

1                   A bill to be entitled  
2           An act relating to family law; amending s. 61.071,  
3           F.S.; specifying that a court may not use certain  
4           presumptive alimony guidelines in calculating alimony  
5           pendente lite; amending s. 61.08, F.S.; providing  
6           definitions; requiring a court to make specified  
7           findings before ruling on a request for alimony;  
8           providing for determination of presumptive alimony  
9           range and duration range; providing presumptions  
10          concerning alimony awards depending on the duration of  
11          marriages; providing for imputation of income in  
12          certain circumstances; providing for awards of nominal  
13          alimony in certain circumstances; providing for  
14          taxability and deductibility of alimony awards;  
15          specifying that a combined award of alimony and child  
16          support may not constitute more than a specified  
17          percentage of a payor's net income; providing for  
18          termination and payment of awards; amending s. 61.14,  
19          F.S.; providing that a party may pursue an immediate  
20          modification of alimony in certain circumstances;  
21          revising factors to be considered in determining  
22          whether an existing award of alimony should be reduced  
23          or terminated because of an alleged supportive  
24          relationship; providing for burden of proof for claims  
25          concerning the existence of supportive relationships;  
26          providing for the effective date of a reduction or

27 termination of an alimony award; providing that the  
28 remarriage of an alimony obligor is not a substantial  
29 change in circumstance; providing that the financial  
30 information of a spouse of a party paying or receiving  
31 alimony is inadmissible and undiscoverable; providing  
32 an exception; providing for modification or  
33 termination of an award based on a party's retirement;  
34 providing a presumption upon a finding of a  
35 substantial change in circumstance; specifying factors  
36 to be considered in determining whether to modify or  
37 terminate an award based on a substantial change in  
38 circumstance; providing for a temporary suspension of  
39 an obligor's payment of alimony while his or her  
40 petition for modification or termination is pending;  
41 providing for an effective date of a modification or  
42 termination of an award; providing for an award of  
43 attorney fees and costs for unreasonably pursuing or  
44 defending a modification of an award; amending s.  
45 61.30, F.S.; providing that whenever a combined  
46 alimony and child support award constitutes more than  
47 a specified percentage of a payor's net income, the  
48 child support award be adjusted to reduce the combined  
49 total; creating s. 61.192, F.S.; providing for motions  
50 to advance the trial of certain actions if a specified  
51 period has passed since the initial service on the  
52 respondent; providing applicability; providing an

53 effective date.

54

55 Be It Enacted by the Legislature of the State of Florida:

56

57 Section 1. Section 61.071, Florida Statutes, is amended to  
58 read:

59 61.071 Alimony pendente lite; suit money.—In every  
60 proceeding for dissolution of the marriage, a party may claim  
61 alimony and suit money in the petition or by motion, and if the  
62 petition is well founded, the court shall allow a reasonable sum  
63 therefor. If a party in any proceeding for dissolution of  
64 marriage claims alimony or suit money in his or her answer or by  
65 motion, and the answer or motion is well founded, the court  
66 shall allow a reasonable sum therefor. The court may not use the  
67 presumptive alimony guidelines in s. 61.08 to calculate alimony  
68 under this section.

69 Section 2. Section 61.08, Florida Statutes, is amended to  
70 read:

71 61.08 Alimony.—  
72 (Substantial rewording of section. See  
73 s. 61.08, F.S., for present text.)

74 (1) DEFINITIONS.—As used in this section, unless the  
75 context otherwise requires, the term:

76 (a)1. "Gross income" means recurring income from any  
77 source and includes, but is not limited to:

78 a. Income from salaries.

79 b. Wages, including tips declared by the individual for  
 80 purposes of reporting to the Internal Revenue Service or tips  
 81 imputed to bring the employee's gross earnings to the minimum  
 82 wage for the number of hours worked, whichever is greater.

83 c. Commissions.

84 d. Payments received as an independent contractor for  
 85 labor or services, which payments must be considered income from  
 86 self-employment.

87 e. Bonuses.

88 f. Dividends.

89 g. Severance pay.

