

1 A bill to be entitled
2 An act relating to family law; amending s. 61.075,
3 F.S.; redefining the term "marital assets and
4 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 requirements relating to the
19 awarding of durational alimony; requiring a court to
20 make certain written findings concerning awards of
21 durational alimony; requiring written findings
22 regarding the incomes and standard of living of the
23 parties after dissolution of marriage; amending s.
24 61.14, F.S.; revising provisions relating to the
25 effect of a supportive relationship on an award of
26 alimony; authorizing a court to award an obligor
27 attorney fees and costs under certain circumstances;
28 requiring a court to impute income to the obligee

29 based on the analysis and factors set forth in
 30 specified provisions; amending s. 61.19, F.S.;
 31 prohibiting the separate adjudication of issues in a
 32 dissolution of marriage case within 180 days after
 33 filing unless a court finds that there are exceptional
 34 circumstances; authorizing the separate adjudication
 35 of issues in a dissolution of marriage case if the
 36 case is more than 180 days past filing; requiring the
 37 separate adjudication of issues of a dissolution of
 38 marriage case, absent a showing of irreparable harm,
 39 if the case is more than 365 days past filing;
 40 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) Durational alimony may be awarded ~~when permanent~~
137 ~~periodic alimony is inappropriate. The purpose of durational~~
138 ~~alimony is~~ to provide a party with economic assistance for a set
139 period of time following a marriage of short or moderate
140 duration or following a marriage of long duration if there is no

141 ongoing need for support on a long-term ~~permanent~~ basis. When
 142 awarding durational alimony, the court must make written
 143 findings that an award of rehabilitative or bridge-the-gap
 144 alimony or a combination thereof is not appropriate. An award of
 145 durational alimony terminates upon the death of either party or
 146 upon the remarriage of the party receiving alimony. The amount
 147 of an award of durational alimony shall ~~may~~ be modified or
 148 terminated based upon a substantial change in circumstances or
 149 upon the existence of a supportive relationship in accordance
 150 with s. 61.14 unless the court makes written findings stating
 151 the exceptional circumstances as to why it should not be
 152 modified or terminated. ~~However,~~ The length of an award of
 153 durational alimony may not ~~be modified except under exceptional~~
 154 ~~circumstances and may not~~ exceed the length of the marriage. If
 155 the court awards durational alimony for a length of time greater
 156 than 50 percent of the length of the marriage, the court must
 157 make written findings stating the circumstances warranting the
 158 length of the award.

159 (9) Notwithstanding any other law to the contrary, an ~~The~~
 160 award of alimony may not leave the payor with ~~significantly~~ less
 161 net income or with a lower standard of living than the ~~net~~
 162 ~~income of the~~ recipient unless there are written findings of
 163 exceptional circumstances. The court shall make written findings
 164 regarding the relative incomes and standards of living citing to
 165 evidence in the record and to this subsection.

166 Section 4. Paragraph (b) of subsection (1) of section
 167 61.14, Florida Statutes, is amended, and subsection (12) is
 168 added to that section, to read:

169 61.14 Enforcement and modification of support,
170 maintenance, or alimony agreements or orders.—

171 (1)

172 (b)1. The court must, except upon a written finding of
173 exceptional circumstances, ~~may~~ reduce or terminate an award of
174 alimony upon specific written findings by the court that since
175 the granting of a divorce and the award of alimony a supportive
176 relationship has existed between the obligee and a person with
177 whom the obligee resides. On the issue of whether alimony should
178 be reduced or terminated under this paragraph, the burden is on
179 the obligor to prove by a preponderance of the evidence that a
180 supportive relationship exists.

181 2. In determining whether an existing award of alimony
182 should be reduced or terminated because of an alleged supportive
183 relationship between an obligee and a person who is not related
184 by consanguinity or affinity and with whom the obligee resides,
185 the court shall elicit the nature and extent of the relationship
186 in question. The court shall give consideration, without
187 limitation, to circumstances~~7~~ including, but not limited to, the
188 following~~7~~ in determining the relationship of an obligee to
189 another person:

190 a. The extent to which the obligee and the other person
191 have held themselves out as a married couple by engaging in
192 conduct such as using the same last name, using a common mailing
193 address, referring to each other in terms such as "my husband"
194 or "my wife," or otherwise conducting themselves in a manner
195 that evidences a permanent supportive relationship.

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

198 c. The extent to which the obligee and the other person
199 have pooled their assets or income or otherwise exhibited
200 financial interdependence.

