

By the Committee on Judiciary; and Senator Diaz de la Portilla

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1 A bill to be entitled
2 An act relating to dissolution of marriage; amending
3 s. 61.08, F.S.; revising the factors to be considered
4 for alimony awards, including adultery; requiring a
5 court to make certain written findings concerning
6 alimony; providing that if the court orders a party to
7 provide security to protect an award of alimony, the
8 court may so order only upon a showing of special
9 circumstances; requiring that the court make specific
10 evidentiary findings regarding the availability, cost,
11 and financial impact on the obligated party to support
12 the award of security; revising provisions for an
13 award of durational alimony; redesignating permanent
14 alimony as long-term alimony and revising provisions
15 relating to its award; amending s. 61.14, F.S.;
16 prohibiting a court from reserving jurisdiction to
17 reinstate an alimony award if a supportive
18 relationship ends; providing that a modification or
19 termination of an alimony award is retroactive to the
20 date of filing; requiring the court to consider
21 certain specified factors in determining if the
22 obligor's retirement is reasonable; amending s. 61.19,
23 F.S.; prohibiting the court from granting a final
24 dissolution of marriage with a reservation of
25 jurisdiction during the first 180 days after the date
26 of service of the original petition for dissolution of
27 marriage to subsequently determine all other
28 substantive issues except in exceptional
29 circumstances; authorizing the court to grant a final

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30 dissolution of marriage with a reservation of
31 jurisdiction to subsequently determine all other
32 substantive issues only if the court enters such other
33 temporary orders as are necessary to protect the
34 interests of the parties and their children; providing
35 circumstances in which the court is not required to
36 enter a temporary order; 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, the court
44 may grant alimony to either party, which alimony may be bridge-
45 the-gap, rehabilitative, durational, or long-term ~~permanent~~ in
46 nature or any combination of these forms of alimony where
47 appropriate. In any award of alimony, the court may order
48 periodic payments or payments in lump sum or both. The court may
49 consider the adultery of either spouse and the circumstances
50 thereof in determining the amount of alimony, if any, to be
51 awarded to the extent that the adultery caused a significant
52 depletion in the marital assets or caused a significant
53 reduction in the income of a party. In all dissolution actions,
54 the 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 maintenance,
58 the court shall first make, in writing, a specific factual

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59 determination as to whether either party has an actual need for
60 alimony or maintenance and whether either party has the ability
61 to pay alimony or maintenance. If the court finds that a party
62 has a need for alimony or maintenance and that the other party
63 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 and make
66 written findings regarding all relevant factors, including, ~~but~~
67 ~~not limited to:~~

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

69 (b) The duration of the marriage.

70 (c) The age and the physical and emotional condition of
71 each party.

72 (d) The financial resources of each party, including the
73 nonmarital and the marital assets and liabilities distributed to
74 each.

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

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

85 (h) The tax treatment and consequences to both parties of
86 any alimony award, which may include the designation of all or a
87 portion of the payment as nontaxable to the recipient and

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88 nondeductible to the payor including the designation of all or a
89 portion of the payment as a nontaxable, nondeductible payment.

90 (i) All sources of income available to either party,
91 including income available to either party through investments
92 of any asset held by that party.

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

95 (k)-(j) Any other factor necessary to do equity and justice
96 between the parties, if that factor is specifically identified
97 in the award along with findings of fact justifying the
98 application of the factor.

99 (3) To the extent necessary to protect an award of alimony,
100 the court may order any party who is ordered to pay alimony to
101 purchase or maintain a life insurance policy or a bond, or to
102 otherwise secure such alimony award with any other assets which
103 may be suitable for that purpose in an amount adequate to secure
104 the alimony award. Such security may be awarded only upon a
105 showing of special circumstances. If the court finds special
106 circumstances and awards such security, the court shall make
107 specific evidentiary findings regarding the availability, cost,
108 and financial impact on the obligated party. Any security may be
109 modifiable if the underlying alimony award is modified.

110 (4) For purposes of determining alimony, there is a
111 rebuttable presumption that a short-term marriage is a marriage
112 having a duration of less than 7 years, a moderate-term marriage
113 is a marriage having a duration of ~~greater than~~ 7 years or
114 greater but less than 17 years, and long-term marriage is a
115 marriage having a duration of 17 years or greater. The length of
116 a marriage is the period of time from the date of marriage until

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117 the date of filing of an action for dissolution of marriage.

118 (5) Bridge-the-gap alimony may be awarded to assist a party
119 by providing support to allow the party to make a transition
120 from being married to being single. Bridge-the-gap alimony is
121 designed to assist a party with legitimate identifiable short-
122 term needs, and the length of an award may not exceed 2 years.
123 An award of bridge-the-gap alimony terminates upon the death of
124 either party or upon the remarriage of the party receiving
125 alimony. An award of bridge-the-gap alimony shall not be
126 modifiable in amount or duration.

