

LEGISLATIVE COMMITTEE MINUTES

HB1305

Bill as Introduced

HB 1305 - AS INTRODUCED

2022 SESSION

22-2648

07/10

HOUSE BILL **1305**

AN ACT relative to temporary alimony.

SPONSORS: Rep. DeSimone, Rock. 14; Rep. Potucek, Rock. 6; Rep. Moffett, Merr. 9

COMMITTEE: Children and Family Law

ANALYSIS

This bill modifies the definition of temporary alimony that a court may award in a pending divorce case.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to temporary alimony.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Annulment, Divorce and Separation; Alimony; Definitions; Temporary Alimony. Amend RSA
2 458:19, XIV to read as follows:

3 XIV. "Temporary alimony" means periodic support payments to or on behalf of a spouse
4 while a case is pending and ending on the effective date of the divorce, legal separation, or
5 annulment. Such alimony shall not be ~~[counted toward or]~~ subject to ~~[either the formula or]~~ the
6 duration limits in RSA 458:19-a, ~~[II, unless the court finds that the temporary alimony was of~~
7 ~~unusually long duration]~~ **but shall be subject to the formula limits in RSA 458:19-a II, unless**
8 **a party seeking temporary alimony pleads, and a court finds that immediate, irreparable**
9 **economic harm would result if the percentage formula were applied. The court shall make**
10 **written findings supporting its order.**

11 2 Effective Date. This act shall take effect January 1, 2023.

Committee Minutes

SENATE CALENDAR NOTICE

Judiciary

Sen Sharon Carson, Chair
Sen Bill Gannon, Vice Chair
Sen Harold French, Member
Sen Rebecca Whitley, Member
Sen Jay Kahn, Member

Date: April 20, 2022

HEARINGS

Tuesday		04/26/2022
(Day)		(Date)
Judiciary	State House 100	1:00 p.m.
(Name of Committee)	(Place)	(Time)
1:00 p.m. HB 1280	prohibiting a parent's refusal to vaccinate a child pursuant to an order of the state or federal government to be used as a basis for terminating parental rights.	
1:30 p.m. HB 1382	relative to the presumption of shared parenting in the determination of parental rights and responsibilities.	
1:50 p.m. HB 1416	relative to consent for mental health treatment in parenting cases with shared decision-making responsibility.	
2:10 p.m. HB 1118	relative to the determination of parental rights and responsibilities following the death of a child's parent or guardian.	
2:30 p.m. HB 1303	relative to causes for absolute divorce.	
2:45 p.m. HB 1305	relative to temporary alimony.	

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 1280

Rep. Roy

HB 1382

Rep. Kofalt

Rep. Yokela

Rep. Bernardy

HB 1416

Rep. Amanda Bouldin

Rep. Query

HB 1118

Rep. B. Griffin

HB 1303

Rep. DeSimone

HB 1305

Rep. DeSimone

Rep. Abrami

Rep. Homola

Sen. Avard

Rep. Nutting-Wong

Rep. Potucek

Rep. Potucek

Rep. Post

Rep. Love

Sen. Ward

Rep. Andrew Bouldin

Rep. Moffett

Rep. Yakubovich

Rep. Spillane

Sen. Daniels

Rep. Snow

Jennifer Horgan 271-7875

Sharon M Carson
Chairman

Senate Judiciary Committee

Jennifer Horgan 271-7875

HB 1305, relative to temporary alimony.

Hearing Date: April 26, 2022

Time Opened: 3:37 p.m.

Time Closed: 3:39 p.m.

Members of the Committee Present: Senators Carson, Gannon, French, Whitley and Kahn

Members of the Committee Absent : None

Bill Analysis: This bill modifies the definition of temporary alimony that a court may award in a pending divorce case.

