

1 A bill to be entitled
2 An act relating to dissolution of marriage; amending
3 s. 61.071, F.S.; limiting awards of suit money in
4 dissolution of marriage cases; amending s. 61.08,
5 F.S.; revising factors to be considered for alimony
6 awards; requiring a court to make certain written
7 findings concerning alimony; revising factors to be
8 considered in whether to award alimony or maintenance;
9 requiring a court to consider the standard of living
10 of both parties when awarding alimony; revising
11 provisions for the tax treatment and consequences of
12 alimony; creating a rebuttable presumption that both
13 parties will have a lower standard of living after
14 dissolution of marriage; revising provisions relating
15 to the protection of awards of alimony; revising
16 provisions for awards of bridge-the-gap alimony and
17 durational alimony; redesignating permanent alimony as
18 long-term alimony and revising provisions relating to
19 its award; requiring written findings regarding the
20 standard of living of the parties after dissolution of
21 marriage; amending s. 61.14, F.S.; revising provisions
22 relating to the effect of a supportive relationship on
23 an award of alimony; requiring refund of alimony paid
24 and an award of costs and fees should recipient of
25 alimony deny existence of a supportive relationship
26 that is later found to exist or deny material facts
27 relating to a supportive relationship that are later
28 found to be true; prohibiting a court from reserving

29 | jurisdiction to reinstate alimony award in the future
 30 | should the supportive relationship end; providing that
 31 | income and assets of the obligor's spouse or person
 32 | with whom the obligor resides may not be considered in
 33 | the redetermination in a modification action;
 34 | providing that if the court orders alimony concurrent
 35 | with a child support order, the alimony award may not
 36 | be modified due to the termination of child support;
 37 | providing that attaining of retirement age is a
 38 | substantial change in circumstances; creating
 39 | rebuttable presumption that alimony terminates upon
 40 | retirement of the obligor; providing for recalculation
 41 | of an alimony award if the presumption is rebutted;
 42 | requiring a court to consider the reasonable potential
 43 | of a person for rehabilitation to maximize earning
 44 | potential; requiring written findings regarding
 45 | rehabilitation; amending s. 61.19, F.S.; requiring
 46 | bifurcation of a dissolution of marriage case if the
 47 | case is more than 180 days past filing; providing for
 48 | interpretation; providing an effective date.

49 |
 50 | Be It Enacted by the Legislature of the State of Florida:

51 |
 52 | Section 1. Section 61.071, Florida Statutes, is amended to
 53 | read:

54 | 61.071 Alimony pendente lite; suit money.—In every
 55 | proceeding for dissolution of the marriage, a party may claim
 56 | alimony and suit money in the petition or by motion, and if the

57 petition is well founded, the court shall allow a reasonable sum
 58 therefor. If a party in any proceeding for dissolution of
 59 marriage claims alimony or suit money in his or her answer or by
 60 motion, and the answer or motion is well founded, the court
 61 shall allow a reasonable sum therefor. Suit money pursuant to
 62 this section may not exceed the greater of \$7,000 or the
 63 reasonable value of the representation of the party paying the
 64 fee.

65 Section 2. Section 61.08, Florida Statutes, is amended to
 66 read:

67 61.08 Alimony.—

68 (1) In a proceeding for dissolution of marriage under s.
 69 61.052(1)(a), the court may grant alimony to either party, which
 70 alimony may be bridge-the-gap, rehabilitative, durational, or
 71 long-term permanent in nature or a any combination of bridge-
 72 the-gap and rehabilitative ~~these forms of alimony where~~
 73 appropriate. In any award of alimony, the court may order
 74 periodic payments or payments in lump sum or both. ~~The court may~~
 75 ~~consider the adultery of either spouse and the circumstances~~
 76 ~~thereof in determining the amount of alimony, if any, to be~~
 77 ~~awarded~~. In all dissolution actions, the court shall include
 78 findings of fact relative to the factors enumerated in
 79 subsection (2) supporting an award or denial of alimony.

