

By Senator Diaz de la Portilla

36-00747-12

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

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30 modified to terminate due to a supportive relationship  
31 and that supportive relationship does not produce a  
32 marriage, the alimony may not be reinstated; providing  
33 that if the court orders alimony concurrent with a  
34 child support order, the alimony award may not be  
35 modified due to the termination of child support;  
36 providing an effective date.  
37

38 Be It Enacted by the Legislature of the State of Florida:  
39

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

42 61.08 Alimony.—

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

57 (2) In determining whether to award alimony or 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 all relevant  
66 factors, including, but not limited to:

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

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

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

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

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

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

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

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

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

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

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

100 1. Age and insurability of the payor.

101 2. Cost of insurance, including decreasing term-life  
102 insurance.

103 3. Amount of the judgment.

104 4. Policies carried during the marriage.

105 5. Duration of the alimony order.

106 6. Prevailing interest rates at the time of the order.

107 7. Other obligations of the payor.

108 (b) An order to protect an alimony award is modifiable upon  
109 a substantial change in circumstance in accordance with s. 61.14  
110 and terminates as provided in subsection (9) ~~To the extent~~  
111 ~~necessary to protect an award of alimony, the court may order~~  
112 ~~any party who is ordered to pay alimony to purchase or maintain~~  
113 ~~a life insurance policy or a bond, or to otherwise secure such~~  
114 ~~alimony award with any other assets which may be suitable for~~  
115 ~~that purpose.~~

116 (4) For purposes of determining alimony, the court shall

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

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

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

- 137 1. The redevelopment of previous skills or credentials; or  
138 2. The acquisition of education, training, or work  
139 experience necessary to develop appropriate employment skills or  
140 credentials.

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

144 (c) An award of rehabilitative alimony shall ~~may~~ be  
145 modified or terminated in accordance with s. 61.14 based upon a

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146 substantial change in circumstances, upon noncompliance with the  
147 rehabilitative plan, or upon completion of the rehabilitative  
148 plan.

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

166 (8) Long-term ~~Permanent~~ alimony may be awarded for a  
167 marriage having a duration of 20 years or greater as provided in  
168 subsection (4), may not exceed 60 percent of the length of the  
169 marriage, and may be extended as needed to continue support of a  
170 receiving party who was disabled during the marriage. The  
171 Division of Disability Determinations of the Department of  
172 Health must authenticate each claim of disability under this  
173 subsection. If the payor is certified as disabled by the  
174 Division of Disability Determinations of the Department of

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175 Health, the award of alimony shall be significantly reduced or  
176 terminated to provide for the needs and necessities of life as  
177 they were established during the marriage of the parties for a  
178 party who lacks the financial ability to meet his or her needs  
179 and necessities of life following a dissolution of marriage.  
180 ~~Permanent alimony may be awarded following a marriage of long~~  
181 ~~duration if such an award is appropriate upon consideration of~~  
182 ~~the factors set forth in subsection (2), following a marriage of~~  
183 ~~moderate duration if such an award is appropriate based upon~~  
184 ~~clear and convincing evidence after consideration of the factors~~  
185 ~~set forth in subsection (2), or following a marriage of short~~  
186 ~~duration if there are written findings of exceptional~~  
187 ~~circumstances. In awarding permanent alimony, the court shall~~  
188 ~~include a finding that no other form of alimony is fair and~~  
189 ~~reasonable under the circumstances of the parties.~~ An award of  
190 long-term permanent alimony terminates upon the death of either  
191 party, or upon the remarriage of the party receiving alimony, or  
192 as provided in subsection (9). An award shall ~~may~~ be modified or  
193 terminated based upon a substantial change in circumstances or  
194 upon the existence of a supportive relationship in accordance  
195 with s. 61.14.

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

203 ~~(10)~~ ~~(9)~~ The award of alimony may not leave the payor with

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204 significantly less net income than the net income of the  
205 recipient ~~unless there are written findings of exceptional~~  
206 ~~circumstances.~~

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

212 (12) ~~(10)~~ (a) With respect to any order requiring the payment  
213 of alimony entered on or after January 1, 1985, unless the  
214 provisions of paragraph (c) or paragraph (d) apply, the court  
215 shall direct in the order that the payments of alimony be made  
216 through the appropriate depository as provided in s. 61.181.

217 (b) With respect to any order requiring the payment of  
218 alimony entered before January 1, 1985, upon the subsequent  
219 appearance, on or after that date, of one or both parties before  
220 the court having jurisdiction for the purpose of modifying or  
221 enforcing the order or in any other proceeding related to the  
222 order, or upon the application of either party, unless the  
223 provisions of paragraph (c) or paragraph (d) apply, the court  
224 shall modify the terms of the order as necessary to direct that  
225 payments of alimony be made through the appropriate depository  
226 as provided in s. 61.181.

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

229 (d)1. If there is a minor child of the parties and both  
230 parties so request, the court may order that alimony payments  
231 need not be directed through the depository. In this case, the  
232 order of support shall provide, or be deemed to provide, that



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233 either party may subsequently apply to the depository to require  
234 that payments be made through the depository. The court shall  
235 provide a copy of the order to the depository.

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

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

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

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

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

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

268  
269 The amendments to s. 61.08, Florida Statutes, made by this act  
270 do not provide a right to seek or receive modification of an  
271 existing alimony judgment in which the parties have agreed in  
272 writing that their alimony judgment is not modifiable or in  
273 which the parties have expressed in writing their intention that  
274 their agreed alimony provisions survive the judgment and  
275 therefore are not modifiable.

276       Section 4. Paragraph (b) of subsection (1) of section  
277 61.14, Florida Statutes, is amended, and paragraphs (c), (d),  
278 and (e) are added to subsection (11) of that section, to read:  
279       61.14 Enforcement and modification of support, maintenance,  
280 or alimony agreements or orders.—

281       (1)

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

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291 ~~relationship exists.~~

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

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

308       b. The economic interdependence of the couple or economic  
309 dependence of one party on the other.

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

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

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

315       f. Other relevant and material factors.

316       ~~a. The extent to which the obligee and the other person~~  
317 ~~have held themselves out as a married couple by engaging in~~  
318 ~~conduct such as using the same last name, using a common mailing~~  
319 ~~address, referring to each other in terms such as "my husband"~~

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320 ~~or "my wife," or otherwise conducting themselves in a manner~~  
321 ~~that evidences a permanent supportive relationship.~~

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

324 ~~e. The extent to which the obligee and the other person~~  
325 ~~have pooled their assets or income or otherwise exhibited~~  
326 ~~financial interdependence.~~

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

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

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

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

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

337 ~~i. Evidence in support of a claim that the obligee and the~~  
338 ~~other person have an express agreement regarding property~~  
339 ~~sharing or support.~~

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

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

346 ~~3. This paragraph does not abrogate the requirement that~~  
347 ~~every marriage in this state be solemnized under a license, does~~  
348 ~~not recognize a common law marriage as valid, and does not~~

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

358 (11)

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

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

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

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