127 (6) (a) Rehabilitative alimony may be awarded to assist a
128 party in establishing the capacity for self-support through
129 either:

- 130 1. The redevelopment of previous skills or credentials; or
- 131 2. The acquisition of education, training, or work
132 experience necessary to develop appropriate employment skills or
133 credentials.

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

137 (c) An award of rehabilitative alimony may be modified or
138 terminated in accordance with s. 61.14 based upon a substantial
139 change in circumstances, upon noncompliance with the
140 rehabilitative plan, or upon completion of the rehabilitative
141 plan.

142 (7) Durational alimony may be awarded when permanent
143 periodic alimony is inappropriate. The purpose of durational
144 alimony is to provide a party with economic assistance for a set
145 period of time following a marriage of short or moderate

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146 duration or following a marriage of long duration if there is no
147 ongoing need for support on a long-term ~~permanent~~ basis as
148 provided in subsection (8). An award of durational alimony
149 terminates upon the death of either party or upon the remarriage
150 of the party receiving alimony. The amount of an award of
151 durational alimony may be modified or terminated based upon a
152 substantial change in circumstances in accordance with s. 61.14.
153 However, The length of an award of durational alimony may not be
154 modified except under exceptional circumstances and may not
155 exceed the length of the marriage.

156 (8) Long-term ~~Permanent~~ alimony may be awarded to provide
157 for the needs and necessities of life as they were established
158 during the marriage of the parties for a party who lacks the
159 financial ability to meet his or her needs and necessities of
160 life following a dissolution of marriage. Long-term ~~Permanent~~
161 alimony may be awarded following a marriage of long duration if
162 such an award is appropriate upon consideration of the factors
163 set forth in subsection (2), following a marriage of moderate
164 duration if such an award is appropriate based upon clear and
165 convincing evidence after consideration of the factors set forth
166 in subsection (2), or following a marriage of short duration if
167 there are written findings of exceptional circumstances. In
168 awarding long-term ~~permanent~~ alimony, the court shall include
169 findings ~~a finding~~ that no other form of alimony will provide
170 for the needs and necessities of life of the recipient as
171 established during the marriage of the parties and that no other
172 form is fair and reasonable under the circumstances of the
173 parties. An award of long-term ~~permanent~~ alimony remains payable
174 until ~~terminates upon~~ the death of either party or upon the

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175 remarriage of the party receiving alimony. An award may be
176 modified or terminated based upon a substantial change in
177 circumstances or upon the existence of a supportive relationship
178 in accordance with s. 61.14.

179 (9) The award of alimony may not leave the payor with
180 significantly less net income than the net income of the
181 recipient unless there are written findings of exceptional
182 circumstances.

183 (10) (a) With respect to any order requiring the payment of
184 alimony entered on or after January 1, 1985, unless ~~the~~
185 ~~provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the
186 court shall direct in the order that the payments of alimony be
187 made through the appropriate depository as provided in s.
188 61.181.

189 (b) With respect to any order requiring the payment of
190 alimony entered before January 1, 1985, upon the subsequent
191 appearance, on or after that date, of one or both parties before
192 the court having jurisdiction for the purpose of modifying or
193 enforcing the order or in any other proceeding related to the
194 order, or upon the application of either party, unless ~~the~~
195 ~~provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the
196 court shall modify the terms of the order as necessary to direct
197 that payments of alimony be made through the appropriate
198 depository as provided in s. 61.181.

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

201 (d)1. If there is a minor child of the parties and both
202 parties so request, the court may order that alimony payments
203 need not be directed through the depository. In this case, the

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204 order of support shall provide, or be deemed to provide, that
205 either party may subsequently apply to the depository to require
206 that payments be made through the depository. The court shall
207 provide a copy of the order to the depository.

208 2. If ~~the provisions of~~ subparagraph 1. applies ~~apply~~,
209 either party may subsequently file with the depository an
210 affidavit alleging default or arrearages in payment and stating
211 that the party wishes to initiate participation in the
212 depository program. The party shall provide copies of the
213 affidavit to the court and the other party or parties. Fifteen
214 days after receipt of the affidavit, the depository shall notify
215 all parties that future payments shall be directed to the
216 depository.

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

220 Section 2. Paragraph (b) of subsection (1) of section
221 61.14, Florida Statutes, is amended, and subsection (12) is
222 added to that section, to read:

223 61.14 Enforcement and modification of support, maintenance,
224 or alimony agreements or orders.—

225 (1)

226 (b)1. The court may reduce or terminate an award of alimony
227 upon specific written findings by the court that since the
228 granting of a divorce and the award of alimony a supportive
229 relationship has existed between the obligee and a person with
230 whom the obligee resides. On the issue of whether alimony should
231 be reduced or terminated under this paragraph, the burden is on
232 the obligor to prove by a preponderance of the evidence that a

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233 supportive relationship exists.

