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Alimony bill dies in waning days

By Gary Blankenship
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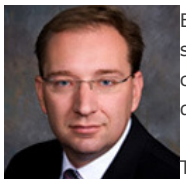
A high-profile bill overhauling the state's alimony laws, which was largely supported by the Bar's Family Law Section, wound up a casualty in the budget wars between the Florida House and Senate.

The House had passed its version of the legislation, HB 943, on April 24, and the Senate's bill, SB 1248, was on second reading in the upper chamber after easily clearing its committee hearings.



But it went no further after the House abruptly adjourned on April 28, three days before the scheduled end of the session over a dispute on the health care portion of the state budget. A lower profile bill aimed at encouraging collaborative law approaches in family law cases, which had cleared the Senate and was pending in the House, also died.

The failure of the alimony bill was the latest in a string of efforts to change state law that began in 2010. In 2013, the Legislature passed a bill opposed by the Family Law Section and which was vetoed by Gov. Rick Scott because it was retroactive. No legislation was advanced in the 2014 session, but interested parties were still at work.

"The section is disappointed with the outcome this session," said West Palm Beach attorney Thomas Sasser, chair of the Family Law Section's Alimony Subcommittee and who lobbied on the bill. "We worked very hard for almost a year now attempting to reach a compromise on changes to the alimony statute. We believe we in fact did that.

"A majority in the House and Senate seemed to agree. And due to two unfortunate circumstances, the bill did not go through."

The first instance was the budget disagreement, Sasser said. But the second was a provision in the original bill that also gave the section heartburn, a presumption that parents should have a 50-50 time-sharing arrangement for children after a divorce.

Sasser said the section believed that was a separate subject and should not have been in the alimony bill. He also said the section was concerned because it upended long-standing state law on time-sharing.

He said the section worked hard to achieve a compromise on that provision, but was unable to satisfy Sen. Tom Lee, R-Brandon.

The section was willing to support language that both parents should be actively and equally involved in their children's lives after a divorce and that judges should make written findings citing standards in the law when determining time-sharing matters, Sasser said.

But Lee, in the Senate legislation, wanted language that "there is a presumption of 50-50 time-sharing in all cases and there was no way to rebut that presumption," Sasser said. "When you just say, 'Here's a presumption,' and you don't say how to rebut it, fundamentally it becomes unrebuttable."

Sasser said the section was trying to work a compromise when the session ended. He explained the section's concern over the time-sharing provisions: "Right now, the law focuses on the best interest of the child. When you make it about the parents, you've turned the law on its head. The child isn't placed first; the parent is placed first."

Of all the recent attempts to change alimony law, this was the first that the Family Law Section endorsed. Sasser said the current system gives a lot of discretion to judges "for several good reasons," but lawmakers wanted to lessen that discretion. The section worked with lawmakers and opponents of the current law on a system that set a formula for determining alimony based on duration of the marriage and the difference in income between the spouses, but still left judges with some discretion to make adjustments.

House supporters said it would reduce litigation by reducing uncertainly in setting alimony.

"Our current system takes money out of the pockets of working families who can't afford lawyers and puts it in the pocket of lawyers. That's what our current system does and here's why," said Rep. Eric Eisnaugle, R-Orlando, during floor debate. "Because in our current system, I can't tell a client, I can't predict with any certainty how much alimony is going to be awarded, even a ballpark. I have to go into court and fight and the case gets long and I get paid. And the folks who can't afford it are the ones paying the bill, because our system is uncertain. . . . The reason I love this bill is it will, for the first time, create certainty."

But Rep. Lori Berman, D-Boynton Beach, called the formulas in the bill for calculating the amount and duration of alimony "arbitrary and not tested" and also said the provisions for modifying alimony if the recipient enters a "supportive relationship" were too lax.

Rep. Cynthia Stafford, D-Opa Locka, said a provision requiring a reduction in child support, if the combination of alimony and child support exceeded 55 percent of the paying spouse's income, was unfair.

"So now we are pitting child support against alimony," she said. "I don't think this is right."

HB 943, which passed 93-22, provided that for marriages of two years or less, there would be a rebuttable presumption that no alimony would be awarded. For marriages of up to 20 years, the presumptive alimony amount would be calculated by multiplying the difference in monthly income between the spouses by 0.015 and multiplying that by the years of the marriage. For marriages of more than 20 years, the multiplier would be 0.02 but the number of years would be capped at 20, unless the duration of the alimony would be less than half the length of the marriage. In those cases, the court could use up to 25 years to calculate the maximum range of the alimony.

The duration of the alimony would be presumed to be the length of the marriage times 0.25 for marriages less than 20 years and 0.75 for longer marriages.

The bill allowed for modification of alimony if the recipient's other income increases significantly or if the paying spouse's income increases because he or she was significantly underemployed when the award was made. It also allowed for modification when the paying spouse retires.

On the time-sharing, the law said that it is the state's public policy that a child's best interests are served by the active involvement of both parents in his or her life, and "absent good cause, it is in the minor child's best interests to have substantial time-sharing with both parents."

The collaborative law bills, SB 462 and HB 503, set out a framework for handling family law cases via the collaborative law approach. Like the alimony bill, the Family Law Section has opposed collaborative law legislation in past years but supported the bill this year.

The Senate bill, which passed that chamber by a 39-0 vote, was sponsored by Lee, and Sasser said Lee had made comments that the legislation was being held hostage in the House until the alimony bill passed the upper chamber. The measure reached the second reading calendar in the House and was briefly on the special order calendar for passage on the final day that the House met, but it was passed over and returned to the second reading calendar.

"I think a lot of stuff was going on at the end of the session," Sasser said. "The alimony legislation is a victim of a much bigger fight that has nothing to do with alimony law or collaborative law or parenting. This just got in the middle of a cross-fire."

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