

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

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

42

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

44

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

47 61.08 Alimony.—

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

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

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

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

83 (b) The duration of the marriage.

84 (c) The age and the physical and emotional condition of

85 each party.

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

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

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

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

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

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

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

113 during the marriage.

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

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

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

140 (5) Bridge-the-gap alimony may be awarded to assist a

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

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

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

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

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

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

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

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

197 consideration of the factors set forth in subsection (2), or  
 198 following a short-term marriage ~~of short duration~~ if there are  
 199 written findings of exceptional circumstances. In awarding long-  
 200 term ~~permanent~~ alimony, the court shall include findings ~~a~~  
 201 ~~finding~~ that no other form of alimony will provide for the needs  
 202 and necessities of life of the recipient and that no other form  
 203 is fair and reasonable under the circumstances of the parties.  
 204 An award of long-term ~~permanent~~ alimony terminates upon the  
 205 death of either party, ~~or~~ upon the remarriage of the party  
 206 receiving alimony, or as provided in s. 61.14(12). An award  
 207 shall ~~may~~ be modified or terminated based upon a substantial  
 208 change in circumstances or upon the existence of a supportive  
 209 relationship in accordance with s. 61.14.

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

217 (10) (a) With respect to any order requiring the payment of  
 218 alimony entered on or after January 1, 1985, unless ~~the~~  
 219 ~~provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the  
 220 court shall direct in the order that the payments of alimony be  
 221 made through the appropriate depository as provided in s.  
 222 61.181.

223 (b) With respect to any order requiring the payment of  
 224 alimony entered before January 1, 1985, upon the subsequent

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

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

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

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

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

253 through the depository.

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

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

260 (1) (a) When the parties enter into an agreement for  
 261 payments for, or instead of, support, maintenance, or alimony,  
 262 whether in connection with a proceeding for dissolution or  
 263 separate maintenance or with any voluntary property settlement,  
 264 or when a party is required by court order to make any payments,  
 265 and the circumstances or the financial ability of either party  
 266 changes or the child who is a beneficiary of an agreement or  
 267 court order as described herein reaches majority after the  
 268 execution of the agreement or the rendition of the order, either  
 269 party may apply to the circuit court of the circuit in which the  
 270 parties, or either of them, resided at the date of the execution  
 271 of the agreement or reside at the date of the application, or in  
 272 which the agreement was executed or in which the order was  
 273 rendered, for an order decreasing or increasing the amount of  
 274 support, maintenance, or alimony, and the court has jurisdiction  
 275 to make orders as equity requires, with due regard to the  
 276 changed circumstances or the financial ability of the parties or  
 277 the child, decreasing, increasing, or confirming the amount of  
 278 separate support, maintenance, or alimony provided for in the  
 279 agreement or order. For purposes of considering a petition for  
 280 modification of an alimony award, an increase in an obligor's

281 income may not be considered permanent in nature unless the  
 282 increase has been maintained without interruption for at least 1  
 283 year. A finding that medical insurance is reasonably available  
 284 or the child support guidelines schedule in s. 61.30 may  
 285 constitute changed circumstances. Except as otherwise provided  
 286 in s. 61.30(11)(c), the court may modify an order of support,  
 287 maintenance, or alimony by increasing or decreasing the support,  
 288 maintenance, or alimony retroactively to the date of the filing  
 289 of the action or supplemental action for modification as equity  
 290 requires, giving due regard to the changed circumstances or the  
 291 financial ability of the parties or the child.

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

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

309 another person:

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

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

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

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

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

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

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

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

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

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

337 k. Whether the obligee and the other person have provided  
338 support to the children of one another, regardless of any legal  
339 duty to do so.

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

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

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

363 (11)

364 (c) If the obligor remarries or resides with another

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

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

374 (12) The fact that an obligor has reached a reasonable  
375 retirement age shall be considered a substantial change in  
376 circumstances as a matter of law. There is a rebuttable  
377 presumption that a reasonable retirement age for purposes of  
378 this subsection is 67 years of age. In anticipation of  
379 retirement, the obligor may file a petition for termination or  
380 modification of the alimony award effective upon the retirement  
381 date. The court shall terminate or modify the alimony award  
382 based on the circumstances of the parties after retirement of  
383 the obligor and based on the factors in subsection (2), unless  
384 the court makes findings of fact that a termination or  
385 modification of an alimony award is not warranted. In  
386 determining whether the obligor's retirement age is reasonable,  
387 the court shall consider the following factors:

388 (a) Age.

389 (b) Health.

390 (c) Motivation for retirement.

391 (d) Type of work.

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

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

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

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

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

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

421 justify the use of this process.

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

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

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

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