Sponsors:

Rep. DeSimone

Rep. Potucek

Rep. Moffett

Who supports the bill: Representative Yokela; Chau Kelley; Gary Friddle

Who opposes the bill: Marilyn Mahoney

Summary of testimony presented in support:

Representative Yokela

- Currently, temporary alimony is not counted towards the amount of time a person can take alimony and they are not required to use the formula used for normal alimony calculations when determining temporary alimony.
- This bill would change the presumption to use that formula unless the Court finds that immediate, irreparable economic harm would result from doing that.
- This will also change the law to include the amount of temporary alimony as part of the total amount of time a person can receive alimony.

Summary of testimony presented in opposition:

None

jch

Date Hearing Report completed: April 29, 2022

Speakers

Senate Remote Testify

Judiciary Committee Testify List for Bill HB1305 on 2022-04-26

Support: 1 Oppose: 0

<u>Name</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>
Friddle, Gary	A Member of the Public	Myself	Support

Testimony

Jennifer Horgan

From: - Patty Davidson <pjdavidson@mindspring.com>
Sent: Sunday, April 3, 2022 1:04 PM
To: Sharon Carson
Cc: Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan
Subject: HB 1305 - revisions needed

Senator Carson,
I urge you to vote against or seek modification to HB1305.

Temporary alimony must take into consideration the marital obligations of the parties and their relative abilities to pay. Suggesting that the 23% formula for final decrees be used for calculating temporary alimony is inappropriate. It leaves the lower earning spouse at a significant disadvantage if the higher earning spouse is unscrupulous.

It would be much more appropriate to provide that marital obligations be paid proportionally to income, and/or that temporary alimony be 50% of the difference in income after mandatory deductions (taxes, child support, etc.).

The phrasing of the new text says that the court can find otherwise, but that requires the lower earning spouse to hire a lawyer and have the time, energy and financial resources to prove that the 23% is inappropriate. That basically means that you've given the higher earning spouse leverage to force the lower earning spouse into an inequitable agreement because they can't afford to fight it. And, because this is part of a temporary decree there is no option for appeal.

In my case, the judge applied the 23% difference in income formula. The calculation gives me a temporary alimony amount of \$2303 a month. No consideration was given to the fact that my spouse moved away and left me with sole responsible for all the household bills and the care of two special needs pets. After paying the mortgage and property taxes I have \$173 a month to live on. I cannot appeal that ruling.

I've had to close my business and find a part time job, so that I can leverage the business assets to pay the bills, household and legal. If I didn't have the business assets to leverage I would have to accept my spouses suggested final decree proposal that gives me only 38% of our estate.

And because of the following prohibition, I cannot access my retirement accounts or take out a home equity or other loan to bridge me until our divorce is final. Our trial is currently scheduled for November.

Until further order of the court, each party is restrained from selling, transferring, encumbering, hypothecating, concealing or in any manner whatsoever disposing of any property, real or personal, belonging to either or both parties except (1) by written agreement of both parties, or (2) for reasonable and necessary living expenses, or (3) in the ordinary and usual course of business.

While my spouse is socking money away and living his new life I am draining the assets I do have access to and wondering when the money will run out and I'll have to settle for his inequitable and unjust proposal.

Do not think that my situation is unique, it is disturbingly common. I hear the stories, mostly from women, in my Divorce Care and Runaway Husbands support groups: Lower earning spouse is effectively abandoned, often with children, with limited financial resources she has to choose between putting groceries on the table and hiring a lawyer for a long drawn out fight. Guess that she almost always chooses?

I am happy to discuss this further, my contact information is below.

