

# Proposed Laws Could Have a Drastic Impact on Alimony Recipients in Florida

Article By:

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A series of proposed changes to the alimony laws is working its way through the Florida Legislature, and **the effect on former spouses who receive alimony may be significant**. During the fall of 2011, three state legislators sponsored related alimony bills: House Bill 549 (“HB 549”), House Bill 565 (“HB 565”), and Senate Bill 748 (“SB 748”). If passed, the proposed bills could result in a financial boon for alimony payors and a financial drag on alimony recipients. While the bills have not become law yet and are, of course, subject to further change or being voted down, a summary of the most notable provisions of the current versions of each bill is set forth as follows:

## HB 549

House Bill 549, sponsored by Representative Ritch Workman (R – Melbourne), provides that upon reaching a reasonable retirement age, the alimony payor may file a petition with the court seeking a downward modification or a termination of the alimony obligation based on such retirement. The Bill presumes that a normal retirement age is 67, though the alimony payor may provide evidence to the court that an earlier retirement age is reasonable, taking into account factors such as the alimony payor’s age, health, motivation for retirement, type of work, and normal retirement age for that type of work. The effect, of course, is that if an alimony recipient is counting on a fixed income each month in the form of alimony from the alimony payor, that alimony recipient could find that their monthly income stream from alimony payments could significantly decrease or dry up altogether, leaving the recipient without a comparable substitute for their monthly support.

Additionally, HB 549 states that if the alimony payor remarries or resides with another person, the income or assets of the alimony payor’s spouse or person with whom the alimony payor resides may not be considered in a modification regarding the alimony payor. Under current law, alimony is determined based on one spouse’s ability to pay alimony and the other spouse’s need for alimony. If an alimony payor remarried or resided with a new individual in a supportive relationship, and that new spouse or person had significant assets, then the alimony payor would conceivably have an even greater ability to pay alimony to his or her former spouse, and the former spouse receiving such alimony could petition the court to increase the alimony payments. The obvious effect of HB 549 is that the court may not consider the income or assets of the alimony payor’s new spouse or significant other, even if that person had a substantial amount of income or assets.

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Conversely, under current law if the alimony recipient enters into a supportive relationship, the alimony payor can file a petition with the court to decrease the alimony amount based on the new supportive relationship. HB 549 gives more teeth to this procedure, providing that if the court finds that a downward modification is warranted, the modification can be applied retroactively to the date the petition was filed with the court. Even more, upon a modification, a court may not thereafter reserve its jurisdiction to later reinstate the original alimony amount in the event the supportive relationship ends. This means that if an alimony recipient enters into a supportive relationship with a new individual after the divorce, the alimony recipient's former spouse may be entitled to decrease or terminate the monthly alimony amount. If the alimony recipient and his or her new significant other end their supportive relationship, the alimony recipient may not thereafter request the court to reinstate the prior monthly alimony amount that the alimony recipient was receiving prior to the commencement of the supportive relationship.

In its current form, HB 549 would also substantially change the award of durational alimony. Under current law, a court has the option of awarding "durational" alimony, the purpose of which is to provide a spouse with economic assistance for a set period of time following a "short-term" marriage (7 years or less) or "moderate term" marriage (greater than 7 years but less than 17 years). Under HB 549, a court would be prohibited from awarding durational alimony to a spouse following a "short-term" marriage. In a moderate term marriage or "long-term" marriage (greater than 17 years), a court can only award durational alimony if it specifically finds in writing that an award of other forms of alimony, such as rehabilitative alimony or bridge-the-gap alimony (which have particularly short durations) is inappropriate. Finally, if a court orders an award of durational alimony for a length of time greater than half the time the parties were married, the court must make written findings justifying the length of the award. As a result of the proposed durational alimony provisions contained in HB 549, judges will be significantly limited as to when and how to make such awards.

