

1 HB330  
2 172965-1  
3 By Representative Jones  
4 RFD: Judiciary  
5 First Read: 25-FEB-16

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

13 This bill would provide for an award of  
14 interim alimony in an action for divorce, legal  
15 separation, or annulment filed after January 1,  
16 2016, if the spouse maintains the validity of the  
17 marriage, the spouse needs interim alimony, and the  
18 other spouse has ability to pay interim alimony.

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

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

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7                   A BILL  
8                   TO BE ENTITLED  
9                   AN ACT

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11                   Relating to alimony; to provide for an award of  
12                   interim alimony in an action for divorce, legal separation, or  
13                   annulment under certain conditions; to provide for the  
14                   modification of interim alimony awards; to provide for the  
15                   termination of an interim alimony award; to provide for an  
16                   award of rehabilitative or periodic alimony under certain  
17                   conditions upon the granting of a divorce or legal separation;  
18                   to provide for modification of an order awarding  
19                   rehabilitative or periodic alimony; and to provide for  
20                   termination of an award of rehabilitative or periodic alimony.  
21                   BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

25                   a. The spouse maintains the validity of the  
26                   marriage.

1           b. The spouse needs interim alimony, after taking  
2 into consideration any other financial contributions provided  
3 by the other spouse pursuant to other interim orders of the  
4 court.

5           c. The other spouse has the ability to pay interim  
6 alimony.

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

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

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

25           (1) The jurisdiction of the court to continue or  
26 prospectively modify the interim alimony during a pending

1 appeal, including a petition for a writ of certiorari, of the  
2 final judgment.

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

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

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

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

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

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

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

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

12 (2) In cases in which the court expressly finds that  
13 rehabilitation is not feasible, a good-faith attempt at  
14 rehabilitation fails, or good-faith rehabilitation only  
15 enables the party to partially acquire the ability to  
16 preserve, to the extent possible, the economic status quo of  
17 the parties as it existed during the marriage, the court shall  
18 award the party periodic installments of alimony for a  
19 duration and an amount to allow the party to preserve, to the  
20 extent possible, the economic status quo of the parties as it  
21 existed during the marriage as provided in subsection (g) of  
22 Section 2.

23 (c) In cases in which a party has proven a lack of  
24 means to acquire the ability to preserve, to the extent  
25 possible, the economic status quo of the parties as it existed  
26 during the marriage, but there exists a present inability of  
27 the other party to supply those means, a court, when the

1 circumstances of the case make it equitable, shall reserve  
2 jurisdiction to award rehabilitative or periodic alimony. If  
3 there is neither an award of alimony nor a reservation of  
4 jurisdiction at the time of the divorce, the court shall  
5 permanently lose jurisdiction to subsequently make an award of  
6 rehabilitative or periodic alimony.

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

12 (1) The party's own individual assets.

13 (2) The marital property received by or awarded to  
14 the party.

15 (3) The liabilities of the party following the  
16 distribution of marital property.

17 (4) The party's own wage-earning capacity, taking  
18 into account the age, health, education, and work experience  
19 of the party as well as the prevailing economic conditions.

20 (5) Any benefits that will assist the party in  
21 obtaining and maintaining gainful employment.

22 (6) That the party has primary physical custody of a  
23 child of the marriage whose condition or circumstances make it  
24 appropriate that the party not be required to seek employment  
25 outside the home.

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

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

4           (1) His or her own individual assets, except those  
5 assets protected from use for the payment of alimony by  
6 federal law.

7           (2) The marital property received by or awarded to  
8 him or her.

9           (3) His or her liabilities following the  
10 distribution of marital property.

11           (4) His or her net income.

12           (5) His or her wage-earning ability, considering his  
13 or her age, health, education, professional licensing, work  
14 history, family commitments, and prevailing economic  
15 conditions.

16           (6) That he or she has primary physical custody of a  
17 child of the marriage whose condition or circumstances make it  
18 appropriate that he or she not be required to maintain  
19 employment outside the home.

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

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

26           (1) The length of the marriage.



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

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

5                   (4) The age and health of the parties.

6                   (5) The future employment prospects of the parties.

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

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

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

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

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

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

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

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

7           Section 3. This act governs only actions for  
8 divorce, legal separation, or annulment filed after January 1,  
9 2017. The law in effect before January 1, 2017, shall continue  
10 to govern any action concerning alimony in any case concerning  
11 divorce, legal separation, or annulment that was filed before  
12 January 1, 2017.

13           Section 4. This act shall become effective on  
14 January 1, 2017, following its passage and approval by the  
15 Governor, or its otherwise becoming law.