

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

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ENROLLED, 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (6) That the party has primary physical custody of a
24 child of the marriage whose condition or circumstances make it

1 appropriate that the party not be required to seek employment
2 outside the home.

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

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

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

11 (2) The marital property received by or awarded to
12 him or her.

13 (3) His or her liabilities following the
14 distribution of marital property.

15 (4) His or her net income.

16 (5) His or her wage-earning ability, considering his
17 or her age, health, education, professional licensing, work
18 history, family commitments, and prevailing economic
19 conditions.

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

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

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

5 (1) The length of the marriage.

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

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

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

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

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

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

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

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

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

24 (g) Except upon a finding by the court that a
25 deviation from the time limits of this section is equitably

1 required, a person shall be eligible for periodic alimony for
2 a period not to exceed the length of the marriage, as of the
3 date of the filing of the complaint, with the exception that
4 if a party is married for 20 years or longer, there shall be
5 no time limit as to his or her eligibility.

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

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

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

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

