

1 A bill to be entitled
2 An act relating to alimony; amending s. 61.08, F.S.;
3 revising factors to be considered for alimony awards;
4 capping awards of alimony at a certain percentage of
5 the payor's monthly net income; requiring a court to
6 make certain written findings concerning alimony;
7 revising factors to be considered in whether to award
8 alimony or maintenance; revising provisions for the
9 tax treatment and consequences of alimony; revising
10 provisions relating to the protection of awards of
11 alimony; revising provisions for awards of bridge-the-
12 gap alimony and durational alimony; redesignating
13 permanent alimony as long-term alimony and revising
14 provisions relating to its award; providing
15 nonreinstatement of alimony awards due to supportive
16 relationships; providing termination of alimony upon
17 full retirement age; repealing s. 2, ch. 2010-199 and
18 s. 80, ch. 2011-92, Laws of Florida, relating to the
19 applicability of specified prior amendments to s.
20 61.08, F.S.; providing applicability for amendments
21 made by the act to s. 61.08, F.S.; providing for
22 retroactive effect; amending s. 61.14, F.S.; revising
23 provisions relating to the effect of cohabitation on
24 an award of alimony; providing that in the event of
25 the obligor's remarriage or residing with another
26 person, income and assets of the obligor's spouse or
27 person with whom the obligor resides may not be
28 considered in the redetermination in a modification

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29 | action; providing that if an alimony award has been
 30 | modified to terminate due to a supportive relationship
 31 | and that supportive relationship does not produce a
 32 | marriage, the alimony may not be reinstated; providing
 33 | that if the court orders alimony concurrent with a
 34 | child support order, the alimony award may not be
 35 | modified due to the termination of child support;
 36 | providing an effective date.

37 |

38 | Be It Enacted by the Legislature of the State of Florida:

39 |

40 | Section 1. Section 61.08, Florida Statutes, is amended to
 41 | read:

42 | 61.08 Alimony.—

43 | (1) In a proceeding for dissolution of marriage under s.
 44 | 61.052(1)(a), the court may grant alimony to either party, which
 45 | alimony may be bridge-the-gap, rehabilitative, durational, or
 46 | long-term permanent in nature ~~or any combination of these forms~~
 47 | ~~of alimony~~. In any award of alimony, the court may order
 48 | periodic payments or payments in lump sum or both, which may not
 49 | exceed 20 percent of the payor's monthly net income to include
 50 | all sources of income averaged over the last 3 years of the
 51 | marriage. ~~The court may consider the adultery of either spouse~~
 52 | ~~and the circumstances thereof in determining the amount of~~
 53 | ~~alimony, if any, to be awarded~~. In all dissolution actions, the
 54 | court shall include findings of fact relative to the factors
 55 | enumerated in subsection (2) supporting an award or denial of
 56 | alimony.

57 (2) In determining whether to award alimony or
 58 maintenance, the court shall first make, in writing, a specific
 59 factual determination as to whether either party has an actual
 60 need for alimony or maintenance and whether either party has the
 61 ability to pay alimony or maintenance. If the court finds that a
 62 party has a need for alimony or maintenance and that the other
 63 party has the ability to pay alimony or maintenance, then in
 64 determining the proper type and amount of alimony or maintenance
 65 under subsections (5)-(8), the court shall consider all relevant
 66 factors, including, but not limited to:

67 ~~(a) The standard of living established during the~~
 68 ~~marriage.~~

69 (a)~~(b)~~ The duration of the marriage.

70 (b)~~(e)~~ The age and the physical and emotional condition of
 71 each party.

72 (c)~~(d)~~ The financial resources of each party, only to
 73 include ~~including the nonmarital and the marital~~ assets and
 74 liabilities acquired during the marriage ~~distributed to each.~~

75 (d)~~(e)~~ The earning capacities, educational levels,
 76 vocational skills, and employability of the parties and, when
 77 applicable, the time necessary for either party to acquire
 78 sufficient education or training to enable such party to find
 79 appropriate employment.