80 (2) In determining whether to award alimony or
 81 maintenance, the court shall first make, in writing, a specific
 82 factual determination as to whether either party has an actual
 83 need for alimony or maintenance and whether either party has the
 84 ability to pay alimony or maintenance. If the court finds that a

85 party has a need for alimony or maintenance and that the other
 86 party has the ability to pay alimony or maintenance, then in
 87 determining the proper type and amount of alimony or maintenance
 88 under subsections (5)-(8), the court shall consider and make
 89 written findings regarding all relevant factors, including, ~~but~~
 90 ~~not limited to:~~

91 (a) The standard of living of each party established
 92 during the marriage.

93 (b) The duration of the marriage.

94 (c) The age and the physical and emotional condition of
 95 each party.

96 (d) The financial resources of each party, only to include
 97 ~~including the nonmarital and~~ the marital assets and liabilities
 98 distributed to each.

99 (e) The earning capacities, educational levels, vocational
 100 skills, and employability of the parties and, when applicable,
 101 the time necessary for either party to acquire sufficient
 102 education or training to enable such party to find appropriate
 103 employment.

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

107 (g) The responsibilities each party will have with regard
 108 to any minor children they have in common.

109 (h) The tax treatment and consequences to both parties of
 110 any alimony award, which award must be deductible by the payor
 111 and taxable to the recipient ~~including the designation of all or~~
 112 ~~a portion of the payment as a nontaxable, nondeductible payment.~~

113 (i) All sources of income available to either party,
 114 including income available to either party through investments
 115 of any asset held by that party that were acquired during the
 116 marriage.

117 (j) The standard of living of each party after the
 118 application of the alimony award. There shall be a rebuttable
 119 presumption that both parties will necessarily have a lower
 120 standard of living after divorce than the standard of living
 121 that they enjoyed during the marriage.

122 (k)(j) Any other factor necessary to do equity and justice
 123 between the parties, provided that such factor is specifically
 124 identified in the award with findings of fact justifying the
 125 application of the factor.

126 (3) To the extent necessary to protect an award of alimony,
 127 the court may order any party who is ordered to pay alimony to
 128 purchase or maintain a life insurance policy or a bond, or to
 129 otherwise secure such alimony award with any other assets which
 130 may be suitable for that purpose. The cost of life insurance or
 131 a bond shall be deducted from the alimony award. Requirements
 132 pursuant to this subsection are separately modifiable pursuant
 133 to s. 61.14, and terminate upon termination of the award of
 134 alimony.

135 (4) For purposes of determining alimony, ~~there is a~~
 136 ~~rebuttable presumption that~~ a short-term marriage is a marriage
 137 having a duration of less than 7 years, a moderate-term marriage
 138 is a marriage having a duration of greater than 7 years but less
 139 than 20 ~~17~~ years, and long-term marriage is a marriage having a
 140 duration of 20 ~~17~~ years or greater. The length of a marriage is

141 the period of time from the date of marriage until the date of
 142 filing of an action for dissolution of marriage.

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

152 (6) (a) Rehabilitative alimony may be awarded to assist a
 153 party in establishing the capacity for self-support through
 154 either:

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

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

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

167 (7) There shall be a presumption in favor of durational
 168 alimony over long-term ~~may be awarded when permanent periodic~~

169 alimony ~~is inappropriate~~. The purpose of durational alimony is
 170 to provide a party with economic assistance for a set period of
 171 time following a marriage of ~~short or~~ moderate duration or
 172 following a marriage of long duration if there is no ongoing
 173 need for support on a long-term ~~permanent~~ basis as provided in
 174 subsection (8). An award of durational alimony terminates upon
 175 the death of either party or upon the remarriage of the party
 176 receiving alimony. The amount of an award of durational alimony
 177 shall ~~may~~ be modified or terminated based upon a substantial
 178 change in circumstances or upon the existence of a supportive
 179 relationship in accordance with s. 61.14. ~~However,~~ The length of
 180 an award of durational alimony may not ~~be modified except under~~
 181 ~~exceptional circumstances and may not~~ exceed the length of the
 182 marriage.

