

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; changing the term "permanent  
22      alimony" to "long-term alimony"; requiring written  
23      findings regarding the incomes of the parties after  
24      dissolution of marriage; crating a rebuttable  
25      presumption concerning the standard of living after  
26      dissolution of marriage; revising provisions relating  
27      to security of alimony awards; providing for  
28      calculation of duration of marriages of parties

29 | married to each other more than once; requiring  
30 | written findings for certain awards of durational  
31 | alimony; amending s. 61.14, F.S.; revising provisions  
32 | relating to the effect of a supportive relationship on  
33 | an award of alimony; authorizing a court to award an  
34 | obligor attorney fees and costs under certain  
35 | circumstances; providing that the fact that an obligor  
36 | has reached a reasonable retirement age for his or her  
37 | profession, has retired, and has no intent to return  
38 | to work is a substantial change in circumstances as a  
39 | matter of law; requiring a court to impute income to  
40 | the obligee based on the analysis and factors set  
41 | forth in specified provisions; amending s. 61.18,  
42 | F.S.; conforming provisions to changes made by act;  
43 | amending s. 61.19, F.S.; prohibiting the separate  
44 | adjudication of issues in a dissolution of marriage  
45 | case within 180 days after filing unless a court finds  
46 | that there are exceptional circumstances; authorizing  
47 | the separate adjudication of issues in a dissolution  
48 | of marriage case if the case is more than 180 days  
49 | past filing; requiring the separate adjudication of  
50 | issues of a dissolution of marriage case, absent a  
51 | showing of irreparable harm, if the case is more than  
52 | 365 days past filing; providing an effective date.

53 |  
54 | Be It Enacted by the Legislature of the State of Florida:

55 |  
56 | Section 1. Paragraph (a) of subsection (6) and subsection

57 (10) of section 61.075, Florida Statutes, are amended to read:

58 61.075 Equitable distribution of marital assets and  
59 liabilities.—

60 (6) As used in this section:

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

62 a. Assets acquired and liabilities incurred during the  
63 marriage, individually by either spouse or jointly by them.

64 b. The enhancement in value and appreciation of nonmarital  
65 assets resulting either from the efforts of either party during  
66 the marriage or from the contribution to or expenditure thereon  
67 of marital funds or other forms of marital assets, or both.

68 c. The value of the marital portion of the passive  
69 appreciation of nonmarital real property as provided in s.  
70 61.0765(2).

71 d.e. Interspousal gifts during the marriage.

72 e.d. All vested and nonvested benefits, rights, and funds  
73 accrued during the marriage in retirement, pension, profit-  
74 sharing, annuity, deferred compensation, and insurance plans and  
75 programs.

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

82 3. All personal property titled jointly by the parties as  
83 tenants by the entirety, whether acquired before ~~prior to~~ or  
84 during the marriage, shall be presumed to be a marital asset. In

85 | the event a party makes a claim to the contrary, the burden of  
 86 | proof shall be on the party asserting the claim that the subject  
 87 | property, or some portion thereof, is nonmarital.

88 |         4. The burden of proof to overcome the gift presumption  
 89 | shall be by clear and convincing evidence.

90 |         (10) (a) To do equity between the parties, the court may,  
 91 | in lieu of or to supplement, facilitate, or effectuate the  
 92 | equitable division of marital assets and liabilities, order a  
 93 | monetary payment in a lump sum or in installments paid over a  
 94 | fixed period of time.

95 |         (b) If installment payments are ordered, the court may  
 96 | require security and a reasonable rate of interest, or otherwise  
 97 | recognize the time value of money in determining the amount of  
 98 | the installments. If security or interest is required, the court  
 99 | shall make written findings relating to any deferred payments,  
 100 | the amount of any security required, and the interest. This  
 101 | paragraph does not preclude the application of chapter 55,  
 102 | relating to judgments, to any subsequent default.

