

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 1922

INTRODUCER: Senators Gruters and Hooper

SUBJECT: Dissolution of Marriage

DATE: March 19, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	<b>Pre-meeting</b>
2.			AP	
3.			RC	

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**I. Summary:**

SB 1922 amends family law issues related to alimony, timesharing between parents of a minor child, and bifurcation of a dissolution of marriage case.

Significant changes to alimony law include:

- Permanent (lifetime) alimony is eliminated, leaving bridge-the-gap, rehabilitative, and durational forms of alimony.
- The criteria for determining any form of alimony is expanded to include a presumption that both parties will have a lower standard of living post-dissolution.
- A court may not require an obligor to purchase life insurance to secure the award of alimony. However, an obligor must cooperate with an obligee's application for life insurance on the obligor.
- The characterization of a marriage as either short-term, moderate-term, or long-term is repealed. The related presumptions regarding alimony appropriate to the term of the marriage are also repealed.
- Rehabilitative alimony is limited to the lesser of 5 years or 50 percent of the term of the marriage.
- Durational alimony terminates upon a showing that the obligee is in a supportive relationship.
- Durational alimony is limited in time to 50 percent of the term of the marriage, may only be awarded where other forms of alimony are insufficient, and is limited in amount to no more than 25 percent of the difference between the parties' net incomes.
- No alimony may be awarded to a party who has a net income that is equal to or more than the other party's net income.
- For purposes of determining alimony, VA disability benefits, and state reemployment assistance or unemployment compensation, are not considered income.

- A divorcing spouse who has reasonably retired cannot be ordered to pay alimony unless the other spouse is too young for Social Security retirement benefits and qualifies for the medically needy program.
- An existing alimony award may be modified or terminated upon early retirement if such retirement is reasonable.
- An existing alimony award terminates when the obligor reaches the Social Security full retirement age, unless durational alimony has been paid for less than 50 percent of the term of the marriage, the obligee is too young for Social Security retirement benefits, and the obligee qualifies for the medically needy program.
- A petition for modification or termination in anticipation of retirement may be filed up to 12 months prior to the planned retirement date.
- The concept of a supportive relationship is expanded to allow proof of a recent supportive relationship and a corresponding right to seek reimbursement of alimony paid. The description of a supportive relationship is expanded by repeal of the requirement to show cohabitation and by adding engagement to be married to another as proof towards a finding of a supportive relationship.

Timesharing with minor children is changed by creation of a presumption in favor of equal time-sharing between parents.

Bifurcation refers to the process where the court dissolves the marriage, reserving other matters such as property distribution, alimony, timesharing, and child support for future court action. The bill gives either party to a dissolution of marriage the right to bifurcation if the case has been pending for longer than one year from the date the respondent received the summons.

The bill is effective July 1, 2021. Changes to alimony apply to existing cases on the effective date. Changes to timesharing and bifurcation apply to cases filed on or after the effective date.

## II. Present Situation:

Dissolution of marriage may involve many different but related matters. Three matters related to dissolution addressed by this bill are alimony, timesharing with children, and bifurcation. Note that the timesharing changes also affect parents who never married.

### **Alimony**

Alimony is a court-ordered allowance that one spouse pays to the other spouse for maintenance and support while they are separated, while they are involved in a matrimonial lawsuit, or after they are divorced.<sup>1</sup> Alimony may be agreed to by the parties or awarded by the court after an evidentiary hearing. While child support is determined primarily through a statutory formula, alimony is determined at the discretion of the trial court based on statutory and equitable factors.

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<sup>1</sup> Alimony, BLACK'S LAW DICTIONARY (11th ed. 2019).

