

1                                   A bill to be entitled  
2       An act relating to dissolution of marriage; amending  
3       s. 61.075, F.S.; redefining the term "marital assets  
4       and liabilities" to include the value of the marital  
5       portion of the passive appreciation of nonmarital real  
6       property; authorizing a court to require security and  
7       the payment of a reasonable rate of interest if  
8       installment payments are required for the distribution  
9       of marital assets and liabilities; requiring the court  
10      to provide written findings regarding any installment  
11      payments; creating s. 61.0765, F.S.; providing  
12      formulas for the calculation of the value of the  
13      marital portion of nonmarital real property subject to  
14      equitable distribution; requiring the court in the  
15      dissolution action to use the formulas unless  
16      sufficient evidence is presented showing that the  
17      application of the formulas is not equitable; amending  
18      s. 61.08, F.S.; revising factors to be considered for  
19      alimony awards; revising factors to be considered in  
20      whether to award alimony or maintenance; requiring  
21      written findings regarding the standard of living of  
22      the parties after dissolution of marriage; amending s.  
23      61.14, F.S.; revising provisions relating to the  
24      effect of a supportive relationship on an award of  
25      alimony; requiring refund of alimony paid and an award  
26      of costs and fees if the recipient of alimony denies  
27      the existence of a supportive relationship that is  
28      later found to exist or denies material facts relating

29 | to a supportive relationship that are later found to  
 30 | be true; requiring a court to require an obligee to  
 31 | maximize both his or her reasonable potential for  
 32 | rehabilitation and reasonable earning capacity to  
 33 | impute all income to the obligee that could be  
 34 | reasonably earned after achieving maximum  
 35 | rehabilitation and reasonably increasing earning  
 36 | capacity; requiring written findings regarding  
 37 | rehabilitation; amending s. 61.19, F.S.; requiring  
 38 | bifurcation of a dissolution of marriage case if the  
 39 | case is more than 180 days past filing; providing  
 40 | legislative intent; providing an effective date.

41 |  
 42 | Be It Enacted by the Legislature of the State of Florida:  
 43 |

44 | Section 1. Paragraph (a) of subsection (6) and subsection  
 45 | (10) of section 61.075, Florida Statutes, are amended to read:

46 | 61.075 Equitable distribution of marital assets and  
 47 | liabilities.—

48 | (6) As used in this section:

49 | (a)1. "Marital assets and liabilities" include:

50 | a. Assets acquired and liabilities incurred during the  
 51 | marriage, individually by either spouse or jointly by them.

52 | b. The enhancement in value and appreciation of nonmarital  
 53 | assets resulting either from the efforts of either party during  
 54 | the marriage or from the contribution to or expenditure thereon  
 55 | of marital funds or other forms of marital assets, or both.

56 | c. The value of the marital portion of the passive

57 appreciation of nonmarital real property as provided in s.  
 58 61.0765(2).

59 ~~d.e.~~ Interspousal gifts during the marriage.

60 ~~e.d.~~ All vested and nonvested benefits, rights, and funds  
 61 accrued during the marriage in retirement, pension, profit-  
 62 sharing, annuity, deferred compensation, and insurance plans and  
 63 programs.

64 2. All real property held by the parties as tenants by the  
 65 entirety, whether acquired before ~~prior to~~ or during the  
 66 marriage, shall be presumed to be a marital asset. If, in any  
 67 case, a party makes a claim to the contrary, the burden of proof  
 68 shall be on the party asserting the claim that the subject  
 69 property, or some portion thereof, is nonmarital.

70 3. All personal property titled jointly by the parties as  
 71 tenants by the entirety, whether acquired before ~~prior to~~ or  
 72 during the marriage, shall be presumed to be a marital asset. In  
 73 the event a party makes a claim to the contrary, the burden of  
 74 proof shall be on the party asserting the claim that the subject  
 75 property, or some portion thereof, is nonmarital.

76 4. The burden of proof to overcome the gift presumption  
 77 shall be by clear and convincing evidence.

78 (10) (a) To do equity between the parties, the court may,  
 79 in lieu of or to supplement, facilitate, or effectuate the  
 80 equitable division of marital assets and liabilities, order a  
 81 monetary payment in a lump sum or in installments paid over a  
 82 fixed period of time.

83 (b) If installment payments are ordered, the court may  
 84 require security and a reasonable rate of interest, or otherwise

85 recognize the time value of money in determining the amount of  
 86 the installments. If security or interest is required, the court  
 87 shall make written findings relating to any deferred payments,  
 88 the amount of any security required, and the interest. This  
 89 paragraph does not preclude the application of chapter 55,  
 90 relating to judgments, to any subsequent default.

