of a breach of any fiduciary duty owed by the trustee to the beneficiaries for a trustee to be or become a secured or unsecured creditor of the



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Amendment No. 1

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land trust, the beneficiary of the land trust, or a third party whose debt to such creditor is guaranteed by a beneficiary of the land trust.

- (11) NOTICES TO TRUSTEE.—Any notice required to be given to a trustee of a land trust regarding trust property by a person who is not a party to the trust agreement must identify the trust property to which the notice pertains or include the name and date of the land trust to which the notice pertains, if such information is shown on the recorded instrument for such trust property.
- (12) DETERMINATION OF APPLICABLE LAW.—Except as otherwise provided in this section, chapter 736 does not apply to a land trust governed by this section.
- (a) A trust is not a land trust governed by this section if there is no recorded instrument that confers on the trustee the power and authority prescribed in s 689.073(1).
- (b) For a trust created before the effective date of this act:
- 1. The trust is a land trust governed by this section if a recorded instrument confers on the trustee the power and authority described in s 689.073(1) and if:
- a. The recorded instrument or the trust agreement expressly provides that the trust is a land trust; or
- b. The intent of the parties that the trust be a land trust is discerned from the trust agreement or the recorded instrument;



#### COMMITTEE/SUBCOMMITTEE AMENDMENT

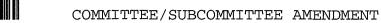
Bill No. HB 229 (2013)

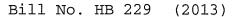
Amendment No. 1	
without regard to whether the trustee's duties under the trus	<u>t</u>
agreement are greater than those limited duties described in	s.
689.071(2)(c).	

- 2. The trust is not a land trust governed by this section if:
- a. The recorded instrument or the trust agreement expressly provides that the trust is to be governed by chapter 736, or by any predecessor trust code or other trust law other than this section; or
- b. The intent of the parties that the trust be governed by chapter 736, or by any predecessor trust code or other trust law other than this section, is discerned from the trust agreement or the recorded instrument;

without regard to whether the trustee's duties under the trust agreement are greater than those limited duties listed in s. 689.071(2)(c), and without consideration of any references in the trust agreement to provisions of chapter 736 made applicable to the trust by chapter 721, if the trust is a timeshare estate trust complying with s. 721.08(2)(c)4. or a vacation club trust complying with s. 721.53(1)(e).

- 3. Solely for the purpose of determining the law governing a trust under subparagraph 1. or subparagraph 2., the determination shall be made without consideration of any amendment to the trust agreement made on or after the effective date of this act, except as provided in paragraph (d).
- 4. If the determination of whether a trust is a land trust governed by this section cannot be made under either







Amendment No. 1
subparagraph 1. or subparagraph 2., the determination shall be
made under paragraph (c) as if the trust was created on or after
the effective date of this act.

- (c) If a recorded instrument confers on the trustee the power and authority described in s. 689.073(1) and the trust was created on or after the effective date of this act, the trust shall be determined to be a land trust governed by this section only if the trustee's duties under the trust agreement, including any amendment made on or after such date, are greater than those limited duties described in s. 689.071(2)(c).
- (d) If the trust agreement for a land trust created before the effective date of this act is amended on or after such date to add to or increase the duties of the trustee beyond the duties provided in the trust agreement as of the effective date of this act, the trust shall remain a land trust governed by this section only if the additional or increased duties of the trustee implemented by the amendment are greater than those limited duties described in s. 689.071(2)(c).
- (13) UNIFORM COMMERCIAL CODE TRANSITION RULE.—This section does not render ineffective any effective Uniform Commercial Code financing statement filed before July 1, 2014, to perfect a security interest in a beneficial interest in a land trust that is determined to be real property as provided in subsection (6), but such a financing statement ceases to be effective at the earlier of July 1, 2019, or the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed, and the filing of a Uniform Commercial Code continuation statement after July 1, 2014, does

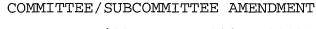


Bill No. HB 229 (2013)

Amendment No. 1
not continue the effectiveness of such a financing statement.
The recording of a mortgage, deed of trust, security agreement,
or other similar security document against such a beneficial
interest that is real property in the public records specified
in subsection (8)(c) continues the effectiveness and priority of
a financing statement filed against such a beneficial interest
before July 1, 2014, if:

- (a) The recording of the security document in that county is effective to perfect a lien on such beneficial interest under subsection (8)(c);
- (b) The recorded security document identifies a financing statement filed before July 1, 2014, by indicating the office in which the financing statement was filed and providing the dates of filing and the file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and
- (c) The recorded security document indicates that such financing statement filed before July 1, 2014, remains effective.

If no original security document bearing the debtor's signature is readily available for recording in the public records, a secured party may proceed under this subsection with such financing statement filed before July 1, 2014, by recording a copy of a security document verified by the secured party as being a true and correct copy of an original authenticated by the debtor. This subsection does not apply to the perfection of





Bill No. HB 229 (2013)

Amendment No. 1

a security interest in any beneficial interest in a land trust

that is determined to be personal property under subsection (6).

- (14) (11) REMEDIAL ACT.—This act is remedial in nature and shall be given a liberal interpretation to effectuate the intent and purposes hereinabove expressed.
- (15)(12) EXCLUSION.—This act does not apply to any deed, mortgage, or other instrument to which s. 689.07 applies.
- Section 3. Section 736.0102, Florida Statutes, is amended to read:

736.0102 Scope.-

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- (1) Except as otherwise provided in this section, this code applies to express trusts, charitable or noncharitable, and trusts created pursuant to a law, judgment, or decree that requires the trust to be administered in the manner of an express trust.
- (2) This code does not apply to constructive or resulting trusts; conservatorships; custodial arrangements pursuant to the Florida Uniform Transfers to Minors Act; business trusts providing for certificates to be issued to beneficiaries; common trust funds; land trusts under s. 689.071, except to the extent provided in s. 689.071(7); trusts created by the form of the account or by the deposit agreement at a financial institution; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.



