

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Harrell) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 61.08, Florida Statutes, is amended to
read:

61.08 Alimony.—

(1) As used in this section, the term:

(a) "Alimony" means a court-ordered payment of support made
by one spouse to the other spouse.

(b) "Net income" means net income as determined in
accordance with s. 61.30(3).

(2) (a) ~~(1)~~ In a proceeding for dissolution of marriage, the
court may grant alimony to either party in the form of, ~~which~~

~~alimony may be bridge-the-gap, rehabilitative, or durational alimony, or a permanent in nature or any combination of these forms of alimony, but shall prioritize an award of bridge-the-gap alimony, followed by rehabilitative alimony, over any other form of alimony.~~ In an ~~any~~ award of alimony, the court may order periodic payments, ~~or~~ payments in lump sum, or both.

(b) The court shall make written findings regarding the basis for awarding a combination of forms of alimony, including the type of alimony and the length of time for which it is awarded. The court may award a combination of forms of alimony for only the purpose of providing greater economic assistance to allow the recipient to achieve rehabilitation.

(c) The court may consider the adultery of either party ~~spouse~~ and the circumstances thereof in determining the amount of alimony, if any, to be awarded.

(d) In all dissolution actions, the court shall include written findings of fact relative to the factors enumerated in subsection (3) ~~(2)~~ supporting an award or denial of alimony.

(3)~~(2)~~ The party seeking alimony has the burden of proof of demonstrating a need for alimony in accordance with subsection (8) and that the other party has the ability to pay alimony. In determining whether to award alimony ~~or maintenance~~, the court shall ~~first~~ make, in writing, a specific factual determination as to whether either party has an actual need for, alimony or maintenance and whether either party has the ability to pay, alimony or maintenance. If the court finds that the a party seeking alimony has met the burden of proof in demonstrating a need for alimony or maintenance and that the other party has the ability to pay alimony ~~or maintenance~~, ~~then~~ in determining the proper type and amount of alimony ~~or maintenance~~ under

subsections (5)-(9) ~~(5)-(8)~~, the court shall consider all relevant factors, including, ~~but not limited to:~~

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

(a) ~~(b)~~ The duration of the marriage.

(b) ~~(e)~~ The age and the physical and emotional condition of each party.

(c) ~~(d)~~ The financial resources of each party, including the portion of nonmarital assets which was relied upon by the parties during the marriage and the marital assets and liabilities distributed to each.

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

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

(f) ~~(g)~~ The responsibilities each party will have with regard to any minor children who the parties ~~they~~ have in common.

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

(h) ~~(i)~~ All sources of income available to either party, including income available to either party through investments of any asset held by that party, which were acquired during the marriage or were acquired outside of the marriage and relied upon during the marriage.

(i) The needs and necessities of life for each party after

dissolution of marriage.

(j) The net income and standard of living available to each party after the application of the alimony award. There is a rebuttable presumption that both parties will have a lower standard of living after the dissolution of marriage than the standard of living they enjoyed during the marriage. This presumption may be overcome by a preponderance of the evidence.

(k)-(j) Any other factor necessary to do equity and justice between the parties, if that factor is specifically identified in the award with findings of fact justifying consideration of the factor.

(4)-(3) To the extent necessary to protect an award of alimony, the court may order any party who the court has is ordered to receive pay alimony may to purchase or maintain a life insurance policy on the obligor's life in an amount adequate to secure the alimony award. If the obligee purchases such a life insurance policy, the obligor shall cooperate in the process of procuring the issuance and underwriting of such life insurance policy or a bond, or to otherwise secure such alimony award with any other assets which may be suitable for that purpose.

(4)-For purposes of determining alimony, there is a rebuttable presumption that a short-term marriage is a marriage having a duration of less than 7 years, a moderate-term marriage is a marriage having a duration of greater than 7 years but less than 17 years, and long-term marriage is a marriage having a duration of 17 years or greater. The length of a marriage is the period of time from the date of marriage until the date of filing of an action for dissolution of marriage.

(5) Bridge-the-gap alimony may be awarded to assist a party

by providing support to allow the party to make a transition from being married to being single. Bridge-the-gap alimony is designed to assist a party with legitimate identifiable short-term needs, and the length of an award may not exceed 2 years. An award of bridge-the-gap alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award of bridge-the-gap alimony is ~~shall~~ not be modifiable in amount or duration.

