By Senator Lee

24-00319-16 2016250__

A bill to be entitled

An act relating to family law; amending s. 61.071, F.S.; requiring a court to consider certain alimony factors and make specific written findings of fact after making specified determinations; prohibiting a court from using certain presumptive alimony guidelines in calculating alimony pendente lite; amending s. 61.08, F.S.; defining terms; requiring a court to make specified initial written findings in a dissolution of marriage proceeding where a party has requested alimony; requiring a court to make specified findings before ruling on a request for alimony; providing for determinations of presumptive alimony amount range and duration range; providing presumptions concerning alimony awards depending on the duration of marriages; providing for imputation of income in certain circumstances; providing for awards of nominal alimony in certain circumstances; providing for taxability and deductibility of alimony awards; prohibiting a combined award of alimony and child support from constituting more than a specified percentage of a payor's net income; authorizing the court to order a party to protect an alimony award by specified means; providing for termination of an alimony award; authorizing a court to modify or terminate the amount of an initial alimony award; prohibiting a court from modifying the duration of an alimony award; providing for payment of awards; amending s. 61.13, F.S.; creating a presumption that

approximately equal time-sharing by both parents is in the best interest of the child; revising a finite list of factors that a court must evaluate when determining whether the presumption of approximately equal time-sharing is overcome; requiring a court order to be supported by written findings of fact under certain circumstances; prohibiting a determination of parental responsibility, a parenting plan, or a time-sharing schedule unless certain determinations are made; reenacting and amending s. 61.14, F.S.; providing that a party may pursue an immediate modification of alimony in certain circumstances; revising factors to be considered in determining whether an existing award of alimony should be reduced or terminated because of an alleged supportive relationship; providing for burden of proof for claims concerning the existence of supportive relationships; providing for the effective date of a reduction or termination of an alimony award; providing that the remarriage of an alimony obligor is not a substantial change in circumstance; providing that the financial information of a spouse of a party paying or receiving alimony is inadmissible and undiscoverable; providing an exception; providing for modification or termination of an award based on a party's retirement; providing a presumption upon a finding of a substantial change in circumstance; specifying factors to be considered in determining whether to modify or terminate an award based on a substantial change in circumstance; providing for a

temporary suspension of an obligor's payment of alimony while his or her petition for modification or termination is pending; providing for an award of attorney fees and costs to the prevailing party when a party unreasonably pursues or defends modification of an alimony award; providing for an effective date of a modification or termination of an award; creating s. 61.192, F.S.; providing for motions to advance the trial of certain actions if a specified period has passed since the initial service on the respondent; amending s. 61.30, F.S.; providing that whenever a combined alimony and child support award constitutes more than a specified percentage of a payor's net income, the child support award be adjusted to reduce the combined total; providing applicability; providing a directive to the Division of Law Revision and Information; providing legislative findings; creating s. 61.55, F.S.; providing a purpose; creating s. 61.56, F.S.; defining terms; creating s. 61.57, F.S.; providing that a collaborative law process commences when the parties enter into a collaborative law participation agreement; prohibiting a tribunal from ordering a party to participate in a collaborative law process over the party's objection; providing the conditions under which a collaborative law process concludes, terminates, or continues; creating s. 61.58, F.S.; providing for confidentiality of communications made during the collaborative law process; providing exceptions; reenacting s.

61.052(1)(b), F.S., relating to dissolution of marriage, to incorporate the amendment made to s. 61.08, F.S., in a reference thereto; reenacting ss. 409.2563(10)(c) and 742.031(4)(b), F.S., relating to administrative establishments of child support obligations, and hearings and court orders for support, respectively, to incorporate the amendment made to s. 61.14, F.S., in references thereto; providing that specified provisions do not take effect until 30 days after the Florida Supreme Court adopts rules of procedure and professional responsibility; providing effective dates.

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

Section 1. Effective October 1, 2016, section 61.071, Florida Statutes, is amended to read:

61.071 Alimony pendente lite; suit money.—In every proceeding for dissolution of the marriage, a party may claim alimony and suit money in the petition or by motion, and if the petition is well founded, the court shall allow a reasonable sum therefor. If a party in any proceeding for dissolution of marriage claims alimony or suit money in his or her answer or by motion, and the answer or motion is well founded, the court shall allow a reasonable sum therefor. After determining that there is a need for alimony and that there is an ability to pay alimony, the court shall consider the alimony factors in s. 61.08(4)(b)1.-14. and make specific written findings of fact regarding the relevant factors that justify an award of alimony

under this section. The court may not use the presumptive alimony guidelines in s. 61.08 to calculate alimony under this section.

Section 2. Effective October 1, 2016, section 61.08, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 61.08, F.S., for present text.)