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Amendment No. 1

(3) This code does not apply to any land trust under s. 689.071, except to the extent provided in s. 689.071(7), s. 721.08(2)(c)4. or s. 721.53(1)(e). A trust governed at its creation by chapter 736, former chapter 737, or any prior trust statute superseded or replaced by any provision of former chapter 737, is not a land trust regardless of any amendment or modification of the trust, any change in the assets held in the trust, or any continuing trust resulting from the distribution or retention in further trust of assets from the trust.

Section 4. The Division of Law Revision and Information is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with such date.

TITLE AMENDMENT

Remove lines 3-5 and insert:

F.S.; transferring and renumbering portions of s. 689.071, F.S.; providing title estoppel language for vesting full title in trustees; providing

#### **Civil Justice Subcommittee**

2/13/2013 2:00:00PM

Location: 404 HOB

HB 231 : Dissolution of Marriage

X | Favorable With Committee Substitute

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Jim Boyd	X			-	
Michael Clelland	X				
Daniel Davis	X				
Tom Goodson	X				
Bill Hager	X				
Jose Oliva	X			-	
Kathleen Passidomo	· X				
José Rodríguez		X			
Ross Spano			X		
Cynthia Stafford		X			
Charlie Stone	X				
James Waldman	X				
Larry Metz (Chair)	X				
	Total Yeas: 10	Total Nays: 2			

#### **HB 231 Amendments**

#### Amendment 668555

X Adopted Without Objection

#### **Appearances:**

Lowell, Paul (Lobbyist) - Proponent Family Law Reform 106 E College Ave, Suite 900 Tallahassee FL 32301 Phone: 850-222-6100

Pitts, Brian - Information Only Justice-2-Jesus 1119 Newton Ave. S. St. Petersburg FL 33705 Phone: 727-897-9291

Power, Terrance (General Public) - Waive In Support 2291 Sweetgrass Court Clearwater FL 33759

Phone: 813-281-0707

Dwyer, Ann (General Public) - Opponent 120 Lake Oaks Blvd Longwood FL 32750

Phone: 407-489-8783

Print Date: 2/13/2013 6:32 pm

#### **Civil Justice Subcommittee**

2/13/2013 2:00:00PM

Location: 404 HOB

HB 231 : Dissolution of Marriage (continued)

Appearances: (continued)

Albarran, Guido (General Public) - Proponent

Florida Alimony Reform 1998 NE 7th Street Deerfield Beach FL 33441 Phone: 561-329-5353

Killilea, Jan (General Public) - Opponent

18036 Mambo Drive Boca Raton FL 33496 Phone: 561-483-3717

Frisher, Alan (General Public) - Proponent

Co-Director, Florida Alimony Reform

7630 N Wickham Road Melbourne FL 32940

Phone: 321-242-7526

Duggar, Thomas (General Public) - Opponent Family Law Section of the Florida Bar

1391 Timberlane Tallahassee FL

MacMillan, Tarie (General Public) - Proponent

Florida Alimony Reform 15822 Aurora Lake Circle Wiwauma FL 33598

Phone: 813-545-3342

Manz, David - Opponent

Florida Bar Family Law Section 5800 Overseas Highway Suite 40

Marathon FL 33013

Phone: (305) 731-3600

Print Date: 2/13/2013 6:32 pm

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Bill No. HB 231 (2013)

#### Amendment No. 1

COMMITTEE/SUBCOMMIT	TTEE ACTION	
ADOPTED	(Y/N)	<b>8</b> a
ADOPTED AS AMENDED	(Y/N)	able
ADOPTED W/O OBJECTION	(Y/N)	10000002.13
FAILED TO ADOPT	(Y/N)	2.13
WITHDRAWN	(Y/N)	
OTHER		

Committee/Subcommittee hearing bill: Civil Justice Subcommittee Representative Workman offered the following:

#### Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 61.071, Florida Statutes, is amended to read:

61.071 Alimony pendente lite; suit money.—In every proceeding for dissolution of the marriage, a party may claim alimony and suit money in the petition or by motion, and if the petition is well founded, the court shall allow alimony calculated in accordance with s. 61.08 and a reasonable sum of suit money therefor. If a party in any proceeding for dissolution of marriage claims alimony or suit money in his or her answer or by motion, and the answer or motion is well founded, the court shall allow alimony calculated in accordance with s. 61.08 and a reasonable sum of suit money therefor.

Section 2. Section 61.08, Florida Statutes, is amended to read:

61.08 Alimony.-

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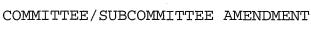
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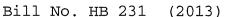


Bill No. HB 231 (2013)

Amendment No. 1

- (1) For purposes of this section, the term:
- (a) "Alimony" means a court-ordered payment of support by an obligor to an obligee after the dissolution of a marriage.
- (b) "Long-term marriage" means a marriage having a duration of 20 years or more, as measured from the date of the marriage to the date of filing the petition for dissolution.
- (c) "Mid-term marriage" means a marriage having a duration of more than 10 years but less than 20 years, as measured from the date of the marriage to the date of filing the petition for dissolution.
- (d) "Net income" means net income as determined in accordance with s. 61.30.
- (e) "Short-term marriage" means a marriage having a duration equal to or less than 10 years, as measured from the date of the marriage to the date of filing the petition for dissolution.
- (2)(a)(1) In a proceeding for dissolution of marriage, the court may grant alimony to either party in the form of, which alimony may be bridge-the-gap, rehabilitative, or durational alimony, or a permanent in nature or any combination of these forms of alimony, but shall prioritize an award of bridge-the-gap alimony, followed by rehabilitative alimony, over any other form of alimony. In an any award of alimony, the court may order periodic payments, or payments in lump sum, or both. Alimony may not be awarded in any other action.
- (b) The court shall make written findings regarding the basis for awarding a combination of forms of alimony, including the type of alimony and length of time for which it is awarded.