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

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

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

(c) The length of an award of rehabilitative alimony may not exceed 5 years.

(d) ~~(e)~~ An award of rehabilitative alimony may be modified or terminated in accordance with s. 61.14 based upon a substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan if the plan is completed before the length of the award of alimony expires.

(7) Durational alimony may be awarded ~~when permanent periodic alimony is inappropriate. The purpose of durational alimony is~~ to provide a party with economic assistance for a set period of time ~~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.~~ An award of durational alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. The amount of an award of durational alimony must ~~may~~ be modified or terminated based upon a substantial change in circumstances or upon a finding that a supportive relationship has existed between the obligee and another person, in accordance with s. 61.14. ~~However,~~ The length of an award of durational alimony may not ~~be modified except under exceptional circumstances and may not~~ exceed 50 percent of the length of the marriage. For purposes of this subsection, the length of a marriage is the period of time from the date of marriage until the date of filing of an action for dissolution of marriage.

(a) When awarding durational alimony, the court must make written findings that an award of another type of alimony, or a combination of the other forms of alimony, is not appropriate.

(b) The amount of durational alimony shall be the lesser of the obligee's reasonable need or 30 percent of the difference between the party's net incomes. For purposes of determining alimony under this subsection, annual net income is capped at \$300,000 as of July 1, 2019, and that amount shall be adjusted by the court for inflation using the Consumer Price Index for All Urban Consumers published by the United States Department of Labor.

(8) A party may not be ordered to pay alimony if he or she has reached full retirement age or reasonable retirement age in accordance with s. 61.14(12) ~~Permanent alimony may be awarded 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. Permanent alimony may be awarded following a marriage of long duration if such an award is appropriate upon consideration of the factors set forth in subsection (2), following a marriage of moderate duration if such an award is appropriate based upon clear and convincing evidence after consideration of the factors set forth in subsection (2), or following a marriage of short duration if there are written findings of exceptional circumstances. In awarding permanent alimony, the court shall include a finding that no other form of alimony is fair and reasonable under the circumstances of the parties. An award of permanent alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award may be modified or terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship in accordance with s. 61.14.~~

(9) (a) Notwithstanding any other provision of law, 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.

(b) Social security retirement benefits may not be imputed to the obligor, as demonstrated by a social security retirement benefits entitlement letter.

(c) If the obligee alleges that a physical disability has impaired his or her ability to earn the imputed income, the obligee must have qualified for benefits under the Social Security Administration Disability Insurance Program or, in the event the obligee is not eligible for the Social Security Administration Disability Insurance Program, must demonstrate that his or her disability meets the disability qualification

standards of the Social Security Administration Disability Insurance Program ~~The award of alimony may not leave the payor with significantly less net income than the net income of the recipient unless there are written findings of exceptional circumstances.~~

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

(b) With respect to any order requiring the payment of alimony entered before January 1, 1985, upon the subsequent appearance, on or after that date, of one or both parties before the court having jurisdiction for the purpose of modifying or enforcing the order or in any other proceeding related to the order, or upon the application of either party, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall modify the terms of the order as necessary to direct that payments of alimony be made through the appropriate depository as provided in s. 61.181.

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

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

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

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

(11) Alimony awarded under this section shall be reduced by the duration of length and by the amount of any alimony pendente lite or suit money paid pursuant to s. 61.071, and by any voluntary payment or payments made to the obligee after the filing of the petition for a dissolution of marriage.

Section 2. Subsection (1) of section 61.14, Florida Statutes, is amended, paragraphs (c) and (d) are added to subsection (11) of that section, and subsections (12) and (13) are added to that section, to read:

