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Alimony reform advocates retooling legislation

September 15, 2013 | By Kathleen Haughney, Tallahassee Bureau

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TALLAHASSEE □ □ Permanent alimony soon may be a thing of the past for Floridians who get a divorce.

Florida lawmakers are looking into rewriting the state's comprehensive divorce law, which some critics call archaic.

Some other key changes being considered include:

- Seeking a reduction in payments when divorcees retire.

- Automatic payment cuts if an ex-spouse loses a job or takes a salary reduction.
- Changing the way child custody is awarded.
- How to calculate alimony.

"Both sides agree that additional reform is necessary," said Alan Frisher, a Melbourne-based financial adviser who heads the group Florida Alimony Reform and has been pressing for legislation for two years.

Though there have been minor changes over the years, critics say Florida law is antiquated and based on a time when most women stayed home to care for the family, giving up their earning potential. That has left some ex-spouses paying alimony for years and made it difficult for people to move on with their lives, plan for retirement and possibly re-marry.

Last spring, the Legislature passed legislation that would have ended permanent alimony, capped awards based on a person's income and the length of the marriage, and let the ex-spouse petition to terminate or lower alimony payments upon retirement. But it also allowed the paying spouse to reopen his or her divorce case and seek retroactive changes to an alimony judgment.

Gov. Rick Scott vetoed that bill, saying the retroactivity provision "tampers with the settled economic expectations of many Floridians who have experienced divorce" and "could result in unfair, unanticipated results."

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Frischer and legislative sponsors responded by removing the retroactivity provision from a revised bill that they expect lawmakers to consider in 2011. And while specifics are still being worked out, many of the vetoed bill's other provisions to cap and otherwise limit future alimony payments likely will remain.

One issue that still could trip up negotiations is how to deal with child-custody issues.

The vetoed legislation included language that automatically would assume that the care and custody of children would be split 50-50. That was a major concern for some child advocates and family law attorneys, who worried it could place children in potentially dangerous situations.

Elisha Roy, a West Palm Beach attorney and head of the Family Law Section of the Florida Bar, said it was unlikely her group ever would back that proposal. Among the reasons: it could affect child-support payments, which are normally set based on the time spent in one parent's home versus the other.

If that provision remains, Roy said, "I think we're going to have worse custody battles."

Roy said her group and Frischer are still meeting and negotiating about the legislation. The Family Law Section board will vote on a set of principles at a Sept. 2 meeting. Roy said the Bar group has not decided whether to draft a bill or simply offer suggestions to Frischer but said she is "hopeful" they will largely be in agreement on the final product.

She would not elaborate on all the items being discussed but said one general area of agreement is that when the paying ex-spouse retires, he or she could seek a reduction in alimony payments.

Reformers say their main goals now are to end permanent alimony by basing duration of payments on the length of the marriage and to make clear that if a paying spouse's income drops in the years after a divorce settlement, the alimony payment should also be reduced.

"There should be the ability to have long-term alimony if necessary, but there needs to be an ending," Frischer said.

Roy said Frischer's original bill was "abominable" but working together now has "really sparked some collaborative work."

Frischer concurs.

"There is a lot of agreement of where we stand," he said.

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Under negotiation

Alimony reform advocates and the state's divorce lawyers are working on a compromise to help retool the state's divorce laws.

How reform could affect alimony payers

For couples who divorce in the future, the higher-earning spouse would most likely not have to pay permanent alimony.

If retirement is defined as a "change in circumstance," a paying spouse could have the amount he or she pays reduced.

Legislation also could potentially make it easier for a paying spouse to reduce payments if he or she lost a job or took a pay cut.

How reform would affect alimony receivers

If you divorce in the future, the amount of money you would receive and the duration of payments likely would be based on the length of the marriage.

When your ex-spouse retires, reformers want that to count as a reason to reduce the alimony reward.

Under proposals by reformers, if your ex-spouse is laid off or takes a pay cut, your alimony reward also would be reduced.