

2013718e2

1 A bill to be entitled
2 An act relating to family law; amending s. 61.071,
3 F.S.; requiring that alimony pendente lite be
4 calculated in accordance with s. 61.08, F.S.; amending
5 s. 61.075, F.S.; redefining the term "marital assets
6 and liabilities" for purposes of equitable
7 distribution in dissolution of marriage actions;
8 providing that the term includes the paydown of
9 principal of notes and mortgages secured by nonmarital
10 real property and certain passive appreciation in such
11 property under certain circumstances; providing
12 formulas and guidelines for determining the amount of
13 such passive appreciation; requiring security and
14 interest relating to the installment payment of such
15 assets; providing exceptions; permitting the court to
16 provide written findings regarding any installment
17 payments; amending s. 61.08, F.S.; defining terms;
18 providing for the priority of bridge-the-gap alimony,
19 followed by rehabilitative alimony, over any other
20 form; requiring a court to make written findings
21 regarding the basis for awarding a combination of
22 forms of alimony, including the type of alimony and
23 length of time for which it is awarded; providing that
24 the party seeking alimony has the burden of proof of
25 demonstrating a need for alimony and that the other
26 party has the ability to pay alimony; requiring the
27 court to consider specified relevant factors when
28 determining the proper type and amount of alimony;
29 revising provisions relating to the protection of

2013718e2

30 awards of alimony; revising provisions for an award of
31 durational alimony; specifying criteria related to the
32 rebuttable presumption to award or not to award
33 alimony; specifying criteria for awarding
34 rehabilitative alimony; deleting a provision
35 authorizing permanent alimony; providing for
36 retirement of a party against whom alimony is sought;
37 providing for imputation of income to the obligor or
38 obligee in certain circumstances; amending s. 61.09,
39 F.S.; providing for the calculation of alimony;
40 amending s. 61.13, F.S.; establishing a presumption
41 that it is in the best interest of the child for the
42 court to order equal time-sharing for each minor
43 child; providing exceptions; providing prospective
44 applicability of the presumption; amending s. 61.14,
45 F.S.; authorizing a party to apply for an order to
46 terminate the amount of support, maintenance, or
47 alimony; requiring that an alimony order be modified
48 upward upon a showing by clear and convincing evidence
49 of an increased ability to pay alimony by the other
50 party; prohibiting an increase in an obligor's income
51 from being considered permanent in nature until it has
52 been maintained for a specified period without
53 interruption; providing an exemption from the
54 reduction or termination of an alimony award in
55 certain circumstances; providing that there is a
56 rebuttable presumption that any modification or
57 termination of an alimony award is retroactive to the
58 date of the filing of the petition; providing for an

2013718e2

59 award of attorney fees and costs if it is determined
60 that an obligee unnecessarily or unreasonably
61 litigates a petition for modification or termination
62 of an alimony award; prohibiting an alimony award from
63 being modified providing that if the court orders
64 alimony concurrent with a child support order, the
65 alimony award may not be modified because of the later
66 modification or termination of child support payments;
67 providing that an obligor's subsequent remarriage or
68 cohabitation is not a basis for modification of
69 alimony; providing that income and assets of obligor's
70 subsequent spouse or person with whom the obligor is
71 residing are generally not relevant to modification;
72 providing that the attaining of retirement age is a
73 substantial change in circumstances; requiring the
74 court to consider certain factors in determining
75 whether the obligor's retirement is reasonable;
76 requiring a court to terminate or reduce an alimony
77 award based on certain factors; amending s. 61.19,
78 F.S.; authorizing separate adjudication of issues in a
79 dissolution of marriage case in certain circumstances;
80 providing for temporary orders necessary to protect
81 the parties and their children; amending s. 61.30,
82 F.S.; providing for consideration of time-sharing
83 schedules as a factor in the adjustment of awards of
84 child support; providing for retroactive application
85 of the act to alimony awards entered before July 1,
86 2013; providing an exception; providing allowable
87 dates for the modification of such awards; providing

2013718e2

88 an effective date.

89

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

91

92 Section 1. Section 61.071, Florida Statutes, is amended to
93 read:

94 61.071 Alimony pendente lite; suit money.—In every
95 proceeding for dissolution of the marriage, a party may claim
96 alimony and suit money in the petition or by motion, and if the
97 petition is well founded, the court shall allow alimony
98 calculated in accordance with s. 61.08 and a reasonable sum of
99 suit money ~~therefor~~. If a party in any proceeding for
100 dissolution of marriage claims alimony or suit money in his or
101 her answer or by motion, and the answer or motion is well
102 founded, the court shall allow alimony calculated in accordance
103 with s. 61.08 and a reasonable sum of suit money ~~therefor~~.

104 Section 2. Paragraph (a) of subsection (6) and subsection
105 (10) of section 61.075, Florida Statutes, are amended to read:

106 61.075 Equitable distribution of marital assets and
107 liabilities.—

108 (6) As used in this section:

109 (a)1. "Marital assets and liabilities" include:

110 a. Assets acquired and liabilities incurred during the
111 marriage, individually by either spouse or jointly by them.

112 b. The enhancement in value and appreciation of nonmarital
113 assets resulting ~~either~~ from the efforts of either party during
114 the marriage or from the contribution to or expenditure thereon
115 of marital funds or other forms of marital assets, or both.

116 c. The paydown of principal of a note and mortgage secured

2013718e2

117 by nonmarital real property and a portion of any passive
118 appreciation in the property, if the note and mortgage secured
119 by the property are paid down from marital funds during the
120 marriage. The portion of passive appreciation in the property
121 characterized as marital and subject to equitable distribution
122 shall be determined by multiplying a coverture fraction by the
123 passive appreciation in the property during the marriage.

124 (I) The passive appreciation shall be determined by
125 subtracting the gross value of the property on the date of the
126 marriage or the date of acquisition of the property, whichever
127 is later, from the value of the property on the valuation date
128 in the dissolution action, less any active appreciation of the
129 property during the marriage, pursuant to sub-subparagraph b.,
130 and less any additional encumbrances secured by the property
131 during the marriage in excess of the first note and mortgage on
132 which principal is paid from marital funds.

