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SB213

By Senators Coleman-Madison, Ross, Figures, Smitherman, Dial, Allen and Ward

RFD Judiciary

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SYNOPSIS: Under existing law, in an action for divorce, the court may make an award of alimony, including interim alimony, for the support of either spouse out of the estate of the other spouse.

This bill would provide for an award of interim alimony in an action for divorce, legal separation, or annulment filed after January 1, 2018, if the spouse maintains the validity of the marriage, the spouse needs interim alimony, and the other spouse has ability to pay interim alimony.

This bill would authorize a judge, out of the marital property or current income, to award reasonable interim fees, costs, and litigation expenses, including discovery, expert witnesses, guardians ad litem, special masters, and attorney fees, to enable each party to have equitable access to the marital property to pursue or defend an action for divorce, legal separation, annulment, or appeal.

This bill would also provide for an award of rehabilitative or periodic alimony after consideration of specific factors and would provide for the modification and termination of such orders.

A BILL
TO BE ENTITLED
AN ACT

Relating to alimony; to provide for an award of interim alimony in an action for divorce, legal separation, or annulment under certain conditions; to provide for the modification of interim alimony awards; to provide for the termination of an interim alimony award; to provide for an award of rehabilitative or periodic alimony under certain conditions upon the granting of a divorce or legal separation; to provide for modification of an order awarding rehabilitative or periodic alimony; and to provide for termination of an award of rehabilitative or periodic alimony.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. (a)(1) In an action for divorce, legal separation, or annulment, the court may award either spouse interim alimony based upon a showing of all of the following:

- a. The spouse maintains the validity of the marriage.
- b. The spouse needs interim alimony, after taking into consideration any other financial contributions provided by the other spouse pursuant to other interim orders of the court.
- c. The other spouse has the ability to pay interim alimony.

(2) An award under subdivision (1) may be made retroactive to the date of the filing of the complaint. The amount awarded shall be based on the applicable factors for awarding rehabilitative or periodic alimony as established in subsections (d), (e), and (f) of Section 2.

(b) An order awarding interim alimony may be terminated or prospectively modified at any time prior to the entry of a final judgment for good cause shown. In case of an emergency, the court may order or prospectively modify interim alimony without notice to the other party pursuant to Rule 65, Alabama Rules of Civil Procedure, subject to the right of the other party to a hearing as soon as practicable for the purpose of determining whether the emergency order should be dissolved, maintained, or modified.

(c) An order awarding interim alimony shall automatically terminate upon entry of the final judgment, the voluntary dismissal of all pending claims, or the abatement of the proceedings, subject to the following:

(1) The jurisdiction of the court to continue or prospectively modify the interim alimony during a pending appeal, including a petition for a writ of certiorari, of the final judgment.

(2) The right of either party to file a subsequent action to recover any arrearage or overage accumulated prior to the termination of the order.

(d) In an action for divorce, legal separation, annulment, or appeals thereof, the court may award out of the marital property or current income reasonable interim fees, costs, and litigation expenses, including discovery, expert witnesses, guardians ad litem, special masters, and attorney fees, to enable each party to have equitable access to the marital property to pursue or defend the action. A denial of the requested motion for interim fees, costs, and litigation expenses does not preclude the court from making such an award. Upon final order, the court shall consider any award or other payments made for interim fees, costs, or litigation expenses.

Section 2. (a) Upon granting a divorce or legal separation, the court shall award either rehabilitative or periodic alimony as provided in subsection (b), if the court expressly finds all of the following:

(1) A party lacks a separate estate or his or her separate estate is insufficient to enable the party to acquire the ability to preserve, to the extent possible, the economic status quo of the parties as it existed during the marriage.

(2) The other party has the ability to supply those means without undue economic hardship.

(3) The circumstances of the case make it equitable.

(b) If a party has met the requirements of subsection (a) of this section, the court shall award alimony in the following priority:

(1) Unless the court expressly finds that rehabilitative alimony is not feasible, the court shall award rehabilitative alimony to the party for a limited duration, not to exceed five years, absent extraordinary circumstances, of an amount to enable the party to acquire the ability to preserve, to the extent possible, the economic status quo of the parties as it existed during the marriage.