Sincerely,

Patty Davidson
19 Debbi Lane Epping, NH
pjdavidson@mindspring.com
603-734-2804

Jennifer Horgan

From: Honey Hastings, Mediator <hhastings@familymediationnh.com>
Sent: Tuesday, April 26, 2022 9:42 AM
To: Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn
Cc: Jennifer Horgan
Subject: written testimony opposing HB 1305
Attachments: alimony calculation.pdf

DATE: 26 April 2022
TO: Senate Judiciary Committee
FROM: Honey Hastings, CFM #75
RE: **Why you should kill HB 1305 (or send to IS)**

Summary--- This bill would make a significant change in the current law, by imposing the final alimony percentage formula on temporary orders. This formula calculates the differences in the party's incomes and designates 23% of that amount as the maximum alimony to the lower earner. (See the attached calculation form.) Such a major change in law should be based on a careful study of the possible need to change the law and any unanticipated consequences. Note—I agree with Atty. Mahoney's written testimony which spells out the significant differences between the goals of temporary and final alimony.

Changes to Current Law—The current law has 2 main provisions about temporary alimony:

- a. The alimony formula does **not** apply; and
- b. The months of paying it doesn't count toward the alimony time limit (half of the marriage length).

HB 1305 would apply the formula to temporary alimony, while keeping the "doesn't count" provision. (See the text below.)

While the bill does offer an exception to the 23%, the burden on the person seeking more alimony is heavy. First, that person must "plead" for it, which generally means filing a court document with the request. This is a barrier to the self-represented litigant who won't know of the requirement or how to meet it. Second, the person must convince the court that "immediate, irreparable economic harm would result if the percentage formula were applied."

Why does the alimony statute adopted in 2018 not apply the formula to temporary alimony?

- a. In the short term, the goal is to maintain the status quo, while gathering info needed for the final decisions;
- b. At the time of the temporary hearing, information about both need for alimony and ability to pay alimony (the first test for alimony) is often incomplete; and
- c. The temporary period is often marked by relocation and changes in employment.

For these reasons, the 2018 legislation retains traditional discretion to the court to fashion an order that fits the needs of each family. A common temporary order is for the higher earner to pay the mortgage and utilities where the lower earner is living, combined with a small amount of cash alimony. If HB 1305 is enacted, it will be argued that the maximum the higher earner can be ordered to pay for mortgage, utilities, & cash is 23% of the differences in income. The attached sample calculation demonstrates the unfairness that could result. In this scenario, Pete earns \$150,000 a year, while Joan is not employed outside of the home. Using the alimony formula would result in her having \$2875 and his having \$9625 monthly gross income.

What is the problem that this bill solves?

The advocates for this bill do not present evidence of a problem that this bill would solve. No dissatisfied litigants showed up at the House hearing. I am not aware of any Supreme Court opinion addressing this statute. The current law is working.

NH currently has about 3500 divorces annually. Estimating that about 350 are contested, I will guess that 70-140 of these involve a fight about alimony. That could mean 35-70 people unhappy with a court order on temporary alimony each year, who might be seeking the change that this bill would make.

Where are the litigants who feel they were ill-served by the current law? Their absence suggests a lack of problem with the current law. (Not that a law should be changed because of a relative handful of dissatisfied litigants.)

Vote ITL or IS on HB 1305.

HB 1305 would delete the text in red and add the bold text:

458:19, XIV to read as follows: XIV. "Temporary alimony" means periodic support payments to or on behalf of a spouse while a case is pending and ending on the effective date of the divorce, legal separation, or annulment. Such alimony shall not be ~~counted toward or~~ subject to ~~either the formula or~~ the duration limits in RSA 458:19-a, ~~III, unless the court finds that the temporary alimony was of unusually long duration~~ but shall be subject to the formula limits in RSA 458:19-a II, unless a party seeking temporary alimony pleads, and a court finds that immediate, irreparable economic harm would result if the percentage formula were applied. The court shall make written findings supporting its order.

CALCULATING THE ALIMONY FORMULA (at 23%) & DURATION

UNDER THE ALIMONY REFORM ACT-rev.8/19

Note: The amount shall be the lessor of reasonable need or the amount produced by the formula, unless the court finds that justice requires an adjustment. The maximum duration of alimony shall be 50% of the length of the marriage. However, the parties may agree to a different amount or duration. Also, the court may adjust either the formula or the duration if justice requires and may vary the formula when child support has been adjusted under RSA 458-C:5. If the issue of alimony is contested, the court may order alimony only if it finds both a need for alimony and the ability to pay alimony. The court may also use a different beginning or ending date for the marriage, if justice requires.

