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LEGISLATIVE ACTION

Senate	.	House
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Floor: WD	.	
03/08/2012 08:58 AM	.	
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Senator Diaz de la Portilla moved the following:

**Senate Amendment (with title amendment)**

Between lines 111 and 112

insert:

Section 3. Section 61.08, Florida Statutes, is amended to read:

61.08 Alimony.—

(1) In a proceeding for dissolution of marriage, the court may grant alimony to either party, which alimony may be bridge-the-gap, rehabilitative, durational, or long-term ~~permanent~~ in nature or any combination of these forms of alimony when appropriate. The court shall make written findings regarding the basis for awarding combinations of alimony, including the type



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14 of alimony and length of time for which it is awarded. The  
15 purposes of combining forms of alimony are to provide greater  
16 economic assistance to allow the recipient to achieve  
17 rehabilitation, where practicable, or for the recipient to  
18 achieve the ability to contribute to the needs and necessities  
19 of life, taking into account such needs and necessities of life  
20 as they were established during the marriage. In any award of  
21 alimony, the court may order periodic payments or payments in  
22 lump sum or both. The court may consider the adultery of either  
23 party spouse and the circumstances thereof in determining the  
24 amount of alimony, if any, to be awarded. In all dissolution  
25 actions, the court shall include findings of fact relative to  
26 the factors enumerated in subsection (2) supporting an award or  
27 denial of alimony.

28 (2) In determining whether to award alimony or maintenance,  
29 the court shall first make, in writing, a specific factual  
30 determination as to whether either party has an actual need for  
31 alimony or maintenance and whether either party has the ability  
32 to pay alimony or maintenance. If the court finds that a party  
33 has a need for alimony or maintenance and that the other party  
34 has the ability to pay alimony or maintenance, then in  
35 determining the proper type and amount of alimony or maintenance  
36 under subsections (5)-(8), the court shall consider and make  
37 written findings regarding all relevant factors, including, ~~but~~  
38 not limited to:

- 39 (a) The standard of living established during the marriage.  
40 (b) The duration of the marriage.  
41 (c) The age and the physical and emotional condition of  
42 each party.



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43 (d) The financial resources of each party, including the  
44 nonmarital and the marital assets and liabilities distributed to  
45 each.

46 (e) The earning capacities, educational levels, vocational  
47 skills, and employability of the parties and, when applicable,  
48 the time necessary for either party to acquire sufficient  
49 education or training to enable such party to find appropriate  
50 employment.

51 (f) The contribution of each party to the marriage,  
52 including, but not limited to, services rendered in homemaking,  
53 child care, education, and career building of the other party.

54 (g) The responsibilities each party will have with regard  
55 to any minor children the parties ~~they~~ have in common.

56 (h) The tax treatment and consequences to both parties of  
57 an any alimony award, which may include ~~including~~ the  
58 designation of all or a portion of the payment as a nontaxable,  
59 nondeductible payment.

60 (i) All sources of income available to either party,  
61 including income available to either party through investments  
62 of any asset held by that party.

63 (j) The net income available to each party after the  
64 application of the alimony award.

65 (k)~~(j)~~ Any other factor necessary to do equity and justice  
66 between the parties, if that factor is specifically identified  
67 in the award along with findings of fact justifying the  
68 application of the factor.

69 (3) To the extent necessary to protect an award of alimony,  
70 the court may order any party who is ordered to pay alimony to  
71 purchase or maintain a life insurance policy or a bond, or to



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72 otherwise secure such alimony award with any other assets which  
73 may be suitable for that purpose in an amount adequate to secure  
74 the alimony award. Any such security may be awarded only upon a  
75 showing of special circumstances. If the court finds special  
76 circumstances and awards such security, the court must make  
77 specific evidentiary findings regarding the availability, cost,  
78 and financial impact on the obligated party. Any security may be  
79 modifiable in the event the underlying alimony award is modified  
80 and may be reduced in an amount commensurate with a reduction in  
81 the alimony award.

