COMMITTEE/SUBCOMMI	TTTEE ACTION
ADOPTED	(Y/N)
ADOPTED AS AMENDED	(Y/N)
ADOPTED W/O OBJECTION	(Y/N)
FAILED TO ADOPT	(Y/N)
WITHDRAWN	(Y/N)
OTHER	

Committee/Subcommittee hearing bill: Civil Justice Subcommittee Representative Andrade offered the following:

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## Amendment (with title amendment)

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Remove everything after the enacting clause and insert:

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

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61.08 Alimony.—

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

10 11 (a) "Alimony" means a court-ordered payment of support by one spouse to the other spouse. The term alimony includes the terms maintenance, spousal support, or separate support, when not intended for the benefit of a child.

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(b) "Gross income" means gross income as determined under s. 61.30.

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(C)	Net	income	is de	termined	l by s	subtracting	allowable
deduction	ns fro	om gros:	s inco	me. Allo	wable	e deductions	s shall
include:							

- 1. Federal, state, and local income tax deductions, adjusted for actual filing status and allowable dependents and income tax liabilities.
  - 2. Federal insurance contributions or self-employment tax.
  - 3. Mandatory union dues.
  - 4. Mandatory retirement payments.
- 5. Health insurance payments, excluding payments for coverage of the minor child.
- 6. Court-ordered support for other children which is actually paid.
- 7. Spousal support paid pursuant to a court order from a previous marriage.
- (2) (a) (1) In a proceeding for dissolution of marriage, the court may grant alimony to either party in the form of, which alimony may be bridge-the-gap, rehabilitative, or durational alimony, or permanent in nature or any combination of these forms of alimony, but shall prioritize an award of bridge-the-gap alimony, followed by rehabilitative alimony, over any other form of alimony. The court may grant permanent alimony only when the parties enter into an agreement for permanent alimony. In any award of alimony, the court may order periodic payments, or payments in lump sum, or both.

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- (b) The court shall make written findings regarding the basis for awarding a combination of forms of alimony, including the type of alimony and the length of time for which the alimony is awarded. The court may award a combination of forms of alimony only to provide greater economic assistance in order to allow the recipient to achieve rehabilitation.
- (c) The court may consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded. However, the adultery of a spouse may not be the court's sole basis for:
  - 1. Denying a request for alimony; or
- 2. Awarding alimony, unless the adultery contributed to a depletion of marital assets.
- (d) In all dissolution actions, the court shall include  $\underline{\text{written}}$  findings of fact relative to the factors provided  $\underline{\text{enumerated}}$  in subsection  $\underline{\text{(3)}}$  supporting  $\underline{\text{the}}$  an award or denial of alimony.
- (3)(2) In determining whether to award alimony or maintenance, the court shall first make, in writing, a specific factual determination as to whether the party requesting alimony has an actual need for alimony or maintenance and whether the other either party has the ability to pay alimony or maintenance. If the court finds that the a party seeking alimony or maintenance has a need for alimony or maintenance and that the other party has the ability to pay alimony or maintenance,

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then in determining the proper type and amount of alimony or maintenance under subsections (5)-(7) (5)-(8), the court shall consider all relevant factors, including, but not limited to:

- (a) The standard of living established during the marriage, including the needs and necessities of life for each party after the dissolution of marriage, taking into consideration the presumption that both parties will have a lower standard of living after the dissolution of marriage than the standard of living they enjoyed during the marriage. This presumption may be overcome by a preponderance of the evidence.
  - (b) The duration of the marriage.
- (c) The age and the physical and emotional condition of each party.
- (d) The financial resources of each party, including the nonmarital and the marital assets and liabilities distributed to each party.
- (e) The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.
- (f) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party.