61.08 Alimony.—

(1) DEFINITIONS.—As used in this section, unless the context otherwise requires, the term:

(a)1. "Gross income" means recurring income from any source and includes, but is not limited to:

a. Income from salaries.

b. Wages, including tips declared by the individual for purposes of reporting to the Internal Revenue Service or tips imputed to bring the employee's gross earnings to the minimum wage for the number of hours worked, whichever is greater.

c. Commissions.

d. Payments received as an independent contractor for labor or services, which payments must be considered income from self-employment.

e. Bonuses.

f. Dividends.

g. Severance pay.

h. Pension payments and retirement benefits actually received.

i. Royalties.

j. Rental income, which is gross receipts minus ordinary and necessary expenses required to produce the income.

k. Interest.

l. Trust income and distributions regularly received, relied upon, or readily available to the beneficiary.

m. Annuity payments.

n. Capital gains.

o. Any money drawn by a self-employed individual for personal use that is deducted as a business expense, which moneys must be considered income from self-employment.

p. Social security benefits, including social security benefits actually received by a party as a result of the disability of that party.

q. Workers' compensation benefits.

r. Unemployment insurance benefits.

s. Disability insurance benefits.

t. Funds payable from any health, accident, disability, or casualty insurance to the extent that such insurance replaces wages or provides income in lieu of wages.

u. Continuing monetary gifts.

v. Income from general partnerships, limited partnerships, closely held corporations, or limited liability companies; except that if a party is a passive investor, has a minority interest in the company, and does not have any managerial duties or input, the income to be recognized may be limited to actual cash distributions received.

w. Expense reimbursements or in-kind payments or benefits received by a party in the course of employment, self-employment, or operation of a business which reduce personal living expenses.

x. Overtime pay.

y. Income from royalties, trusts, or estates.

z. Spousal support received from a previous marriage.

aa. Gains derived from dealings in property, unless the gain is nonrecurring.

2. "Gross income" does not include:

a. Child support payments received.

b. Benefits received from public assistance programs.

c. Social security benefits received by a parent on behalf of a minor child as a result of the death or disability of a parent or stepparent.

d. Earnings or gains on retirement accounts, including individual retirement accounts; except that such earnings or gains shall be included as income if a party takes a distribution from the account. If a party is able to take a distribution from the account without being subject to a federal tax penalty for early distribution and the party chooses not to take such a distribution, the court may consider the distribution that could have been taken in determining the party's gross income.

3.a. For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, the term "gross income" equals gross receipts minus ordinary and necessary expenses, as defined in sub-subparagraph b., which are required to produce such income.

b. "Ordinary and necessary expenses," as used in sub-subparagraph a., does not include amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses or investment tax credits or any other

business expenses determined by the court to be inappropriate for determining gross income for purposes of calculating alimony.

(b) "Potential income" means income which could be earned by a party using his or her best efforts and includes potential income from employment and potential income from the investment of assets or use of property. Potential income from employment is the income which a party could reasonably expect to earn by working at a locally available, full-time job commensurate with his or her education, training, and experience. Potential income from the investment of assets or use of property is the income a party could reasonably expect to earn from the investment of his or her assets or the use of his or her property in a financially prudent manner.

(c)1. "Underemployed" means a party is not working full-time in a position which is appropriate, based upon his or her educational training and experience, and available in the geographical area of his or her residence.

2. A party is not considered "underemployed" if he or she is enrolled in an educational program that can be reasonably expected to result in a degree or certification within a reasonable period, so long as the educational program is:

a. Expected to result in higher income within the foreseeable future.

b. A good faith educational choice based upon the previous education, training, skills, and experience of the party and the availability of immediate employment based upon the educational program being pursued.

(d) "Years of marriage" means the number of whole years,

beginning from the date of the parties' marriage until the date of the filing of the action for dissolution of marriage.

(2) INITIAL FINDINGS.—When a party has requested alimony in a dissolution of marriage proceeding, before granting or denying an award of alimony, the court shall make initial written findings as to:

(a) The amount of each party's monthly gross income, including, but not limited to, the actual or potential income, and also including actual or potential income from nonmarital or marital property distributed to each party.

(b) The years of marriage as determined from the date of marriage through the date of the filing of the action for dissolution of marriage.

(3) ALIMONY GUIDELINES.—After making the initial findings described in subsection (2), the court shall calculate the presumptive alimony amount range and the presumptive alimony duration range. The court shall make written findings as to the presumptive alimony amount range and presumptive alimony duration range.

(a) Presumptive alimony amount range.—The low end of the presumptive alimony amount range shall be calculated by using the following formula:

(0.015 x the years of marriage) x the difference between the monthly gross incomes of the parties

The high end of the presumptive alimony amount range shall be calculated by using the following formula:

(0.020 x the years of marriage) x the difference between the monthly gross incomes of the parties

For purposes of calculating the presumptive alimony amount range, 20 years of marriage shall be used in calculating the low end and high end for marriages of 20 years or more. In calculating the difference between the parties' monthly gross income, the income of the party seeking alimony shall be subtracted from the income of the other party. If the application of the formulas to establish a guideline range results in a negative number, the presumptive alimony amount shall be $0. If a court establishes the duration of the alimony award at 50 percent or less of the length of the marriage, the court shall use the actual years of the marriage, up to a maximum of 25 years, to calculate the high end of the presumptive alimony amount range.