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

(1)(a) When the parties enter into an agreement for payments for, or instead of, support, maintenance, or alimony, whether in connection with a proceeding for dissolution or separate maintenance or with any voluntary property settlement, or when a party is required by court order to make any payments, and the circumstances or the financial ability of either party changes or the child who is a beneficiary of an agreement or

court order as described herein reaches majority after the execution of the agreement or the rendition of the order, either party may apply to the circuit court of the circuit in which the parties, or either of them, resided at the date of the execution of the agreement or reside at the date of the application, or in which the agreement was executed or in which the order was rendered, for an order terminating, decreasing, or increasing the amount of support, maintenance, or alimony, and the court has jurisdiction to make orders as equity requires, with due regard to the changed circumstances or the financial ability of the parties or the child, decreasing, increasing, or confirming the amount of separate support, maintenance, or alimony provided for in the agreement or order. A finding that medical insurance is reasonably available or the child support guidelines schedule in s. 61.30 may constitute changed circumstances. Except as otherwise provided in s. 61.30(11)(c), the court may modify an order of support, maintenance, or alimony by terminating, increasing, or decreasing the support, maintenance, or alimony retroactively to the date of the filing of the action or supplemental action for modification as equity requires, giving due regard to the changed circumstances or the financial ability of the parties or the child.

(b)1. The court may reduce or terminate an award of alimony upon specific written findings by the court that since the granting of a divorce and the award of alimony, a supportive relationship has existed between the obligee and another a person at any time during the 180 days before the filing of a petition for modification of alimony ~~with whom the obligee resides~~. On the issue of whether alimony should be reduced or terminated under this paragraph, the burden is on the obligor to

prove by a preponderance of the evidence that a supportive relationship exists or existed.

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

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

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

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

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

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

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

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

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

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

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

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

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

4. There is a rebuttable presumption that any modification or termination of an alimony award is retroactive to the date of the filing of the petition. In an action under this section, if it is determined that the obligee or obligor unnecessarily or unreasonably litigated the underlying petition for modification or termination, the court may award the other party his or her reasonable attorney fees and costs pursuant to s. 61.16.

(c) For each support order reviewed by the department as required by s. 409.2564(11), if the amount of the child support award under the order differs by at least 10 percent but not less than \$25 from the amount that would be awarded under s. 61.30, the department shall seek to have the order modified and any modification shall be made without a requirement for proof or showing of a change in circumstances.

(d) The department may ~~shall have authority to~~ adopt rules to administer ~~implement~~ this section.

(11)

(c) If the court orders alimony payable concurrent with a child support order, the alimony award may not be modified solely because of a later reduction or termination of child support payments, unless the court finds that the obligor has the ability to pay the modified alimony award, that the existing alimony award as determined by the court at the time of dissolution is insufficient to meet the needs of the obligee, and that such need continues to exist.

(d) An obligor's subsequent remarriage or cohabitation does not constitute a basis for a modification of alimony. The income and assets of the obligor's subsequent spouse or person with whom the obligor resides is not relevant in a modification action.

(12) (a) An alimony obligation terminates when the obligor reaches full retirement age as determined by the United States Social Security Administration or when the obligor retires at an age that is reasonable for the obligor's profession or line of work, whichever is earlier. In determining whether the obligor's retirement age is reasonable, the court shall consider the obligor's age, health, motivation for retirement, and type of

work and the normal retirement age for that type of work.

(b) In anticipation of his or her retirement, the obligor may file a petition for termination of the alimony award effective upon the retirement date. The court shall terminate the alimony award based on the circumstances of the parties after the retirement of the obligor, unless the court finds that the obligor's retirement age is not reasonable.

(13) (a) An alimony obligation shall be reduced by the amount of any social security retirement or disability benefits for which the obligee may be entitled to receive.

(b) The obligor's social security benefits, retirement, and disability benefit payments received by the obligor are exempt from garnishment for alimony enforcement.

Section 3. Section 61.19, Florida Statutes, is amended to read:

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

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

(2) (a) During the first 180 days after the date of service of the original petition for dissolution of marriage, the court may not grant a final dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues unless the court makes written findings that there are exceptional circumstances that make the use of this process clearly necessary to protect the parties or their children and

that granting a final dissolution will not cause irreparable harm to either party or their children. Before granting a final dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues, the court shall 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. The desire of one party to remarry does not justify the use of this process.

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

(c) If more than 365 days have elapsed after the date of service of the original petition for dissolution of marriage, absent a showing by either party that irreparable harm will result from granting a final dissolution, the court shall, upon request of either party, immediately grant a final dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues. Before granting a final dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues, the court shall 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.