Amendment	No.	1											
The court	may	award	only	a	combinat:	ion	of	for	ms	of	ali	.mony	to
provide g	reate	r ecor	nomic	as	ssistance	in	ord	ler	to	a11	.ow	the	
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- (c) The court may consider the adultery of either party spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded.
- (d) In all dissolution actions, the court shall include written findings of fact relative to the factors enumerated in subsection (3)(2) supporting an award or denial of alimony.
- (e) An award of alimony granted under this section automatically terminates without further action of either party or the court upon the earlier of:
  - 1. The durational limits specified in this section; or
- 2. The obligee's normal retirement age for social security retirement benefits.

If the obligee proves by clear and convincing evidence that the need for alimony continues to exist and the court determines that the obligor continues to have the ability to pay, the court shall issue written findings justifying an extension of alimony consistent with the provisions of this section.

- (f) The clerk of the court shall, upon request, indicate in writing that an alimony obligation has terminated in accordance with paragraph (e), unless there is a pending motion before the court disputing the fulfillment of the alimony obligation.
- (3) (2) The party seeking alimony has the burden of proof of demonstrating a need for alimony in accordance with



#### COMMITTEE/SUBCOMMITTEE AMENDMENT

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Amendment No. 1 subsection (8) and that the other party has the ability to pay alimony. In determining whether to award alimony or maintenance, the court shall first make, in writing, a specific factual determination as to whether the other either party has an actual need for alimony or maintenance and whether either party has the ability to pay alimony or maintenance. If the court finds that the a party seeking alimony has met its burden of proof in demonstrating a need for alimony or maintenance and that the other party has the ability to pay alimony or maintenance, then in determining the proper type and amount of alimony or maintenance under subsections (5)-(9)(5)(8), the court shall consider all relevant factors, including, but not limited to:

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

(a) (b) The duration of the marriage.

 $\underline{\text{(b)}}$  (c) The age and the physical and emotional condition of each party.

(c) (d) The financial resources of each party, including the portion of nonmarital assets that were relied upon by the parties during the marriage and the marital assets and liabilities distributed to each.

<u>(d) (e)</u> 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.

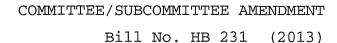


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<u>(e) <del>(f)</del></u>	- The	contrib	ution	of	each	party	to	the	marri	age,
including,	but no	t limit	ed to	, se	ervice	es ren	dere	ed ir	n home	emaking
child care,	educa	tion, a	nd ca	reer	buil	lding	of t	he c	ther	party.

- $\underline{\text{(f)}}$  The responsibilities each party will have with regard to any minor children that the parties they have in common.
- (g) (h) The tax treatment and consequences to both parties of an any alimony award, which must be consistent with applicable state and federal tax laws and may include including the designation of all or a portion of the payment as a nontaxable, nondeductible payment.
- (h)(i) All sources of income available to either party, including income available to either party through investments of any asset held by that party which was acquired during the marriage or acquired outside the marriage and relied upon during the marriage.
- (i) The net income and standard of living available to each party after the application of the alimony award. There is a rebuttable presumption that both parties will have a lower standard of living after the dissolution of marriage than the standard of living they enjoyed during the marriage. This presumption may be overcome by a preponderance of the evidence.
- (j) Any other factor necessary to do equity and justice between the parties, if that factor is specifically identified in the award with findings of fact justifying the application of the factor.
- (4) (3) To the extent necessary to protect an award of alimony, the court may order any party who is ordered to pay





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alimony to purchase or maintain a decreasing term life insurance policy or a bond, or to otherwise secure such alimony award with any other assets that which may be suitable for that purpose, in an amount adequate to secure the alimony award. Any such security may be awarded only upon a showing of special circumstances. If the court finds special circumstances and awards such security, the court must make specific evidentiary findings regarding the availability, cost, and financial impact on the obligated party. Any security may be modifiable in the event that the underlying alimony award is modified and shall be reduced in an amount commensurate with any reduction in the alimony award.

- (4) For purposes of determining alimony, there is a rebuttable presumption that a short-term marriage is a marriage having a duration of less than 7 years, a moderate-term marriage is a marriage having a duration of greater than 7 years but less than 17 years, and long term marriage is a marriage having a duration of 17 years or greater. 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.
- (5) 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



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of the party receiving alimony. An award of bridge-the-gap alimony  $\underline{\text{is}}$   $\underline{\text{shall}}$  not  $\underline{\text{be}}$  modifiable in amount or duration.

- (6)(a) Rehabilitative alimony may be awarded to assist a party in establishing the capacity for self-support through either:
  - 1. The redevelopment of previous skills or credentials; or
- 2. The acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials.
- (b) 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.
- (c) An award of rehabilitative alimony may be modified or terminated only during the rehabilitative period in accordance with s. 61.14 based upon a substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan.
- 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 short-term, mid-term, or long-term marriage of short or moderate duration or following a marriage of long duration if there is no engoing need for support on a permanent basis. When awarding durational alimony, the court must make written findings that an award of another form of alimony or a combination of the other forms of alimony is not appropriate. An award of durational alimony terminates upon the death of either party or upon the remarriage of the party



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Amendment No. 1 receiving alimony. The amount of an award of durational alimony shall 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. However, The length of an award of durational alimony may not be modified except under exceptional circumstances and may not exceed 50 percent of the length of the marriage, unless the party seeking alimony proves by clear and convincing evidence that exceptional circumstances justify the need for a longer award of alimony, which exceptional circumstances must be set out in writing by the court the length of the marriage.

- (8) (a) There is a rebuttable presumption against awarding alimony for a short-term marriage. A party seeking alimony may overcome this presumption by demonstrating by clear and convincing evidence a need for alimony. If the court finds that the party has met its burden in demonstrating a need for alimony and that the other party has the ability to pay alimony, the court shall determine a monthly award of alimony that may not exceed 20 percent of the obligor's monthly net income.
- (b) There is no presumption in favor of either party to an award of alimony for a mid-term marriage. A party seeking such alimony must prove by a preponderance of the evidence a need for alimony. If the court finds that the party has met its burden in demonstrating a need for alimony and that the other party has the ability to pay alimony, the court shall determine a monthly alimony obligation that may not exceed 30 percent of the obligor's monthly net income.