91 Section 2. Section 61.0765, Florida Statutes, is created  
 92 to read:

93 61.0765 Valuation of marital portion of nonmarital real  
 94 property.—

95 (1) (a) The total value of the marital portion of  
 96 nonmarital real property consists of the sum of the following:

97 1. The value of the active appreciation of the property as  
 98 described in s. 61.075(6) (a)1.b.

99 2. The amount of the mortgage principal paid from marital  
 100 funds.

101 3. A portion of any passive appreciation of the property,  
 102 if the mortgage principal was paid from marital funds.

103 (b) The value of the marital portion of nonmarital real  
 104 property may not exceed the total net equity of the property on  
 105 the valuation date in the dissolution action.

106 (2) The marital portion of the passive appreciation as  
 107 provided in subparagraph (1) (a)3. is calculated by multiplying  
 108 the passive appreciation of the property by the marital  
 109 fraction.

110 (a) The passive appreciation of the property is calculated  
 111 by subtracting all of the following from the value of the  
 112 property on the valuation date in the dissolution action:

113 1. The gross value of the property on the date of the  
 114 marriage or on the date the property was acquired, whichever is  
 115 later.

116 2. The value of the active appreciation of the property  
 117 during the marriage as described in s. 61.075(6) (a)1.b.

118 3. The amount of any additional debts secured by the  
 119 property during the marriage.

120 (b) The numerator of the marital fraction consists of the  
 121 amount of the mortgage principal paid on any mortgage on the  
 122 property from marital funds. The denominator consists of the  
 123 value of the property on the date of the marriage, the date of  
 124 acquisition of the property, or the date the property was first  
 125 encumbered by a mortgage on which principal was paid from  
 126 marital funds, whichever is later.

127 (3) The court in a dissolution action must apply the  
 128 formulas provided in this section to determine the value of the  
 129 marital portion of nonmarital real property subject to equitable  
 130 dissolution unless a party presents sufficient evidence to  
 131 establish that the application of these formulas is not  
 132 equitable under the particular circumstances of the case.

133 Section 3. Subsections (7) and (9) of section 61.08,  
 134 Florida Statutes, are amended to read:

135 61.08 Alimony.—

136 (7) There shall be a presumption in favor of durational  
 137 alimony over ~~may be awarded when~~ permanent periodic alimony ~~is~~  
 138 ~~inappropriate~~. The purpose of durational alimony is to provide a  
 139 party with economic assistance for a set period of time  
 140 following a marriage of ~~short or~~ moderate duration or following

141 a marriage of long duration if there is no ongoing need for  
 142 support on a permanent basis. An award of durational alimony  
 143 terminates upon the death of either party or upon the remarriage  
 144 of the party receiving alimony. The amount of an award of  
 145 durational alimony shall ~~may~~ be modified or terminated based  
 146 upon a substantial change in circumstances or upon the existence  
 147 of a supportive relationship in accordance with s. 61.14.  
 148 ~~However,~~ The length of an award of durational alimony may not ~~be~~  
 149 ~~modified except under exceptional circumstances and may not~~  
 150 exceed the length of the marriage.

151 (9) Notwithstanding any other law to the contrary, an ~~The~~  
 152 award of alimony may not leave the payor with ~~significantly~~ less  
 153 net income or with a lower standard of living than the net  
 154 ~~income of the recipient unless there are written findings of~~  
 155 ~~exceptional circumstances.~~ The court shall make written findings  
 156 regarding the relative incomes and standards of living citing to  
 157 evidence in the record and to this subsection.

158 Section 4. Paragraph (b) of subsection (1) of section  
 159 61.14, Florida Statutes, is amended, and subsection (12) is  
 160 added to that section, to read:

161 61.14 Enforcement and modification of support,  
 162 maintenance, or alimony agreements or orders.—

163 (1)

164 (b)1. The court must ~~may~~ reduce or terminate an award of  
 165 alimony upon specific written findings by the court that since  
 166 the granting of a divorce and the award of alimony a supportive  
 167 relationship has existed between the obligee and a person with  
 168 whom the obligee resides. On the issue of whether alimony should

169 be reduced or terminated under this paragraph, the burden is on  
 170 the obligor to prove by a preponderance of the evidence that a  
 171 supportive relationship exists.