133 (II) The coverture fraction shall consist of a numerator,
134 defined as the total paydown of principal from marital funds of
135 all notes and mortgages secured by the property during the
136 marriage, and a denominator, defined as the value of the subject
137 real property on the date of the marriage, the date of
138 acquisition of the property, or the date the property was
139 encumbered by the first note and mortgage on which principal was
140 paid from marital funds, whichever is later.

141 (III) The passive appreciation shall be multiplied by the
142 coverture fraction to determine the marital portion of the
143 passive appreciation in the property.

144 (IV) The total marital portion of the property shall
145 consist of the marital portion of the passive appreciation,

2013718e2

146 pursuant to subparagraph 3., the mortgage principal paid during
147 the marriage from marital funds, and any active appreciation of
148 the property, pursuant to sub-subparagraph b., not to exceed the
149 total net equity in the property at the date of valuation.

150 (V) The court shall apply this formula unless a party shows
151 circumstances sufficient to establish that application of the
152 formula would be inequitable under the facts presented.

153 d.e. Interspousal gifts during the marriage.

154 e.d. All vested and nonvested benefits, rights, and funds
155 accrued during the marriage in retirement, pension, profit-
156 sharing, annuity, deferred compensation, and insurance plans and
157 programs.

158 2. All real property held by the parties as tenants by the
159 entirety, whether acquired prior to or during the marriage,
160 shall be presumed to be a marital asset. If, in any case, a
161 party makes a claim to the contrary, the burden of proof shall
162 be on the party asserting the claim that the subject property,
163 or some portion thereof, is nonmarital.

164 3. All personal property titled jointly by the parties as
165 tenants by the entirety, whether acquired prior to or during
166 the marriage, shall be presumed to be a marital asset. In the
167 event a party makes a claim to the contrary, the burden of proof
168 shall be on the party asserting the claim that the subject
169 property, or some portion thereof, is nonmarital.

170 4. The burden of proof to overcome the gift presumption
171 shall be by clear and convincing evidence.

172 (10) (a) To do equity between the parties, the court may, in
173 lieu of or to supplement, facilitate, or effectuate the
174 equitable division of marital assets and liabilities, order a

2013718e2

175 monetary payment in a lump sum or in installments paid over a
176 fixed period of time.

177 (b) If installment payments are ordered, the court may
178 require security and a reasonable rate of interest, or otherwise
179 recognize the time value of money in determining the amount of
180 the installments. If security or interest is required, the court
181 shall make written findings relating to any deferred payments,
182 the amount of any security required, and the interest. This
183 subsection does not preclude the application of chapter 55 to
184 any subsequent default.

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

187 61.08 Alimony.—

188 (1) As used in this section, the term:

189 (a) "Alimony" means a court-ordered payment of support by
190 an obligor spouse to an obligee spouse.

191 (b) "Long-term marriage" means a marriage having a duration
192 of 20 years or more, as measured from the date of the marriage
193 to the date of filing the petition for dissolution.

194 (c) "Mid-term marriage" means a marriage having a duration
195 of more than 11 years but less than 20 years, as measured from
196 the date of marriage to the date of filing the petition for
197 dissolution.

198 (d) "Net income" means net income as determined in
199 accordance with s. 61.30.

200 (e) "Short term marriage" means a marriage having a
201 duration equal to or less than 11 years, as measured from the
202 date of the marriage to the date of filing the petition for
203 dissolution.

2013718e2

204 (2) (a) ~~(1)~~ In a proceeding for dissolution of marriage, the
205 court may grant alimony to either party in the form of, ~~which~~
206 ~~alimony may be~~ bridge-the-gap, rehabilitative, or durational
207 alimony, or a permanent in nature or any combination of these
208 forms of alimony, but shall prioritize an award of bridge-the-
209 gap alimony, followed by rehabilitative alimony, over any other
210 form of alimony. In an any award of alimony, the court may order
211 periodic payments, ~~or~~ payments in lump sum, or both.

212 (b) The court shall make written findings regarding the
213 basis for awarding a combination of forms of alimony, including
214 the type of alimony and the length of time for which it is
215 awarded. The court may award only a combination of forms of
216 alimony to provide greater economic assistance in order to allow
217 the recipient to achieve rehabilitation.

218 (c) The court may consider the adultery of either party
219 ~~spouse~~ and the circumstances thereof in determining the amount
220 of alimony, if any, to be awarded.

221 (d) In all dissolution actions, the court shall include
222 written findings of fact relative to the factors enumerated in
223 subsection (3) ~~(2)~~ supporting an award or denial of alimony.

224 (3) ~~(2)~~ The party seeking alimony has the burden of proof of
225 demonstrating a need for alimony in accordance with subsection
226 (8) and that the other party has the ability to pay alimony. In
227 determining whether to award alimony ~~or maintenance,~~ the court
228 shall ~~first~~ make, in writing, a specific factual determination
229 as to whether the other ~~either party has an actual need for~~
230 ~~alimony or maintenance and whether either party has the ability~~
231 to pay alimony ~~or maintenance.~~ If the court finds that the a
232 party seeking alimony has met its burden of proof in