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- (g) The responsibilities each party will have with regard to any minor children that the parties they have in common.
- (h) The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a nontaxable, nondeductible payment.
- (i) All sources of income available to either party, including income available to either party through investments of any asset held by that party.
- (j) Any other factor necessary to do equity and justice between the parties if such factor is specifically identified in the award with findings of fact justifying the application of such factor.
- (4)(3) To the extent necessary to protect an award of alimony, the obligee may court may order any party who is ordered to pay alimony to purchase or maintain a life insurance policy on the obligor's life in an amount adequate to or a bond, or to otherwise secure such alimony award with any other assets which may be suitable for that purpose. If the obligee purchases such a life insurance policy, the court may order the obligor to cooperate in the process of procuring the issuance and underwriting of the life insurance policy and to reimburse the obligee for the cost of procuring and maintaining the policy.
- (4) For purposes of determining alimony, there is a rebuttable presumption that a short-term marriage is a marriage having a duration of less than 7 years, a moderate-term marriage

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is a marriage having a duration of greater than 7 years but les	S
than 17 years, and long-term marriage is a marriage having a	
duration of 17 years or greater. The length of a marriage is th	њ
period of time from the date of marriage until the date of	
filing of an action for dissolution of marriage.	

- (5) Bridge-the-gap alimony may be awarded to assist a party by providing support to allow the party to make a transition from being married to being single. Bridge-the-gap alimony is designed to assist a party with legitimate identifiable short-term needs, and the length of an award of bridge-the-gap alimony may not exceed 2 years. An award of bridge-the-gap alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award of bridge-the-gap alimony is shall not be modifiable in amount or duration.
- (6)(a) Rehabilitative alimony may be awarded to assist a party in establishing the capacity for self-support through either:
  - 1. The redevelopment of previous skills or credentials; or
- 2. The acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials.
- (b) In order to award rehabilitative alimony, there must be a specific and defined rehabilitative plan which shall be included as a part of any order awarding rehabilitative alimony.

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- (c) The length of an award of rehabilitative alimony may not exceed 5 years or the limitations for durational alimony as provided in subsection (7), whichever period of time is shorter.
- (d) An award of rehabilitative alimony may be modified or terminated in accordance with s. 61.14 based upon a substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan before the length of the award of rehabilitative alimony expires.
- (7)(a) Durational alimony may be awarded when permanent periodic alimony is inappropriate. The purpose of durational alimony is to provide a party with economic assistance for a set period of time following a marriage of short or moderate duration or following a marriage of long duration if there is no ongoing need for support on a permanent basis. An award of durational alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. The amount of an award of durational alimony may be modified or terminated based upon a substantial change in circumstances, including a finding that a supportive relationship exists or existed between the obligee and another person in accordance with s. 61.14. However, The length of an award of durational alimony may not be modified except under exceptional circumstances and may not exceed 50 percent of the length of the marriage. For purposes of this subsection, the length of a marriage is the period of time

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beginni	ing (	on the	date	of	marriage	and	ending	on	the	date	the	<u>!</u>
action	for	disso	lution	of	marriage	e cui	rrently	per	nding	, befo	re	the
court i	is f	iled.										

- (b) When awarding durational alimony, the court must make written findings that an award of another type of alimony, or any combination of the other forms of alimony, is not appropriate.
- (c) The amount of durational alimony is the amount determined to be the obligee's reasonable need or 25 percent of the difference between the parties' net incomes, whichever amount is less.
- (8) A party against whom alimony is sought who has met the requirements for retirement in accordance with s. 61.14(12) before the filing of the petition for dissolution of marriage may not be ordered to pay bridge-the-gap, rehabilitative, or durational alimony, unless the court determines that the needs and necessities of life for the party seeking alimony are not adequately provided for by nonmarital assets or the distribution of marital assets.
- (9) (a) Notwithstanding any other provision of law, alimony may not be awarded to a party who has a monthly net income that is equal to or more than the other party's monthly net income.
- 186 (b) Social security retirement benefits may not be imputed

  187 to the obligor or the obligee as demonstrated by a social

  188 security retirement benefits entitlement letter.

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impaired his or her capability to earn the income imputed by the court, the obligee must have qualified for benefits under the Social Security Administration Disability Insurance Program or, in the event the obligee is not eligible for the program, must demonstrate that his or her disability meets the disability qualification standards of the Social Security Administration Disability Insurance Program.

(8) Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage. Permanent alimony may be awarded following a marriage of long duration if such an award is appropriate upon consideration of the factors set forth in subsection (2), following a marriage of moderate duration if such an award is appropriate based upon clear and convincing evidence after consideration of the factors set forth in subsection (2), or following a marriage of short duration if there are written findings of exceptional circumstances. In awarding permanent alimony, the court shall include a finding that no other form of alimony is fair and reasonable under the circumstances of the parties. An award of permanent alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award may be modified or

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terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship in accordance with s. 61.14.