80 (e)~~(f)~~ The contribution of each party to the marriage,
 81 including, but not limited to, services rendered in homemaking,
 82 child care, education, and career building of the other party.

83 (f)~~(g)~~ The responsibilities each party will have with
 84 regard to any minor children they have in common.

85 (g) ~~(h)~~ The tax treatment and consequences to both parties
 86 of any alimony award, including the designation of all ~~or a~~
 87 ~~portion~~ of the payment as taxable to the recipient and
 88 deductible to the payor ~~a nontaxable, nondeductible~~ payment.

89 (h) ~~(i)~~ All sources of income available to either party,
 90 including income available to either party through investments
 91 of any asset held by that party that were acquired during the
 92 marriage.

93 ~~(j)~~ ~~Any other factor necessary to do equity and justice~~
 94 ~~between the parties.~~

95 (3) (a) The court may require the payor to maintain a life
 96 insurance policy or bond to protect an award of alimony only if
 97 there is a specific factual determination in writing as to
 98 whether the recipient has an actual need. An order to secure a
 99 life insurance policy or a bond to protect an award of alimony
 100 shall be based upon due consideration of the following factors:

- 101 1. Age and insurability of the payor.
- 102 2. Cost of insurance, including decreasing term-life
 103 insurance.
- 104 3. Amount of the judgment.
- 105 4. Policies carried during the marriage.
- 106 5. Duration of the alimony order.
- 107 6. Prevailing interest rates at the time of the order.
- 108 7. Other obligations of the payor.

109 (b) An order to protect an alimony award is modifiable
 110 upon a substantial change in circumstance in accordance with s.
 111 61.14 and terminates as provided in subsection (9) ~~To the extent~~
 112 ~~necessary to protect an award of alimony, the court may order~~

113 ~~any party who is ordered to pay alimony to purchase or maintain~~
 114 ~~a life insurance policy or a bond, or to otherwise secure such~~
 115 ~~alimony award with any other assets which may be suitable for~~
 116 ~~that purpose.~~

117 (4) For purposes of determining alimony, the court shall
 118 recognize ~~there is a rebuttable presumption~~ that a short-term
 119 marriage is a marriage having a duration of less than 7 years, a
 120 moderate-term marriage is a marriage having a duration of
 121 greater than 7 years but less than 20 ~~17~~ years, and long-term
 122 marriage is a marriage having a duration of 20 ~~17~~ years or
 123 greater. The length of a marriage is the period of time from the
 124 date of marriage until the date of filing of an action for
 125 dissolution of marriage.

126 (5) Bridge-the-gap alimony may be awarded to assist a
 127 party by providing support to allow the party to make a
 128 transition from being married to being single. Bridge-the-gap
 129 alimony is designed to assist a party with legitimate
 130 identifiable short-term needs, and the length of an award may
 131 not exceed 2 years. An award of bridge-the-gap alimony
 132 terminates upon the death of either party or upon the remarriage
 133 of the party receiving alimony. An award of bridge-the-gap
 134 alimony is ~~shall not be~~ modifiable in accordance with s. 61.14
 135 ~~amount or duration.~~

136 (6) (a) Rehabilitative alimony may be awarded to assist a
 137 party in establishing the capacity for self-support through
 138 either:

- 139 1. The redevelopment of previous skills or credentials; or
- 140 2. The acquisition of education, training, or work

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141 | experience necessary to develop appropriate employment skills or
 142 | credentials.

143 | (b) In order to award rehabilitative alimony, there must
 144 | be a specific and defined rehabilitative plan which shall be
 145 | included as a part of any order awarding rehabilitative alimony.

146 | (c) An award of rehabilitative alimony shall ~~may~~ be
 147 | modified or terminated in accordance with s. 61.14 based upon a
 148 | substantial change in circumstances, upon noncompliance with the
 149 | rehabilitative plan, or upon completion of the rehabilitative
 150 | plan.