(b) Presumptive alimony duration range.—The low end of the presumptive alimony duration range shall be calculated by using the following formula:

0.25 x the years of marriage

The high end of the presumptive alimony duration range shall be calculated by using the following formula:

0.75 x the years of marriage.

(4) ALIMONY AWARD.—

(a) *Marriages of 2 years or less.*—For marriages of 2 years

or less, there is a rebuttable presumption that no alimony shall be awarded. The court may award alimony for a marriage with a duration of 2 years or less only if the court makes written findings that there is a clear and convincing need for alimony, there is an ability to pay alimony, and that the failure to award alimony would be inequitable. The court shall then establish the alimony award in accordance with paragraph (b).

(b) *Marriages of more than 2 years.*—Absent an agreement of the parties, alimony shall presumptively be awarded in an amount within the alimony amount range calculated in paragraph (3)(a). Absent an agreement of the parties, alimony shall presumptively be awarded for a duration within the alimony duration range calculated in paragraph (3)(b). In determining the amount and duration of the alimony award, the court shall consider all of the following factors upon which evidence was presented:

1. The financial resources of the recipient spouse, including the actual or potential income from nonmarital or marital property or any other source and the ability of the recipient spouse to meet his or her reasonable needs independently.

2. The financial resources of the payor spouse, including the actual or potential income from nonmarital or marital property or any other source and the ability of the payor spouse to meet his or her reasonable needs while paying alimony.

3. The standard of living of the parties during the marriage with consideration that there will be two households to maintain after the dissolution of the marriage and that neither party may be able to maintain the same standard of living after the dissolution of the marriage.

4. The equitable distribution of marital property, including whether an unequal distribution of marital property was made to reduce or alleviate the need for alimony.

5. Both parties' income, employment, and employability, obtainable through reasonable diligence and additional training or education, if necessary, and any necessary reduction in employment due to the needs of an unemancipated child of the marriage or the circumstances of the parties.

6. Whether a party could become better able to support himself or herself and reduce the need for ongoing alimony by pursuing additional educational or vocational training along with all of the details of such educational or vocational plan, including, but not limited to, the length of time required and the anticipated costs of such educational or vocational training.

7. Whether one party has historically earned higher or lower income than the income reflected at the time of trial and the duration and consistency of income from overtime or secondary employment.

8. Whether either party has foregone or postponed economic, educational, or employment opportunities during the course of the marriage.

9. Whether either party has caused the unreasonable depletion or dissipation of marital assets.

10. The amount of temporary alimony and the number of months that temporary alimony was paid to the recipient spouse.

11. The age, health, and physical and mental condition of the parties, including consideration of significant health care needs or uninsured or unreimbursed health care expenses.

12. Significant economic or noneconomic contributions to the marriage or to the economic, educational, or occupational advancement of a party, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party, payment by one spouse of the other spouse's separate debts, or enhancement of the other spouse's personal or real property.

13. The tax consequence of the alimony award.

14. Any other factor necessary to do equity and justice between the parties.

(c) *Deviation from guidelines.*—The court may establish an award of alimony that is outside the presumptive alimony amount or alimony duration ranges only if the court considers all of the factors in paragraph (b) and makes specific written findings concerning the relevant factors justifying that the application of the presumptive alimony amount or alimony duration ranges, as applicable, is inappropriate or inequitable.

(d) *Order establishing alimony award.*—After consideration of the presumptive alimony amount and duration ranges in accordance with paragraphs (3)(a) and (3)(b) and the factors upon which evidence was presented in accordance with paragraph (b), the court may establish an alimony award. An order establishing an alimony award must clearly set forth both the amount and the duration of the award. The court shall also make a written finding that the payor has the financial ability to pay the award.

(5) IMPUTATION OF INCOME.—If a party is voluntarily unemployed or underemployed, alimony shall be calculated based on a determination of potential income unless the court makes

specific written findings regarding the circumstances that make it inequitable to impute income.

(6) NOMINAL ALIMONY.—Notwithstanding subsections (1), (3), and (4), the court may make an award of nominal alimony in the amount of $1 per year if, at the time of trial, a party who has traditionally provided the primary source of financial support to the family temporarily lacks the ability to pay support but is reasonably anticipated to have the ability to pay support in the future. The court may also award nominal alimony for an alimony recipient who is presently able to work but for whom a medical condition with a reasonable degree of medical certainty may inhibit or prevent his or her ability to work during the duration of the alimony period. The duration of the nominal alimony shall be established within the presumptive durational range based upon the length of the marriage subject to the alimony factors in paragraph (4)(b). Before the expiration of the durational period, nominal alimony may be modified in accordance with s. 61.14 as to amount to a full alimony award using the alimony guidelines and factors in accordance with this section.

(7) TAXABILITY AND DEDUCTIBILITY OF ALIMONY.—

(a) Unless otherwise stated in the judgment or order for alimony or in an agreement incorporated thereby, alimony shall be deductible from income by the payor under s. 215 of the Internal Revenue Code and includable in the income of the payee under s. 71 of the Internal Revenue Code.