2013718e2

233 demonstrating a need for alimony ~~or maintenance~~ and that the
234 other party has the ability to pay alimony ~~or maintenance~~, then
235 in determining the proper type and amount of alimony ~~or~~
236 ~~maintenance~~ under subsections (5)-(9) ~~(5)-(8)~~, the court shall
237 consider all relevant factors, including, ~~but not limited to~~:
238 ~~(a) The standard of living established during the marriage.~~
239 (a) ~~(b)~~ The duration of the marriage.
240 (b) ~~(e)~~ The age and the physical and emotional condition of
241 each party.
242 (c) ~~(d)~~ The financial resources of each party, including the
243 portion of nonmarital assets that were relied upon by the
244 parties during the marriage and the marital assets and
245 liabilities distributed to each.
246 (d) ~~(e)~~ The earning capacities, educational levels,
247 vocational skills, and employability of the parties and, when
248 applicable, the time necessary for either party to acquire
249 sufficient education or training to enable such party to find
250 appropriate employment.
251 (e) ~~(f)~~ The contribution of each party to the marriage,
252 including, but not limited to, services rendered in homemaking,
253 child care, education, and career building of the other party.
254 (f) ~~(g)~~ The responsibilities each party will have with
255 regard to any minor children that the parties ~~they~~ have in
256 common.
257 (g) ~~(h)~~ The tax treatment and consequences to both parties
258 of an any alimony award, which must be consistent with
259 applicable state and federal tax laws and may include ~~including~~
260 the designation of all or a portion of the payment as a
261 nontaxable, nondeductible payment.

2013718e2

262 (h)~~(i)~~ All sources of income available to either party,
263 including income available to either party through investments
264 of any asset held by that party which was acquired during the
265 marriage or acquired outside the marriage and relied upon during
266 the marriage.

267 (i) The needs and necessities of life after dissolution of
268 marriage, taking into account the lifestyle of the parties
269 during the marriage but subject to the presumption in paragraph
270 (j).

271 (j) The net income and standard of living available to each
272 party after the application of the alimony award. There is a
273 rebuttable presumption that both parties will have a lower
274 standard of living after the dissolution of marriage than the
275 standard of living they enjoyed during the marriage. This
276 presumption may be overcome by a preponderance of the evidence.

277 (k)~~(j)~~ Any other factor necessary to do equity and justice
278 between the parties, if that factor is specifically identified
279 in the award with findings of fact justifying the application of
280 the factor.

281 (4)~~(3)~~ To the extent necessary to protect an award of
282 alimony, the court may order any party who is ordered to pay
283 alimony to purchase or maintain a life insurance policy that may
284 be decreasing or another form of term life insurance at the
285 option of the obligor or a bond, or to otherwise secure such
286 alimony award with any other assets that ~~which~~ may be suitable
287 for that purpose, in an amount adequate to secure the alimony
288 award. Any such security may be awarded only upon a showing of
289 special circumstances. If the court finds special circumstances
290 and awards such security, the court must make specific

2013718e2

291 evidentiary findings regarding the availability, cost, and
292 financial impact on the obligated party. Any security may be
293 modifiable in the event that the underlying alimony award is
294 modified and shall be reduced in an amount commensurate with any
295 reduction in the alimony award.

296 ~~(4) For purposes of determining alimony, there is a~~
297 ~~rebuttable presumption that a short-term marriage is a marriage~~
298 ~~having a duration of less than 7 years, a moderate-term marriage~~
299 ~~is a marriage having a duration of greater than 7 years but less~~
300 ~~than 17 years, and long-term marriage is a marriage having a~~
301 ~~duration of 17 years or greater. The length of a marriage is the~~
302 ~~period of time from the date of marriage until the date of~~
303 ~~filing of an action for dissolution of marriage.~~

304 (5) Bridge-the-gap alimony may be awarded to assist a party
305 by providing support to allow the party to make a transition
306 from being married to being single. Bridge-the-gap alimony is
307 designed to assist a party with legitimate identifiable short-
308 term needs, and the length of an award may not exceed 2 years.
309 An award of bridge-the-gap alimony terminates upon the death of
310 either party or upon the remarriage of the party receiving
311 alimony. An award of bridge-the-gap alimony is ~~shall~~ not be
312 modifiable in amount or duration.

313 (6) (a) Rehabilitative alimony may be awarded to assist a
314 party in establishing the capacity for self-support through
315 either:

- 316 1. The redevelopment of previous skills or credentials; or
317 2. The acquisition of education, training, or work
318 experience necessary to develop appropriate employment skills or
319 credentials.

2013718e2

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

323 (c) An award of rehabilitative alimony may be modified or
324 terminated only during the rehabilitative period in accordance
325 with s. 61.14 based upon a substantial change in circumstances,
326 upon noncompliance with the rehabilitative plan, or upon
327 completion of the rehabilitative plan.

328 (7) Durational alimony may be awarded ~~when permanent~~
329 ~~periodic alimony is inappropriate. The purpose of durational~~
330 ~~alimony is~~ to provide a party with economic assistance for a set
331 period of time following a short-term, mid-term, or long-term
332 ~~marriage of short or moderate duration or following a marriage~~
333 ~~of long duration if there is no ongoing need for support on a~~
334 ~~permanent basis. When awarding durational alimony, the court~~
335 must make written findings that an award of another form of
336 alimony or a combination of the other forms of alimony is not
337 appropriate. An award of durational alimony terminates upon the
338 death of either party or upon the remarriage of the party
339 receiving alimony. The amount of an award of durational alimony
340 shall ~~may~~ be modified or terminated based upon a substantial
341 change in circumstances or upon the existence of a supportive
342 relationship in accordance with s. 61.14. ~~However,~~ The length of
343 an award of durational alimony may not ~~be modified except under~~
344 ~~exceptional circumstances and may not~~ exceed 50 percent of the
345 length of the marriage, unless the party seeking alimony proves
346 by a preponderance of the evidence the circumstances justifying
347 the need for a longer award of alimony, which circumstances must
348 be set out in writing by the court ~~the length of the marriage.~~

2013718e2

349 (8) (a) There is a rebuttable presumption against awarding
350 alimony for a short-term marriage. A party seeking bridge-the-
351 gap or rehabilitative alimony may overcome this presumption by
352 demonstrating by a preponderance of the evidence a need for
353 alimony. A party seeking durational alimony may overcome this
354 presumption by demonstrating by clear and convincing evidence a
355 need for alimony. If the court finds that the party has met its
356 burden in demonstrating a need for alimony and that the other
357 party has the ability to pay alimony, the court shall determine
358 a monthly award of alimony that may not exceed 25 percent of the
359 obligor's gross monthly income, as calculated under s.
360 61.30(2) (a), with the exception that gross income does not
361 include, consistent with paragraph (3) (h), sources of income
362 acquired outside of the marriage which were not relied upon
363 during the marriage.

