

Controversial Alimony Bill in California Senate Judiciary Committee

Spousal support, traditionally called alimony and also known as spousal maintenance, is a court-ordered ongoing support payment from one former spouse to the other. A California court can order one spouse to financially support the other after the marriage ends where it is "just and reasonable."

In deciding if spousal support is appropriate, California law requires the judge to consider a long list of relevant factors like hardship, equality, career sacrifice in the marriage to benefit of the other spouse, age, health, responsibilities to children, debts, assets, earnings, tax impact, history of domestic violence and more.

State Sen. Roderick "Rod" Wright, D-Inglewood, wants to add another mandatory factor to the alimony law for the court to consider: "The extent to which income for support was already capitalized and paid to the other spouse in the division of community property, to avoid double counting the income when the result would be inequitable, based on all of the circumstances presented."

This language is from Senate Bill 481, introduced by Wright in February 2011. After a May hearing, the bill seems stalled in the Senate Judiciary Committee.

The 1987 California Second District Court of Appeal decision of *Marriage of White* held the opposite of what Sen. Wright is proposing and illustrates the kind of situation Wright is concerned about.

The court in *White* found that in a divorce where one spouse was awarded a pension in the property division award, the ongoing income from that pension could be considered as available income in the spousal maintenance question.

The husband argued that since he was awarded the pension as part of the marital property division, the pension should be off limits as a source of income to pay alimony. In other words, he felt that an order redirecting future pension income to his former wife for spousal support would be unfair "double dipping" into that asset that had been awarded solely to him.

The court called his double-dipping theory a "fallacy" - holding that it was entirely proper to consider the future pension income as an available resource for alimony.

Wright's bill would essentially nullify the holding of this case, making future money generated by income-producing marital assets (like pensions, small businesses and professional practices) awarded in divorce to one spouse off limits as a source of spousal maintenance to the other spouse.

Not surprisingly considering the disparity in incomes between the genders that still exists, and the number of families in which traditional roles are played, women's rights groups largely oppose the bill, and fathers' rights groups tend to support it.

Whether or not the bill ultimately passes, anyone facing divorce and its issues of property division and spousal maintenance should retain an experienced family law attorney to fight for their rights.