(b) When making a judgment or order for alimony, the court may, in its discretion after weighing the equities and tax efficiencies, order alimony be nondeductible from income by the

payor and nonincludable in the income of the payee.

(c) The parties may, in a marital settlement agreement, separation agreement, or related agreement, specifically agree in writing that alimony be nondeductible from income by the payor and nonincludable in the income of the payee.

(8) MAXIMUM COMBINED AWARD.—A combined award of alimony and child support may not constitute more than 55 percent of the payor's net income, calculated without any consideration of alimony or child support obligations.

(9) SECURITY OF AWARD.—To the extent necessary to protect an award of alimony, the court may order any party who is ordered to pay alimony to purchase or maintain a decreasing term life insurance policy or a bond, or to otherwise secure such alimony award with any other assets that may be suitable for that purpose, in an amount adequate to secure the alimony award. Any such security may be awarded only upon a showing of special circumstances. If the court finds special circumstances and awards such security, the court must make specific evidentiary findings regarding the availability, cost, and financial impact on the obligated party. Any security may be modifiable in the event the underlying alimony award is modified and shall be reduced in an amount commensurate with any reduction in the alimony award.

(10) TERMINATION OF AWARD.—An alimony award shall terminate upon the death of either party or the remarriage of the obligee.

(11) MODIFICATION OF AWARD.—A court may subsequently modify or terminate the amount of an award of alimony initially established under this section in accordance with s. 61.14. However, a court may not modify the duration of an award of

alimony initially established under this section.

(12) PAYMENT OF AWARD.—

(a) With respect to an order requiring the payment of alimony entered on or after January 1, 1985, unless paragraph (c) or paragraph (d) applies, 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 an 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 paragraph (c) or paragraph (d) applies, 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 do not need to be directed through the depository.

(d)1. If there is a minor child of the parties and both parties so request, the court may order that alimony payments do not need to be directed through the depository. In this case, the order of support shall 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 subparagraph 1. applies, either party may subsequently file with the clerk of the court a verified motion alleging a default or arrearages in payment stating that the

party wishes to initiate participation in the depository program. The moving party shall copy the other party with the motion. No later than 15 days after filing the motion, the court shall conduct an evidentiary hearing establishing the default and arrearages, if any, and issue an order directing the clerk of the circuit court to establish, or amend an existing, family law case history account, and further advising the parties that future payments must thereafter be directed through the depository.

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

Section 3. Effective October 1, 2016, subsection (3) of section 61.13, Florida Statutes, is amended to read:

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

(3) For purposes of establishing or modifying parental responsibility and creating, developing, approving, or modifying a parenting plan, including a time-sharing schedule, which governs each parent's relationship with his or her minor child and the relationship between each parent with regard to his or her minor child, the best interest of the child shall be the primary consideration.

(a) Approximately equal time-sharing with a minor child by both parents is presumed to be in the best interest of the child. In determining whether the presumption is overcome, the court shall evaluate the evidence based on ~~A determination of parental responsibility, a parenting plan, or a time-sharing schedule may not be modified without a showing of a substantial,~~

~~material, and unanticipated change in circumstances and a determination that the modification is in the best interests of the child. Determination of the best interests of the child shall be made by evaluating~~ all of the factors affecting the welfare and interests of the particular minor child and the circumstances of that family, including~~, but not limited to~~:

1.~~(a)~~ The demonstrated capacity or ~~and~~ disposition of each parent to facilitate and encourage a close and continuing parent-child relationship, to honor the time-sharing schedule, and to be reasonable when changes are required.

2.~~(b)~~ The anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties.

3.~~(c)~~ The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child as opposed to the needs or desires of the parent.

4.~~(d)~~ The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.

5.~~(e)~~ The geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to carry out ~~effectuate~~ the parenting plan. This factor does not create a presumption for or against relocation of either parent with a child.

6.~~(f)~~ The moral fitness of the parents.

7.~~(g)~~ The mental and physical health of the parents.

8.~~(h)~~ The home, school, and community record of the child.

9.~~(i)~~ The reasonable preference of the child~~,~~ if the court deems the child to be of sufficient intelligence, understanding,

and experience to express a preference.

10.~~(j)~~ The demonstrated knowledge, capacity, or ~~and~~ disposition of each parent to be informed of the circumstances of the minor child, including, but not limited to, the child's friends, teachers, medical care providers, daily activities, and favorite things.

11.~~(k)~~ The demonstrated capacity or ~~and~~ disposition of each parent to provide a consistent routine for the child, such as discipline~~,~~ and daily schedules for homework, meals, and bedtime.

12.~~(l)~~ The demonstrated capacity of each parent to communicate with the other parent and keep the other parent informed of issues and activities regarding the minor child, and the willingness of each parent to adopt a unified front on all major issues when dealing with the child.

13.~~(m)~~ Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, regardless of whether a prior or pending action relating to those issues has been brought. If the court accepts evidence of prior or pending actions regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect, the court must specifically acknowledge in writing that such evidence was considered when evaluating the best interests of the child.

14.~~(n)~~ Evidence that either parent has knowingly provided false information to the court regarding any prior or pending action regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect.