### *Calculation of the Amount of Alimony*

There is no fixed formula for alimony. Alimony is based on both financial need and the ability to pay.<sup>2</sup> After making an initial determination to award alimony, the court must consider ten factors:

- The standard of living established during the marriage.
- The length of marriage.
- Ages and physical and emotional condition of the parties.
- Financial resources of the parties.
- Earning capacity, education level, vocational skill, and employability of the parties.
- Marital contributions, including homemaking, child care, and education and career building of the other party.
- Responsibilities of each party towards minor children.
- Tax treatment and consequences of alimony awards.
- All sources of income.
- Any other factor that advances equity and justice.<sup>3</sup>

The income tax factor has less relevance than in the past. Beginning January 1, 2019, alimony or separate maintenance payments are not deductible from the income of the obligor, or includable in the income of the obligee, if made under a divorce or separation agreement executed after December 31, 2018. This also applies to a divorce or separation agreement executed on or before December 31, 2018, and modified after December 31, 2018, as long as the modification changes the terms of the alimony or separate maintenance payments and states that the alimony or separate maintenance payments are not deductible by the obligor or includable in the income of the obligee. On the other hand, alimony or separate maintenance payments are generally deductible from the income of the obligor and includable in the income of the obligee, if made under a divorce or separation agreement executed on or before December 31, 2018, even if the agreement was modified after December 31, 2018, so long as the modification is not one described in the preceding sentence.<sup>4</sup>

The court may also consider adultery by either spouse in a decision to award alimony.<sup>5</sup> That consideration is dependent upon the circumstances of each particular case. Absent a showing of a related depletion of marital assets, a party's adulterous misconduct is not a valid reason to award a greater share of those marital assets to the innocent spouse or to deny the adulterous spouse alimony. Furthermore, despite evidence of adultery, need and ability to pay remain the primary considerations in awarding alimony.<sup>6</sup>

To protect an alimony award, the court may order an obligor to maintain a life insurance policy.<sup>7</sup> A court making the requirement must first make specific findings regarding the availability and

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<sup>2</sup> Section 61.08(2), F.S.

<sup>3</sup> Section 61.08(2)(a)-(j), F.S.

<sup>4</sup> IRS, *CLARIFICATION: Changes to deduction for certain alimony payments effective in 2019* (March 3, 2021) available at <https://www.irs.gov/forms-pubs/clarification-changes-to-deduction-for-certain-alimony-payments-effective-in-2019> (last viewed March 13, 2021).

<sup>5</sup> Section 61.08(1), F.S.

<sup>6</sup> *Williamson v. Williamson*, 367 So. 2d 1016, 1019 (Fla.1979); *Noah v. Noah*, 491 So. 2d 1124, 1127 (Fla. 1986); *Keyser v. Keyser*, 204 So. 3d 159, 161 (Fla. 1st DCA 2016).

<sup>7</sup> Section 61.08(3), F.S.

cost of insurance, the obligor's ability to pay, and the special circumstances that warrant the requirement for security of the obligation.<sup>8</sup> The special circumstances required to support an order mandating life insurance include "a spouse potentially left in dire financial straits after the death of the obligor spouse due to age, ill health and/or lack of employment skills, obligor spouse in poor health, minors living at home, supported spouse with limited earning capacity, obligor spouse in arrears on support obligations, and cases where the obligor spouse agreed on the record to secure an award with a life insurance policy."<sup>9</sup>

An award of alimony may not result in the obligor with significantly less net income than the net income of the obligee absent exceptional circumstances.<sup>10</sup> What qualifies as exceptional circumstances is undefined.

### ***Types of Alimony***

For purposes of determining the appropriate type of alimony to award, marriages are classified by term or length of marriage, based on the time from the date of marriage to the date the dissolution of marriage action was filed:

- Short term means less than 7 years.
- Moderate-term means greater than 7 years but less than 17 years.
- Long-term means greater than 17 years.<sup>11</sup>

Florida law recognizes various forms of alimony, including bridge-the-gap, rehabilitative, durational, and permanent periodic alimony.<sup>12</sup>

Bridge-the-gap alimony:<sup>13</sup>

- Is designed to assist a party in his or her transition from being married to being single.
- May be awarded in a marriage of any term.
- Cannot exceed 2 years in duration.
- May not be modified.
- Terminates upon death or remarriage.

Rehabilitative alimony:<sup>14</sup>

- Is designed to assist a party in establishing the capacity for self-support through either the redevelopment of previous skills or credentials; or the acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials.
- May be awarded in a marriage of any term.
- Can be of any duration.
- May be modified based upon a substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan.
- Does not automatically terminate upon remarriage.