- (9) The award of alimony may not leave the payor with significantly less net income than the net income of the recipient unless there are written findings of exceptional eircumstances.
- (10)(a) With respect to any order requiring the payment of alimony entered on or after January 1, 1985, unless the provisions of paragraph (c) or paragraph (d) applies apply, the court shall direct in the order that the payments of alimony be made through the appropriate depository as provided in s. 61.181.
- (b) With respect to any order requiring the payment of alimony entered before January 1, 1985, upon the subsequent appearance, on or after that date, of one or both parties before the court having jurisdiction for the purpose of modifying or enforcing the order or in any other proceeding related to the order, or upon the application of either party, unless the provisions of paragraph (c) or paragraph (d) applies apply, the court shall modify the terms of the order as necessary to direct that payments of alimony be made through the appropriate depository as provided in s. 61.181.
- (c) If there is no minor child, alimony payments need not be directed through the depository.

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- (d)1. If there is a minor child of the parties and both parties so request, the court may order that alimony payments need not be directed through the depository. In this case, the order of support <u>must shall</u> provide, or be deemed to provide, that either party may subsequently apply to the depository to require that payments be made through the depository. The court shall provide a copy of the order to the depository.
- 2. If the provisions of subparagraph 1. applies apply, either party may subsequently file with the depository an affidavit alleging default or arrearages in payment and stating that the party wishes to initiate participation in the depository program. The party shall provide copies of the affidavit to the court and the other party or parties. Fifteen days after receipt of the affidavit, the depository shall notify all parties that future payments shall be directed to the depository.
- 3. In IV-D cases, the IV-D agency has shall have the same rights as the obligee in requesting that payments be made through the depository.
- the obligee after the date of filing of a petition for dissolution of marriage, either voluntarily or pursuant to a court order, in determining the amount and length of an award of rehabilitative or durational alimony.

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

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

(2)

- (c) The court shall determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act, except that modification of a parenting plan and time-sharing schedule requires a showing of a substantial, material, and unanticipated change of circumstances.
- 1. It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. Unless otherwise agreed to by the parties, there is a presumption that equal time-sharing is in the best interests of the minor children common to both parties. There is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when creating or modifying the parenting plan of the child.
- 2. The court shall order that the parental responsibility for a minor child be shared by both parents unless the court

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finds that shared parental responsibility would be detrimental to the child. Evidence that a parent has been convicted of a misdemeanor of the first degree or higher involving domestic violence, as defined in s. 741.28 and chapter 775, or meets the criteria of s. 39.806(1)(d), creates a rebuttable presumption of detriment to the child. If the presumption is not rebutted after the convicted parent is advised by the court that the presumption exists, shared parental responsibility, including time-sharing with the child, and decisions made regarding the child, may not be granted to the convicted parent. However, the convicted parent is not relieved of any obligation to provide financial support. If the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility and make such arrangements for time-sharing as specified in the parenting plan as will best protect the child or abused spouse from further harm. Regardless of whether or not there is a conviction of any offense of domestic violence or child abuse or the existence of an injunction for protection against domestic violence, the court shall consider evidence of domestic violence or child abuse as evidence of detriment to the child.

a. In ordering shared parental responsibility, the court may consider the expressed desires of the parents and may grant to one party the ultimate responsibility over specific aspects of the child's welfare or may divide those responsibilities

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between the parties based on the best interests of the child.

Areas of responsibility may include education, health care, and any other responsibilities that the court finds unique to a particular family.