15.~~(o)~~ The demonstrated capacity or disposition of each parent to perform or ensure the performance of particular

parenting tasks customarily performed by the other ~~each~~ parent and the division of parental responsibilities before the institution of litigation and during the pending litigation, including the extent to which parenting responsibilities were undertaken by third parties.

16.~~(p)~~ The demonstrated capacity and disposition of each parent to participate and be involved in the child's school and extracurricular activities.

17.~~(q)~~ The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.

18.~~(r)~~ The capacity and disposition of each parent to protect the child from the ongoing litigation as demonstrated by not discussing the litigation with the child, not sharing documents or electronic media related to the litigation with the child, and refraining from disparaging comments about the other parent to the child.

19.~~(s)~~ The developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child's developmental needs.

20. The amount of time-sharing requested by each parent.

21. The frequency that a parent would likely leave the child in the care of a nonrelative on evenings and weekends when the other parent would be available and willing to provide care.

22.~~(t)~~ Any other factor that is relevant to the determination of a specific parenting plan, including the time-sharing schedule.

(b) A court order must be supported by written findings of fact if the order establishes an initial permanent time-sharing

schedule that does not provide for approximately equal time-sharing.

(c) A determination of parental responsibility, a parenting plan, or a time-sharing schedule may not be modified without a determination that such modification is in the best interest of the child and upon a showing of a substantial, material, and unanticipated change in circumstances.

Section 4. Effective October 1, 2016, subsection (1) of section 61.14, Florida Statutes, is amended, and paragraph (a) of subsection (5) is reenacted, to read:

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

(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. However, a court may not decrease or increase the duration of alimony provided for in the agreement or order. A party is entitled to pursue an immediate modification of alimony if the actual income earned by the other party exceeds by at least 10 percent the amount imputed to that party at the time the existing alimony award was determined and such circumstance shall constitute a substantial change in circumstance sufficient to support a modification of alimony. However, an increase in an alimony obligor's income alone does not constitute a basis for a modification to increase alimony unless at the time the alimony award was established it was determined that the obligor was underemployed or unemployed and the court did not impute income to that party at his or her maximum potential income. If an alimony obligor becomes involuntarily underemployed or unemployed for 6 months after the entry of the last order requiring the payment of alimony, the obligor is entitled to pursue an immediate modification of his or her existing alimony obligations and such circumstance shall constitute a substantial change in circumstance sufficient to support a modification of alimony. 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 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 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 within the previous year before the date of the filing of the petition for modification or termination between the obligee and another ~~a~~ person ~~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.~~

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:

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 spouse" ~~"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.

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.

l. Whether the obligor's failure, in whole or in part, to comply with all court-ordered financial obligations to the obligee constituted a significant factor in the establishment of the supportive relationship.

3. In any proceeding to modify an alimony award based upon a supportive relationship, the obligor has the burden of proof to establish, by a preponderance of the evidence, that a

supportive relationship exists or has existed within the previous year before the date of the filing of the petition for modification or termination. The obligor is not required to prove cohabitation of the obligee and the third party.

4. Notwithstanding paragraph (f), if a reduction or termination is granted under this paragraph, the reduction or termination is retroactive to the date of filing of the petition for reduction or termination.

5.~~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)1. For purposes of this section, the remarriage of an alimony obligor does not constitute a substantial change in circumstance or a basis for a modification of alimony.

2. The financial information, including, but not limited to, information related to assets and income, of a subsequent spouse of a party paying or receiving alimony is inadmissible and may not be considered as a part of any modification action unless a party is claiming that his or her income has decreased since the marriage. If a party makes such a claim, the financial

information of the subsequent spouse is discoverable and admissible only to the extent necessary to establish whether the party claiming that his or her income has decreased is diverting income or assets to the subsequent spouse that might otherwise be available for the payment of alimony. However, this subparagraph may not be used to prevent the discovery of or admissibility in evidence of the income or assets of a party when those assets are held jointly with a subsequent spouse. This subparagraph is not intended to prohibit the discovery or admissibility of a joint tax return filed by a party and his or her subsequent spouse in connection with a modification of alimony.

(d)1. An obligor may file a petition for modification or termination of an alimony award based upon his or her actual retirement.

a. A substantial change in circumstance is deemed to exist if:

(I) The obligor has reached the age for eligibility to receive full retirement benefits under s. 216 of the Social Security Act, 42 U.S.C. s. 416, and has retired; or

(II) The obligor has reached the customary retirement age for his or her occupation and has retired from that occupation. An obligor may file an action within 1 year of his or her anticipated retirement date and the court shall determine the customary retirement date for the obligor's profession. However, a determination of the customary retirement age is not an adjudication of a petition for a modification of an alimony award.

b. If an obligor voluntarily retires before reaching any of

the ages described in sub-subparagraph a., the court shall determine whether the obligor's retirement is reasonable upon consideration of the obligor's age, health, and motivation for retirement and the financial impact on the obligee. A finding of reasonableness by the court shall constitute a substantial change in circumstance.