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<sup>8</sup> *O'Neill v. O'Neill*, 305 So. 3d 551, 554 (Fla. 4th DCA 2020).

<sup>9</sup> *Kotlarz v. Kotlarz*, 21 So. 3d 892, 893 (Fla. 1st DCA 2009).

<sup>10</sup> Section 61.08(9), F.S.

<sup>11</sup> Section 61.08(4), F.S. This triad was first enacted in 2010. Ch. 2010-199, Laws of Fla.

<sup>12</sup> Section 61.08(1), F.S.

<sup>13</sup> Section 61.08(5), F.S.

<sup>14</sup> Section 61.08(6), F.S.

**Durational alimony:**<sup>15</sup>

- Is designed to provide a party with economic assistance for a set period of time.
- May be awarded following a marriage of short or moderate duration, or following a marriage of long duration if there is no ongoing need for support on a permanent basis.
- May not exceed the length of the marriage.
- May be modified as to amount, based upon a substantial change in circumstances; but the length may not be modified except under exceptional circumstances.
- Terminates upon the death of either party or upon the remarriage of the party receiving alimony.

**Permanent alimony:**<sup>16</sup>

- Is designed to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage.
- May be awarded only after a finding that no other form of alimony is fair and reasonable under the circumstances of the parties, following a marriage of:
  - Long duration, if such an award is appropriate upon consideration of the ten factors by a preponderance of the evidence;
  - Moderate duration, if such an award is appropriate based upon clear and convincing evidence after consideration of the 10 factors; or
  - Short duration, if there are written findings of exceptional circumstances.
- Is not for a fixed period of time.
- May be modified or terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship.
- Terminates upon the death of either party or upon the remarriage of the party receiving alimony.

***Substantial Change in Circumstances***

Where allowed, either party may seek modification of an alimony award on the grounds of a substantial change in circumstances.<sup>17</sup> To obtain a modification of alimony, the party seeking modification must allege, and the trial court must find, that:

- There has been a substantial change in circumstances.
- The change was not contemplated at the time of the final judgment of dissolution.
- The change is sufficient, material, permanent, and involuntary.<sup>18</sup>

The court may modify support retroactively to the date of the filing of the motion.<sup>19</sup>

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<sup>15</sup> Section 61.08(7), F.S.

<sup>16</sup> Section 61.08(8), F.S.

<sup>17</sup> Section 61.14(1)(a), F.S.

<sup>18</sup> *Golson v. Golson*, 207 So. 3d 321, 325 (Fla. 5th DCA 2016).

<sup>19</sup> Section 61.14(1)(a), F.S.

### ***Supportive Relationship***

To avoid losing alimony because of remarriage, it was once common to simply “live with” someone. Today, the existence of a supportive relationship between the obligee and a third party may be a substantial change in circumstances that warrants a modification of alimony. To modify alimony on an assertion of cohabitation between the obligee and a third party, the court must find:

- The existence of a supportive relationship between the obligee and a third party; and
- That the obligee lives with the third party.

To determine whether a relationship is supportive, the court will examine:

- The extent to which the obligee and the third party hold themselves out as a married couple;
- The length of time that the third party has resided with the obligee;
- Whether the obligee and the third party have jointly purchased property;
- The extent to which the obligee and third party commingle financial assets; and
- The extent to which one of the parties supports the other party.<sup>20</sup>

The burden is on the obligor to show by a preponderance of evidence that a supportive relationship exists.<sup>21</sup>

### ***Retirement***

Voluntary retirement may qualify as a substantial change in circumstances that warrants a modification of alimony. It is an exception to the general rule that a substantial change in circumstances must result from an involuntary action. Retirement as a substantial change in circumstances is not addressed in statute. The leading case in this area ruled:

In determining whether a voluntary retirement is reasonable, the court must consider the payor’s age, health, and motivation for retirement, as well as the type of work the payor performs and the age at which others engaged in that line of work normally retire. . . . [A] payor spouse should not be permitted to unilaterally choose voluntary retirement if this choice places the receiving spouse in peril of poverty. Thus, the court should consider the needs of the receiving spouse and the impact a termination or reduction of alimony would have on him or her. In assessing those needs, the court should consider any assets which the receiving spouse has accumulated or received since the final judgment as well as any income generated by those assets.<sup>22</sup>

An obligor looking into voluntary retirement in the near future faces a difficult decision. The motion cannot be filed until the substantial change in circumstances has actually occurred, that is, the obligor must actually retire. If the court finds that the retirement was not reasonable some months later, the now unemployed obligor must continue to pay the alimony without the job that he or she left and is unlikely to be hired back to.

