

1 HB257
2 181533-1
3 By Representative Jones
4 RFD: Judiciary
5 First Read: 16-FEB-17

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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 2018, 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 on or after
9 January 1, 2018. The law in effect before January 1, 2018,
10 shall continue to govern any action concerning alimony in any
11 case concerning divorce, legal separation, or annulment that
12 was filed before January 1, 2018.

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