2. Upon a finding of a substantial change in circumstance, there is a rebuttable presumption that an obligor's existing alimony obligation shall be modified or terminated. The court shall modify or terminate the alimony obligation, or make a determination regarding whether the rebuttable presumption has been overcome, based upon the following factors applied to the current circumstances of the obligor and obligee:

a. The age of the parties.

b. The health of the parties.

c. The assets and liabilities of the parties.

d. The earned or imputed income of the parties as provided in s. 61.08(1)(a) and (5).

e. The ability of the parties to maintain part-time or full-time employment.

f. Any other factor deemed relevant by the court.

3. The court may temporarily reduce or suspend the obligor's payment of alimony while his or her petition for modification or termination under this paragraph is pending.

(e) A party who unreasonably pursues or defends an action for modification of alimony shall be required to pay the reasonable attorney fees and costs of the prevailing party. Further, a party obligated to pay prevailing party attorney fees and costs in connection with unreasonably pursuing or defending

an action for modification is not entitled to an award of attorney fees and cost in accordance with s. 61.16.

(f) There is a rebuttable presumption that a modification or termination of an alimony award is retroactive to the date of the filing of the petition, unless the obligee demonstrates that the result is inequitable.

(g) ~~(e)~~ 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.

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

(5)(a) When a court of competent jurisdiction enters an order for the payment of alimony or child support or both, the court shall make a finding of the obligor's imputed or actual present ability to comply with the order. If the obligor subsequently fails to pay alimony or support and a contempt hearing is held, the original order of the court creates a presumption that the obligor has the present ability to pay the alimony or support and to purge himself or herself from the contempt. At the contempt hearing, the obligor shall have the burden of proof to show that he or she lacks the ability to purge himself or herself from the contempt. This presumption is adopted as a presumption under s. 90.302(2) to implement the public policy of this state that children shall be maintained from the resources of their parents and as provided for in s.

409.2551, and that spouses be maintained as provided for in s. 61.08. The court shall state in its order the reasons for granting or denying the contempt.

Section 5. Effective October 1, 2016, section 61.192, Florida Statutes, is created to read:

61.192 Advancing trial.—In an action brought pursuant to this chapter, if more than 2 years have passed since the initial petition was served on the respondent, either party may move the court to advance the trial of their action on the docket. This motion may be made at any time after 2 years have passed since the petition was served, and once made the court must give the case priority on the court's calendar.

Section 6. Effective October 1, 2016, paragraph (d) is added to subsection (11) of section 61.30, Florida Statutes, to read:

61.30 Child support guidelines; retroactive child support.—

(11)

(d) Whenever a combined alimony and child support award constitutes more than 55 percent of the payor's net income, calculated without any consideration of alimony or child support obligations, the court shall adjust the award of child support to ensure that the 55 percent cap is not exceeded.

Section 7. The amendments made by this act to sections 61.071, 61.08, 61.13, 61.14, 61.192, and 61.30, Florida Statutes, apply to all initial determinations of alimony and all alimony modification actions that are pending on October 1, 2016, and to all initial determinations of alimony and all alimony modification actions brought on or after October 1, 2016. The enacting of this act may not serve as the sole basis

for a party to seek a modification of an alimony award existing before October 1, 2016.

Section 8. The Division of Law Revision and Information is directed to create part III of chapter 61, Florida Statutes, consisting of ss. 61.55-61.58, Florida Statutes, to be entitled the "Collaborative Law Process Act."

Section 9. The Legislature finds and declares that the purpose of part III of chapter 61, Florida Statutes, is to:

(1) Create a uniform system of practice for a collaborative law process for proceedings under chapters 61 and 742, Florida Statutes.

(2) Encourage the peaceful resolution of disputes and the early settlement of pending litigation through voluntary settlement procedures.

(3) Preserve the working relationship between parties to a dispute through a nonadversarial method that reduces the emotional and financial toll of litigation.

Section 10. Section 61.55, Florida Statutes, is created to read:

61.55 Purpose.—The purpose of this part is to create a uniform system of practice for the collaborative law process in this state. It is the policy of this state to encourage the peaceful resolution of disputes and the early resolution of pending litigation through a voluntary settlement process. The collaborative law process is a unique nonadversarial process that preserves a working relationship between the parties and reduces the emotional and financial toll of litigation.

Section 11. Section 61.56, Florida Statutes, is created to read:

61.56 Definitions.—As used in this part, the term:

(1) "Collaborative attorney" means an attorney who represents a party in a collaborative law process.

(2) "Collaborative law communication" means an oral or written statement, including a statement made in a record, or nonverbal conduct that:

(a) Is made in the conduct of or in the course of participating in, continuing, or reconvening for a collaborative law process; and

(b) Occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded or terminated.

(3) "Collaborative law participation agreement" means an agreement between persons to participate in a collaborative law process.

(4) "Collaborative law process" means a process intended to resolve a collaborative matter without intervention by a tribunal and in which persons sign a collaborative law participation agreement and are represented by collaborative attorneys.