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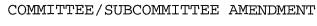
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(c) There is a rebuttable presumption in favor of awarding alimony for a long-term marriage. A party against whom alimony is sought may overcome this presumption by demonstrating by clear and convincing evidence that there is no need for alimony. If the court finds that the party against whom alimony is sought fails to meet its burden to demonstrate that there is no need for alimony and that the party has the ability to pay alimony, the court shall determine a monthly alimony obligation that may not exceed 33 percent of the obligor's monthly net income.

(9) The court may order alimony exceeding the monthly net income limits established in subsection (8) if the court determines, in accordance with the factors in subsection (3), that there is a need for additional alimony, which determination must be set out in writing. 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 a dissolution of marriage. Permanent alimony may be awarded following a marriage of long duration if such an award is appropriate upon consideration of the factors set forth in subsection (2), following a marriage of moderate duration if such an award is appropriate based upon clear and convincing evidence after consideration of the factors set forth in subsection (2), or following a marriage of short duration if there are written findings of exceptional circumstances. In awarding permanent alimony, the court shall include a finding that no other form of alimony is fair and reasonable under the circumstances of the parties. An award of

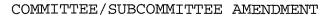




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permanent alimony terminates upon the death of either party or
upon the remarriage of the party receiving alimony. An award may
be modified or terminated based upon a substantial change in
circumstances or upon the existence of a supportive relationship
in accordance with s 61 14

- (10) A party against whom alimony is sought who has met the requirements for retirement in accordance with s. 61.14(12) before the filing of the petition for dissolution is not required to pay alimony unless the party seeking alimony proves by clear and convincing evidence the other party has the ability to pay alimony, in addition to all other requirements of this section.
- (11) (9) Notwithstanding any other law, alimony may not be awarded to a party who has a monthly net income that is equal to or more than the other party. Except in the case of a long-term marriage, in awarding alimony, the court shall impute income to the obligor and obligee as follows:
- (a) In the case of the obligor, social security retirement benefits may not be imputed to the obligor, as demonstrated by a social security retirement benefits entitlement letter.
  - (b) In the case of the obligee, if the obligee:
- 1. Is unemployed at the time the petition is filed and has been unemployed for less than 1 year before the time of the filing of the petition, the obligee's monthly net income shall be imputed at 90 percent of the obligee's prior monthly net income.
- 2. Is unemployed at the time the petition is filed and has been unemployed for at least 1 year but less than 2 years before

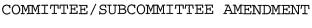


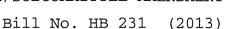


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<u>the</u>	time	of	the	fili	ng of	the	pet:	ition,	the	oblig	gee's mont	hly
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- 3. Is unemployed at the time the petition is filed and has been unemployed for at least 2 years but less than 3 years before the time of the filing of the petition, the obligee's monthly net income shall be imputed at 70 percent of the obligee's prior monthly net income.
- 4. Is unemployed at the time the petition is filed and has been unemployed for at least 3 years but less than 4 years before the time of the filing of the petition, the obligee's monthly net income shall be imputed at 60 percent of the obligee's prior monthly net income.
- 5. Is unemployed at the time the petition is filed and has been unemployed for at least 4 years but less than 5 years before the time of the filing of the petition, the obligee's monthly net income shall be imputed at 50 percent of the obligee's prior monthly net income.
- 6. Is unemployed at the time the petition is filed and has been unemployed for at least 5 years before the time of the filing of the petition, the obligee's monthly net income shall be imputed at 40 percent of the obligee's prior monthly net income, or the monthly net income of a minimum wage earner at the time of the filing of the petition, whichever is greater.
- 7. Proves by a preponderance of the evidence that he or she does not have the ability to earn the imputed income through reasonable means, the court shall reduce the imputation of income specified in this paragraph. If the obligee alleges that







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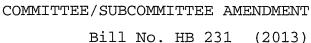
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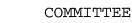
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Amendment No. 1 a physical disability has impaired his or her ability to earn the imputed income, such disability must meet the definition of disability as determined by the Social Security Administration. The award of alimony may not leave the payor with significantly less net income than the net income of the recipient unless there are written findings of exceptional circumstances.

- (12)(a)<del>(10)(a)</del> 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) applies 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.
- With respect to any order requiring the payment of (b) 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) applies 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.
- If there is no minor child, alimony payments need not be directed through the depository.
- 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 must shall provide, or be deemed to provide,





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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.

- If the provisions of subparagraph 1. applies 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.
- In IV-D cases, the IV-D agency has shall have the same rights as the obligee in requesting that payments be made through the depository.

Section 3. Section 61.09, Florida Statutes, is amended to read:

61.09 Alimony and child support unconnected with dissolution.-If a person having the ability to contribute to the maintenance of his or her spouse and support of his or her minor child fails to do so, the spouse who is not receiving support may apply to the court for alimony and for support for the child without seeking dissolution of marriage, and the court shall enter an order as it deems just and proper. Alimony awarded under this section shall be calculated in accordance with s. 61.08.

Section 4. Subsection (1) of section 61.14, Florida Statutes, is amended, paragraph (c) is added to subsection (11)



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Amendment No. 1 of that section, and subsection (12) is added to that section, to read:

- 61.14 Enforcement and modification of support, maintenance, or alimony agreements or orders.—
- (1)(a) When the parties enter into an agreement for payments for, or instead of, support, maintenance, or alimony, whether in connection with a proceeding for dissolution or separate maintenance or with any voluntary property settlement, or when a party is required by court order to make any payments, and the circumstances or the financial ability of either party changes or the child who is a beneficiary of an agreement or court order as described herein reaches majority after the execution of the agreement or the rendition of the order, either party may apply to the circuit court of the circuit in which the parties, or either of them, resided at the date of the execution of the agreement or reside at the date of the application, or in which the agreement was executed or in which the order was rendered, for an order terminating, decreasing, or increasing the amount of support, maintenance, or alimony, and the court has jurisdiction to make orders as equity requires, with due regard to the changed circumstances or the financial ability of the parties or the child, decreasing, increasing, or confirming the amount of separate support, maintenance, or alimony provided for in the agreement or order. A finding that medical insurance is reasonably available or the child support guidelines schedule in s. 61.30 may constitute changed circumstances. Except as otherwise provided in s. 61.30(11)(c), the court may modify an order of support, maintenance, or alimony by terminating,



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Amendment No. 1 increasing, or decreasing the support, maintenance, or alimony retroactively to the date of the filing of the action or supplemental action for modification as equity requires, giving due regard to the changed circumstances or the financial ability of the parties or the child.