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<sup>20</sup> Section 61.14(b), F.S.

<sup>21</sup> Section 61.14(1)(b)1., F.S.

<sup>22</sup> *Pimm v. Pimm*, 601 So. 2d 534, 537 (Fla. 1992).

### **Timesharing with Minor Children**

The public policy of the state is for each minor child to have “frequent and continuing contact with both parents.”<sup>23</sup> Additionally, a court must order shared parental responsibility for a minor child unless the court finds that shared responsibility would be detrimental to the child.<sup>24</sup> In determining timesharing with each parent, a court must consider the best interests of the child based on a specific list of statutory factors. These factors include:

- The demonstrated capacity of each parent to have a close and continuing parent-child relationship, honor the time-sharing schedule, and be reasonable when changes are required.
- The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child, including developmental needs.
- The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
- 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 effectuate the parenting plan.
- The moral fitness and the mental and physical health of the parents.
- The reasonable preference of the child, if the child is of sufficient intelligence, understanding, and experience to express a preference.
- The demonstrated capacity and disposition of each parent to provide a consistent routine for the child, such as discipline, and daily schedules for homework, meals, and bedtime, and to be involved in the child’s school and extracurricular activities.
- The demonstrated capacity of each parent to keep the other parent informed about the minor child, and the willingness of each parent to adopt a unified front on major issues.
- Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, or that either parent has knowingly provided false information about these issues. If the court accepts evidence of prior or pending actions on these issues, the court must acknowledge in writing that the evidence was considered in evaluating best interests.
- The particular parenting tasks customarily performed by each parent and the division of parental responsibilities before and during litigation, including the extent to which parenting responsibilities were undertaken by third parties.
- The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.<sup>25</sup>

A final factor provides the court with flexibility to consider any other factor relevant in establishing a parenting plan, including a time-sharing schedule.<sup>26</sup>

### **Bifurcation of a Dissolution Case**

Normally, a dissolution of marriage case is resolved when the court issues an omnibus final judgment of dissolution, which judgment dissolves the marriage, splits the debts and property of

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<sup>23</sup> Section 61.13(2)(c)1., F.S.

<sup>24</sup> Section 61.13 (2)(c)2., F.S.

<sup>25</sup> Section 61.13(3), F.S.

<sup>26</sup> Section 61.13(3)(t), F.S.

the couple, and, where required, resolves timesharing with the children, child support, and alimony. The term “bifurcation” refers to the process whereby the court grants the dissolution of marriage, but reserves jurisdiction to resolve the remaining issues between the parties at a later date.

Parties seek bifurcation mostly for purposes of remarriage. Bifurcation is allowed but its use is discouraged by the courts. The Florida Supreme Court explained why:

[W]e believe the trial court should avoid this split procedure. The general law and our procedural rules at both the trial and appellate levels are designed for one final judgment and one appeal. Splitting the process can cause multiple legal and procedural problems which result in delay and additional expense to the litigants. This split procedure should be used only when it is clearly necessary for the best interests of the parties or their children.<sup>27</sup>

The Florida Supreme Court has established presumptive trial court time standards for the most common types of cases. The time standards are not deadlines, but represent the time within which most cases should be resolved. The time standard for a contested domestic relations case is 180 days from filing to final disposition.<sup>28</sup>

### **Presumptions**

A presumption in a legal proceeding is an assumption of the existence of a fact which is in reality unproven by direct evidence. A presumption is derived from another fact or group of facts that has been proven in the action. If a presumption is recognized, the presumed fact must be found to be present if the trier of fact finds that the underlying facts which give rise to the presumption exist. Presumptions usually assist in managing circumstances in which direct proof is rendered difficult. Presumptions arising out of considerations of fairness, public policy, and probability, as well as judicial economy, are also useful devices for allocating the burden of proof.<sup>29</sup> There are two types of presumption applicable to civil actions -- a presumption affecting the burden of producing evidence and a presumption affecting the burden of proof.<sup>30</sup>