82 (4) For purposes of determining alimony, ~~there is a~~  
83 ~~rebuttable presumption that~~ a short-term marriage is a marriage  
84 having a duration equal to or ~~of~~ less than 7 years, a moderate-  
85 term marriage is a marriage having a duration of greater than 7  
86 years but less than 18 ~~17~~ years, and a long-term marriage is a  
87 marriage having a duration of 18 ~~17~~ years or greater. The length  
88 of a marriage is the period of time from the date of marriage  
89 until the date of filing of an action for dissolution of  
90 marriage. If the parties have been married to each other more  
91 than once, the court may, for purposes of determining alimony,  
92 add the years of the marriages together to determine the  
93 duration of the marriage.

94 (5) Bridge-the-gap alimony may be awarded to assist a party  
95 by providing support to allow the party to make a transition  
96 from being married to being single. Bridge-the-gap alimony is  
97 designed to assist a party with legitimate identifiable short-  
98 term needs, and the length of an award may not exceed 2 years.  
99 An award of bridge-the-gap alimony terminates upon the death of  
100 either party or upon the remarriage of the party receiving



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101 alimony. An award of bridge-the-gap alimony shall not be  
102 modifiable in amount or duration.

103 (6) (a) Rehabilitative alimony may be awarded to assist a  
104 party in establishing the capacity for self-support through  
105 either:

- 106 1. The redevelopment of previous skills or credentials; or  
107 2. The acquisition of education, training, or work  
108 experience necessary to develop appropriate employment skills or  
109 credentials.

110 (b) In order to award rehabilitative alimony, there must be  
111 a specific and defined rehabilitative plan which shall be  
112 included as a part of any order awarding rehabilitative alimony.

113 (c) An award of rehabilitative alimony may be modified or  
114 terminated in accordance with s. 61.14 based upon a substantial  
115 change in circumstances, upon noncompliance with the  
116 rehabilitative plan, or upon completion of the rehabilitative  
117 plan.

118 (7) Durational alimony may be awarded when long-term  
119 ~~permanent-periodic~~ alimony is inappropriate. The purpose of  
120 durational alimony is to provide a party with economic  
121 assistance for a set period of time following a marriage of  
122 short or moderate duration or following a marriage of long  
123 duration if there is no ongoing need for support on a long-term  
124 ~~permanent~~ basis. An award of durational alimony terminates upon  
125 the death of either party or upon the remarriage of the party  
126 receiving alimony. The amount of an award of durational alimony  
127 may be modified or terminated based upon a substantial change in  
128 circumstances in accordance with s. 61.14. However, the length  
129 of an award of durational alimony may not be modified except



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130 under exceptional circumstances and may not exceed the length of  
131 the marriage.

132 (8) Long-term ~~Permanent~~ alimony may be awarded to provide  
133 for the needs and necessities of life as they were established  
134 during the marriage of the parties for a party who lacks the  
135 financial ability to meet his or her needs and necessities of  
136 life following a dissolution of marriage. Long-term ~~Permanent~~  
137 alimony may be awarded following a long-term marriage ~~of long~~  
138 ~~duration~~ if such an award is appropriate upon consideration of  
139 the factors set forth in subsection (2), following a moderate-  
140 term marriage ~~of moderate duration~~ if such an award is  
141 appropriate based upon clear and convincing evidence after  
142 consideration of the factors set forth in subsection (2), or  
143 following a short-term marriage ~~of short duration~~ if there are  
144 written findings of exceptional circumstances. In awarding long-  
145 term ~~permanent~~ alimony, the court shall include findings a  
146 finding that no other form of alimony will provide for the needs  
147 and necessities of life as established during the marriage of  
148 the parties and that no other form of alimony is fair and  
149 reasonable under the circumstances of the parties. An award of  
150 long-term ~~permanent~~ alimony remains payable until terminates  
151 ~~upon~~ the death of either party, termination by court order, or  
152 ~~upon~~ the remarriage of the party receiving alimony. An award may  
153 be modified or terminated based upon a substantial change in  
154 circumstances or upon the existence of a supportive relationship  
155 in accordance with s. 61.14.

156 (9) An ~~The~~ award of alimony may not leave the payor with  
157 significantly less net income than the net income of the  
158 recipient unless there are written findings of exceptional



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159 circumstances. The court shall make written findings regarding  
160 the income of each party after the application of the alimony  
161 award.

162 (10) (a) With respect to any order requiring the payment of  
163 alimony entered on or after January 1, 1985, unless ~~the~~  
164 ~~provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the  
165 court shall direct in the order that the payments of alimony be  
166 made through the appropriate depository as provided in s.  
167 61.181.

