

1 A bill to be entitled
2 An act relating to dissolution of marriage; amending
3 s. 61.08, F.S.; revising factors to be considered for
4 alimony awards; requiring a court to make certain
5 written findings concerning alimony; revising factors
6 to be considered in whether to award alimony or
7 maintenance; revising provisions relating to the
8 protection of awards of alimony; revising provisions
9 for an award of durational alimony; redesignating
10 permanent alimony as long-term alimony and revising
11 provisions relating to its award; requiring written
12 findings regarding the incomes and standard of living
13 of the parties after dissolution of marriage; amending
14 s. 61.14, F.S.; providing that an increase in an
15 obligor's income may not be considered permanent in
16 nature until it has been maintained for a specified
17 period without interruption; providing for award of
18 attorney fees and costs if it is determined that an
19 obligee unnecessarily or unreasonably litigated a
20 petition for modification or termination of an alimony
21 award; revising provisions relating to the effect of a
22 supportive relationship on an award of alimony;
23 prohibiting a court from reserving jurisdiction to
24 reinstate an alimony award; providing that income and
25 assets of the obligor's spouse or the person with whom
26 the obligor resides may not be considered in the
27 redetermination in a modification action; providing
28 that if the court orders alimony concurrent with a

29 child support order, the alimony award may not be
 30 modified due to the later modification or termination
 31 of child support payments; providing that the
 32 attaining of retirement age is a substantial change in
 33 circumstances; providing factors the court shall
 34 consider in determining whether the obligor's
 35 retirement is reasonable; requiring a court to impute
 36 income to the obligee based on the analysis and
 37 factors set forth in specified provisions; amending s.
 38 61.19, F.S.; allowing separate adjudication of issues
 39 in a dissolution of marriage case in certain
 40 circumstances; providing an effective date.

41

42 Be It Enacted by the Legislature of the State of Florida:

43

44 Section 1. Section 61.08, Florida Statutes, is amended to
 45 read:

46 61.08 Alimony.—

47 (1) In a proceeding for dissolution of marriage, the court
 48 may grant alimony to either party, which alimony may be bridge-
 49 the-gap, rehabilitative, durational, or long-term ~~permanent~~ in
 50 nature or a any combination of these forms of alimony where
 51 appropriate. The court shall make written findings regarding the
 52 basis for awarding combinations of alimony, including the type
 53 of alimony and length of time for which it is awarded. The
 54 purpose of combining forms of alimony is to provide greater
 55 economic assistance to allow the recipient to achieve
 56 rehabilitation or an ability to contribute to the needs and

57 necessities of life, taking into account such needs and
58 necessities of life as they were established during the
59 marriage. In any award of alimony, the court may order periodic
60 payments, ~~or~~ payments in lump sum, or both. The court may
61 consider the adultery of either spouse and the circumstances
62 thereof in determining the amount of alimony, if any, to be
63 awarded, only to the extent that the adultery caused a
64 significant depletion in the material assets or caused a
65 significant reduction in the income of a party. In all
66 dissolution actions, the court shall include findings of fact
67 relative to the factors enumerated in subsection (2) supporting
68 an award or denial of alimony.

69 (2) In determining whether to award alimony or
70 maintenance, the court shall first make, in writing, a specific
71 factual determination as to whether either party has an actual
72 need for alimony or maintenance and whether either party has the
73 ability to pay alimony or maintenance. If the court finds that a
74 party has a need for alimony or maintenance and that the other
75 party has the ability to pay alimony or maintenance, then in
76 determining the proper type and amount of alimony or maintenance
77 under subsections (5)-(8), the court shall consider and make
78 written findings regarding all relevant factors, including, ~~but~~
79 ~~not limited to:~~

80 (a) The standard of living established during the
81 marriage.

82 (b) The duration of the marriage.

83 (c) The age and the physical and emotional condition of
84 each party.

85 (d) The financial resources of each party, including the
86 nonmarital assets that were relied upon and used by the parties
87 during the marriage and the marital assets and liabilities
88 distributed to each.