Presumptions which are recognized primarily to facilitate the determination of an action, rather than to implement public policy, are presumptions affecting the burden of producing evidence. These so-called bursting bubble presumptions are recognized when the underlying facts are proved to exist and they remain in effect until credible evidence is introduced to disprove the presumed fact. Once the evidence of the nonexistence of the presumed fact is offered, the presumption disappears.<sup>31</sup>

Any presumption not falling within the category of presumptions affecting the burden of producing evidence is a presumption affecting the burden of proof.<sup>32</sup> These presumptions are

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<sup>27</sup> *Cloughton v. Cloughton*, 393 So. 2d 1061, 1062 (Fla. 1980).

<sup>28</sup> Fla. R. Jud. Admin. 2.250(a)(1)(C).

<sup>29</sup> *Presumptions—Generally*, 1 Fla. Prac., Evidence s. 301.1 (2020 ed.).

<sup>30</sup> Section 90.302, F.S.

<sup>31</sup> *Types of presumptions which affect the burden of producing evidence*, 1 Fla. Prac., Evidence s. 303.1 (2020 ed.).

<sup>32</sup> Section 90.304, F.S.



recognized because they express a policy that society deems desirable. When proof is introduced of the basic facts giving rise to a presumption affecting the burden of proof, the presumption operates to shift the burden of persuasion regarding the presumed fact to the opposing party.<sup>33</sup>

### III. Effect of Proposed Changes:

#### Alimony

##### *Forms of Alimony*

The bill changes alimony law to eliminate permanent alimony as a form of alimony that a court may order. However, an obligor may agree to permanent alimony.

The bill prioritizes the remaining forms of alimony in this order:

- Bridge-the-gap alimony.
- Rehabilitative alimony.
- Durational alimony.

If the court orders a combination of forms of alimony, it must make written findings regarding the basis for the award. A combination may only be awarded to provide greater economic assistance for the purpose of rehabilitation of the obligee.

##### *Criteria for an Award of Alimony*

The bill provides that adultery of a spouse may not be the sole basis for awarding or denying alimony unless the adultery contributed to a depletion of marital assets.

The bill amends the 10 factors for consideration in determining the amount of an award of alimony as follows:

- The standard of living established during the marriage factor is limited. In looking at the standard of living during the marriage, the court must take into account the needs and necessities of life for each party after dissolution. The bill also creates a rebuttable presumption that both parties will have a lower standard of living after the dissolution.
- The tax treatment factor is modified by repeal of the portion regarding the tax treatment of the alimony. This reflects a change in the federal tax code effective January 1, 2019.
- The “all sources of income” factor is amended by a change in the definition of “income” at s. 61.046(8), F.S., to exclude VA disability payments, reemployment assistance, and unemployment compensation as income.<sup>34</sup>
- A court using the “any other factor” language must specify the other factor and the findings of fact justifying the factor.

The bill prohibits a court from requiring that the obligor purchase life insurance or secure a bond or other security naming the obligee as beneficiary. The bill adds that the obligee may purchase life insurance on the obligor, and that the obligor must cooperate with the application and

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<sup>33</sup> *Types of presumptions which affect the burden of proof*, 1 Fla. Prac., Evidence § 304.1 (2020 ed.).

<sup>34</sup> These exclusions will not apply to formulas in the bill based on the terms “gross income” or “net income” as those terms are separately defined terms.

underwriting process. The bill implies that an obligee has an insurable interest in the life of obligor.

The bill repeals the classification of marriages being either short-term, moderate-term, or long-term. The bill also repeals their related presumptions regarding which forms of alimony are appropriate to each.

The bill limits the length of an alimony award:

- Bridge-the-gap alimony remains limited to 2 years.
- Rehabilitative alimony is limited to the lesser of 50 percent of the length of the marriage or 5 years.
- Durational alimony is limited to 50 percent of the length of the marriage.