(5) "Collaborative matter" means a dispute, a transaction, a claim, a problem, or an issue for resolution, including a dispute, a claim, or an issue in a proceeding which is described in a collaborative law participation agreement and arises under chapter 61 or chapter 742, including, but not limited to:

(a) Marriage, divorce, dissolution, annulment, and marital property distribution.

(b) Child custody, visitation, parenting plan, and parenting time.

(c) Alimony, maintenance, and child support.

(d) Parental relocation with a child.

(e) Parentage and paternity.

(f) Premarital, marital, and postmarital agreements.

(6) "Law firm" means:

(a) One or more attorneys who practice law in a partnership, professional corporation, sole proprietorship, limited liability company, or association; or

(b) One or more attorneys employed in a legal services organization, the legal department of a corporation or other organization, or the legal department of a governmental entity, subdivision, agency, or instrumentality.

(7) "Nonparty participant" means a person, other than a party and the party's collaborative attorney, who participates in a collaborative law process.

(8) "Party" means a person who signs a collaborative law participation agreement and whose consent is necessary to resolve a collaborative matter.

(9) "Person" means an individual; a corporation; a business trust; an estate; a trust; a partnership; a limited liability company; an association; a joint venture; a public corporation; a government or governmental subdivision, agency, or instrumentality; or any other legal or commercial entity.

(10) "Proceeding" means a judicial, administrative, arbitral, or other adjudicative process before a tribunal, including related prehearing and posthearing motions, conferences, and discovery.

(11) "Prospective party" means a person who discusses with a prospective collaborative attorney the possibility of signing

a collaborative law participation agreement.

(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Related to a collaborative matter" means involving the same parties, transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

(14) "Sign" means, with present intent to authenticate or adopt a record, to:

(a) Execute or adopt a tangible symbol; or

(b) Attach to or logically associate with the record an electronic symbol, sound, or process.

(15) "Tribunal" means a court, an arbitrator, an administrative agency, or other body acting in an adjudicative capacity which, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party's interests in a matter.

Section 12. Section 61.57, Florida Statutes, is created to read:

61.57 Beginning, concluding, and terminating a collaborative law process.—

(1) The collaborative law process commences, regardless of whether a legal proceeding is pending, when the parties enter into a collaborative law participation agreement.

(2) A tribunal may not order a party to participate in a collaborative law process over that party's objection.

(3) A collaborative law process is concluded by any of the following:

(a) Resolution of a collaborative matter as evidenced by a signed record;

(b) Resolution of a part of the collaborative matter, evidenced by a signed record, in which the parties agree that the remaining parts of the collaborative matter will not be resolved in the collaborative law process; or

(c) Termination of the collaborative law process.

(4) A collaborative law process terminates when a party:

(a) Gives notice to the other parties in a record that the collaborative law process is concluded;

(b) Begins a proceeding related to a collaborative matter without the consent of all parties;

(c) Initiates a pleading, a motion, an order to show cause, or a request for a conference with a tribunal in a pending proceeding related to a collaborative matter;

(d) Requests that the proceeding be put on the tribunal's active calendar in a pending proceeding related to a collaborative matter;

(e) Takes similar action requiring notice to be sent to the parties in a pending proceeding related to a collaborative matter; or

(f) Discharges a collaborative attorney or a collaborative attorney withdraws from further representation of a party, except as otherwise provided in subsection (7).

(5) A party's collaborative attorney shall give prompt notice to all other parties in a record of a discharge or withdrawal.

(6) A party may terminate a collaborative law process with or without cause.

(7) Notwithstanding the discharge or withdrawal of a collaborative attorney, the collaborative law process continues if, not later than 30 days after the date that the notice of the discharge or withdrawal of a collaborative attorney required by subsection (5) is sent to the parties:

(a) The unrepresented party engages a successor collaborative attorney;

(b) The parties consent to continue the collaborative law process by reaffirming the collaborative law participation agreement in a signed record;

(c) The collaborative law participation agreement is amended to identify the successor collaborative attorney in a signed record; and

(d) The successor collaborative attorney confirms his or her representation of a party in the collaborative law participation agreement in a signed record.

(8) A collaborative law process does not conclude if, with the consent of the parties, a party requests a tribunal to approve a resolution of a collaborative matter or any part thereof as evidenced by a signed record.

(9) A collaborative law participation agreement may provide additional methods for concluding a collaborative law process.

Section 13. Section 61.58, Florida Statutes, is created to read:

61.58 Confidentiality of a collaborative law communication.—Except as provided in this section, a collaborative law communication is confidential to the extent agreed by the parties in a signed record or as otherwise provided by law.

(1) PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE LAW COMMUNICATION; ADMISSIBILITY; DISCOVERY.—

(a) Subject to subsections (2) and (3), a collaborative law communication is privileged as provided under paragraph (b), is not subject to discovery, and is not admissible into evidence.

(b) In a proceeding, the following privileges apply:

1. A party may refuse to disclose, and may prevent another person from disclosing, a collaborative law communication.

2. A nonparty participant may refuse to disclose, and may prevent another person from disclosing, a collaborative law communication of a nonparty participant.