364 (b) There is no presumption in favor of either party to an
365 award of alimony for a mid-term marriage. A party seeking such
366 alimony must prove by a preponderance of the evidence a need for
367 alimony. If the court finds that the party has met its burden in
368 demonstrating a need for alimony and that the other party has
369 the ability to pay alimony, the court shall determine a monthly
370 award of alimony that may not exceed 35 percent of the obligor's
371 gross monthly income, as calculated under s. 61.30(2) (a), with
372 the exception that gross income does not include, consistent
373 with paragraph (3) (h), sources of income acquired outside of the
374 marriage which were not relied upon during the marriage.

375 (c) There is a rebuttable presumption in favor of awarding
376 alimony for a long-term marriage. A party against whom alimony
377 is sought may overcome this presumption by demonstrating by

2013718e2

378 clear and convincing evidence that there is no need for alimony.
379 If the court finds that the party against whom alimony is sought
380 fails to meet its burden to demonstrate that there is no need
381 for alimony and that the party has the ability to pay alimony,
382 the court shall determine a monthly award of alimony which may
383 not exceed 38 percent of the obligor's gross monthly income, as
384 calculated under s. 61.30(2) (a), with the exception that gross
385 income does not include, consistent with paragraph (3) (h),
386 sources of income acquired outside of the marriage which were
387 not relied upon during the marriage.

388 (d) Notwithstanding subsections (8) and (9), the
389 combination of an award of rehabilitative alimony and another
390 form of alimony may be awarded up to a maximum of 40 percent of
391 the obligor's gross monthly income during the temporary period
392 in which rehabilitative alimony has been awarded, as calculated
393 under s. 61.30(2) (a), with the exception that gross income does
394 not include, consistent with paragraph (3) (h), sources of income
395 acquired outside of the marriage which were not relied upon
396 during the marriage.

397 (9) The court may order alimony exceeding the monthly
398 income limits established in subsection (8) if the court
399 determines, in accordance with the factors in subsection (3),
400 that there is a need for additional alimony, which determination
401 must be set out in writing ~~Permanent alimony may be awarded to~~
402 ~~provide for the needs and necessities of life as they were~~
403 ~~established during the marriage of the parties for a party who~~
404 ~~lacks the financial ability to meet his or her needs and~~
405 ~~necessities of life following a dissolution of marriage.~~
406 ~~Permanent alimony may be awarded following a marriage of long~~

2013718e2

407 ~~duration if such an award is appropriate upon consideration of~~
408 ~~the factors set forth in subsection (2), following a marriage of~~
409 ~~moderate duration if such an award is appropriate based upon~~
410 ~~clear and convincing evidence after consideration of the factors~~
411 ~~set forth in subsection (2), or following a marriage of short~~
412 ~~duration if there are written findings of exceptional~~
413 ~~circumstances. In awarding permanent alimony, the court shall~~
414 ~~include a finding that no other form of alimony is fair and~~
415 ~~reasonable under the circumstances of the parties. An award of~~
416 ~~permanent alimony terminates upon the death of either party or~~
417 ~~upon the remarriage of the party receiving alimony. An award may~~
418 ~~be modified or terminated based upon a substantial change in~~
419 ~~circumstances or upon the existence of a supportive relationship~~
420 ~~in accordance with s. 61.14.~~

421 (10) A party against whom alimony is sought who has met the
422 requirements for retirement in accordance with s. 61.14(12)
423 before the filing of the petition for dissolution is not
424 required to pay alimony unless the party seeking alimony proves
425 by clear and convincing evidence the other party has the ability
426 to pay alimony, in addition to all other requirements of this
427 section.

428 (11) ~~(9)~~ Notwithstanding any other provision of law, alimony
429 may not be awarded to a party who has a monthly net income that
430 is equal to or more than the other party. Except in the case of
431 a long-term marriage, in awarding alimony, the court shall
432 impute income to the obligor and obligee as follows:

433 (a) In the case of the obligor, social security retirement
434 benefits may not be imputed to the obligor, as demonstrated by a
435 social security retirement benefits entitlement letter.

2013718e2

436 (b) In the case of the obligee, if the obligee:

437 1. Is unemployed at the time the petition is filed and has
438 been unemployed for less than 1 year before the time of the
439 filing of the petition, the obligee's monthly net income shall
440 be imputed at 90 percent of the obligee's prior monthly net
441 income.

442 2. Is unemployed at the time the petition is filed and has
443 been unemployed for at least 1 year but less than 2 years before
444 the time of the filing of the petition, the obligee's monthly
445 net income shall be imputed at 80 percent of the obligee's prior
446 monthly net income.

447 3. Is unemployed at the time the petition is filed and has
448 been unemployed for at least 2 years but less than 3 years
449 before the time of the filing of the petition, the obligee's
450 monthly net income shall be imputed at 70 percent of the
451 obligee's prior monthly net income.

452 4. Is unemployed at the time the petition is filed and has
453 been unemployed for at least 3 years but less than 4 years
454 before the time of the filing of the petition, the obligee's
455 monthly net income shall be imputed at 60 percent of the
456 obligee's prior monthly net income.

457 5. Is unemployed at the time the petition is filed and has
458 been unemployed for at least 4 years but less than 5 years
459 before the time of the filing of the petition, the obligee's
460 monthly net income shall be imputed at 50 percent of the
461 obligee's prior monthly net income.

462 6. Is unemployed at the time the petition is filed and has
463 been unemployed for at least 5 years before the time of the
464 filing of the petition, the obligee's monthly net income shall

2013718e2

465 be imputed at 40 percent of the obligee's prior monthly net
466 income, or the monthly net income of a minimum wage earner at
467 the time of the filing of the petition, whichever is greater.