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

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

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

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

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

211 i. Evidence in support of a claim that the obligee and the
212 other person have an express agreement regarding property
213 sharing or support.

214 j. Evidence in support of a claim that the obligee and the
215 other person have an implied agreement regarding property
216 sharing or support.

217 k. Whether the obligee and the other person have provided
218 support to the children of one another, regardless of any legal
219 duty to do so.

220 3. This paragraph does not abrogate the requirement that
221 every marriage in this state be solemnized under a license, does
222 not recognize a common law marriage as valid, and does not
223 recognize a de facto marriage. This paragraph recognizes only

224 that relationships do exist that provide economic support
 225 equivalent to a marriage and that alimony terminable on
 226 remarriage may be reduced or terminated upon the establishment
 227 of equivalent equitable circumstances as described in this
 228 paragraph. The existence of a conjugal relationship, though it
 229 may be relevant to the nature and extent of the relationship, is
 230 not necessary for the application of ~~the provisions of this~~
 231 paragraph.

232 4. There shall be a rebuttable presumption that any
 233 modification or termination of an alimony award is retroactive
 234 to the date of the filing of the petition. In an action under
 235 this section, if it is determined that the obligee unnecessarily
 236 or unreasonably litigated the underlying petition for
 237 modification or termination, the court may award the obligor his
 238 or her reasonable attorney fees and costs pursuant to s. 61.16
 239 and applicable case law.

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

243 Section 5. Section 61.19, Florida Statutes, is amended to
 244 read:

245 61.19 Entry of judgment of dissolution of marriage; ~~7~~ delay
 246 period; separate adjudication of issues.—

247 (1) A ~~No~~ final judgment of dissolution of marriage may not
 248 be entered until at least 20 days have elapsed from the date of
 249 filing the original petition for dissolution of marriage, ~~7~~ but
 250 the court, on a showing that injustice would result from this
 251 delay, may enter a final judgment of dissolution of marriage at

252 an earlier date.

253 (2) (a) During the first 180 days after the date of service
254 of the original petition for dissolution of marriage, the court
255 may not grant a final dissolution of marriage with a reservation
256 of jurisdiction to subsequently determine all other substantive
257 issues unless the court makes written findings that there are
258 exceptional circumstances which make the use of this process
259 clearly necessary to protect the parties or their children and
260 that granting a final dissolution will not cause irreparable
261 harm to either party or the children. Before granting a final
262 dissolution of marriage with a reservation of jurisdiction to
263 subsequently determine all other substantive issues, the court
264 shall enter appropriate temporary orders necessary to protect
265 the parties and their children, which orders shall remain
266 effective until all other issues can be adjudicated by the
267 court. The desire of one of the parties to remarry does not
268 justify the use of this process.

269 (b) If more than 180 days have elapsed after the date of
270 service of the original petition for dissolution of marriage,
271 the court may grant a final dissolution of marriage with a
272 reservation of jurisdiction to subsequently determine all other
273 substantive issues only if the court enters appropriate
274 temporary orders necessary to protect the parties and their
275 children, which orders shall remain effective until such time as
276 all other issues can be adjudicated by the court, and makes a
277 written finding that no irreparable harm will result from
278 granting a final dissolution.

279 (c) If more than 365 days have elapsed after the date of

280 service of the original petition for dissolution of marriage,
281 absent a showing by either party that irreparable harm will
282 result from granting a final dissolution, the court shall, upon
283 request of either party, immediately grant a final dissolution
284 of marriage with a reservation of jurisdiction to subsequently
285 determine all other substantive issues. Before granting a final
286 dissolution of marriage with a reservation of jurisdiction to
287 subsequently determine all other substantive issues, the court
288 shall enter appropriate temporary orders necessary to protect
289 the parties and their children, which orders shall remain
290 effective until all other issues can be adjudicated by the
291 court.

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

- 296 1. Restrict the sale or disposition of property.
- 297 2. Protect and preserve the marital assets.
- 298 3. Establish temporary support.
- 299 4. Provide for maintenance of health insurance.
- 300 5. Provide for maintenance of life insurance.

301 (e) The court is not required to enter temporary orders to
302 protect the parties and their children if the court enters a
303 final judgment of dissolution of marriage which adjudicates
304 substantially all of the substantive issues between the parties
305 but reserves jurisdiction to address ancillary issues such as
306 the entry of a qualified domestic relations order or the
307 adjudication of attorney fees and costs.

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