151 | (7) Durational alimony may be awarded for a moderate-term
 152 | or long-term marriage as defined in subsection (4) ~~when~~
 153 | ~~permanent periodic alimony is inappropriate~~. The purpose of
 154 | durational alimony is to provide a party with economic
 155 | assistance for a set period of time following a marriage of
 156 | ~~short or~~ moderate duration or following a marriage of long
 157 | duration if there is no ongoing need for support on a long-term
 158 | ~~permanent~~ basis as provided in subsection (8). An award of
 159 | durational alimony terminates upon the death of either party or
 160 | upon the remarriage of the party receiving alimony. The amount
 161 | of an award of durational alimony shall ~~may~~ be modified ~~or~~
 162 | ~~terminated~~ based upon a substantial change in circumstances or
 163 | terminated upon the existence of a supportive relationship in
 164 | accordance with s. 61.14. ~~However,~~ The length of an award of
 165 | durational alimony may not exceed 50 percent of ~~be modified~~
 166 | ~~except under exceptional circumstances and may not exceed the~~
 167 | length of the marriage.

168 | (8) Long-term ~~Permanent~~ alimony may be awarded for a

169 marriage having a duration of 20 years or greater as provided in
 170 subsection (4), may not exceed 60 percent of the length of the
 171 marriage, and may be extended as needed to continue support of a
 172 receiving party who was disabled during the marriage. The
 173 Division of Disability Determinations of the Department of
 174 Health must authenticate each claim of disability under this
 175 subsection. If the payor is certified as disabled by the
 176 Division of Disability Determinations of the Department of
 177 Health, the award of alimony shall be significantly reduced or
 178 terminated to provide for the needs and necessities of life as
 179 ~~they were established during the marriage of the parties for a~~
 180 ~~party who lacks the financial ability to meet his or her needs~~
 181 ~~and necessities of life following a dissolution of marriage.~~
 182 ~~Permanent alimony may be awarded following a marriage of long~~
 183 ~~duration if such an award is appropriate upon consideration of~~
 184 ~~the factors set forth in subsection (2), following a marriage of~~
 185 ~~moderate duration if such an award is appropriate based upon~~
 186 ~~clear and convincing evidence after consideration of the factors~~
 187 ~~set forth in subsection (2), or following a marriage of short~~
 188 ~~duration if there are written findings of exceptional~~
 189 ~~circumstances. In awarding permanent alimony, the court shall~~
 190 ~~include a finding that no other form of alimony is fair and~~
 191 ~~reasonable under the circumstances of the parties. An award of~~
 192 long-term permanent alimony terminates upon the death of either
 193 party, ~~or~~ upon the remarriage of the party receiving alimony, or
 194 as provided in subsection (9). An award shall ~~may~~ be modified or
 195 terminated based upon a substantial change in circumstances or
 196 upon the existence of a supportive relationship in accordance

197 with s. 61.14.

198 (9) Any award of alimony terminates upon the payor
 199 attaining the full retirement age when the payor is eligible for
 200 the old-age retirement benefit under the federal Old-Age,
 201 Survivors, and Disability Insurance Program, 42 U.S.C. s. 416,
 202 as amended, as of the date of filing of an action for
 203 dissolution of marriage. The payor's ability to work beyond that
 204 age may not be used as a reason to extend alimony.

205 ~~(10)(9)~~ The award of alimony may not leave the payor with
 206 significantly less net income than the net income of the
 207 recipient ~~unless there are written findings of exceptional~~
 208 ~~circumstances.~~

209 (11) In accordance with s. 61.14, if an alimony award has
 210 been modified to terminate due to a supportive relationship and
 211 that supportive relationship does not produce a marriage, the
 212 recipient is not entitled to reinstatement of alimony from the
 213 payor.

214 (12)(10)(a) With respect to any order requiring the
 215 payment of alimony entered on or after January 1, 1985, unless
 216 the provisions of paragraph (c) or paragraph (d) apply, the
 217 court shall direct in the order that the payments of alimony be
 218 made through the appropriate depository as provided in s.
 219 61.181.