172 2. In determining whether an existing award of alimony  
 173 should be reduced or terminated because of an alleged supportive  
 174 relationship between an obligee and a person who is not related  
 175 by consanguinity or affinity and with whom the obligee resides,  
 176 the court shall elicit the nature and extent of the relationship  
 177 in question. The court shall give consideration, without  
 178 limitation, to circumstances, including, but not limited to, the  
 179 following, in determining the relationship of an obligee to  
 180 another person:

181 a. The extent to which the obligee and the other person  
 182 have held themselves out as a married couple by engaging in  
 183 conduct such as using the same last name, using a common mailing  
 184 address, referring to each other in terms such as "my husband"  
 185 or "my wife," or otherwise conducting themselves in a manner  
 186 that evidences a permanent supportive relationship.

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

189 c. The extent to which the obligee and the other person  
 190 have pooled their assets or income or otherwise exhibited  
 191 financial interdependence.

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

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

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

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

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

202 i. Evidence in support of a claim that the obligee and the  
 203 other person have an express agreement regarding property  
 204 sharing or support.

205 j. Evidence in support of a claim that the obligee and the  
 206 other person have an implied agreement regarding property  
 207 sharing or support.

208 k. Whether the obligee and the other person have provided  
 209 support to the children of one another, regardless of any legal  
 210 duty to do so.

211 3. This paragraph does not abrogate the requirement that  
 212 every marriage in this state be solemnized under a license, does  
 213 not recognize a common law marriage as valid, and does not  
 214 recognize a de facto marriage. This paragraph recognizes only  
 215 that relationships do exist that provide economic support  
 216 equivalent to a marriage and that alimony terminable on  
 217 remarriage may be reduced or terminated upon the establishment  
 218 of equivalent equitable circumstances as described in this  
 219 paragraph. The existence of a conjugal relationship, though it  
 220 may be relevant to the nature and extent of the relationship, is  
 221 not necessary for the application of ~~the provisions of~~ this  
 222 paragraph.



223 4. If the obligee denies or fails to admit any material  
 224 fact regarding the existence of a supportive relationship in  
 225 circumstances where the obligee knew or should have known about  
 226 the material fact and the obligor subsequently proves the  
 227 existence of the material fact, the court shall, in the form of  
 228 a civil judgment:

229 a. Order modification of the alimony award retroactive to  
 230 the beginning of the supportive relationship.

231 b. Award to the obligor a refund of all of the alimony the  
 232 obligor actually paid to the obligee from the beginning of the  
 233 supportive relationship.

234 c. Award to the obligor reasonable costs and attorney fees  
 235 incurred in proving the fact.

236 5. If the obligee denies the existence of a supportive  
 237 relationship and the obligor subsequently proves the existence  
 238 of a supportive relationship, the court shall order termination  
 239 of the alimony award retroactive to the beginning of the  
 240 supportive relationship, award to the obligor a refund of all of  
 241 the alimony the obligor actually paid to the obligee from the  
 242 beginning of the supportive relationship, and award to the  
 243 obligor reasonable costs and attorney fees incurred in proving  
 244 the existence of the supportive relationship. An award under  
 245 this subparagraph shall be a civil judgment.

246 (12) In any alimony award, the court shall require an  
 247 obligee to maximize both his or her reasonable potential for  
 248 rehabilitation and reasonable earning capacity and shall impute  
 249 all income to the obligee that could be reasonably earned after  
 250 achieving maximum rehabilitation and reasonably increasing

251 earning capacity. The court shall make written findings of fact  
 252 concerning the reasonable potential of the obligee for  
 253 rehabilitation and the amount of income that should be imputed  
 254 to the obligee.

255 Section 5. Section 61.19, Florida Statutes, is amended to  
 256 read:

257 61.19 Entry of judgment of dissolution of marriage;~~7~~ delay  
 258 period;bifurcation.—

259 (1) A ~~No~~ final judgment of dissolution of marriage may not  
 260 be entered until at least 20 days have elapsed from the date of  
 261 filing the original petition for dissolution of marriage,~~7~~ but  
 262 the court, on a showing that injustice would result from this  
 263 delay, may enter a final judgment of dissolution of marriage at  
 264 an earlier date.

265 (2) If more than 180 days has elapsed since the filing of  
 266 an action for dissolution of marriage, upon the request of  
 267 either spouse the court shall enter an order bifurcating the  
 268 action and, if legal grounds for dissolution are proved, shall  
 269 enter a judgment dissolving the marriage and reserving  
 270 jurisdiction to determine all issues other than dissolution. It  
 271 is the intent of the Legislature that the decision in *Cloughton*  
 272 *v. Cloughton*, 393 So.2d 1061 (Fla. 1981), shall not prevent  
 273 bifurcation or entry of a final judgment pursuant to this  
 274 subsection.

275 Section 6. This act shall take effect July 1, 2012.