Alimony Amendments

At Line 89-90 the provision "whether or not to award alimony" introduces the new concept of completely eliminating alimony for a needy recipient spouse if he/she has committed any fault. And although it may say "alimony is not punitive if it complies with this subsection," of course it is – either to eliminate alimony or to increase it.

At Lines 92-95, I do now know what "substantiated" and "unilaterally" mean or how it would be applied by the court. Is "substantiated" to be established by an entity other than the court, such as DCFS "support" (formerly "substantiated") of domestic violence? Would it require some level of proof beyond preponderance, such as clear and convincing or beyond a reasonable doubt? And as to "unilaterally", I would interpret this literally and conclude that it means that the section would NOT apply if one party carried on multiple extra marital affairs and the other party had only one minor indiscretion.

The second example of fault on Line 97 of "physical abuse" is also of concern. Although I am an ardent opponent of domestic violence and have confidence in the court to take and weigh testimony and evidence, I have concern that this too would open a "Pandora's box" for litigation. I am not so naïve to know that individuals can and do make allegations of domestic violence for strategic purposes. I also know that savvy perpetrators of domestic violence make allegations of domestic violence for their advantage.

Although I think that the sponsors of this bill and many of its earlier iterations are trying to limit the areas of fault that the court can take cognizance of, the end result will be endless litigation that departs from the Jones factors that address the financial issues of divorcing spouses.

Line 98 "The parties may stipulate to fault" is probably not necessary since the parties can stipulate to ANYTHING in a divorce.

On Line 99 regarding "closing the proceedings," it would seem to be a violation of open courts provision of our constitution. If we are to allow the public into murder and rape trials, what would be the justification to close fault divorce proceedings? I'm not sure the sensitivities of marital infidelity or abuse is a reason to ignore the constitution.

I like the correction on line 137 changing "allowing" to "enabling the payor spouse to attend school during the marriage".

As for this bill - it seems to say that the Court can not award alimony if there is fault, which includes "compromising the marriage", even if it is needed, or, in theory, award it, even if it is not needed if the potential payor is "at fault." So, in essence, fault becomes the only issue in alimony if there is any. We all know what a bloodbath this will be. I oppose.

Change to "enabling" from "allowing" on line 87 is certainly inoffensive and actually an improvement.

Since a judge can always decide to not award alimony, I don't really have a problem in the language in 89 or 90 stating "whether or not to award alimony." The next sentence in 90 and 91 along with the provisions in lines 92-97 are objectionable for all the reasons we have previously discussed. Further, if you are going to have a fault provision, including the two named "offenses" places limitations, potentially, on what constitutes fault. The language before that is vague and opens the floodgate. Does our legislature really want to provide further economic support to attorneys and have our court system further harm the children with evidence on these issues and more protracted litigation as well as further polarize the parties? That is what this would do.

Obviously, most of us believe the fault provision should be eliminated altogether

In my opinion, there are cases where the conduct of a party seeking alimony is so outrageous that it really should be considered in whether or not to award alimony. In the definition of fault, I would remove the word "unilaterally" as it will just cause problems. I would also remove the word "substantiated" - it goes without saying that the evidence supporting fault will need to be substantiated

I agree with (notes above); there are rare occasions when fault should be considered. Of course by including this provision, people will bring it up much more often. I would remove substantiated from lines 92 and 93, as it is redundant with what is described below it. I would also insert something that gives the court more leeway than just alimony or no alimony, perhaps something like "whether or how much alimony to award."

Most of the discussion seems to be focused on the "fault" of the recipients, thus limiting or eliminating alimony when it is needed. What about the fault of the payor spouse? Higher income earner wants to move on and lower income earner has been frugal during the marriage? What about severe emotional abuse that pushes a spouse out of the marriage?

Without going in to crazy detail.... I'm not a huge fan of fault, but on very rare occasions it can come up. Fault is a generally accepted term that doesn't require a list of specific examples. The addition of the word "substantiated" makes it even worse. What is this? Private investigators, photos, police reports? Additionally, abuse of children opens up a whole new can of worms considering a child's statement alone is enough for a supported DCFS finding. I think this is too inviting. The current wording allows fault to be "out there somewhere" but not necessarily relevant to each case.