220 (b) With respect to any order requiring the payment of
 221 alimony entered before January 1, 1985, upon the subsequent
 222 appearance, on or after that date, of one or both parties before
 223 the court having jurisdiction for the purpose of modifying or
 224 enforcing the order or in any other proceeding related to the

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225 order, or upon the application of either party, unless the
226 provisions of paragraph (c) or paragraph (d) apply, the court
227 shall modify the terms of the order as necessary to direct that
228 payments of alimony be made through the appropriate depository
229 as provided in s. 61.181.

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

232 (d)1. If there is a minor child of the parties and both
233 parties so request, the court may order that alimony payments
234 need not be directed through the depository. In this case, the
235 order of support shall provide, or be deemed to provide, that
236 either party may subsequently apply to the depository to require
237 that payments be made through the depository. The court shall
238 provide a copy of the order to the depository.

239 2. If the provisions of subparagraph 1. apply, either
240 party may subsequently file with the depository an affidavit
241 alleging default or arrearages in payment and stating that the
242 party wishes to initiate participation in the depository
243 program. The party shall provide copies of the affidavit to the
244 court and the other party or parties. Fifteen days after receipt
245 of the affidavit, the depository shall notify all parties that
246 future payments shall be directed to the depository.

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

250 Section 2. Section 2 of chapter 2010-199 and section 80 of
251 chapter 2011-92, Laws of Florida, are repealed.

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252 Section 3. The amendments to s. 61.08, Florida Statutes,
253 made by this act constitute a material change of circumstance
254 that warrants modification of existing alimony judgments that
255 exceed durational limits set forth in s. 61.08(4)-(9), Florida
256 Statutes, as amended by this act. Any modification filed by a
257 payor pursuant to this section solely because the existing
258 alimony judgment exceeds the durational limits set forth in s.
259 61.08(4)-(9), Florida Statutes, as amended by this act, may be
260 filed only as follows:

261 (1) A payor who was married to the alimony recipient for
262 more than 7 years may file a modification action in accordance
263 with s. 61.08(4), Florida Statutes, no earlier than 2 years
264 after the effective date of this act.

265 (2) A payor who is eligible for the full old-age
266 retirement benefit under the federal Old-Age, Survivors, and
267 Disability Insurance Program, 42 U.S.C. s. 416, or who will
268 become eligible for such benefit within 3 years after the
269 effective date of this act, may file a modification action no
270 earlier than 1 year after the effective date of this act.

271
272 The amendments to s. 61.08, Florida Statutes, made by this act
273 do not provide a right to seek or receive modification of an
274 existing alimony judgment in which the parties have agreed in
275 writing that their alimony judgment is not modifiable or in
276 which the parties have expressed in writing their intention that
277 their agreed alimony provisions survive the judgment and
278 therefore are not modifiable.

279 Section 4. Paragraph (b) of subsection (1) of section
 280 61.14, Florida Statutes, is amended, and paragraphs (c), (d),
 281 and (e) are added to subsection (11) of that section, to read:

282 61.14 Enforcement and modification of support,
 283 maintenance, or alimony agreements or orders.—

284 (1)

285 (b)1. The court must ~~may~~ reduce or terminate an award of
 286 alimony if it determines ~~upon specific written findings by the~~
 287 ~~court~~ that since the granting of a divorce and the award of
 288 alimony a supportive relationship has existed between the
 289 obligee and a person with whom the obligee resides. The court
 290 shall make specific written findings that support such a
 291 determination. ~~On the issue of whether alimony should be reduced~~
 292 ~~or terminated under this paragraph, the burden is on the obligor~~
 293 ~~to prove by a preponderance of the evidence that a supportive~~
 294 ~~relationship exists.~~