89 (e) The earning capacities, educational levels, vocational
90 skills, and employability of the parties and, when applicable,
91 the time necessary for either party to acquire sufficient
92 education or training to enable such party to find appropriate
93 employment.

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

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

99 (h) The tax treatment and consequences to both parties of
100 an ~~any~~ alimony award, which must be consistent with applicable
101 state and federal tax laws ~~including the designation of all or a~~
102 ~~portion of the payment as a nontaxable, nondeductible payment.~~

103 (i) All sources of income available to either party,
104 including income available to either party through investments
105 of any asset held by that party that were acquired during the
106 marriage.

107 (j) The net income and standard of living available to
108 each party after the application of the alimony award. There
109 shall be a rebuttable presumption that both parties will
110 necessarily have a lower standard of living after the
111 dissolution of marriage than the standard of living they enjoyed
112 during the marriage.

113 ~~(k)-(j)~~ Any other factor necessary to do equity and justice
 114 between the parties, if that factor is specifically identified
 115 in the award with findings of fact justifying the application of
 116 the factor.

117 (3) To the extent necessary to protect an award of
 118 alimony, the court may order any party who is ordered to pay
 119 alimony to purchase or maintain a life insurance policy or a
 120 bond, or to otherwise secure such alimony award with any other
 121 assets which may be suitable for that purpose in an amount
 122 adequate to secure the alimony award. Any such security may only
 123 be awarded upon a showing of special circumstances. If the court
 124 finds special circumstances and awards such security, the court
 125 must make specific evidentiary findings regarding the
 126 availability, cost, and financial impact on the obligated party.
 127 Any security may be modifiable in the event the underlying
 128 alimony award is modified and shall be reduced in an amount
 129 commensurate with any reduction in the alimony award.

130 (4) For purposes of determining alimony, ~~there is a~~
 131 ~~rebuttable presumption that~~ a short-term marriage is a marriage
 132 having a duration equal to or of less than 7 years, a moderate-
 133 term marriage is a marriage having a duration of greater than 7
 134 years but less than 20 ~~17~~ years, and long-term marriage is a
 135 marriage having a duration of 20 ~~17~~ years or greater. The length
 136 of a marriage is the period of time from the date of marriage
 137 until the date of filing of an action for dissolution of
 138 marriage.

139 (5) Bridge-the-gap alimony may be awarded to assist a
 140 party by providing support to allow the party to make a

141 transition from being married to being single. Bridge-the-gap
 142 alimony is designed to assist a party with legitimate
 143 identifiable short-term needs, and the length of an award may
 144 not exceed 2 years. An award of bridge-the-gap alimony
 145 terminates upon the death of either party or upon the remarriage
 146 of the party receiving alimony. An award of bridge-the-gap
 147 alimony shall not be modifiable in amount or duration.

148 (6) (a) Rehabilitative alimony may be awarded to assist a
 149 party in establishing the capacity for self-support through
 150 either:

- 151 1. The redevelopment of previous skills or credentials; or
- 152 2. The acquisition of education, training, or work
 153 experience necessary to develop appropriate employment skills or
 154 credentials.

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

158 (c) An award of rehabilitative alimony may be modified or
 159 terminated in accordance with s. 61.14 based upon a substantial
 160 change in circumstances, upon noncompliance with the
 161 rehabilitative plan, or upon completion of the rehabilitative
 162 plan.

163 (7) Durational alimony may be awarded ~~when permanent~~
 164 ~~periodic alimony is inappropriate. The purpose of durational~~
 165 ~~alimony is~~ to provide a party with economic assistance for a set
 166 period of time following a marriage of short or moderate
 167 duration or following a marriage of long duration if there is no
 168 ongoing need for support on a long-term ~~permanent~~ basis. When

169 awarding durational alimony, the court must make written
170 findings that an award of any other form of alimony or a
171 combination thereof is not appropriate. An award of durational
172 alimony terminates upon the death of either party or upon the
173 remarriage of the party receiving alimony. The amount of an
174 award of durational alimony shall ~~may~~ be modified or terminated
175 based upon a substantial change in circumstances or upon the
176 existence of a supportive relationship in accordance with s.
177 61.14 unless the court makes written findings stating the
178 exceptional circumstances as to why it should not be modified or
179 terminated. ~~However,~~ The length of an award of durational
180 alimony may not ~~be modified except under exceptional~~
181 ~~circumstances and may not~~ exceed the length of the marriage. If
182 the court awards durational alimony for a length of time greater
183 than 50 percent of the length of the marriage, the court must
184 make written findings stating the circumstances warranting the
185 length of the award.