468 7. Proves by a preponderance of the evidence that he or she
469 does not have the ability to earn the imputed income through
470 reasonable means, the court shall reduce the imputation of
471 income specified in this paragraph. If the obligee alleges that
472 a physical disability has impaired his or her ability to earn
473 the imputed income, such disability must meet the definition of
474 disability as determined by the Social Security Administration.
475 ~~The award of alimony may not leave the payor with significantly~~
476 ~~less net income than the net income of the recipient unless~~
477 ~~there are written findings of exceptional circumstances.~~

478 (12) (a) ~~(10) (a)~~ With respect to any order requiring the
479 payment of alimony entered on or after January 1, 1985, unless
480 ~~the provisions of~~ paragraph (c) or paragraph (d) applies apply,
481 the court shall direct in the order that the payments of alimony
482 be made through the appropriate depository as provided in s.
483 61.181.

484 (b) With respect to any order requiring the payment of
485 alimony entered before January 1, 1985, upon the subsequent
486 appearance, on or after that date, of one or both parties before
487 the court having jurisdiction for the purpose of modifying or
488 enforcing the order or in any other proceeding related to the
489 order, or upon the application of either party, unless ~~the~~
490 ~~provisions of~~ paragraph (c) or paragraph (d) applies apply, the
491 court shall modify the terms of the order as necessary to direct
492 that payments of alimony be made through the appropriate
493 depository as provided in s. 61.181.

2013718e2

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

496 (d)1. If there is a minor child of the parties and both
497 parties so request, the court may order that alimony payments
498 need not be directed through the depository. In this case, the
499 order of support must ~~shall~~ provide, or be deemed to provide,
500 that either party may subsequently apply to the depository to
501 require that payments be made through the depository. The court
502 shall provide a copy of the order to the depository.

503 2. If ~~the provisions of~~ subparagraph 1. applies ~~apply~~,
504 either party may subsequently file with the depository an
505 affidavit alleging default or arrearages in payment and stating
506 that the party wishes to initiate participation in the
507 depository program. The party shall provide copies of the
508 affidavit to the court and the other party or parties. Fifteen
509 days after receipt of the affidavit, the depository shall notify
510 all parties that future payments shall be directed to the
511 depository.

512 3. In IV-D cases, the IV-D agency has ~~shall have~~ the same
513 rights as the obligee in requesting that payments be made
514 through the depository.

515 Section 4. Section 61.09, Florida Statutes, is amended to
516 read:

517 61.09 Alimony and child support unconnected with
518 dissolution.—If a person having the ability to contribute to the
519 maintenance of his or her spouse and support of his or her minor
520 child fails to do so, the spouse who is not receiving support
521 may apply to the court for alimony and for support for the child
522 without seeking dissolution of marriage, and the court shall

2013718e2

523 enter an order as it deems just and proper. Alimony awarded
524 under this section shall be calculated in accordance with s.
525 61.08.

526 Section 5. Paragraph (c) of subsection (2) of section
527 61.13, Florida Statutes, is amended to read:

528 61.13 Support of children; parenting and time-sharing;
529 powers of court.—

530 (2)

531 (c) The court shall determine all matters relating to
532 parenting and time-sharing of each minor child of the parties in
533 accordance with the best interests of the child and in
534 accordance with the Uniform Child Custody Jurisdiction and
535 Enforcement Act, except that modification of a parenting plan
536 and time-sharing schedule requires a showing of a substantial,
537 material, and unanticipated change of circumstances.

538 1. It is the public policy of this state that each minor
539 child has frequent and continuing contact with both parents
540 after the parents separate or the marriage of the parties is
541 dissolved and to encourage parents to share the rights and
542 responsibilities, and joys, of childrearing. There is no
543 presumption for or against the father or mother of the child or
544 for or against any specific time-sharing schedule when creating
545 or modifying the parenting plan of the child. Equal time-sharing
546 with a minor child by both parents is in the best interest of
547 the child unless the court finds that:

548 a. The safety, well-being, and physical, mental, and
549 emotional health of the child would be endangered by equal time-
550 sharing, that visitation would be presumed detrimental
551 consistent with s. 39.0139(3), or that supervised visitation is

2013718e2

552 appropriate, if any is appropriate;

553 b. Clear and convincing evidence of extenuating
554 circumstances justify a departure from equal time-sharing and
555 the court makes written findings justifying the departure from
556 equal time-sharing;

557 c. A parent is incarcerated;

558 d. The distance between parental residences makes equal
559 time-sharing impracticable;

560 e. A parent does not request at least 50-percent time-
561 sharing;

562 f. A permanent injunction has been entered or is warranted
563 against a parent or household member relating to contact between
564 the subject of the injunction and the parent or household
565 member; or

566 g. Domestic violence, as defined in s. 741.28, has
567 occurred.

568 2. The court shall order that the parental responsibility
569 for a minor child be shared by both parents unless the court
570 finds that shared parental responsibility would be detrimental
571 to the child. Evidence that a parent has been convicted of a
572 misdemeanor of the first degree or higher involving domestic
573 violence, as defined in s. 741.28 and chapter 775, or meets the
574 criteria of s. 39.806(1)(d), creates a rebuttable presumption of
575 detriment to the child. If the presumption is not rebutted after
576 the convicted parent is advised by the court that the
577 presumption exists, shared parental responsibility, including
578 time-sharing with the child, and decisions made regarding the
579 child, may not be granted to the convicted parent. However, the
580 convicted parent is not relieved of any obligation to provide

2013718e2

581 financial support. If the court determines that shared parental
582 responsibility would be detrimental to the child, it may order
583 sole parental responsibility and make such arrangements for
584 time-sharing as specified in the parenting plan as will best
585 protect the child or abused spouse from further harm. Whether or
586 not there is a conviction of any offense of domestic violence or
587 child abuse or the existence of an injunction for protection
588 against domestic violence, the court shall consider evidence of
589 domestic violence or child abuse as evidence of detriment to the
590 child.