The bill changes durational alimony to:

- Add that durational alimony ends upon proof of a supportive relationship between the obligee and another person.
- Repeal the requirement to show “exceptional circumstances” in order to modify the duration of the alimony.
- Require a court awarding durational alimony to make written finding that bridge-the-gap, rehabilitative alimony, or a combination of the two, is not appropriate.
- Durational alimony is limited to the lesser of the obligee’s reasonable need for alimony or 25 percent of the difference between the parties’ net incomes.

The term “net income” is defined by the bill as gross income<sup>35</sup> minus allowable deductions, which are:

- Federal, state, or local income tax deductions, adjusted for actual filing status and allowable dependents and income tax liabilities.
- Federal insurance contributions or self-employment tax.
- Mandatory union dues.
- Mandatory retirement payments.
- Health insurance payments, excluding payments for coverage of a minor child.
- Court-ordered support for other children which is actually paid.
- Spousal support paid pursuant to a court order from a previous marriage

The bill makes the following additional changes to, and limits on, an alimony award:

- Alimony may not be awarded to a party who has a monthly net income that is equal to or more than the other party’s net income. The bill repeals the provision that allows an award of alimony that leaves an obligor with significantly less income upon a showing of exceptional circumstances.
- The court may not use potential Social Security benefits in calculating imputed income.
- For a spouse to claim disability as grounds for not imputing income, the spouse must either be actually qualified for federal Social Security benefits or must show that he or she would qualify as disabled under that program.

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<sup>35</sup> The bill references the definition of “gross income” in the child support law at s. 61.30(2), F.S. That subsection broadly includes all forms of income, including imputed income, but excluding public support payments.

- The court must consider all alimony payments made prior to the final hearing, whether voluntary or court-ordered, when determining the amount and duration of alimony awarded in the final judgment of dissolution.

### ***Retirement***

The bill addresses retirement of an obligor at two stages -- a retired person in a current dissolution of marriage proceeding, and a current obligor seeking modification or termination of an existing alimony award to allow retirement.

*As to a pending dissolution of marriage*, if a spouse is reasonably retired, that spouse may not be ordered to pay alimony to the other spouse unless:

- The other spouse has not yet reached the minimum age to receive any Social Security retirement benefits;<sup>36</sup> and
- The other spouse would, based on the outcome of the dissolution, qualify for the Florida Medicaid medically needy program.<sup>37</sup>

When considering whether a spouse is reasonably retired in a pending dissolution of marriage case, the court must consider these factors when determining if the retirement is reasonable:

- The obligor's age and health.
- The obligor's motivation for retirement.
- The obligor's profession or line of work, and the typical age of retirement for that profession or line of work.
- The needs and necessities of life of both spouses.

*As to modification or termination of an existing award of alimony based on retirement*, the court must consider these factors when determining if the retirement is reasonable:

- The obligor's age and health.
- The obligor's motivation for retirement.
- The obligor's profession or line of work, and the typical age of retirement for that profession or line of work.
- The needs and necessities of life of both parties.
- The impact that a termination or reduction of alimony would have on the obligee, taking into consideration the present assets and income of the obligee.

The factors for determination of a reasonable retirement for purposes of a modification or termination of alimony are similar to those in current case law.<sup>38</sup> The case law requirement that alimony set by agreement is more difficult to modify than alimony set by the court is not listed as a consideration.

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<sup>36</sup> Currently, the minimum age for retirement benefits is 62. <https://www.ssa.gov/benefits/retirement/planner/agereduction.html> (last viewed March 17, 2021).

<sup>37</sup> The medically needy program grants eligible persons temporary access to Medicaid. A person otherwise eligible for Medicaid but whose gross income is too high qualifies as medically needy in any month where, deducting their medical expenses from gross income the remainder is less than the Medicaid income threshold. Where qualified, the medically needy person's medical bills for the remainder of that month are paid through Medicaid. Qualification is on a month-to-month basis.

<sup>38</sup> *Pimm v. Pimm*, 601 So. 2d 534 (Fla. 1992).