103 |         Section 2. Section 61.0765, Florida Statutes, is created  
 104 | to read:

105 |         61.0765 Valuation of marital portion of nonmarital real  
 106 | property.—

107 |         (1) (a) The total value of the marital portion of  
 108 | nonmarital real property consists of the sum of the following:

109 |         1. The value of the active appreciation of the property as  
 110 | described in s. 61.075 (6) (a) 1.b.

111 |         2. The amount of the mortgage principal paid from marital  
 112 | funds.

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

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

118 (2) The marital portion of the passive appreciation as  
119 provided in subparagraph (1)(a)3. is calculated by multiplying  
120 the passive appreciation of the property by the marital  
121 fraction.

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

125 1. The gross value of the property on the date of the  
126 marriage or on the date the property was acquired, whichever is  
127 later.

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

130 3. The amount of any additional debts secured by the  
131 property during the marriage.

132 (b) The numerator of the marital fraction consists of the  
133 amount of the mortgage principal paid on any mortgage on the  
134 property from marital funds. The denominator consists of the  
135 value of the property on the date of the marriage, the date of  
136 acquisition of the property, or the date the property was first  
137 encumbered by a mortgage on which principal was paid from  
138 marital funds, whichever is later.

139 (3) The court in a dissolution action must apply the  
140 formulas provided in this section to determine the value of the

141 marital portion of nonmarital real property subject to equitable  
142 dissolution unless a party presents sufficient evidence to  
143 establish that the application of these formulas is not  
144 equitable under the particular circumstances of the case.

145 Section 3. Subsections (1), (2), (3), (4), (7), (8), and  
146 (9) of section 61.08, Florida Statutes, are amended to read:

147 61.08 Alimony.—

148 (1) In a proceeding for dissolution of marriage, the court  
149 may grant alimony to either party, which alimony may be bridge-  
150 the-gap, rehabilitative, durational, or long-term ~~permanent~~ in  
151 nature or any combination of these forms of alimony. In any  
152 award of alimony, the court may order periodic payments or  
153 payments in lump sum or both. The court may consider the  
154 adultery of either spouse and the circumstances thereof in  
155 determining the amount of alimony, if any, to be awarded. In all  
156 dissolution actions, the court shall include findings of fact  
157 relative to the factors enumerated in subsection (2) supporting  
158 an award or denial of alimony. The court shall make written  
159 findings regarding the basis for awarding combinations of  
160 alimony, including the basis for the types and lengths of each  
161 award.

162 (2) In determining whether to award alimony or  
163 maintenance, the court shall first make, in writing, a specific  
164 factual determination as to whether either party has an actual  
165 need for alimony or maintenance and whether either party has the  
166 ability to pay alimony or maintenance. If the court finds that a  
167 party has a need for alimony or maintenance and that the other  
168 party has the ability to pay alimony or maintenance, then in

169 determining the proper type and amount of alimony or maintenance  
170 under subsections (5)-(8), the court shall consider and make  
171 written findings regarding all relevant factors, including, but  
172 not limited to:

173 (a) The standard of living established during the  
174 marriage.

175 (b) The duration of the marriage.

176 (c) The age and the physical and emotional condition of  
177 each party.

178 (d) The financial resources of each party, including the  
179 nonmarital and the marital assets and liabilities distributed to  
180 each.

181 (e) The earning capacities, educational levels, vocational  
182 skills, and employability of the parties and, when applicable,  
183 the time necessary for either party to acquire sufficient  
184 education or training to enable such party to find appropriate  
185 employment.

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

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

191 (h) The tax treatment and consequences to both parties of  
192 any alimony award, including the designation of all or a portion  
193 of the payment as a nontaxable, nondeductible payment.

194 (i) All sources of income available to either party,  
195 including income available to either party through investments  
196 of any asset held by that party.

197           (j) The net income and standard of living available to  
 198 each party after the application of the alimony award. There  
 199 shall be a rebuttable presumption that both parties will  
 200 necessarily have a lower standard of living after the  
 201 dissolution of marriage as compared to the standard of living  
 202 they enjoyed during the marriage.