- (b) 1. If the court has determined that an existing alimony award as determined by the court at the time of dissolution is insufficient to meet the needs of the obligee, and that such need continues to exist, an alimony order shall be modified upward upon a showing by clear and convincing evidence of a permanently increased ability to pay alimony. Clear and convincing evidence must include, but need not limited to, federal tax returns. An increase in an obligor's income may not be considered permanent in nature unless the increase has been maintained without interruption for at least 2 years, taking into account the obligor's ability to sustain his or her income.
- 2.1. Notwithstanding subparagraph 1., the court shall may reduce or terminate an award of alimony upon specific written findings by the court that since the granting of a divorce and the award of alimony, a supportive relationship has existed between the obligee and another a person, except upon a showing by clear and convincing evidence by the obligee that his or her long-term need for alimony, taking into account the totality of the circumstances, has not been reduced by the supportive relationship with whom the obligee resides. On the issue of whether alimony should be reduced or terminated under this paragraph, the burden is on the obligor to prove by a



## COMMITTEE/SUBCOMMITTEE AMENDMENT

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Amendment No. 1 preponderance of the evidence that a supportive relationship exists.

- 3.2. In determining whether an existing award of alimony should be reduced or terminated because of an alleged supportive relationship between an obligee and a person who is not related by consanguinity or affinity and with whom the obligee resides, the court shall elicit the nature and extent of the relationship in question. The court shall give consideration, without limitation, to circumstances, including, but not limited to, the following, in determining the relationship of an obligee to another person:
- a. The extent to which the obligee and the other person have held themselves out as a married couple by engaging in conduct such as using the same last name, using a common mailing address, referring to each other in terms such as "my husband" or "my wife," or otherwise conducting themselves in a manner that evidences a permanent supportive relationship.
- b. The period of time that the obligee has resided with the other person in a permanent place of abode.
- c. The extent to which the obligee and the other person have pooled their assets or income or otherwise exhibited financial interdependence.
- d. The extent to which the obligee or the other person has supported the other, in whole or in part.
- e. The extent to which the obligee or the other person has performed valuable services for the other.
- f. The extent to which the obligee or the other person has performed valuable services for the other's company or employer.



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- g. Whether the obligee and the other person have worked together to create or enhance anything of value.
- h. Whether the obligee and the other person have jointly contributed to the purchase of any real or personal property.
- i. Evidence in support of a claim that the obligee and the other person have an express agreement regarding property sharing or support.
- j. Evidence in support of a claim that the obligee and the other person have an implied agreement regarding property sharing or support.
- k. Whether the obligee and the other person have provided support to the children of one another, regardless of any legal duty to do so.
- 4.3. This paragraph does not abrogate the requirement that every marriage in this state be solemnized under a license, does not recognize a common law marriage as valid, and does not recognize a de facto marriage. This paragraph recognizes only that relationships do exist that provide economic support equivalent to a marriage and that alimony terminable on remarriage may be reduced or terminated upon the establishment of equivalent equitable circumstances as described in this paragraph. The existence of a conjugal relationship, though it may be relevant to the nature and extent of the relationship, is not necessary for the application of the provisions of this paragraph.
- 5. There is a rebuttable presumption that any modification or termination of an alimony award is retroactive to the date of the filing of the petition. In an action under this section, if



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- it is determined that the obligee unnecessarily or unreasonably litigated the underlying petition for modification or termination, the court may award the obligor his or her reasonable attorney fees and costs pursuant to s. 61.16 and applicable case law.
- (c) For each support order reviewed by the department as required by s. 409.2564(11), if the amount of the child support award under the order differs by at least 10 percent but not less than \$25 from the amount that would be awarded under s. 61.30, the department shall seek to have the order modified and any modification shall be made without a requirement for proof or showing of a change in circumstances.
- (d) The department <u>may</u> shall have authority to adopt rules to <u>administer</u> implement this section.

(11)

- (c) If the court orders alimony payable concurrent with a child support order, the alimony award may not be modified solely because of a later reduction or termination of child support payments, unless the court finds the obligor has the ability to pay the modified alimony award, the existing alimony award as determined by the court at the time of dissolution is insufficient to meet the needs of the obligee, and such need continues to exist.
- (12) (a) The fact that an obligor has reached a reasonable retirement age for his or her profession, has retired, and has no intent to return to work, or has reached the normal retirement age for social security benefits, is considered a substantial change in circumstances as a matter of law. An





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obligor who has reached the normal retirement age for social
security benefits shall be considered to have reached a
reasonable retirement age. With regard to an obligor who has
retired before the normal retirement age for social security
benefits, the court shall consider the following in determining
whether the obligor's retirement age is reasonable:

1. Age.

- 2. Health.
- 3. Type of work.
- 4. Normal retirement age for that type of work.
- (b) In anticipation of retirement, the obligor may file a petition for termination or modification of the alimony award effective upon the earlier of the retirement date or the date the obligor reaches the normal retirement age for social security benefits. The court shall terminate the award or reduce the award based on the circumstances of the parties after retirement and based on the factors in s. 61.08, unless the obligee proves by clear and convincing evidence that the need for alimony at the present level continues to exist and that the obligor's ability to pay has not been diminished.
- Section 5. Section 61.19, Florida Statutes, is amended to read:
- 61.19 Entry of judgment of dissolution of marriage; delay period; separate adjudication of issues.—
- (1) A No final judgment of dissolution of marriage may not be entered until at least 20 days have elapsed from the date of filing the original petition for dissolution of marriage,  $\tau$  but the court, on a showing that injustice would result from this



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Amendment No. 1 delay, may enter a final judgment of dissolution of marriage at an earlier date.