(c) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely because of its disclosure or use in a collaborative law process.

(2) WAIVER AND PRECLUSION OF PRIVILEGE.—

(a) A privilege under subsection (1) may be waived orally or in a record during a proceeding if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, if it is expressly waived by the nonparty participant.

(b) A person who makes a disclosure or representation about a collaborative law communication that prejudices another person in a proceeding may not assert a privilege under subsection (1). This preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

(3) LIMITS OF PRIVILEGE.—

(a) A privilege under subsection (1) does not apply to a

collaborative law communication that is:

1. Available to the public under chapter 119 or made during a session of a collaborative law process that is open, or is required by law to be open, to the public;

2. A threat, or statement of a plan, to inflict bodily injury or commit a crime of violence;

3. Intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity; or

4. In an agreement resulting from the collaborative law process, as evidenced by a record signed by all parties to the agreement.

(b) The privilege under subsection (1) for a collaborative law communication does not apply to the extent that such collaborative law communication is:

1. Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice arising from or relating to a collaborative law process; or

2. Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child or adult unless the Department of Children and Families is a party to or otherwise participates in the process.

(c) A privilege under subsection (1) does not apply if a tribunal finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the collaborative law communication is sought or offered in:

1. A court proceeding involving a felony; or

2. A proceeding seeking rescission or reformation of a contract arising out of the collaborative law process or in which a defense is asserted to avoid liability on the contract.

(d) If a collaborative law communication is subject to an exception under paragraph (b) or paragraph (c), only the part of the collaborative law communication necessary for the application of the exception may be disclosed or admitted.

(e) Disclosure or admission of evidence excepted from the privilege under paragraph (b) or paragraph (c) does not make the evidence or any other collaborative law communication discoverable or admissible for any other purpose.

(f) The privilege under subsection (1) does not apply if the parties agree in advance in a signed record, or if a record of a proceeding reflects agreement by the parties, that all or part of a collaborative law process is not privileged. This paragraph does not apply to a collaborative law communication made by a person who did not receive actual notice of the collaborative law participation agreement before the communication was made.

Section 14. For the purpose of incorporating the amendment made by this act to section 61.08, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 61.052, Florida Statutes, is reenacted to read:

61.052 Dissolution of marriage.—

(1) No judgment of dissolution of marriage shall be granted unless one of the following facts appears, which shall be pleaded generally:

(b) Mental incapacity of one of the parties. However, no

dissolution shall be allowed unless the party alleged to be incapacitated shall have been adjudged incapacitated according to the provisions of s. 744.331 for a preceding period of at least 3 years. Notice of the proceeding for dissolution shall be served upon one of the nearest blood relatives or guardian of the incapacitated person, and the relative or guardian shall be entitled to appear and to be heard upon the issues. If the incapacitated party has a general guardian other than the party bringing the proceeding, the petition and summons shall be served upon the incapacitated party and the guardian; and the guardian shall defend and protect the interests of the incapacitated party. If the incapacitated party has no guardian other than the party bringing the proceeding, the court shall appoint a guardian ad litem to defend and protect the interests of the incapacitated party. However, in all dissolutions of marriage granted on the basis of incapacity, the court may require the petitioner to pay alimony pursuant to the provisions of s. 61.08.

Section 15. For the purpose of incorporating the amendment made by this act to section 61.14, Florida Statutes, in a reference thereto, paragraph (c) of subsection (10) of section 409.2563, Florida Statutes, is reenacted to read:

409.2563 Administrative establishment of child support obligations.—

(10) JUDICIAL REVIEW, ENFORCEMENT, OR COURT ORDER SUPERSEDING ADMINISTRATIVE SUPPORT ORDER.—

(c) A circuit court of this state, where venue is proper and the court has jurisdiction of the parties, may enter an order prospectively changing the support obligations established

in an administrative support order, in which case the administrative support order is superseded and the court's order shall govern future proceedings in the case. Any unpaid support owed under the superseded administrative support order may not be retroactively modified by the circuit court, except as provided by s. 61.14(1)(a), and remains enforceable by the department, by the obligee, or by the court. In all cases in which an administrative support order is superseded, the court shall determine the amount of any unpaid support owed under the administrative support order and shall include the amount as arrearage in its superseding order.

Section 16. For the purpose of incorporating the amendment made by this act to section 61.14, Florida Statutes, in a reference thereto, paragraph (b) of subsection (4) of section 742.031, Florida Statutes, is reenacted to read:

742.031 Hearings; court orders for support, hospital expenses, and attorney's fee.—

(4)

(b) The modification of the temporary support order may be retroactive to the date of the initial entry of the temporary support order; to the date of filing of the initial petition for dissolution of marriage, petition for support, petition determining paternity, or supplemental petition for modification; or to a date prescribed in s. 61.14(1)(a) or s. 61.30(11)(c) or (17), as applicable.

Section 17. Sections 61.55-61.58, Florida Statutes, as created by this act, shall not take effect until 30 days after the Florida Supreme Court adopts rules of procedure and professional responsibility consistent with this act.

Section 18. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2016.