168 (b) With respect to any order requiring the payment of  
169 alimony entered before January 1, 1985, upon the subsequent  
170 appearance, on or after that date, of one or both parties before  
171 the court having jurisdiction for the purpose of modifying or  
172 enforcing the order or in any other proceeding related to the  
173 order, or upon the application of either party, unless ~~the~~  
174 ~~provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the  
175 court shall modify the terms of the order as necessary to direct  
176 that payments of alimony be made through the appropriate  
177 depository as provided in s. 61.181.

178 (c) If there is no minor child, alimony payments need not  
179 be directed through the depository.

180 (d)1. If there is a minor child of the parties and both  
181 parties so request, the court may order that alimony payments  
182 need not be directed through the depository. In this case, the  
183 order of support shall provide, or be deemed to provide, that  
184 either party may subsequently apply to the depository to require  
185 that payments be made through the depository. The court shall  
186 provide a copy of the order to the depository.

187 2. If ~~the provisions of~~ subparagraph 1. applies ~~apply~~,



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188 either party may subsequently file with the depository an  
189 affidavit alleging default or arrearages in payment and stating  
190 that the party wishes to initiate participation in the  
191 depository program. The party shall provide copies of the  
192 affidavit to the court and the other party or parties. Fifteen  
193 days after receipt of the affidavit, the depository shall notify  
194 all parties that future payments shall be directed to the  
195 depository.

196 3. In IV-D cases, the IV-D agency shall have the same  
197 rights as the obligee in requesting that payments be made  
198 through the depository.

199 Section 4. Subsection (1) of section 61.14, Florida  
200 Statutes, is amended, and subsection (12) is added to that  
201 section, to read:

202 61.14 Enforcement and modification of support, maintenance,  
203 or alimony agreements or orders.—

204 (1) (a) When the parties enter into an agreement for  
205 payments for, or instead of, support, maintenance, or alimony,  
206 whether in connection with a proceeding for dissolution or  
207 separate maintenance or with any voluntary property settlement,  
208 or when a party is required by court order to make any payments,  
209 and the circumstances or the financial ability of either party  
210 changes or the child who is a beneficiary of an agreement or  
211 court order as described herein reaches majority after the  
212 execution of the agreement or the rendition of the order, either  
213 party may apply to the circuit court of the circuit in which the  
214 parties, or either of them, resided at the date of the execution  
215 of the agreement or reside at the date of the application, or in  
216 which the agreement was executed or in which the order was



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217 rendered, for an order decreasing or increasing the amount of  
218 support, maintenance, or alimony, and the court has jurisdiction  
219 to make orders as equity requires, with due regard to the  
220 changed circumstances or the financial ability of the parties or  
221 the child, decreasing, increasing, or confirming the amount of  
222 separate support, maintenance, or alimony provided for in the  
223 agreement or order. For purposes of considering a petition for  
224 modification of an alimony award, absent exceptional  
225 circumstances, an increase or decrease in either party's income  
226 may not be considered permanent in nature unless the increase or  
227 decrease has been maintained without interruption for at least 6  
228 months. A finding that medical insurance is reasonably available  
229 or the child support guidelines schedule in s. 61.30 may  
230 constitute changed circumstances. Except as otherwise provided  
231 in s. 61.30(11)(c), the court may modify an order of support,  
232 maintenance, or alimony by increasing or decreasing the support,  
233 maintenance, or alimony retroactively to the date of the filing  
234 of the action or supplemental action for modification as equity  
235 requires, giving due regard to the changed circumstances or the  
236 financial ability of the parties or the child.

237 (b)1. The court may reduce or terminate an award of alimony  
238 upon specific written findings by the court that since the  
239 granting of a divorce and the award of alimony a supportive  
240 relationship has existed between the obligee and a person with  
241 whom the obligee resides. On the issue of whether alimony should  
242 be reduced or terminated under this paragraph, the burden is on  
243 the obligor to prove by a preponderance of the evidence that a  
244 supportive relationship exists.