As described above, the current law states that **a "long-term" marriage is a marriage having a duration of 17 years or greater. Under HB 549, however, the term would be defined to include only those marriages having a duration of 20 years or greater.** Further, if a court wishes to order long-term alimony to a spouse, the court must first make a finding that no other forms of alimony (i.e., durational, rehabilitative, or bridge-the-gap) will provide for the spouse's needs and necessities of life and that no other form of alimony is fair and reasonable under the circumstances. Such a procedure would serve to make judges "think twice" before ordering long-term alimony, the effect of which would presumably be to discourage judges from awarding such long-term alimony and instead award alimony for a shorter duration.

Finally, HB 549 includes a provision stating that if a court orders alimony payable concurrently with the payment of child support, the alimony award may not be modified solely because of a later modification or termination of child support payments. For example, under current law if the alimony payor is also making child support payments for the parties' minor child, the monthly child support obligation may be terminated upon the minor child reaching the age of 18. The alimony recipient could thereafter file a petition with the court asking for the alimony award to be increased, arguing that the alimony payor has a greater ability to pay alimony now that no child support obligation exists. Under HB 549, no such procedure would be available to the alimony recipient based solely on the modification or termination of the alimony payor's monthly child support obligation.

As of this writing, HB 549 has passed the Florida House of Representatives and is currently pending a vote in the Florida Senate.

## HB 565

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House Bill 565, sponsored by Representative Elizabeth W. Porter (R – Lake City), is substantially shorter than HB 549, though its provisions closely mirror those contained in HB 549. Like HB 549, HB 565 provides that if an alimony payor files a petition for modification or termination of alimony and the court grants the petition, the modification or termination would be required to be retroactive to the date the petition was filed. HB 565 also includes the same provisions regarding durational alimony as HB 549, which provisions are discussed in more detail above.

Additionally, HB 565 provides that, except in cases where the parties were in a “long-term” marriage, the court must impute income to the alimony recipient using certain calculation guidelines already contained in the Florida Statutes (HB 549 has a similar provision). The result of such provision means that if an alimony recipient is voluntarily unemployed or underemployed, the court may still determine the alimony award based on a higher income level that is imputed on the alimony recipient.

Currently, HB 565 has passed the Florida House of Representatives and is currently pending a vote in the Florida Senate.

## **SB 748**

Senate Bill 748, sponsored by Senator Miguel Diaz de la Portilla (R – Miami), is also shorter than HB 549 but contains provisions that mirror those in HB 549. Among other things, SB 748 includes the same language regarding the modification or termination of an alimony award upon the alimony payor reaching retirement. And, like HB 549, the Bill prohibits a court that terminates an alimony award based on the alimony recipient’s commencement of a supportive relationship with a new significant other from reserving its jurisdiction to thereafter reinstate the alimony award after the supportive relationship ends.

Additionally, under current law, if a court orders a party to pay alimony, it can also order that party to provide security (usually in the form of a life insurance policy or a bond) to secure the alimony award. Under SB 748, however, such an order may only be entered by the court upon a showing of special circumstances, with the court being obligated to make specific findings based on the evidence presented at trial regarding the availability, cost, and financial impact on the alimony payor. Further, SB 748 provides that any security ordered by the court may be modified if the underlying alimony award is modified (HB 549 has similar language; HB 565 does not). The result of such language is that it will be more difficult for the alimony recipient to obtain from the court adequate security for the alimony award, especially in the event the alimony payor suffers an untimely death (at which point the alimony award ceases pursuant to existing Florida law).

Today, SB 748 is pending in the Florida Senate Rules Committee.

## **Conclusion**

The bills discussed in this article have yet to become law. However, each of the bills is proceeding through the Legislature at a steady pace, and if any or all of the bills are passed by the Legislature and signed by the Governor, they will become law effective July 1, 2012.

Given the pro-alimony payor slant of each of the bills, it is never too early to start planning ahead if you have previously been through a divorce and are currently receiving alimony payments from your former spouse, or anticipate getting divorced in the near future and expect to receive an award of alimony.

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