203           (k) Any other factor necessary to do equity and justice  
 204 between the parties, if that factor is specifically identified  
 205 in the award with findings of fact justifying the application of  
 206 the factor.

207           (3) To the extent necessary to protect an award of  
 208 alimony, the court may order any party who is ordered to pay  
 209 alimony to purchase or maintain a life insurance policy or a  
 210 bond, or to otherwise secure such alimony award with any other  
 211 assets which may be suitable for that purpose in an amount  
 212 adequate to secure the alimony award. Any such security may only  
 213 be awarded upon a showing of special circumstances. If the court  
 214 finds special circumstances and awards such security, the court  
 215 must make specific evidentiary findings regarding the  
 216 availability, cost, and financial impact on the obligated party.  
 217 Any security may be modifiable in the event the underlying  
 218 alimony award is modified and may be reduced in an amount  
 219 commensurate with any reduction in the alimony award.

220           (4) For purposes of determining alimony, ~~there is a~~  
 221 ~~rebuttable presumption that~~ a short-term marriage is a marriage  
 222 having a duration equal to or ~~of~~ less than 7 years, a moderate-  
 223 term marriage is a marriage having a duration of greater than 7  
 224 years but less than 17 years, and long-term marriage is a



225 marriage having a duration of 17 years or greater. The length of  
226 a marriage is the period of time from the date of marriage until  
227 the date of filing of an action for dissolution of marriage. If  
228 the parties have been married to each other more than once, the  
229 court may, for purposes of determining alimony, add the years of  
230 the marriages together to determine the duration of the  
231 marriage.

232 (7) Durational alimony may be awarded when long-term  
233 ~~permanent~~ periodic alimony is inappropriate. The purpose of  
234 durational alimony is to provide a party with economic  
235 assistance for a set period of time following a marriage of  
236 short or moderate duration or following a marriage of long  
237 duration if there is no ongoing need for support on a long-term  
238 ~~permanent~~ basis. An award of durational alimony terminates upon  
239 the death of either party or upon the remarriage of the party  
240 receiving alimony. The amount of an award of durational alimony  
241 may be modified or terminated based upon a substantial change in  
242 circumstances in accordance with s. 61.14. ~~However,~~ The length  
243 of an award of durational alimony may not ~~be modified except~~  
244 ~~under exceptional circumstances and may not~~ exceed the length of  
245 the marriage. If the court awards durational alimony for a  
246 length of time greater than 50 percent of the length of the  
247 marriage, the court must make written findings stating the  
248 circumstances warranting the length of the award.

249 (8) Long-term ~~Permanent~~ alimony may be awarded to provide  
250 for the needs and necessities of life as they were established  
251 during the marriage of the parties for a party who lacks the  
252 financial ability to meet his or her needs and necessities of

253 life following a dissolution of marriage. Long-term ~~Permanent~~  
 254 alimony may be awarded following a marriage of long duration if  
 255 such an award is appropriate upon consideration of the factors  
 256 set forth in subsection (2), following a marriage of moderate  
 257 duration if such an award is appropriate based upon clear and  
 258 convincing evidence after consideration of the factors set forth  
 259 in subsection (2), or following a marriage of short duration if  
 260 there are written findings of exceptional circumstances. In  
 261 awarding long-term ~~permanent~~ alimony, the court shall include a  
 262 finding that no other form of alimony is fair and reasonable  
 263 under the circumstances of the parties. An award of long-term  
 264 ~~permanent~~ alimony terminates upon the death of either party or  
 265 upon the remarriage of the party receiving alimony. An award may  
 266 be modified or terminated based upon a substantial change in  
 267 circumstances or upon the existence of a supportive relationship  
 268 in accordance with s. 61.14.