245 2. In determining whether an existing award of alimony



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246 should be reduced or terminated because of an alleged supportive  
247 relationship between an obligee and a person who is not related  
248 by consanguinity or affinity and with whom the obligee resides,  
249 the court shall elicit the nature and extent of the relationship  
250 in question. The court shall give consideration, without  
251 limitation, to circumstances, including, but not limited to, the  
252 following, in determining the relationship of an obligee to  
253 another person:

254 a. The extent to which the obligee and the other person  
255 have held themselves out as a married couple by engaging in  
256 conduct such as using the same last name, using a common mailing  
257 address, referring to each other in terms such as "my husband"  
258 or "my wife," or otherwise conducting themselves in a manner  
259 that evidences a permanent supportive relationship.

260 b. The period of time that the obligee has resided with the  
261 other person in a permanent place of abode.

262 c. The extent to which the obligee and the other person  
263 have pooled their assets or income or otherwise exhibited  
264 financial interdependence.

265 d. The extent to which the obligee or the other person has  
266 supported the other, in whole or in part.

267 e. The extent to which the obligee or the other person has  
268 performed valuable services for the other.

269 f. The extent to which the obligee or the other person has  
270 performed valuable services for the other's company or employer.

271 g. Whether the obligee and the other person have worked  
272 together to create or enhance anything of value.

273 h. Whether the obligee and the other person have jointly  
274 contributed to the purchase of any real or personal property.



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275 i. Evidence in support of a claim that the obligee and the  
276 other person have an express agreement regarding property  
277 sharing or support.

278 j. Evidence in support of a claim that the obligee and the  
279 other person have an implied agreement regarding property  
280 sharing or support.

281 k. Whether the obligee and the other person have provided  
282 support to the children of one another, regardless of any legal  
283 duty to do so.

284 3. This paragraph does not abrogate the requirement that  
285 every marriage in this state be solemnized under a license, does  
286 not recognize a common law marriage as valid, and does not  
287 recognize a de facto marriage. This paragraph recognizes only  
288 that relationships do exist that provide economic support  
289 equivalent to a marriage and that alimony terminable on  
290 remarriage may be reduced or terminated upon the establishment  
291 of equivalent equitable circumstances as described in this  
292 paragraph. The existence of a conjugal relationship, though it  
293 may be relevant to the nature and extent of the relationship, is  
294 not necessary for the application of ~~the provisions of~~ this  
295 paragraph.

296 4. In an action for modification or termination of alimony,  
297 the court may retroactively modify or terminate the alimony  
298 award to the date of filing of the petition. In an action under  
299 this section, if it is determined that a party unnecessarily or  
300 unreasonably litigated the underlying petition for modification  
301 or termination, the court may award the other party his or her  
302 reasonable attorney fees and costs.

303 5. A court terminating an alimony award based on the



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304 existence of a supportive relationship may not reserve  
305 jurisdiction to later reinstate alimony.

306 (c) For each support order reviewed by the department as  
307 required by s. 409.2564(11), if the amount of the child support  
308 award under the order differs by at least 10 percent but not  
309 less than \$25 from the amount that would be awarded under s.  
310 61.30, the department shall seek to have the order modified and  
311 any modification shall be made without a requirement for proof  
312 or showing of a change in circumstances.

313 (d) The department shall have authority to adopt rules to  
314 implement this section.

315 (12) The fact that an obligor has reached a reasonable  
316 retirement age for his or her profession, has retired, and has  
317 no intent to return to work shall be considered a substantial  
318 change in circumstances as a matter of law. In determining  
319 whether the obligor's retirement age is reasonable, the court  
320 shall consider the obligor's:

321 (a) Age.

322 (b) Health.

323 (c) Motivation for retirement.

324 (d) Type of work.

325 (e) Normal retirement age for that type of work.

326 Section 5. Section 61.19, Florida Statutes, is amended to  
327 read:

328 61.19 Entry of judgment of dissolution of marriage, delay  
329 period; separate adjudication of issues.—

330 (1) A ~~No~~ final judgment of dissolution of marriage may not  
331 be entered until at least 20 days have elapsed from the date of  
332 filing the original petition for dissolution of marriage; but



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333 the court, on a showing that injustice would result from this  
334 delay, may enter a final judgment of dissolution of marriage at  
335 an earlier date.