Information needed to calculate the amount formula and duration:

1. Monthly gross income of each spouse
2. Monthly child support paid/received for joint children
3. Monthly child support & alimony paid for prior spouse of other children
4. Monthly cost of health insurance or other specified expenses to benefit the other party.
5. Date of marriage & date of petition filing

Payor — Name Pete

- | | |
|--|------------------|
| a. Monthly gross income | \$ <u>12,500</u> |
| b. Minus any support paid for joint children | \$ <u>—</u> |
| c. Minus any child support or alimony paid for others | \$ <u>—</u> |
| d. Minus health insurance or other costs paid for spouse | \$ <u>—</u> |

(150k yr)

Payor adjusted income*

\$ 12,500

Payee — Name Joan

- | | |
|--|-------------|
| e. Monthly gross income | \$ <u>0</u> |
| f. Plus child support received for joint children | \$ <u>—</u> |
| g. Minus health insurance or other costs paid for spouse | \$ <u>—</u> |

Payee adjusted income*

\$ 0

Difference between payor and payee adjusted income

\$ 12,500

Difference in adjusted income times 23%

Alimony formula — \$ 2,875

Date of Marriage _____

Maximum — 50% of length _____*

*See the paragraph at the top of this form and RSA 458:19, 458:19-a, and 458:19-aa about adjustments of formulas. This form does not consider all possible facts and scenarios requiring an adjustment.

Prepared by _____

Date _____

Copyright, 2019, H. Hastings—permission granted to use the form in calculating alimony under the formula.

DATE: April 26, 2022
MEMORANDUM TO: Senate Judiciary Committee
FROM: Alimony Working Group (by Atty. Marilyn Mahoney)
RE: In opposition to HB 1305, regarding temporary alimony

Question

HB 1305 would make all temporary alimony orders subject to the formula limits in the current statute. Why is there, or should there be, a difference between the amount of temporary alimony and final alimony?"

Short Answer

A temporary alimony order is necessarily made without the full understanding of each party's financial needs and resources. New Hampshire law recognizes that this temporary period, characterized by such uncertainty, is categorically different from the situation at and after the finalization of the divorce, when the court knows the parties' respective financial circumstances and needs. At the time of a temporary hearing, the judge may simply order one party or both to pay specific expenses, such as the mortgage and utilities, rather than making an alimony order. The current provision in our law, distinguishing temporary alimony from term (final) alimony, has worked effectively during the 3 years since the alimony reform statute took effect.

Discussion

In answering this question, one must be mindful of the financial challenges divorcing couples have to confront. Typically, a married couple's financial circumstances become commingled and intertwined during the marriage, when couples routinely acquire joint assets such as a home and other real estate, vehicles, businesses, savings and bank accounts, and retirement savings. Also, couples incur joint debt, such as a home mortgage, car loans, and credit card debt.

Immediately upon the initiation of a divorce and separation, and often for many months thereafter, many financial issues are in dispute: Who will live in the home and who will move out? How will the savings be used, or divided? Who will pay the mortgage and utilities? Who will pay the credit card debt, the car loan? Who will use which car? How will both parties' credit ratings be protected? The opportunity for financial chaos and severe financial consequences is very high.

Also, by law, a temporary financial restraining order goes into effect (RSA 458:16-b), prohibiting either party from selling, transferring, hiding, or taking any assets without the knowledge and agreement of the other party. This restraining order remains in effect during the temporary period from when the divorce is filed until it is finalized.

To further complicate matters, it is frequently the case that each party is not fully aware of or knowledgeable about the value of the parties' assets, the nature and extent of debt, or even where s/he is going to be living.