234 2. In determining whether an existing award of alimony
235 should be reduced or terminated because of an alleged supportive
236 relationship between an obligee and a person who is not related
237 by consanguinity or affinity and with whom the obligee resides,
238 the court shall elicit the nature and extent of the relationship
239 in question. The court shall give consideration, without
240 limitation, to circumstances, including, but not limited to, the
241 following, in determining the relationship of an obligee to
242 another person:

243 a. The extent to which the obligee and the other person
244 have held themselves out as a married couple by engaging in
245 conduct such as using the same last name, using a common mailing
246 address, referring to each other in terms such as "my husband"
247 or "my wife," or otherwise conducting themselves in a manner
248 that evidences a permanent supportive relationship.

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

251 c. The extent to which the obligee and the other person
252 have pooled their assets or income or otherwise exhibited
253 financial interdependence.

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

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

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

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

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

264 i. Evidence in support of a claim that the obligee and the
265 other person have an express agreement regarding property
266 sharing or support.

267 j. Evidence in support of a claim that the obligee and the
268 other person have an implied agreement regarding property
269 sharing or support.

270 k. Whether the obligee and the other person have provided
271 support to the children of one another, regardless of any legal
272 duty to do so.

273 3. This paragraph does not abrogate the requirement that
274 every marriage in this state be solemnized under a license, does
275 not recognize a common law marriage as valid, and does not
276 recognize a de facto marriage. This paragraph recognizes only
277 that relationships do exist that provide economic support
278 equivalent to a marriage and that alimony terminable on
279 remarriage may be reduced or terminated upon the establishment
280 of equivalent equitable circumstances as described in this
281 paragraph. The existence of a conjugal relationship, though it
282 may be relevant to the nature and extent of the relationship, is
283 not necessary for the application of ~~the provisions of~~ this
284 paragraph.

285 4. A court terminating an alimony award based on the
286 existence of a supportive relationship may not reserve
287 jurisdiction to later reinstate alimony.

288 5. A modification or termination of an alimony award may be
289 retroactive to the date of filing of the petition for
290 modification or termination.

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291 (12) The fact that an obligor has reached the normal
292 retirement age for his or her profession, has retired, and has
293 no intent to return to work shall be considered a substantial
294 change in circumstance as a matter of law. In determining
295 whether the obligor's retirement is reasonable, the court shall
296 consider the following factors of the obligor:

297 (a) Age.

298 (b) Health.

299 (c) Motivation for retirement.

300 (d) Type of work.

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

302 Section 3. Section 61.19, Florida Statutes, is amended to
303 read:

304 61.19 Entry of judgment of dissolution of marriage; ~~;~~ delay
305 period; bifurcation.-

306 (1) A ~~No~~ final judgment of dissolution of marriage may ~~not~~
307 be entered until at least 20 days have elapsed following ~~from~~
308 the date of filing the original petition for dissolution of
309 marriage, ~~+~~ but the court, on a showing that injustice would
310 result from this delay, may enter a final judgment of
311 dissolution of marriage at an earlier date.

312 (2) During the first 180 days following the date of service
313 of the original petition for dissolution of marriage, the court
314 may not grant a final dissolution of marriage with a reservation
315 of jurisdiction to subsequently determine all other substantive
316 issues except in exceptional circumstances when it is clearly
317 necessary for the best interests of the parties or their
318 children. The desire of one of the parties to remarry does not
319 justify the use of this process. If more than 180 days have

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320 elapsed following the date of service of the original petition
321 for dissolution of marriage, the court may grant a final
322 dissolution of marriage with a reservation of jurisdiction to
323 subsequently determine all other substantive issues only if the
324 court enters such other temporary orders as are necessary to
325 protect the interests of the parties and their children, which
326 shall remain effective until such time as all other issues can
327 be adjudicated by the court. The temporary orders necessary to
328 protect the interests of the children and the parties, which may
329 be entered before the granting of a dissolution of marriage
330 without an adjudication of all substantive issues, may include,
331 but need not be limited to, temporary orders that:

- 332 (a) Restrict the sale or disposition of property.
333 (b) Protect and preserve the marital assets.
334 (c) Establish support.
335 (d) Provide for maintenance of health insurance.
336 (e) Provide for maintenance of life insurance.

337
338 The court is not required to enter temporary orders to protect
339 the parties and their children if the court enters a final
340 judgment of dissolution of marriage which adjudicates
341 substantially all of the substantive issues between the parties
342 but reserves jurisdiction to address ancillary issues, such as
343 the entry of a qualified domestic relations order or the
344 adjudication of attorney fees and costs.

345 Section 4. This act shall take effect July 1, 2012.