591 a. In ordering shared parental responsibility, the court
592 may consider the expressed desires of the parents and may grant
593 to one party the ultimate responsibility over specific aspects
594 of the child's welfare or may divide those responsibilities
595 between the parties based on the best interests of the child.
596 Areas of responsibility may include education, health care, and
597 any other responsibilities that the court finds unique to a
598 particular family.

599 b. The court shall order sole parental responsibility for a
600 minor child to one parent, with or without time-sharing with the
601 other parent if it is in the best interests of the minor child.

602 3. Access to records and information pertaining to a minor
603 child, including, but not limited to, medical, dental, and
604 school records, may not be denied to either parent. Full rights
605 under this subparagraph apply to either parent unless a court
606 order specifically revokes these rights, including any
607 restrictions on these rights as provided in a domestic violence
608 injunction. A parent having rights under this subparagraph has
609 the same rights upon request as to form, substance, and manner

2013718e2

610 of access as are available to the other parent of a child,
611 including, without limitation, the right to in-person
612 communication with medical, dental, and education providers.

613 Section 6. The amendments made by this act to s. 61.13,
614 Florida Statutes, providing for equal time-sharing, apply
615 prospectively to initial final custody orders made on or after
616 July 1, 2013. The amendments do not constitute a substantial
617 change in circumstances that warrant the modification of a final
618 custody order entered before July 1, 2013.

619 Section 7. Subsection (1) of section 61.14, Florida
620 Statutes, is amended, paragraphs (c) and (d) are added to
621 subsection (11) of that section, and subsection (12) is added to
622 that section, to read:

623 61.14 Enforcement and modification of support, maintenance,
624 or alimony agreements or orders.—

625 (1) (a) When the parties enter into an agreement for
626 payments for, or instead of, support, maintenance, or alimony,
627 whether in connection with a proceeding for dissolution or
628 separate maintenance or with any voluntary property settlement,
629 or when a party is required by court order to make any payments,
630 and the circumstances or the financial ability of either party
631 changes or the child who is a beneficiary of an agreement or
632 court order as described herein reaches majority after the
633 execution of the agreement or the rendition of the order, either
634 party may apply to the circuit court of the circuit in which the
635 parties, or either of them, resided at the date of the execution
636 of the agreement or reside at the date of the application, or in
637 which the agreement was executed or in which the order was
638 rendered, for an order terminating, decreasing, or increasing

2013718e2

639 the amount of support, maintenance, or alimony, and the court
640 has jurisdiction to make orders as equity requires, with due
641 regard to the changed circumstances or the financial ability of
642 the parties or the child, decreasing, increasing, or confirming
643 the amount of separate support, maintenance, or alimony provided
644 for in the agreement or order. A finding that medical insurance
645 is reasonably available or the child support guidelines schedule
646 in s. 61.30 may constitute changed circumstances. Except as
647 otherwise provided in s. 61.30(11)(c), the court may modify an
648 order of support, maintenance, or alimony by terminating,
649 increasing, or decreasing the support, maintenance, or alimony
650 retroactively to the date of the filing of the action or
651 supplemental action for modification as equity requires, giving
652 due regard to the changed circumstances or the financial ability
653 of the parties or the child.

654 (b)1. If the court has determined that an existing alimony
655 award as determined by the court at the time of dissolution is
656 insufficient to meet the needs of the obligee, and that such
657 need continues to exist, an alimony order shall be modified
658 upward and upon a showing by a preponderance of the evidence of
659 increased ability to pay alimony. Absent a finding of fraud, an
660 increase in an obligor's income may not be considered permanent
661 in nature unless the increase has been maintained without
662 interruption for at least 1 year, taking into account the
663 obligor's ability to sustain his or her income.

664 2.1- Notwithstanding subparagraph 1., the court shall ~~may~~
665 reduce or terminate an award of alimony upon specific written
666 findings by the court that since the granting of a divorce and
667 the award of alimony, a supportive relationship has existed

2013718e2

668 between the obligee and another a person, except upon a showing
669 by clear and convincing evidence by the obligee that his or her
670 long-term need for alimony, taking into account the totality of
671 the circumstances, has not been reduced by the supportive
672 relationship with whom the obligee resides. On the issue of
673 whether alimony should be reduced or terminated under this
674 paragraph, the burden is on the obligor to prove by a
675 preponderance of the evidence that a supportive relationship
676 exists.

677 3.2. In determining whether an existing award of alimony
678 should be reduced or terminated because of an alleged supportive
679 relationship between an obligee and a person who is not related
680 by consanguinity or affinity and with whom the obligee resides,
681 the court shall elicit the nature and extent of the relationship
682 in question. The court shall give consideration, without
683 limitation, to circumstances, including, but not limited to, the
684 following, in determining the relationship of an obligee to
685 another person:

686 a. The extent to which the obligee and the other person
687 have held themselves out as a married couple by engaging in
688 conduct such as using the same last name, using a common mailing
689 address, referring to each other in terms such as "my husband"
690 or "my wife," or otherwise conducting themselves in a manner
691 that evidences a permanent supportive relationship.

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

694 c. The extent to which the obligee and the other person
695 have pooled their assets or income or otherwise exhibited
696 financial interdependence.

2013718e2

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

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

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

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

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

707 i. Evidence in support of a claim that the obligee and the
708 other person have an express agreement regarding property
709 sharing or support.

710 j. Evidence in support of a claim that the obligee and the
711 other person have an implied agreement regarding property
712 sharing or support.

713 k. Whether the obligee and the other person have provided
714 support to the children of one another, regardless of any legal
715 duty to do so.