- (2) (a) During the first 180 days after the date of service of the original petition for dissolution of marriage, the court may not grant a final dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues unless the court makes written findings that there are exceptional circumstances that make the use of this process clearly necessary to protect the parties or their children and that granting a final dissolution will not cause irreparable harm to either party or the children. Before granting a final dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues, the court shall enter temporary orders necessary to protect the parties and their children, which orders remain effective until all other issues can be adjudicated by the court. The desire of one party to remarry does not justify the use of this process.
- (b) If more than 180 days have elapsed after the date of service of the original petition for dissolution of marriage, the court may grant a final dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues only if the court enters temporary orders necessary to protect the parties and their children, which orders remain effective until such time as all other issues can be adjudicated by the court, and makes a written finding that no irreparable harm will result from granting a final dissolution.
- (c) If more than 365 days have elapsed after the date of service of the original petition for dissolution of marriage,



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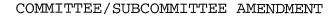
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	absent a showing by either party that irreparable harm will
	result from granting a final dissolution, the court shall, upon
	request of either party, immediately grant a final dissolution
	of marriage with a reservation of jurisdiction to subsequently
	determine all other substantive issues. Before granting a final
	dissolution of marriage with a reservation of jurisdiction to
	subsequently determine all other substantive issues, the court
	shall enter temporary orders necessary to protect the parties
	and their children, which orders remain effective until all

- (d) The temporary orders necessary to protect the parties and their children entered before granting a dissolution of marriage without an adjudication of all substantive issues may include, but are not limited to, temporary orders that:
  - 1. Restrict the sale or disposition of property.
  - 2. Protect and preserve the marital assets.
  - 3. Establish temporary support.

other issues can be adjudicated by the court.

- 4. Provide for maintenance of health insurance.
- 5. Provide for maintenance of life insurance.
- (e) The court is not required to enter temporary orders to protect the parties and their children if the court enters a final judgment of dissolution of marriage which adjudicates substantially all of the substantive issues between the parties but reserves jurisdiction to address ancillary issues such as the entry of a qualified domestic relations order or the adjudication of attorney fees and costs.
- Section 6. (1) The amendments to chapter 61, Florida

  Statutes, made by this act apply to all initial awards of, and





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Bill No. HB 231 (2013)

Amendment No. 1
agreements for, alimony entered before July 1, 2013, and to all
modifications of such awards or agreements made before July 1,
2013, with the exception of agreements that are expressly
nonmodifiable. Such amendments may serve as a basis to modify
the amount or duration of an award existing before July 1, 2013.
Such amendments may also serve as a basis to modify an agreement
for alimony if the agreement is 25 percent or more in duration
or amount than an alimony award calculated under the amendments
made by this act.

- (2) An obligor whose initial award or modification of such award was made before July 1, 2013, may file a modification action according to the following schedule:
- (a) An obligor who is subject to an alimony award of 15 years or more may file a modification action on or after July 1, 2013.
- (b) An obligor who is subject to an alimony award of 8 years of more, but less than 15 years, may file a modification action on or after July 1, 2014.
- (c) An obligor who is subject to an alimony award of less than 8 years may file a modification action on or after July 1, 2015.
- (3) An obligor whose initial agreement or modification of such agreement was made before July 1, 2013, may file a modification action according to the following schedule:
- (a) An obligor who has agreed to permanent alimony may file a modification action on or after July 1, 2013.



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Amendment No. 1

	(b)	An	oblig	gor	who	has	agreed	to	durati	ona	<u> 1</u>	alimony	z of	<u>10</u>
years	or	more	may	fil	e a	modi	ificatio	on	action	on	or	after	July	· 1,
2014.														

(c) An obligor who has agreed to durational alimony of more than 5 years but less than 10 years may file a modification action on or after July 1, 2015.

Section 7. This act shall take effect July 1, 2013.

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TITLE AMENDMENT

thing before the expeting along

Remove everything before the enacting clause and insert: An act relating to dissolution of marriage; amending s. 61.071, F.S.; requiring that alimony pendente lite be calculated in accordance with s. 61.08, F.S.; amending s. 61.08, F.S.; defining terms; revising factors to be considered for alimony awards; requiring a court to make written findings regarding the basis for awarding a combination of forms of alimony, including the type of alimony and length of time for which it is awarded; revising factors to be considered when deciding whether to award alimony; providing that an award of alimony granted automatically terminates without further action under certain circumstances; providing that the party seeking alimony has the burden of proof of demonstrating a need for alimony and that the other party has the ability to pay alimony; requiring the court to consider specified



Bill No. HB 231 (2013)

#### Amendment No. 1

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relevant factors when determining the proper type and amount of alimony; revising provisions relating to the protection of awards of alimony; revising provisions for an award of durational alimony; specifying criteria related to the rebuttable presumption to award or not to award alimony; deleting a provision authorizing permanent alimony; requiring written findings regarding the incomes and standard of living of the parties after dissolution of marriage; amending s. 61.09, F.S.; providing for the calculation of alimony; amending s. 61.14, F.S.; authorizing a party to apply for an order to terminate the amount of support, maintenance, or alimony; requiring that an alimony order be modified upward upon a showing by clear and convincing evidence of an increased ability to pay alimony by the other party; prohibiting an increase in an obligor's income from being considered permanent in nature until it has been maintained for a specified period without interruption; providing an exemption from the reduction or termination of an alimony award in certain circumstances; providing that there is a rebuttable presumption that any modification or termination of an alimony award is retroactive to the date of the filing of the petition; providing for an award of attorney fees and costs if it is determined that an obligee unnecessarily or unreasonably litigates a petition for modification or termination of an alimony award; revising provisions



Bill No. HB 231 (2013)

#### Amendment No. 1

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relating to the effect of a supportive relationship on an award of alimony; providing that income and assets of the obligor's spouse or the person with whom the obligor resides may not be considered in the redetermination in a modification action; prohibiting an alimony award from being modified providing that if the court orders alimony concurrent with a child support order, the alimony award may not be modified because of the later modification or termination of child support payments; providing that the attaining of retirement age is a substantial change in circumstances; requiring the court to consider certain factors in determining whether the obligor's retirement is reasonable; requiring a court to terminate or reduce an alimony award based on certain factors; amending s. 61.19, F.S.; authorizing separate adjudication of issues in a dissolution of marriage case in certain circumstances; providing for retroactive application of the act to alimony awards entered before July 1, 2013; providing allowable dates for the modification of such awards; providing an effective date.