- b. The court shall order sole parental responsibility for a minor child to one parent, with or without time-sharing with the other parent if it is in the best interests of the minor child.
- 3. Access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, may not be denied to either parent. Full rights under this subparagraph apply to either parent unless a court order specifically revokes these rights, including any restrictions on these rights as provided in a domestic violence injunction. A parent having rights under this subparagraph has the same rights upon request as to form, substance, and manner of access as are available to the other parent of a child, including, without limitation, the right to in-person communication with medical, dental, and education providers
- Section 3. Paragraph (b) of subsection (1) of section 61.14, Florida Statutes, is amended, paragraphs (c) and (d) are added to subsection (11), and subsections (12), (13), and (14) are added to that section, to read:
- 61.14 Enforcement and modification of support, maintenance, or alimony agreements or orders.—

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(1)(a) When the parties enter into an agreement for
payments for, or instead of, support, maintenance, or alimony,
whether in connection with a proceeding for dissolution or
separate maintenance or with any voluntary property settlement,
or when a party is required by court order to make any payments,
and the circumstances or the financial ability of either party
changes or the child who is a beneficiary of an agreement or
court order as described herein reaches majority after the
execution of the agreement or the rendition of the order, either
party may apply to the circuit court of the circuit in which the
parties, or either of them, resided at the date of the execution
of the agreement or reside at the date of the application, or in
which the agreement was executed or in which the order was
rendered, for an order decreasing or increasing the amount of
support, maintenance, or alimony, and the court has jurisdiction
to make orders as equity requires, with due regard to the
changed circumstances or the financial ability of the parties or
the child, decreasing, increasing, or confirming the amount of
separate support, maintenance, or alimony provided for in the
agreement or order. A finding that medical insurance is
reasonably available or the child support guidelines schedule in
s. 61.30 may constitute changed circumstances. Except as
otherwise provided in s. $61.30(11)(c)$ , the court may modify an
order of support, maintenance, or alimony by increasing or
decreasing the support, maintenance, or alimony retroactively to

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the date of the filing of the action or supplemental action for modification as equity requires, giving due regard to the changed circumstances or the financial ability of the parties or the child.

- (b)1. The court may reduce or terminate an award of alimony or order reimbursement to the obligor for any amount the court determines is equitable upon specific written findings by the court that since the granting of a divorce and the award of alimony a supportive relationship exists or has existed between the obligee and another a person at any time during the 180 days before the filing of a petition for modification of alimony with whom the obligee resides. On the issue of whether alimony should be reduced or terminated under this paragraph, the burden is on the obligor to prove by a preponderance of the evidence that a supportive relationship exists or existed.
- 2. In determining whether an existing award of alimony should be reduced or terminated because of an alleged supportive relationship between an obligee and a person who is not related by consanguinity or affinity and with whom the obligee resides, the court shall elicit the nature and extent of the relationship in question. The court shall give consideration, without limitation, to circumstances, including, but not limited to, the following, in determining the relationship of an obligee to another person:

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- a. The extent to which the obligee and the other person have held themselves out as a married couple by engaging in conduct such as using the same last name, using a common mailing address, referring to each other in terms such as "my husband" or "my wife," or otherwise conducting themselves in a manner that evidences a permanent supportive relationship.
- b. The period of time that the obligee has resided with the other person in a permanent place of abode.
- c. The extent to which the obligee and the other person have pooled their assets or income or otherwise exhibited financial interdependence.
- d. The extent to which the obligee or the other person has supported the other, in whole or in part.
- e. The extent to which the obligee or the other person has performed valuable services for the other.
- f. The extent to which the obligee or the other person has performed valuable services for the other's company or employer.
- g. Whether the obligee and the other person have worked together to create or enhance anything of value.
- h. Whether the obligee and the other person have jointly contributed to the purchase of any real or personal property.
- i. Evidence in support of a claim that the obligee and the other person have an express agreement regarding property sharing or support.

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- j. Evidence in support of a claim that the obligee and the other person have an implied agreement regarding property sharing or support.
  - k. Whether the obligee and the other person have provided support to the children of one another, regardless of any legal duty to do so.
  - 3. This paragraph does not abrogate the requirement that every marriage in this state be solemnized under a license, does not recognize a common law marriage as valid, and does not recognize a de facto marriage. This paragraph recognizes only that relationships do exist that provide economic support equivalent to a marriage and that alimony terminable on remarriage may be reduced or terminated upon the establishment of equivalent equitable circumstances as described in this paragraph. The existence of a conjugal relationship, though it may be relevant to the nature and extent of the relationship, is not necessary for the application of the provisions of this paragraph.
  - (c) For each support order reviewed by the department as required by s. 409.2564(11), if the amount of the child support award under the order differs by at least 10 percent but not less than \$25 from the amount that would be awarded under s. 61.30, the department shall seek to have the order modified and any modification shall be made without a requirement for proof or showing of a change in circumstances.