(d) The temporary orders necessary to protect the parties

and their children entered before granting a dissolution of marriage without an adjudication of all substantive issues may include, but are not limited to, temporary orders that:

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

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

Section 4. The amendments to chapter 61, Florida Statutes, made by this act apply to:

(1) Final judgments of alimony awards entered before July 1, 2019.

(a) For such judgments or orders, the amendments to chapter 61, Florida Statutes, constitute a substantial change in circumstances for which an obligor, in accordance with s. 61.14, Florida Statutes, may seek a modification of the amount, type, or duration of alimony, except for an order incorporating an agreement of alimony payments which is expressly nonmodifiable.

(2) Final judgments and orders for which the amendments to chapter 61, Florida Statutes, constitute a substantial change in circumstances under subsection (1) may be the subject of a modification action according to the following schedule:

(a) An obligor who is subject to alimony of 17 years or

more may file a modification action on or after July 1, 2020.

(b) An obligor who is subject to alimony of 7 years or more, but less than 17 years, may file a modification action on or after July 1, 2021

(c) An obligor who is subject to alimony of less than 7 years may file a modification action on or after July 1, 2022

Section 5. This act shall take effect July 1, 2019.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to dissolution of marriage; amending s. 61.08, F.S.; defining the terms "alimony" and "net income"; requiring the prioritization of bridge-the-gap alimony, followed by rehabilitative alimony, over any other form of alimony; requiring the court to make written findings regarding the basis for awarding a combination of forms of alimony, including the type of alimony and length of time for which it is awarded; providing that the party seeking alimony has the burden of proof of demonstrating a need for alimony and the other party's ability to pay alimony; revising factors that the court must consider in determining the proper type and amount of alimony; revising provisions relating to the protection of awards of alimony; authorizing a party to whom the court has awarded alimony to purchase or maintain a life insurance policy on the obligor's life under certain

circumstances; requiring cooperation on the part of the obligor in securing such insurance; deleting criteria related to the rebuttable presumption to award or not to award alimony based on duration of the marriage; prohibiting an award of rehabilitative alimony from exceeding a specified period; revising a provision authorizing the modification of rehabilitative alimony after completion of the rehabilitative plan; requiring, rather than authorizing, the amount of an award of durational alimony from being modified or terminated based upon a substantial change in circumstances or certain findings; prohibiting the length of an award of durational alimony from exceeding half of the length of the marriage; requiring a court to make written findings that no other type or types of alimony are appropriate when awarding durational alimony; providing a formula for the calculation of durational alimony; capping annual net incomes at a specified amount, to be adjusted for inflation; providing that a party who has reached retirement age in accordance with specified provisions may not be ordered to pay alimony; deleting provisions authorizing a court to award permanent alimony; establishing that 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; prohibiting social security retirement benefits from being imputed to the obligor; requiring an obligee to meet certain requirements if he or she alleges that a physical disability has impaired his or

her ability to earn the imputed income; requiring a reduction of an alimony award if certain payments were made to the obligee; amending s. 61.14, F.S.; authorizing a party to apply for an order to terminate the amount of support, maintenance, or alimony; authorizing the court to reduce or terminate an award if the court finds that a relationship has existed between the obligee and another person during a certain timeframe; providing that there is a rebuttable presumption that any modification or termination of an alimony award is retroactive to the date of the filing of the petition; providing that if the court orders alimony concurrent with a child support order, the alimony award may not be modified because of the later modification or termination of child support payments; providing that an obligor's subsequent remarriage or cohabitation is not a basis for modification of alimony; requiring that an alimony obligation terminate upon the obligor reaching full retirement age or when the obligor retires at a reasonable age; requiring the court to consider certain factors in determining whether the obligor's retirement age is reasonable; authorizing the obligor to prospectively file a petition for termination of alimony effective upon his or her retirement; requiring a court to terminate an alimony award upon retirement unless the court finds that the obligor's retirement age is not reasonable; requiring that alimony obligations be reduced by the amount of certain benefits that the obligee is entitled to

receive; providing that such benefits are exempt from garnishment for alimony enforcement; amending s. 61.19, F.S.; authorizing separate adjudication of issues in a dissolution of marriage case in certain circumstances; providing for temporary orders necessary to protect the parties and their children; providing for retroactive application of the act; providing an exception; providing allowable dates for the modification of such awards; providing an effective date.