336 (2)(a) During the first 180 days after the date of service  
337 of the original petition for dissolution of marriage, the court  
338 may not grant a final dissolution of marriage with a reservation  
339 of jurisdiction to subsequently determine all other substantive  
340 issues unless the court makes written findings that there are  
341 exceptional circumstances that make the use of this process  
342 clearly necessary in order to protect the parties or their  
343 children and that granting a final dissolution will not cause  
344 irreparable harm to either party or the children. Before  
345 granting a final dissolution of marriage with a reservation of  
346 jurisdiction to subsequently determine all other substantive  
347 issues, the court shall enter appropriate temporary orders  
348 necessary to protect the parties and their children, which  
349 orders shall remain effective until all other issues can be  
350 adjudicated by the court. The desire of one of the parties to  
351 remarry does not justify the use of this process.

352 (b) If more than 180 days have elapsed after the date of  
353 service of the original petition for dissolution of marriage,  
354 the court may grant a final dissolution of marriage with a  
355 reservation of jurisdiction to subsequently determine all other  
356 substantive issues only if the court enters appropriate  
357 temporary orders necessary to protect the parties and their  
358 children, which orders shall remain in effect until such time as  
359 all other issues can be adjudicated by the court and the court  
360 makes a written finding that no irreparable harm will result  
361 from granting a final dissolution.



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362       (c) If more than 365 days have elapsed after the date of  
363 service of the original petition for dissolution of marriage,  
364 absent a showing by either party that irreparable harm will  
365 result from granting a final dissolution, the court shall, upon  
366 request of either party, immediately grant a final dissolution  
367 of marriage with a reservation of jurisdiction to subsequently  
368 determine all other substantive issues. Before granting a final  
369 dissolution of marriage with a reservation of jurisdiction to  
370 subsequently determine all other substantive issues, the court  
371 shall enter appropriate temporary orders necessary to protect  
372 the parties and their children, which orders shall remain in  
373 effect until all other issues can be adjudicated by the court.

374       (d) The temporary orders necessary to protect the parties  
375 and their children entered before granting a dissolution of  
376 marriage without an adjudication of all substantive issues may  
377 include, but are not limited to, temporary orders that:

- 378       1. Restrict the sale or disposition of property.
- 379       2. Protect and preserve the marital assets.
- 380       3. Establish temporary support.
- 381       4. Provide for maintenance of health insurance.
- 382       5. Provide for maintenance of life insurance.

383       (e) The court is not required to enter temporary orders to  
384 protect the parties and their children if the court enters a  
385 final judgment of dissolution of marriage which adjudicates  
386 substantially all of the substantive issues between the parties  
387 but reserves jurisdiction to address ancillary issues such as  
388 the entry of a qualified domestic relations order or the  
389 adjudication of attorney fees and costs.

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391 ===== T I T L E A M E N D M E N T =====

392 And the title is amended as follows:

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394 Delete line 18

395 and insert:

396 application of the formulas is not equitable; amending  
397 s. 61.08, F.S.; requiring the court to make written  
398 findings regarding the basis for awarding combinations  
399 of alimony, including the type of alimony and length  
400 of time for which it is awarded; requiring the court  
401 to make written findings regarding specified factors  
402 the court must consider when awarding alimony;  
403 providing that the court may order security to protect  
404 an award of alimony; requiring that any such security  
405 may be awarded only upon a showing of special  
406 circumstances; providing that if the court finds  
407 special circumstances and awards such security, the  
408 court must make specific evidentiary findings  
409 regarding the availability, cost, and financial impact  
410 on the obligated party; requiring a court, if awarding  
411 long-term alimony, to make findings that no other form  
412 of alimony will provide for the needs and necessities  
413 of life as established during the marriage of the  
414 parties and that no other form of alimony is fair and  
415 reasonable under the circumstances of the parties;  
416 amending s. 61.14, F.S.; providing that for purposes  
417 of considering a petition for modification of an  
418 alimony award and absent exceptional circumstances, an  
419 increase or decrease in either party's income may not



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420 be considered permanent in nature unless the increase  
421 or decrease has been maintained without interruption  
422 for at least 6 months; authorizing the court to award  
423 the other party his or her reasonable attorney fees  
424 and costs if the court determines that a party  
425 unnecessarily or unreasonably litigated the underlying  
426 petition for modification or termination; specifying  
427 criteria to determine whether the obligor's retirement  
428 age is reasonable; amending s. 61.19, F.S.; revising  
429 procedures for issuing judgments for dissolution of  
430 marriage; providing that temporary orders necessary to  
431 protect the parties and their children must be entered  
432 before granting a dissolution of marriage without an  
433 adjudication of all substantive issues;