186 (8) Long-term ~~Permanent~~ alimony may be awarded to provide
187 for the needs and necessities of life as they were established
188 during the marriage of the parties for a party who lacks the
189 financial ability to meet his or her needs and necessities of
190 life following a dissolution of marriage. Long-term ~~Permanent~~
191 alimony may be awarded following a long-term marriage ~~of long~~
192 ~~duration~~ if such an award is appropriate upon consideration of
193 the factors set forth in subsection (2), following a moderate-
194 term marriage ~~of moderate duration~~ if such an award is
195 appropriate based upon clear and convincing evidence after
196 consideration of the factors set forth in subsection (2), or

197 following a short-term marriage ~~of short duration~~ if there are
 198 written findings of exceptional circumstances. In awarding long-
 199 term permanent alimony, the court shall include findings a
 200 finding that no other form of alimony will provide for the needs
 201 and necessities of life of the recipient and that no other form
 202 is fair and reasonable under the circumstances of the parties.
 203 An award of long-term permanent alimony terminates upon the
 204 death of either party, ~~or~~ upon the remarriage of the party
 205 receiving alimony, or as provided in s. 61.14(12). An award
 206 shall ~~may~~ be modified or terminated based upon a substantial
 207 change in circumstances or upon the existence of a supportive
 208 relationship in accordance with s. 61.14.

209 (9) Notwithstanding any other law to the contrary, an ~~The~~
 210 award of alimony may not leave the payor with ~~significantly~~ less
 211 net income or with a lower standard of living than the ~~net~~
 212 ~~income of the~~ recipient unless there are written findings of
 213 exceptional circumstances. The court shall make written findings
 214 regarding the relative incomes and standards of living citing to
 215 evidence in the record and to this subsection.

216 (10) (a) With respect to any order requiring the payment of
 217 alimony entered on or after January 1, 1985, unless ~~the~~
 218 ~~provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the
 219 court shall direct in the order that the payments of alimony be
 220 made through the appropriate depository as provided in s.
 221 61.181.

222 (b) With respect to any order requiring the payment of
 223 alimony entered before January 1, 1985, upon the subsequent
 224 appearance, on or after that date, of one or both parties before

225 the court having jurisdiction for the purpose of modifying or
 226 enforcing the order or in any other proceeding related to the
 227 order, or upon the application of either party, unless ~~the~~
 228 ~~provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the
 229 court shall modify the terms of the order as necessary to direct
 230 that payments of alimony be made through the appropriate
 231 depository as provided in s. 61.181.

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

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

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

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

253 Section 2. Paragraphs (a) and (b) of subsection (1) of
254 section 61.14, Florida Statutes, are amended, paragraphs (c) and
255 (d) are added to subsection (11) of that section, and
256 subsections (12) and (13) are added to that section, to read:

257 61.14 Enforcement and modification of support,
258 maintenance, or alimony agreements or orders.—

259 (1) (a) When the parties enter into an agreement for
260 payments for, or instead of, support, maintenance, or alimony,
261 whether in connection with a proceeding for dissolution or
262 separate maintenance or with any voluntary property settlement,
263 or when a party is required by court order to make any payments,
264 and the circumstances or the financial ability of either party
265 changes or the child who is a beneficiary of an agreement or
266 court order as described herein reaches majority after the
267 execution of the agreement or the rendition of the order, either
268 party may apply to the circuit court of the circuit in which the
269 parties, or either of them, resided at the date of the execution
270 of the agreement or reside at the date of the application, or in
271 which the agreement was executed or in which the order was
272 rendered, for an order decreasing or increasing the amount of
273 support, maintenance, or alimony, and the court has jurisdiction
274 to make orders as equity requires, with due regard to the
275 changed circumstances or the financial ability of the parties or
276 the child, decreasing, increasing, or confirming the amount of
277 separate support, maintenance, or alimony provided for in the
278 agreement or order. For purposes of considering a petition for
279 modification of an alimony award, an increase in an obligor's
280 income may not be considered permanent in nature unless the