As a consequence of these unavoidable circumstances, a divorcing couple's respective financial circumstances are at best uncertain, and at worst chaotic. The process of discovery, or the legal disclosure and exchange of financial information with one another, may take time as appraisals are completed, audits of bank accounts and credit card accounts are conducted, and the process of permanently and finally resolving all the financial issues is completed.

During this temporary period, which usually takes at least several months and sometimes a year or more, an alimony order may be indicated. A temporary alimony order is necessarily made without the full understanding of each party's financial needs and resources. Temporary alimony orders are, more often than not, significantly different from the final, permanent alimony orders. New Hampshire law must recognize that this temporary period, characterized by such uncertainty, is categorically different from the situation of a divorced couple who has had the opportunity to know and understand one another's financial circumstances and has made adjustments, (whether through negotiation and mediation or through court hearings and orders from a judge) for the long-term, permanent circumstances of life after the divorce process has ended.

HB 1305 would hamstring the Court and divorcing parties by not allowing necessary adjustments to the alimony formula based on the information available at the time of a temporary hearing. This bill should therefore be voted as inexpedient to legislate.

Voting Sheets

Senate Judiciary Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # 1305

Hearing date: _____

Executive Session date: _____

Motion of: IS Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: Consent Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Carson

Notes: pretty significant change
Hastings
unintended consequences

Committee Report

FOR THE CONSENT CALENDAR

JUDICIARY

HB 1305, relative to temporary alimony.

Interim Study, Vote 5-0.

Senator Sharon Carson for the committee.

This bill would modify the definition of temporary alimony that a court may award in a pending divorce case. Making this amendment to the statute would result in a pretty significant change in the alimony process, and the Committee believes that more time is needed to examine possible unintended consequences.

HB1305

Bill Details

Title: relative to temporary alimony.

Sponsors: *(Prime)* DeSimone (R), Potucek (R), Moffett (R)

LSR Number: **22-2648**

General Status: **SENATE**

House:

Committee: Children and Family Law

Due Out: 3/10/2022

Status: PASSED/ADOPTED

Senate:

Committee: Judiciary

Floor Date: 5/5/2022

Status: INTERIM STUDY

Bill Docket

Body	Description
H	Introduced 01/05/2022 and referred to Children and Family Law
H	Public Hearing: 01/25/2022 01:15 pm LOB 206-208
H	Executive Session: 03/01/2022 0900am LOB 206-208
H	Majority Committee Report: Ought to Pass <u>(Vote 8-7: RC)</u>
H	Minority Committee Report: Inexpedient to Legislate
H	Ought to Pass: MA VV 03/15/2022 <u>HJ 6</u>
S	Introduced 03/17/2022 and Referred to Judiciary; <u>SJ 6</u>
S	Hearing: 04/26/2022, Room 100, SH, 02:45 pm; <u>SC 17</u>
S	Committee Report: Referred to Interim Study, 05/05/2022: Vote 5-0; CC; <u>SC 18</u>
S	Refer to Interim Study, MA, VV: 05/05/2022; <u>SJ 11</u>

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB1305

Senate Committee: Judiciary

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

___ - amendment # ___ ___ - amendment # ___

___ - amendment # ___ ___ - amendment # ___

Executive Session Sheet

Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

___ - amendment # ___ ___ - amendment # ___

___ - amendment # ___ ___ - amendment # ___

Post Floor Action: (if applicable) {Clerk's Office}

___ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

___ Enrolled Bill Amendment(s)

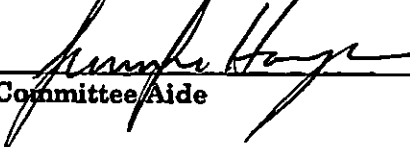
___ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

___ as amended by the senate ___ as amended by the house

___ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:


Committee Aide

8/12/22
Date

Senate Clerk's Office AK