716 ~~4.3~~ This paragraph does not abrogate the requirement that
717 every marriage in this state be solemnized under a license, does
718 not recognize a common law marriage as valid, and does not
719 recognize a de facto marriage. This paragraph recognizes only
720 that relationships do exist that provide economic support
721 equivalent to a marriage and that alimony terminable on
722 remarriage may be reduced or terminated upon the establishment
723 of equivalent equitable circumstances as described in this
724 paragraph. The existence of a conjugal relationship, though it
725 may be relevant to the nature and extent of the relationship, is

2013718e2

726 not necessary for the application of ~~the provisions of~~ this
727 paragraph.

728 5. There is a rebuttable presumption that any modification
729 or termination of an alimony award is retroactive to the date of
730 the filing of the petition. In an action under this section, if
731 it is determined that the obligee or obligor unnecessarily or
732 unreasonably litigated the underlying petition for modification
733 or termination, the court may award the other party his or her
734 reasonable attorney fees and costs pursuant to s. 61.16 and
735 applicable case law.

736 (c) For each support order reviewed by the department as
737 required by s. 409.2564(11), if the amount of the child support
738 award under the order differs by at least 10 percent but not
739 less than \$25 from the amount that would be awarded under s.
740 61.30, the department shall seek to have the order modified and
741 any modification shall be made without a requirement for proof
742 or showing of a change in circumstances.

743 (d) The department may ~~shall have authority to~~ adopt rules
744 to administer ~~implement~~ this section.

745 (11)

746 (c) If the court orders alimony payable concurrent with a
747 child support order, the alimony award may not be modified
748 solely because of a later reduction or termination of child
749 support payments, unless the court finds the obligor has the
750 ability to pay the modified alimony award, the existing alimony
751 award as determined by the court at the time of dissolution is
752 insufficient to meet the needs of the obligee, and such need
753 continues to exist.

754 (d) An obligor's subsequent remarriage or cohabitation does

2013718e2

755 not constitute a basis for a modification of alimony. The income
756 and assets of the obligor's subsequent spouse or person with
757 whom the obligor resides is not relevant in a modification
758 action except under exceptional circumstances.

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

765 (a) Age.

766 (b) Health.

767 (c) Motivation for retirement.

768 (d) Type of work.

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

770

771 In anticipation of retirement, the obligor may file a petition
772 for termination or modification of the alimony award effective
773 upon the retirement date. The court shall terminate or modify
774 the alimony award based on the circumstances of the parties
775 after retirement of the obligor and based on the factors in s.
776 61.08(3), unless the court makes findings of fact that a
777 termination or modification of an alimony award is not
778 warranted.

779 Section 8. Paragraphs (a) and (b) of subsection (11) of
780 section 61.30, Florida Statutes, are amended to read:

781 61.30 Child support guidelines; retroactive child support.-

782 (11) (a) The court may adjust the total minimum child
783 support award, or either or both parents' share of the total

2013718e2

784 minimum child support award, based upon the following deviation
785 factors:

786 1. Extraordinary medical, psychological, educational, or
787 dental expenses.

788 2. Independent income of the child, not to include moneys
789 received by a child from supplemental security income.

790 3. The payment of support for a parent which has been
791 regularly paid and for which there is a demonstrated need.

792 4. Seasonal variations in one or both parents' incomes or
793 expenses.

794 5. The age of the child, taking into account the greater
795 needs of older children.

796 6. Special needs, such as costs that may be associated with
797 the disability of a child, that have traditionally been met
798 within the family budget even though fulfilling those needs will
799 cause the support to exceed the presumptive amount established
800 by the guidelines.

801 7. Total available assets of the obligee, obligor, and the
802 child.

803 8. The impact of the Internal Revenue Service Child &
804 Dependent Care Tax Credit, Earned Income Tax Credit, and
805 dependency exemption and waiver of that exemption. The court may
806 order a parent to execute a waiver of the Internal Revenue
807 Service dependency exemption if the paying parent is current in
808 support payments.

809 9. An application of the child support guidelines schedule
810 that requires a person to pay another person more than 55
811 percent of his or her gross income for a child support
812 obligation for current support resulting from a single support

2013718e2

813 order.

814 10. The particular parenting plan, court-ordered time-
815 sharing schedule, or particular time-sharing schedule exercised
816 by agreement of the parties, such as where the child spends a
817 significant amount of time, but less than 20 percent of the
818 overnights, with one parent, thereby reducing the financial
819 expenditures incurred by the other parent; or the refusal of a
820 parent to become involved in the activities of the child.

821 11. Any other adjustment that is needed to achieve an
822 equitable result which may include, but not be limited to, a
823 reasonable and necessary existing expense or debt. Such expense
824 or debt may include, but is not limited to, a reasonable and
825 necessary expense or debt that the parties jointly incurred
826 during the marriage.

827 (b) Whenever a particular parenting plan, court-ordered
828 time-sharing schedule, or particular time-sharing schedule
829 exercised by agreement of the parties provides that each child
830 spend a substantial amount of time with each parent, the court
831 shall adjust any award of child support, as follows:

832 1. In accordance with subsections (9) and (10), calculate
833 the amount of support obligation apportioned to each parent
834 without including day care and health insurance costs in the
835 calculation and multiply the amount by 1.5.

836 2. Calculate the percentage of overnight stays the child
837 spends with each parent.

838 3. Multiply each parent's support obligation as calculated
839 in subparagraph 1. by the percentage of the other parent's
840 overnight stays with the child as calculated in subparagraph 2.

841 4. The difference between the amounts calculated in

2013718e2

842 subparagraph 3. shall be the monetary transfer necessary between
843 the parents for the care of the child, subject to an adjustment
844 for day care and health insurance expenses.

845 5. Pursuant to subsections (7) and (8), calculate the net
846 amounts owed by each parent for the expenses incurred for day
847 care and health insurance coverage for the child.

848 6. Adjust the support obligation owed by each parent
849 pursuant to subparagraph 4. by crediting or debiting the amount
850 calculated in subparagraph 5. This amount represents the child
851 support which must be exchanged between the parents.