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### **Civil Justice Subcommittee**

2/13/2013 2:00:00PM

Location: 404 HOB

**HB 267**: Real Property Liens and Conveyances

Favorable

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Jim Boyd	Х				
Michael Clelland	X				
Daniel Davis	_ X				
Tom Goodson	X			·	
Bill Hager	X				
Jose Oliva	X				
Kathleen Passidomo	X				
José Rodríguez	X				
Ross Spano			Х		
Cynthia Stafford	X				
Charlie Stone	X				
James Waldman	X				
Larry Metz (Chair)	X				
	Total Yeas: 12	Total Nays: 0			

### **Appearances:**

Adams, Howard "Gene" (Lobbyist) - Waive In Support Real Property, Probate and Trust Law Section of the Florida Bar 215 S Monroe St Tallahassee FL 32301

Phone: 850-222-3533

Pitts, Brian - Waive In Support Justice-2-Jesus 1119 Newton Ave. S. St. Petersburg FL 33705 Phone: 727-897-9291

Print Date: 2/13/2013 6:32 pm

## **Civil Justice Subcommittee**

2/13/2013 2:00:00PM

Location: 404 HOB

HB 457: Worthless Checks, Drafts, or Orders of Payment

X Favorable With Committee Substitute

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Jim Boyd	X				
Michael Clelland	X				
Daniel Davis	X				
Tom Goodson	X				
Bill Hager	X				
Jose Oliva	X				
Kathleen Passidomo	X				
José Rodríguez		X			
Ross Spano			X		
Cynthia Stafford		X			
Charlie Stone	X				
James Waldman	X				
Larry Metz (Chair)	X				
	Total Yeas: 10	Total Nays: 2			

#### **HB 457 Amendments**

#### Amendment 549405

X Adopted Without Objection

## Appearances:

Pitts, Brian - Information Only Justice-2-Jesus 1119 Newton Ave. S. St. Petersburg FL 33705 Phone: 727-897-9291

Diaz, Pablo (Lobbyist) - Information Only National Federation of Independent Busines 110 E Jefferson St Tallahassee FL 32301 Phone: (850)681-0416

Johnson, Carolyn (Lobbyist) - Waive In Support Policy Director, Florida Chamber of Commerce 136 S Bronough Street Tallahassee FL 32311 Phone: 850-521-1235

Joiner, Melissa (Lobbyist) - Waive In Support Director of Government Affairs, Florida Retail Federation

Phone: 850-570-0269

Print Date: 2/13/2013 6:32 pm

# **Civil Justice Subcommittee**

2/13/2013 2:00:00PM

Location: 404 HOB

HB 457: Worthless Checks, Drafts, or Orders of Payment (continued)

Appearances: (continued)

Lozano, Lance (Lobbyist) - Proponent Florida United Businesses Association

PO Box 1302

Tallahassee FL 32302 Phone: (850)681-6265

Phone: 850-681-0024

Reeves, Teye (Lobbyist) - Waive In Support Associated Industries of Florida 108 S Monroe Street Tallahassee FL 32301

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Print Date: 2/13/2013 6:32 pm Page 8 of 10



Bill No. HB 457 (2013)

Amendment No. 1

COMMITTEE/SUBCOMMIT	TEE ACTION	
ADOPTED	(Y/N)	
ADOPTED AS AMENDED	(Y/N)	We
ADOPTED W/O OBJECTION	(Y/N)	10000
FAILED TO ADOPT	(Y/N)	JONOR 13.13
WITHDRAWN	(Y/N)	9.1
OTHER		

Committee/Subcommittee hearing bill: Civil Justice Subcommittee Representative Magar offered the following:

#### Amendment (with title amendment)

Remove everything after the enacting clause and insert: Section 1. Section 68.065, Florida Statutes, is amended to read:

68.065 Actions to collect worthless checks, drafts, or orders of payment, debit card orders, or electronic funds transfers; attorney attorney's fees and collection costs.—

(1) The payee of any check, draft, order of payment, debit card order, or electronic funds transfer of which was refused by the drawee because of the lack of funds, credit, or an account, or where the maker or drawer stops payment on the check, draft, order of payment, debit card order, or electronic funds transfer with intent to defraud, may lawfully collect bank fees actually incurred by the payee in the course of tendering the payment, plus a service charge of \$25, if the face value does not exceed \$50, \$30, if the face value exceeds \$50 but does not exceed \$300, \$40, if the face value exceeds \$300, or 5 percent of the

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Amendment No. 1
face amount of the check, draft, order of payment, debit card
order, or electronic funds transfer, whichever is greater. The
right to damages under this subsection may be claimed without
the filing of a civil action. This service charge is not in
addition to any right to a service charge pursuant to subsection
(2), s. 832.062(4)(a), or s. 832.07.

(2) (1) In any civil action brought for the purpose of collecting a check, draft, or order of payment, debit card order, or electronic funds transfer, the payment of which was refused by the drawee because of the lack of funds, credit, or an account, or where the maker or drawer stops payment on the check, draft, or order of payment with intent to defraud, and where the maker or drawer fails to pay the amount owing, in cash, to the payee within 30 days following a written demand therefor, if required by as provided in subsection (4) (3), the maker or drawer shall be liable to the payee, in addition to the amount owing upon such check, draft, or order of payment, debit card order, or electronic funds transfer, for damages of triple the amount so owing. However, in no case shall the liability for damages be less than \$50. The maker or drawer shall also be liable for any court costs and reasonable attorney fees incurred by the payee in taking the action. Criminal sanctions, as provided in s. 832.07, may be applicable.