295 2. A person is deemed to maintain a supportive
 296 relationship when he or she shares a primary residence together
 297 with or without another person for a period of at least 3
 298 continuous months in a common household. In determining whether
 299 the obligee is maintaining a common household, the court may
 300 consider any of the following factors ~~an existing award of~~
 301 ~~alimony should be reduced or terminated because of an alleged~~
 302 ~~supportive relationship between an obligee and a person who is~~
 303 ~~not related by consanguinity or affinity and with whom the~~
 304 ~~obligee resides, the court shall elicit the nature and extent of~~
 305 ~~the relationship in question. The court shall give~~
 306 ~~consideration, without limitation, to circumstances, including,~~

307 ~~but not limited to, the following, in determining the~~
308 ~~relationship of an obligee to another person:~~

309 a. Oral or written statements or representations made to
310 third parties regarding the relationship of the cohabitants.

311 b. The economic interdependence of the couple or economic
312 dependence of one party on the other.

313 c. The common household couple engaging in conduct and
314 collaborative roles in furtherance of their life together.

315 d. The benefit in the life of either or both of the common
316 household parties from their relationship.

317 e. The community reputation of the parties as a couple.

318 f. Other relevant and material factors.

319 ~~a. The extent to which the obligee and the other person~~
320 ~~have held themselves out as a married couple by engaging in~~
321 ~~conduct such as using the same last name, using a common mailing~~
322 ~~address, referring to each other in terms such as "my husband"~~
323 ~~or "my wife," or otherwise conducting themselves in a manner~~
324 ~~that evidences a permanent supportive relationship.~~

325 ~~b. The period of time that the obligee has resided with~~
326 ~~the other person in a permanent place of abode.~~

327 ~~e. The extent to which the obligee and the other person~~
328 ~~have pooled their assets or income or otherwise exhibited~~
329 ~~financial interdependence.~~

330 ~~d. The extent to which the obligee or the other person has~~
331 ~~supported the other, in whole or in part.~~

332 ~~e. The extent to which the obligee or the other person has~~
333 ~~performed valuable services for the other.~~

334 ~~f. The extent to which the obligee or the other person has~~

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335 ~~performed valuable services for the other's company or employer.~~

336 ~~g. Whether the obligee and the other person have worked~~
337 ~~together to create or enhance anything of value.~~

338 ~~h. Whether the obligee and the other person have jointly~~
339 ~~contributed to the purchase of any real or personal property.~~

340 ~~i. Evidence in support of a claim that the obligee and the~~
341 ~~other person have an express agreement regarding property~~
342 ~~sharing or support.~~

343 ~~j. Evidence in support of a claim that the obligee and the~~
344 ~~other person have an implied agreement regarding property~~
345 ~~sharing or support.~~

346 ~~k. Whether the obligee and the other person have provided~~
347 ~~support to the children of one another, regardless of any legal~~
348 ~~duty to do so.~~

349 ~~3. This paragraph does not abrogate the requirement that~~
350 ~~every marriage in this state be solemnized under a license, does~~
351 ~~not recognize a common law marriage as valid, and does not~~
352 ~~recognize a de facto marriage. This paragraph recognizes only~~
353 ~~that relationships do exist that provide economic support~~
354 ~~equivalent to a marriage and that alimony terminable on~~
355 ~~remarriage may be reduced or terminated upon the establishment~~
356 ~~of equivalent equitable circumstances as described in this~~
357 ~~paragraph. The existence of a conjugal relationship, though it~~
358 ~~may be relevant to the nature and extent of the relationship, is~~
359 ~~not necessary for the application of the provisions of this~~
360 ~~paragraph.~~

361 (11)

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362 (c) If the obligor remarries or resides with another
363 person, income and assets of the obligor's spouse or person with
364 whom the obligor resides may not be considered in the
365 redetermination in a modification action.

366 (d) If an alimony award has been modified to terminate due
367 to a supportive relationship and that supportive relationship
368 does not produce a marriage, the obligee is not entitled to
369 reinstatement of alimony from the obligor.

370 (e) If the court orders alimony concurrent with a child
371 support order, the alimony award may not be modified due to the
372 termination of child support when the child support payments
373 end.

374 Section 5. This act shall take effect July 1, 2012.