852 7. The court may deviate from the child support amount
853 calculated pursuant to subparagraph 6. based upon the deviation
854 factors in paragraph (a), as well as the obligee parent's low
855 income and ability to maintain the basic necessities of the home
856 for the child, the likelihood that either parent will actually
857 exercise the time-sharing schedule set forth in the parenting
858 plan granted by the court, and whether all of the children are
859 exercising the same time-sharing schedule.

860 8. For purposes of adjusting any award of child support
861 under this paragraph, "substantial amount of time" means that a
862 parent exercises time-sharing at least 20 percent of the
863 overnights of the year.

864 Section 9. Section 61.19, Florida Statutes, is amended to
865 read:

866 61.19 Entry of judgment of dissolution of marriage;7 delay
867 period; separate adjudication of issues.-

868 (1) A ~~No~~ final judgment of dissolution of marriage may not
869 be entered until at least 20 days have elapsed from the date of
870 filing the original petition for dissolution of marriage,7 but

2013718e2

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

874 (2) (a) During the first 180 days after the date of service
875 of the original petition for dissolution of marriage, the court
876 may not grant a final dissolution of marriage with a reservation
877 of jurisdiction to subsequently determine all other substantive
878 issues unless the court makes written findings that there are
879 exceptional circumstances that make the use of this process
880 clearly necessary to protect the parties or their children and
881 that granting a final dissolution will not cause irreparable
882 harm to either party or the children. Before granting a final
883 dissolution of marriage with a reservation of jurisdiction to
884 subsequently determine all other substantive issues, the court
885 shall enter temporary orders necessary to protect the parties
886 and their children, which orders remain effective until all
887 other issues can be adjudicated by the court. The desire of one
888 party to remarry does not justify the use of this process.

889 (b) If more than 180 days have elapsed after the date of
890 service of the original petition for dissolution of marriage,
891 the court may grant a final dissolution of marriage with a
892 reservation of jurisdiction to subsequently determine all other
893 substantive issues only if the court enters temporary orders
894 necessary to protect the parties and their children, which
895 orders remain effective until such time as all other issues can
896 be adjudicated by the court, and makes a written finding that no
897 irreparable harm will result from granting a final dissolution.

898 (c) If more than 365 days have elapsed after the date of
899 service of the original petition for dissolution of marriage,

2013718e2

900 absent a showing by either party that irreparable harm will
901 result from granting a final dissolution, the court shall, upon
902 request of either party, immediately grant a final dissolution
903 of marriage with a reservation of jurisdiction to subsequently
904 determine all other substantive issues. Before granting a final
905 dissolution of marriage with a reservation of jurisdiction to
906 subsequently determine all other substantive issues, the court
907 shall enter temporary orders necessary to protect the parties
908 and their children, which orders remain effective until all
909 other issues can be adjudicated by the court.

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

- 914 1. Restrict the sale or disposition of property.
- 915 2. Protect and preserve the marital assets.
- 916 3. Establish temporary support.
- 917 4. Provide for maintenance of health insurance.
- 918 5. Provide for maintenance of life insurance.

919 (e) The court is not required to enter temporary orders to
920 protect the parties and their children if the court enters a
921 final judgment of dissolution of marriage that adjudicates
922 substantially all of the substantive issues between the parties
923 but reserves jurisdiction to address ancillary issues such as
924 the entry of a qualified domestic relations order or the
925 adjudication of attorney fees and costs.

926 Section 10. (1) (a) The amendments to chapter 61, Florida
927 Statutes, made by this act apply to:

- 928 1. Final judgments of alimony awards entered before July 1,

2013718e2

929 2013.

930 2. Final orders entered before July 1, 2013, that
931 incorporate an agreement between the parties for alimony, if the
932 duration of the marriage was equal to or less than 15 years and
933 the duration of the alimony agreement exceeds the duration of
934 the marriage.

935 (b) For such judgments or orders, the amendments to chapter
936 61, Florida Statutes, shall constitute a substantial change in
937 circumstances for which an obligor may seek, in accordance with
938 s. 61.14, Florida Statutes, a modification of the amount or
939 duration of alimony, except for an order incorporating an
940 agreement that is expressly nonmodifiable.

941 (2) (a) For final orders entered before July 1, 2013 that
942 incorporate an agreement between the parties for alimony, but
943 otherwise do not meet the criteria set forth in subparagraph
944 (1) (a)2., the amendments to chapter 61, Florida Statutes, made
945 by this act shall apply if the obligor proves, by clear and
946 convincing evidence, that:

947 1. The obligor did not execute the agreement voluntarily;

948 2. The agreement was the product of fraud, duress,
949 coercion, or overreaching; or

950 3. The agreement was unconscionable when it was executed
951 and, before execution of the agreement, the obligor:

952 a. Was not provided a fair and reasonable disclosure of the
953 property or financial obligations of the other party.

954 b. Did not voluntarily and expressly waive, in writing, any
955 right to disclosure of the property or financial obligations of
956 the other party beyond disclosure provided.

957 c. Did not have or reasonably could not have had an

2013718e2

958 adequate knowledge of the property or financial obligations of
959 the other party.

960 (b) For such orders, the amendments to chapter 61, Florida
961 Statutes, shall constitute a substantial change in circumstances
962 for which an obligor may seek, in accordance with s. 61.14,
963 Florida Statutes, a modification of the amount or duration of
964 alimony, except for an order incorporating an agreement that is
965 expressly nonmodifiable.

966 (3) Final judgments and orders for which the amendments to
967 chapter 61, Florida Statutes, constitute a substantial change in
968 circumstances under subsection (1) and (2) may be the subject of
969 a modification action according to the following schedule:

970 (a) An obligor who is subject to alimony of 15 years or
971 more may file a modification action on or after July 1, 2013.

972 (b) An obligor who is subject to alimony of 8 years of
973 more, but less than 15 years, may file a modification action on
974 or after July 1, 2014.

975 (c) An obligor who is subject to alimony of less than 8
976 years may file a modification action on or after July 1, 2015.

977 Section 11. This act shall take effect July 1, 2013.