183 (8) Long-term ~~Permanent~~ alimony may be awarded to provide
 184 for the needs and necessities of life ~~as they were established~~
 185 ~~during the marriage of the parties~~ for a party who lacks the
 186 financial ability to meet his or her needs and necessities of
 187 life following a dissolution of marriage. Long-term ~~Permanent~~
 188 alimony may be awarded following a marriage of long duration if
 189 such an award is appropriate upon consideration of the factors
 190 set forth in subsection (2), following a marriage of moderate
 191 duration if such an award is appropriate based upon clear and
 192 convincing evidence after consideration of the factors set forth
 193 in subsection (2), or following a marriage of short duration if
 194 there are written findings of exceptional circumstances. In
 195 awarding long-term ~~permanent~~ alimony, the court shall include a
 196 finding that no other form of alimony will provide for the needs

197 and necessities of life of the recipient ~~is fair and reasonable~~
 198 ~~under the circumstances of the parties.~~ An award of long-term
 199 ~~permanent~~ alimony terminates upon the death of either party, ~~or~~
 200 upon the remarriage of the party receiving alimony, or as
 201 provided in subsection (12). An award shall ~~may~~ be modified or
 202 terminated based upon a substantial change in circumstances or
 203 upon the existence of a supportive relationship in accordance
 204 with s. 61.14.

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

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

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

225 | payments of alimony be made through the appropriate depository
 226 | as provided in s. 61.181.

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

229 | (d)1. If there is a minor child of the parties and both
 230 | parties so request, the court may order that alimony payments
 231 | need not be directed through the depository. In this case, the
 232 | order of support shall provide, or be deemed to provide, that
 233 | either party may subsequently apply to the depository to require
 234 | that payments be made through the depository. The court shall
 235 | provide a copy of the order to the depository.

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

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

247 | Section 3. Paragraph (b) of subsection (1) of section
 248 | 61.14, Florida Statutes, is amended, paragraphs (c) and (d) are
 249 | added to subsection (11), and subsection (12) is added to that
 250 | section, to read:

251 | 61.14 Enforcement and modification of support,
 252 | maintenance, or alimony agreements or orders.—

253 (1)
 254 (b)1. The court must ~~may~~ reduce or terminate an award of
 255 alimony upon specific written findings by the court that since
 256 the granting of a divorce and the award of alimony a supportive
 257 relationship has existed between the obligee and a person with
 258 whom the obligee resides. On the issue of whether alimony should
 259 be reduced or terminated under this paragraph, the burden is on
 260 the obligor to prove by a preponderance of the evidence that a
 261 supportive relationship exists.

262 2. In determining whether an existing award of alimony
 263 should be reduced or terminated because of an alleged supportive
 264 relationship between an obligee and a person who is not related
 265 by consanguinity or affinity and with whom the obligee resides,
 266 the court shall elicit the nature and extent of the relationship
 267 in question. The court shall give consideration, without
 268 limitation, to circumstances, including, but not limited to, the
 269 following, in determining the relationship of an obligee to
 270 another person:

271 a. The extent to which the obligee and the other person
 272 have held themselves out as a married couple by engaging in
 273 conduct such as using the same last name, using a common mailing
 274 address, referring to each other in terms such as "my husband"
 275 or "my wife," or otherwise conducting themselves in a manner
 276 that evidences a permanent supportive relationship.

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

279 c. The extent to which the obligee and the other person
 280 have pooled their assets or income or otherwise exhibited
 281 financial interdependence.

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

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

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

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

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

292 i. Evidence in support of a claim that the obligee and the
 293 other person have an express agreement regarding property
 294 sharing or support.

295 j. Evidence in support of a claim that the obligee and the
 296 other person have an implied agreement regarding property
 297 sharing or support.

298 k. Whether the obligee and the other person have provided
 299 support to the children of one another, regardless of any legal
 300 duty to do so.

301 3. This paragraph does not abrogate the requirement that
 302 every marriage in this state be solemnized under a license, does
 303 not recognize a common law marriage as valid, and does not
 304 recognize a de facto marriage. This paragraph recognizes only
 305 that relationships do exist that provide economic support
 306 equivalent to a marriage and that alimony terminable on

307 remarriage may be reduced or terminated upon the establishment
 308 of equivalent equitable circumstances as described in this
 309 paragraph. The existence of a conjugal relationship, though it
 310 may be relevant to the nature and extent of the relationship, is
 311 not necessary for the application of the provisions of this
 312 paragraph.