The modification statute is further amended to provide that an alimony award terminates when the obligor reaches the Social Security full retirement age,<sup>39</sup> except that the court may order durational alimony to extend beyond the Social Security full retirement age if:

- The durational alimony has been paid for a duration of less than 50 percent of the term of the marriage;
- The obligee has not reached the minimum age to qualify for Social Security retirement benefits; and
- The obligee would, as a result of termination of alimony, qualify for the Florida Medicaid medically needy program.

An extension of alimony beyond the age at which the obligor has reached the Social Security full retirement age may not extend the total duration of alimony beyond 50 percent of the term of the marriage.

The bill creates a procedural mechanism to file a petition for modification in anticipation of a future retirement. An obligor may file the petition up to 12 months prior to the anticipated retirement date.

The bill provides that receipt of any Social Security, disability, or retirement received by an obligee is considered a substantial change in circumstances that would allow the obligor to seek modification of alimony.

The bill provides that an agreement on alimony may limit modification of the agreement based on a threshold or a limited period of time.

#### ***Modification of Termination of Alimony Based on a Supportive Relationship***

The bill expands the qualification for the filing of a petition to modify or terminate alimony based on a supportive relationship to include the right to file the petition regarding a past relationship, happening up to 180 days prior to filing the petition.

The bill broadens the description of a supportive relationship to:

- Repeal the requirement to show cohabitation.
- Add to the factors proof that the couple refer to each other as “my partner” or “my fiancé.”
- Add to the factors proof of a longstanding relationship.
- Add to the factors proof that the couple is engaged to be married.

Upon a finding that a supportive relationship exists, the bill adds an additional remedy -- the court may order reimbursement of past alimony paid in any equitable amount.

The bill provides that remarriage or cohabitation by the obligor is not grounds for either party to petition for modification of alimony. An obligee may not seek modification based on the income or assets of the obligor’s new spouse or another person living with the obligor, and the obligor

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<sup>39</sup> For many years the full retirement age was 65. Currently, it is being slowly raised and will be 67 for persons born in 1960 or later. <https://www.ssa.gov/benefits/retirement/planner/agereduction.html> (last viewed March 17, 2021).

may not seek modification based on the obligor's reliance upon the income and assets of the subsequent spouse or another person living with him or her.

### ***Effective Dates of Changes to Alimony***

Changes to alimony law in general, and to the effect of retirement on the initial dissolution of marriage case, are effective July 1, 2021, and apply to any case pending on that date, including pending on appeal.

Changes to alimony law related to modification of an existing award on the grounds of retirement of the obligor, are effective July 1, 2021, and apply to any modification motion pending on that date, including one pending on appeal.

### **Timesharing with Minor Children**

The bill creates a presumption that equal time-sharing is in the best interests of a minor child common to the parties. The parties may jointly waive this presumption.

The change to timesharing is effective for any action filed on or after July 1, 2021.

### **Bifurcation of Dissolution Case**

The bill creates a statutory right to bifurcation of a dissolution of marriage case. Either party may request bifurcation if more than 365 days have elapsed since the respondent spouse was served with a summons. Unless the other party shows that irreparable harm will result from granting a final judgment of dissolution of marriage, the court must grant the motion. Once granted, the court will enter a final judgment of dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues.

Before granting the final dissolution reserving jurisdiction, if the court has not already done so, the court must enter temporary orders necessary to protect the parties and their children, which orders remain effective until all other issues can be adjudicated by the court.

This part of the bill applies to all petitions for dissolution of marriage filed on or after July 1, 2021.

### **Rulemaking**

The bill repeals s. 61.14(1)(d), F.S. That paragraph gives the Department of Revenue the authority to adopt administrative rules to implement s. 61.14, F.S. The scope of s. 61.14, F.S., is not limited to modification or termination of an alimony award, portions also govern modification and termination of child support. The apparent purpose of the grant of rulemaking authority is to assist in the administrative establishment of child support obligations by the Division of Child Support Enforcement of the Department of Revenue.<sup>40</sup> Repeal of this paragraph may negatively impact the division's operations.

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<sup>40</sup> See Rule 12E-1.030, F.A.C.

The bill takes effect July 1, 2021.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 61.046, 61.08, 61.13, 61.14, and 61.19.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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