(3)(2) The payee may also charge the maker or drawer of the check, draft, or order of payment a service charge not to exceed the service fees authorized under s. 832.08(5) or 5 percent of the face amount of the instrument, whichever is greater, when making written demand for payment. In the event



## COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 457 (2013)

Amendment No. 1 that a judgment or decree is rendered, interest at the rate and in the manner described in s. 55.03 may be added toward the total amount due. Any bank fees incurred by the payee may be charged to the maker or drawer of the check, draft, or order of payment, debit card order, or electronic funds transfer.

(4)(3) Before recovery under this section may be claimed, a written demand must be delivered by certified or registered mail, evidenced by return receipt, or by first-class mail, evidenced by an affidavit of service of mail, to the maker or drawer of the check, draft, or order of payment, debit card order, or electronic funds transfer to the address on the check or other instrument, to the address given by the drawer at the time the instrument was issued, or to the drawer's last known address. The form of such notice shall be substantially as follows:

"You are hereby notified that a check numbered .... in the face amount of \$.... issued by you on ...(date)..., drawn upon ...(name of bank)..., and payable to ...., has been dishonored. Pursuant to Florida law, you have 30 days from receipt of this notice to tender payment in cash of the full amount of the check plus a service charge of \$25, if the face value does not exceed \$50, \$30, if the face value exceeds \$50 but does not exceed \$300, \$40, if the face value exceeds \$300, or 5 percent of the face amount of the check, whichever is greater, the total amount due being \$.... and .... cents. Unless this amount is paid in full within the 30-day period, the holder of the check or instrument may file a civil action against you for three times the amount of the check, but in no case less than \$50, in



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## COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 457 (2013)

Amendment No. 1 addition to the payment of the check plus any court costs, reasonable attorney fees, and any bank fees incurred by the payee in taking the action."

A subsequent person receiving a check, draft, or (5) - (4)order of payment, debit card order, or electronic transfer, from the original payee or a successor endorsee has the same rights that the original payee has against the maker of the instrument, provided such subsequent person gives notice in substantially similar form to that provided subsequent person providing such notice shall be immune from civil liability for the giving of such notice and for proceeding under the forms of such notice, so long as the maker of the instrument has the same defenses against the subsequent person as against the original payee. However, the remedies available under this section may be exercised only by one party in interest.

(6)(5) Subsequent to the commencement of the action but prior to the hearing, the maker or drawer may tender to the payee, as satisfaction of the claim, an amount of money equal to the sum of the check or other instrument, the service charge, court costs, and incurred bank fees. Other provisions notwithstanding, the maker or drawer is liable to the payee for all attorney fees and collection costs incurred by payee as a result of the payee's claim.

(7)(6) If the court or jury determines that the failure of the maker or drawer to satisfy the dishonored check or other instrument was due to economic hardship, the court or jury has the discretion to waive all or part of the statutory damages.



of a civil action; providing an effective date.

## COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 457 (2013)

Amendment No. 1

This act shall take effect July 1, 2013. Section 2.

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Remove everything before the enacting clause and insert: An act relating to worthless checks, drafts, orders of payment, debit card orders, or electronic funds tranfers; amending s. 68.065, F.S.; permitting recovery of bank fees and a service charge related to worthless checks, drafts, or orders of payment without the sending of a specified written demand or the filing

TITLE AMENDMENT

#### **Civil Justice Subcommittee**

2/13/2013 2:00:00PM

Location: 404 HOB

PCB CJS 13-02 : Expert Testimony

X Favorable

James Waldman Larry Metz (Chair)	X	X			
Cynthia Stafford Charlie Stone	X	X			
Ross Spano		V	X		<u>.</u>
José Rodríguez		X			
Kathleen Passidomo	X				
Jose Oliva	X				
Bill Hager	X				
Tom Goodson	X				
Daniel Davis	X				
Michael Clelland		X			
Jim Boyd	X				
·	Yea	Nay	No Vote	Absentee Yea	Absentee Nay

## **Appearances:**

Pitts, Brian - Information Only Justice-2-Jesus 1119 Newton Ave. S. St. Petersburg FL 33705 Phone: 727-897-9291

Newsome, Rich (General Public) - Opponent 201 S Orange Avenue, Suite 1500 Orlando FL 32801

Phone: 321-217-9864

Diaz, Pablo (Lobbyist) - Waive In Support National Federation of Independent Busines 110 E Jefferson St Tallahassee FL 32301 Phone: (850)681-0416

Hart, David (Lobbyist) - Proponent Executive Vice President, Florida Chamber 136 S Bronough Tallahassee FL 32301 Phone: 850-521-1200

Hess, Glenn (State Employee) - Opponent Florida Prosecuting Attorneys' Association 421 Magnolia Avenue Panama City FL 32401

Phone: 850-872-7680

Print Date: 2/13/2013 6:32 pm

## **Civil Justice Subcommittee**

2/13/2013 2:00:00PM

Location: 404 HOB

PCB CJS 13-02 : Expert Testimony (continued)

Appearances: (continued)

Kroeger, Leslie (General Public) - Opponent Florida Justice Association 2035 SW Panther Trace Stuart FL 34997

Large, William (Lobbyist) - Waive In Support Florida Justice Reform Institute 210 S Monroe St Tallahassee FL 32301 Phone: (850)222-0170

Winn, Stephen (Lobbyist) - Waive In Support Florida Osteopathic Medical Association 2007 Apalachee Pky Tallahassee FL 32301 Phone: (850)878-7364

Scott, Jeff (Lobbyist) - Waive In Support Florida Medical Association 1430 E Piedmont Drive Tallahassee FL 32308 Phone: 850-251-2439

Meros, George (Lobbyist) - Proponent U.S. Chamber of Commerce 301 S. Bronough Tallahassee FL 32302 Phone: 850-577-9090

Reeves, Teye (Lobbyist) - Waive In Support Associated Industries of Florida 108 S Monroe Street Tallahassee FL 32301 Phone: 850-681-0024

Print Date: 2/13/2013 6:32 pm

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