269 (9) Notwithstanding any other law to the contrary, an ~~The~~  
 270 award of alimony may not leave the payor with ~~significantly~~ less  
 271 net income than the ~~net income of the~~ recipient unless there are  
 272 written findings of exceptional circumstances. The court shall  
 273 make written findings regarding the relative incomes of the  
 274 parties.

275 Section 4. Paragraph (b) of subsection (1) of section  
 276 61.14, Florida Statutes, is amended, and subsections (12) and  
 277 (13) are added to that section, to read:

278 61.14 Enforcement and modification of support,  
 279 maintenance, or alimony agreements or orders.—

280 (1)

281 (b)1. The court may reduce or terminate an award of  
282 alimony upon specific written findings by the court that since  
283 the granting of a divorce and the award of alimony a supportive  
284 relationship has existed between the obligee and a person with  
285 whom the obligee resides. On the issue of whether alimony should  
286 be reduced or terminated under this paragraph, the burden is on  
287 the obligor to prove by a preponderance of the evidence that a  
288 supportive relationship exists.

289 2. In determining whether an existing award of alimony  
290 should be reduced or terminated because of an alleged supportive  
291 relationship between an obligee and a person who is not related  
292 by consanguinity or affinity and with whom the obligee resides,  
293 the court shall elicit the nature and extent of the relationship  
294 in question. The court shall give consideration, without  
295 limitation, to circumstances, including, but not limited to, the  
296 following, in determining the relationship of an obligee to  
297 another person:

298 a. The extent to which the obligee and the other person  
299 have held themselves out as a married couple by engaging in  
300 conduct such as using the same last name, using a common mailing  
301 address, referring to each other in terms such as "my husband"  
302 or "my wife," or otherwise conducting themselves in a manner  
303 that evidences a permanent supportive relationship.

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

306 c. The extent to which the obligee and the other person  
307 have pooled their assets or income or otherwise exhibited  
308 financial interdependence.

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

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

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

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

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

319 i. Evidence in support of a claim that the obligee and the  
 320 other person have an express agreement regarding property  
 321 sharing or support.

322 j. Evidence in support of a claim that the obligee and the  
 323 other person have an implied agreement regarding property  
 324 sharing or support.

325 k. Whether the obligee and the other person have provided  
 326 support to the children of one another, regardless of any legal  
 327 duty to do so.

328 3. This paragraph does not abrogate the requirement that  
 329 every marriage in this state be solemnized under a license, does  
 330 not recognize a common law marriage as valid, and does not  
 331 recognize a de facto marriage. This paragraph recognizes only  
 332 that relationships do exist that provide economic support  
 333 equivalent to a marriage and that alimony terminable on  
 334 remarriage may be reduced or terminated upon the establishment  
 335 of equivalent equitable circumstances as described in this  
 336 paragraph. The existence of a conjugal relationship, though it

337 | may be relevant to the nature and extent of the relationship, is  
338 | not necessary for the application of the provisions of this  
339 | paragraph.

340 | 4. In any action for modification or termination of  
341 | alimony, the court may retroactively modify or terminate the  
342 | alimony award to the date of the filing of the petition. In an  
343 | action under this section, if it is determined that a party  
344 | unnecessarily or unreasonably litigated the underlying petition  
345 | for modification or termination, the court shall award the other  
346 | party his or her reasonable attorney fees and costs.

347 | 5. A court terminating an alimony award based on the  
348 | existence of a supportive relationship may not reserve  
349 | jurisdiction to later reinstate alimony.

350 | (12) The fact that an obligor has reached a reasonable  
351 | retirement age for his or her profession, has retired, and has  
352 | no intent to return to work shall be considered a substantial  
353 | change in circumstances as a matter of law. In determining  
354 | whether the obligor's retirement age is reasonable, the court  
355 | shall consider the obligor's age, health, motivation for  
356 | retirement, type of work, and the normal retirement age for that  
357 | type of work.

358 | (13) Except in cases of long-term marriages, in any  
359 | alimony award, the court shall impute income to the obligee  
360 | based on the analysis and factors set forth in s. 61.30(2)(b).