313 4. If the obligee denies or fails to admit any material
 314 fact regarding the existence of a supportive relationship in
 315 circumstances where the obligee knew or should have known about
 316 the material fact, and the obligor subsequently proves the
 317 existence of the material fact, the court shall in the form of a
 318 civil judgment:

319 a. Order modification of the alimony award retroactive to
 320 the beginning of the supportive relationship;

321 b. Award to the obligor a refund of all of the alimony the
 322 obligor actually paid to the obligee from the beginning of the
 323 supportive relationship; and

324 c. Award to the obligor reasonable costs and attorneys fees
 325 incurred in proving the fact.

326 5. If the obligee denies the existence of a supportive
 327 relationship, and the obligor subsequently proves the existence
 328 of a supportive relationship, the court shall order termination
 329 of the alimony award retroactive to the beginning of the
 330 supportive relationship; shall award to the obligor a refund of
 331 all of the alimony the obligor actually paid to the obligee from
 332 the beginning of the supportive relationship; and shall award to
 333 the obligor reasonable costs and attorneys fees incurred in

334 proving the existence of the supportive relationship. An award
 335 under this subparagraph shall be a civil judgment.

336 6. A court terminating an alimony award based on the
 337 existence of a supportive relationship may not reserve
 338 jurisdiction to later reinstate alimony.

339 (11)

340 (c) If the obligor remarries or resides with another
 341 person, the income and assets of the obligor's spouse or person
 342 with whom the obligor resides may not be considered in a
 343 modification action regarding such obligor.

344 (d) If the court orders alimony payable concurrent with a
 345 child support order, the alimony award may not be modified
 346 solely because of a later modification or termination of child
 347 support payments.

348 (12) The fact that an obligor has reached the normal
 349 retirement age shall be considered a substantial change in
 350 circumstances as a matter of law. There is a rebuttable
 351 presumption that the normal retirement age for purposes of this
 352 subsection is upon attaining the age of 67 years. In
 353 anticipation of retirement, the obligor may file a petition for
 354 termination or modification of the alimony award effective upon
 355 the retirement date. There is a rebuttable presumption that
 356 alimony terminates upon retirement of the obligor, which may
 357 only be overcome by a written finding of exceptional
 358 circumstances. If this presumption is overcome, the court shall
 359 modify the alimony award based on the circumstances of the
 360 parties after retirement of the obligor and based on the factors
 361 in subsection (2).

362 (13) In any alimony award, the court shall require an
 363 obligee to maximize both his or her reasonable potential for
 364 rehabilitation and reasonable earning capacity, and shall impute
 365 all income to the obligee that could be reasonably earned after
 366 achieving maximum rehabilitation and reasonably increasing
 367 earning capacity. The court shall make written findings of fact
 368 concerning the reasonable potential of the obligee for
 369 rehabilitation and the amount of income that should be imputed
 370 to the obligee.

371 Section 4. Section 61.19, Florida Statutes, is amended to
 372 read:

373 61.19 Entry of judgment of dissolution of marriage, delay
 374 period; bifurcation.-

375 (1) No final judgment of dissolution of marriage may be
 376 entered until at least 20 days have elapsed from the date of
 377 filing the original petition for dissolution of marriage; but
 378 the court, on a showing that injustice would result from this
 379 delay, may enter a final judgment of dissolution of marriage at
 380 an earlier date.

381 (2) If more than 180 days has elapsed since the filing of
 382 an action for dissolution, on the request of either spouse the
 383 court shall enter an order bifurcating the action and, if legal
 384 grounds for dissolution are proved, the court shall enter a
 385 judgment dissolving the marriage and reserving jurisdiction to
 386 determine all issues other than dissolution. It is the intent of
 387 the legislature that the decision in *Claughton v. Claughton*, 393
 388 So.2d 1061 (Fla. 1981) shall not prevent bifurcation or entry of
 389 a final judgment pursuant to this subsection.

PCS for HB 549

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