281 increase has been maintained without interruption for at least 1
282 year. A finding that medical insurance is reasonably available
283 or the child support guidelines schedule in s. 61.30 may
284 constitute changed circumstances. Except as otherwise provided
285 in s. 61.30(11)(c), the court may modify an order of support,
286 maintenance, or alimony by increasing or decreasing the support,
287 maintenance, or alimony retroactively to the date of the filing
288 of the action or supplemental action for modification as equity
289 requires, giving due regard to the changed circumstances or the
290 financial ability of the parties or the child.

291 (b)1. The court must, except upon a written finding of
292 exceptional circumstances, ~~may~~ reduce or terminate an award of
293 alimony upon specific written findings by the court that since
294 the granting of a divorce and the award of alimony a supportive
295 relationship has existed between the obligee and a person with
296 whom the obligee resides. On the issue of whether alimony should
297 be reduced or terminated under this paragraph, the burden is on
298 the obligor to prove by a preponderance of the evidence that a
299 supportive relationship exists.

300 2. In determining whether an existing award of alimony
301 should be reduced or terminated because of an alleged supportive
302 relationship between an obligee and a person who is not related
303 by consanguinity or affinity and with whom the obligee resides,
304 the court shall elicit the nature and extent of the relationship
305 in question. The court shall give consideration, without
306 limitation, to circumstances~~7~~ including, but not limited to, the
307 following~~7~~ in determining the relationship of an obligee to
308 another person:

309 a. The extent to which the obligee and the other person
 310 have held themselves out as a married couple by engaging in
 311 conduct such as using the same last name, using a common mailing
 312 address, referring to each other in terms such as "my husband"
 313 or "my wife," or otherwise conducting themselves in a manner
 314 that evidences a permanent supportive relationship.

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

317 c. The extent to which the obligee and the other person
 318 have pooled their assets or income or otherwise exhibited
 319 financial interdependence.

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

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

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

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

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

330 i. Evidence in support of a claim that the obligee and the
 331 other person have an express agreement regarding property
 332 sharing or support.

333 j. Evidence in support of a claim that the obligee and the
 334 other person have an implied agreement regarding property
 335 sharing or support.

336 k. Whether the obligee and the other person have provided

337 support to the children of one another, regardless of any legal
 338 duty to do so.

339 3. This paragraph does not abrogate the requirement that
 340 every marriage in this state be solemnized under a license, does
 341 not recognize a common law marriage as valid, and does not
 342 recognize a de facto marriage. This paragraph recognizes only
 343 that relationships do exist that provide economic support
 344 equivalent to a marriage and that alimony terminable on
 345 remarriage may be reduced or terminated upon the establishment
 346 of equivalent equitable circumstances as described in this
 347 paragraph. The existence of a conjugal relationship, though it
 348 may be relevant to the nature and extent of the relationship, is
 349 not necessary for the application of ~~the provisions of~~ this
 350 paragraph.

351 4. There shall be a rebuttable presumption that any
 352 modification or termination of an alimony award is retroactive
 353 to the date of the filing of the petition. In an action under
 354 this section, if it is determined that the obligee unnecessarily
 355 or unreasonably litigated the underlying petition for
 356 modification or termination, the court may award the obligor his
 357 or her reasonable attorney fees and costs pursuant to s. 61.16
 358 and applicable case law.

359 5. A court terminating an alimony award based on the
 360 existence of a supportive relationship may not reserve
 361 jurisdiction to later reinstate alimony.

362 (11)

363 (c) If the obligor remarries or resides with another
 364 person, the income and assets of the obligor's spouse or the

365 person with whom the obligor resides may not be considered in a
366 modification action regarding such obligor, except for purposes
367 of discovery to determine the obligor's income or assets within
368 the pooled income and assets.