(2) In cases in which the court expressly finds that rehabilitation is not feasible, a good-faith attempt at rehabilitation fails, or good-faith rehabilitation only enables the party to partially acquire the ability to preserve, to the extent possible, the economic status quo of the parties as it existed during the

marriage, the court shall award the party periodic installments of alimony for a duration and an amount to allow the party to preserve, to the extent possible, the economic status quo of the parties as it existed during the marriage as provided in subsection (g) of Section 2.

(c) In cases in which a party has proven a lack of means to acquire the ability to preserve, to the extent possible, the economic status quo of the parties as it existed during the marriage, but there exists a present inability of the other party to supply those means, a court, when the circumstances of the case make it equitable, shall reserve jurisdiction to award rehabilitative or periodic alimony. If there is neither an award of alimony nor a reservation of jurisdiction at the time of the divorce, the court shall permanently lose jurisdiction to subsequently make an award of rehabilitative or periodic alimony.

(d) In determining whether a party has a sufficient separate estate to preserve, to the extent possible, the economic status quo of the parties as it existed during the marriage, the court shall consider any and all relevant evidence, including all of the following:

- (1) The party's own individual assets.
- (2) The marital property received by or awarded to the party.
- (3) The liabilities of the party following the distribution of marital property.
- (4) The party's own wage-earning capacity, taking into account the age, health, education, and work experience of the party as well as the prevailing economic conditions.
- (5) Any benefits that will assist the party in obtaining and maintaining gainful employment.
- (6) That the party has primary physical custody of a child of the marriage whose condition or circumstances make it appropriate that the party not be required to seek employment outside the home.
- (7) Any other factor the court deems equitable under the circumstances of the case.

(e) In determining whether the other party has the ability to pay alimony, the court shall consider any and all evidence, including all of the following:

- (1) His or her own individual assets, except those assets protected from use for the payment of alimony by federal law.
- (2) The marital property received by or awarded to him or her.
- (3) His or her liabilities following the distribution of marital property.
- (4) His or her net income.
- (5) His or her wage-earning ability, considering his or her age, health, education, professional licensing, work history, family commitments, and prevailing economic conditions.
- (6) That he or she has primary physical custody of a child of the marriage whose condition or circumstances make it appropriate that he or she not be required to maintain employment outside the home.

(7) Any other factor the court deems equitable under the circumstances of the case.

(f) In determining whether the award of rehabilitative or periodic alimony is equitable, the court shall consider all relevant factors including all of the following:

(1) The length of the marriage.

(2) The standard of living to which the parties became accustomed during the marriage.

(3) The relative fault of the parties for the breakdown of the marriage.

(4) The age and health of the parties.

(5) The future employment prospects of the parties.

(6) The contribution of the one party to the education or earning ability of the other party.

(7) The extent to which one party reduced his or her income or career opportunities for the benefit of the other party or the family.

(8) Excessive or abnormal expenditures, destruction, concealment, or fraudulent disposition of property.

(9) All actual damages and judgments from conduct resulting in criminal conviction of either spouse in which the other spouse or child of the marriage was the victim.

(10) Any other factor the court deems equitable under the circumstances of the case.

(g) Except upon a finding by the court that a deviation from the time limits of this section is equitably required, a person shall be eligible for periodic alimony for a period not to exceed the length of the marriage, as of the date of the filing of the complaint, with the exception that if a party is married for 20 years or longer, there shall be no time limit as to his or her eligibility.

(h) An order awarding rehabilitative or periodic alimony may be modified based upon application and a showing of material change in circumstances.

(i) Rehabilitative or periodic alimony awarded under this section terminates as provided in Section 30-2-55, Code of Alabama 1975, or upon the death of either spouse.

Section 3. This act governs only actions for divorce, legal separation, or annulment filed on or after January 1, 2018. The law in effect before January 1, 2018, shall continue to govern any action concerning alimony in any case concerning divorce, legal separation, or annulment that was filed before January 1, 2018.

Section 4. This act shall become effective on January 1, 2018, following its passage and approval by the Governor, or its otherwise becoming law.

Family Law