361 | Section 5. Subsection (1) of section 61.18, Florida  
362 | Statutes, is amended to read:

363 | 61.18 Alimony and child support; default in undertaking of  
364 | bond posted to ensure payment.—

365 (1) ~~If~~ ~~When~~ there is a breach of the condition of any bond  
366 posted to ensure the payment of alimony or child support ~~to~~  
367 ~~either temporary or permanent,~~ ~~for~~ a party or for minor children  
368 of the parties, the court in which the order was issued may  
369 order payment to the party entitled thereto of the principal of  
370 the bond or the part thereof necessary to cure the existing  
371 default without further notice from time to time where the  
372 amount is liquidated.

373 Section 6. Section 61.19, Florida Statutes, is amended to  
374 read:

375 61.19 Entry of judgment of dissolution of marriage; ~~7~~ delay  
376 period; separate adjudication of issues.—

377 (1) A ~~No~~ final judgment of dissolution of marriage may not  
378 be entered until at least 20 days have elapsed from the date of  
379 filing the original petition for dissolution of marriage, ~~7~~ but  
380 the court, on a showing that injustice would result from this  
381 delay, may enter a final judgment of dissolution of marriage at  
382 an earlier date.

383 (2) (a) During the first 180 days after the date of service  
384 of the original petition for dissolution of marriage, the court  
385 may not grant a final dissolution of marriage with a reservation  
386 of jurisdiction to subsequently determine all other substantive  
387 issues unless the court makes written findings that there are  
388 exceptional circumstances which make the use of this process  
389 clearly necessary to protect the parties or their children and  
390 that granting a final dissolution will not cause irreparable  
391 harm to either party or the children. Before granting a final  
392 dissolution of marriage with a reservation of jurisdiction to

393 subsequently determine all other substantive issues, the court  
394 shall enter appropriate temporary orders necessary to protect  
395 the parties and their children, which orders shall remain  
396 effective until all other issues can be adjudicated by the  
397 court. The desire of one of the parties to remarry does not  
398 justify the use of this process.

399 (b) If more than 180 days have elapsed after the date of  
400 service of the original petition for dissolution of marriage,  
401 the court may grant a final dissolution of marriage with a  
402 reservation of jurisdiction to subsequently determine all other  
403 substantive issues only if the court enters appropriate  
404 temporary orders necessary to protect the parties and their  
405 children, which orders shall remain effective until such time as  
406 all other issues can be adjudicated by the court, and makes a  
407 written finding that no irreparable harm will result from  
408 granting a final dissolution.

409 (c) If more than 365 days have elapsed after the date of  
410 service of the original petition for dissolution of marriage,  
411 absent a showing by either party that irreparable harm will  
412 result from granting a final dissolution, the court shall, upon  
413 request of either party, immediately grant a final dissolution  
414 of marriage with a reservation of jurisdiction to subsequently  
415 determine all other substantive issues. Before granting a final  
416 dissolution of marriage with a reservation of jurisdiction to  
417 subsequently determine all other substantive issues, the court  
418 shall enter appropriate temporary orders necessary to protect  
419 the parties and their children, which orders shall remain  
420 effective until all other issues can be adjudicated by the

421 court.

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

- 426 1. Restrict the sale or disposition of property.
- 427 2. Protect and preserve the marital assets.
- 428 3. Establish temporary support.
- 429 4. Provide for maintenance of health insurance.
- 430 5. Provide for maintenance of life insurance.

431 (e) The court is not required to enter temporary orders to  
 432 protect the parties and their children if the court enters a  
 433 final judgment of dissolution of marriage which adjudicates  
 434 substantially all of the substantive issues between the parties  
 435 but reserves jurisdiction to address ancillary issues such as  
 436 the entry of a qualified domestic relations order or the  
 437 adjudication of attorney fees and costs.

438 Section 7. This act shall take effect July 1, 2012.