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	(d) The	department <u>may</u>	shall have	authority to	adopt rules
to	administer	implement this	section.		

(11)

- (c) An obligor's subsequent remarriage or cohabitation does not constitute a basis for either party to seek modification of alimony. An obligee may not seek modification to increase an award of alimony based on the income and assets of the obligor's subsequent spouse or person with whom the obligor resides, and the obligor may not seek modification to reduce an award of alimony based on the obligor's reliance upon the income and assets of the obligor's subsequent spouse or person with whom the obligor resides.
- (12) (a) An alimony award may be modified when the obligor reaches full retirement age as determined by the United States

  Social Security Administration or when the obligor retires at an age that is reasonable for his or her profession or line of work, whichever is earlier. However, if an alimony award was made pursuant to an agreement between the parties, the court must make written findings of fact indicating exceptional circumstances which require the court to modify the agreed upon alimony award.
- (b) In determining whether the obligor's retirement age is reasonable, the court shall consider:
  - 1. The obligor's age and health.
  - 2. The obligor's motivation for retirement.

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	3.	Th∈	e obli	igor	<b>′</b> s	type	of	work	and	the	typical	retirement
age	for	the	type	of m	wor	ck.						

- 4. The obligee's needs and necessities of life.
- 5. The impact a termination or reduction of alimony would have on the receiving spouse. In determining the impact, the court shall consider any assets accumulated or received by the obligee, including any income generated by such assets, since the final judgment of dissolution of marriage.
- c) Up to 12 months prior to the obligor's anticipated retirement, the obligor may file a petition to modify the alimony award effective upon the obligor's actual retirement date. The court shall modify the alimony award after the retirement of the obligor, unless the court makes written findings of fact that the obligor's retirement is not reasonable.
- (13) Any amount of social security or disability benefits or retirement payments received by an obligee subsequent to an initial award of alimony constitutes a change in circumstances for which an obligor may seek modification to reduce an alimony award.
- (14) Nothing in this section shall make invalid any support, maintenance, or alimony award, including a permanent alimony award, ordered prior to July 1, 2020.
- Section 4. This act shall take effect July 1, 2020.

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## 486 TITLE AMENDMENT

Remove everything before the enacting clause and insert: An act relating to dissolution of marriage; amending s. 61.08, F.S.; providing definitions; providing for the priority of different forms of alimony; requiring a court to make written findings regarding the basis for awarding a combination of forms of alimony; revising factors the court must considered when determining an alimony award; revising provisions relating to the protection of awards of alimony; removing the rebuttable presumption of the length of a marriage; revising provisions and criteria for an award of rehabilitative and durational alimony; removing the authorization for a court to order permanent alimony; permitting the court to approve an award of permanent alimony only when by agreement of the parties; providing that a retired party does not have to pay alimony under certain circumstances; permitting the court to consider prior support payments made by the obligor when calculating durational limitations; amending s. 61.13, F.S.; creating a presumption for equal time-sharing; amending provisions to conform to changes made by the act; amending s. 61.14, F.S.; revising and creating provisions relating to the modification or termination of an alimony award; providing that an obligor's subsequent remarriage or cohabitation is not a basis for modification or termination of alimony; providing that attaining retirement age is a basis for an obligor to seek modification of an alimony award;

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## COMMITTEE/SUBCOMMITTEE AMENDMENT Bill No. HB 843 (2020)

Amendment No.

providing factors to be considered in determining whether
retirement is reasonable; requiring the court to make written
findings of exceptional circumstances to modify an alimony award
made by agreement of the parties; allowing the court to modify
an alimony award based on certain factors; allowing an obligor
to petition for modification up to 12 months prior to
anticipated retirement; providing that certain benefits received
by an obligee subsequent to an initial alimony award constitute
a substantial change in circumstances; providing that nothing in
the modification statute shall be interpreted to invalidate any
alimony award ordered prior to July 1, 2020; providing an
effective date.

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