369 (d) If the court orders alimony payable concurrent with a
370 child support order, the alimony award may not be modified
371 solely because of a later modification or termination of child
372 support payments.

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

379 (a) Age.

380 (b) Health.

381 (c) Motivation for retirement.

382 (d) Type of work.

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

384

385 In anticipation of retirement, the obligor may file a petition
386 for termination or modification of the alimony award effective
387 upon the retirement date. The court shall terminate or modify
388 the alimony award based on the circumstances of the parties
389 after retirement of the obligor and based on the factors in s.
390 61.08(2), unless the court makes findings of fact that a
391 termination or modification of an alimony award is not
392 warranted.

393 (13) Except in cases of long-term marriages, in any
 394 alimony award, the court shall impute income to the obligee
 395 based on the analysis and factors set forth in s. 61.30(2)(b).

396 Section 3. Section 61.19, Florida Statutes, is amended to
 397 read:

398 61.19 Entry of judgment of dissolution of marriage;~~7~~ delay
 399 period; separate adjudication of issues.—

400 (1) A ~~No~~ final judgment of dissolution of marriage may not
 401 be entered until at least 20 days have elapsed from the date of
 402 filing the original petition for dissolution of marriage,~~7~~ but
 403 the court, on a showing that injustice would result from this
 404 delay, may enter a final judgment of dissolution of marriage at
 405 an earlier date.

406 (2) (a) During the first 180 days after the date of service
 407 of the original petition for dissolution of marriage, the court
 408 may not grant a final dissolution of marriage with a reservation
 409 of jurisdiction to subsequently determine all other substantive
 410 issues unless the court makes written findings that there are
 411 exceptional circumstances which make the use of this process
 412 clearly necessary to protect the parties or their children and
 413 that granting a final dissolution will not cause irreparable
 414 harm to either party or the children. Before granting a final
 415 dissolution of marriage with a reservation of jurisdiction to
 416 subsequently determine all other substantive issues, the court
 417 shall enter appropriate temporary orders necessary to protect
 418 the parties and their children, which orders shall remain
 419 effective until all other issues can be adjudicated by the
 420 court. The desire of one of the parties to remarry does not

421 justify the use of this process.

422 (b) If more than 180 days have elapsed after the date of
423 service of the original petition for dissolution of marriage,
424 the court may grant a final dissolution of marriage with a
425 reservation of jurisdiction to subsequently determine all other
426 substantive issues only if the court enters appropriate
427 temporary orders necessary to protect the parties and their
428 children, which orders shall remain effective until such time as
429 all other issues can be adjudicated by the court, and makes a
430 written finding that no irreparable harm will result from
431 granting a final dissolution.

432 (c) If more than 365 days have elapsed after the date of
433 service of the original petition for dissolution of marriage,
434 absent a showing by either party that irreparable harm will
435 result from granting a final dissolution, the court shall, upon
436 request of either party, immediately grant a final dissolution
437 of marriage with a reservation of jurisdiction to subsequently
438 determine all other substantive issues. Before granting a final
439 dissolution of marriage with a reservation of jurisdiction to
440 subsequently determine all other substantive issues, the court
441 shall enter appropriate temporary orders necessary to protect
442 the parties and their children, which orders shall remain
443 effective until all other issues can be adjudicated by the
444 court.

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

- 449 1. Restrict the sale or disposition of property.
450 2. Protect and preserve the marital assets.
451 3. Establish temporary support.
452 4. Provide for maintenance of health insurance.
453 5. Provide for maintenance of life insurance.
454 (e) The court is not required to enter temporary orders to
455 protect the parties and their children if the court enters a
456 final judgment of dissolution of marriage which adjudicates
457 substantially all of the substantive issues between the parties
458 but reserves jurisdiction to address ancillary issues such as
459 the entry of a qualified domestic relations order or the
460 adjudication of attorney fees and costs.
461 Section 4. This act shall take effect July 1, 2012.