90 h. Pension payments and retirement benefits actually  
 91 received.

92 i. Royalties.

93 j. Rents.

94 k. Interest.

95 l. Trust income and distributions which are regularly  
 96 received, relied upon, or readily available to the beneficiary.

97 m. Annuity payments.

98 n. Capital gains.

99 o. Any money drawn by a self-employed individual for  
 100 personal use that is deducted as a business expense, which  
 101 moneys must be considered income from self-employment.

102 p. Social security benefits, including social security  
 103 benefits actually received by a party as a result of the  
 104 disability of that party.

- 105        q. Workers' compensation benefits.
- 106        r. Unemployment insurance benefits.
- 107        s. Disability insurance benefits.
- 108        t. Funds payable from any health, accident, disability, or
- 109 casualty insurance to the extent that such insurance replaces
- 110 wages or provides income in lieu of wages.
- 111        u. Continuing monetary gifts.
- 112        v. Income from general partnerships, limited partnerships,
- 113 closely held corporations, or limited liability companies;
- 114 except that if a party is a passive investor, has a minority
- 115 interest in the company, and does not have any managerial duties
- 116 or input, the income to be recognized may be limited to actual
- 117 cash distributions received.
- 118        w. Expense reimbursements or in-kind payments or benefits
- 119 received by a party in the course of employment, self-
- 120 employment, or operation of a business which reduces personal
- 121 living expenses.
- 122        x. Overtime pay.
- 123        2. "Gross income" does not include:
- 124        a. Child support payments received.
- 125        b. Benefits received from public assistance programs.
- 126        c. Social security benefits received by a parent on behalf
- 127 of a minor child as a result of the death or disability of a
- 128 parent or stepparent.
- 129        d. Earnings or gains on retirement accounts, including
- 130 individual retirement accounts; except that such earnings or

131 gains shall be included as income if a party takes a  
132 distribution from the account. If a party is able to take a  
133 distribution from the account without being subject to a federal  
134 tax penalty for early distribution and the party chooses not to  
135 take such a distribution, the court may consider the  
136 distribution that could have been taken in determining the  
137 party's gross income.

138 3.a. For income from self-employment, rent, royalties,  
139 proprietorship of a business, or joint ownership of a  
140 partnership or closely held corporation, the term "gross income"  
141 equals gross receipts minus ordinary and necessary expenses, as  
142 defined in sub-subparagraph b., which are required to produce  
143 such income.

144 b. "Ordinary and necessary expenses," as used in sub-  
145 paragraph a., does not include amounts allowable by the  
146 Internal Revenue Service for the accelerated component of  
147 depreciation expenses or investment tax credits or any other  
148 business expenses determined by the court to be inappropriate  
149 for determining gross income for purposes of calculating  
150 alimony.

151 (b) "Potential income" means income which could be earned  
152 by a party using his or her best efforts and includes potential  
153 income from employment and potential income from the investment  
154 of assets or use of property. Potential income from employment  
155 is the income which a party could reasonably expect to earn by  
156 working at a locally available, full-time job commensurate with

157 his or her education, training, and experience. Potential income  
158 from the investment of assets or use of property is the income  
159 which a party could reasonably expect to earn from the  
160 investment of his or her assets or the use of his or her  
161 property in a financially prudent manner.

162 (c)1. "Underemployed" means a party is not working full-  
163 time in a position which is appropriate, based upon his or her  
164 educational training and experience, and available in the  
165 geographical area of his or her residence.

166 2. A party is not considered "underemployed" if he or she  
167 is enrolled in an educational program that can be reasonably  
168 expected to result in a degree or certification within a  
169 reasonable period and that will result in a higher income, so  
170 long as the educational program is:

171 a. Temporary and is reasonably expected to result in  
172 higher income within the foreseeable future.

173 b. A good faith educational choice based upon the previous  
174 education, training, skills, and experience of the party and the  
175 availability of immediate employment based upon the educational  
176 program being pursued.

177 (d) "Years of marriage" means the number of whole years,  
178 beginning from the date of the parties' marriage until the date  
179 of the filing of the action for dissolution of marriage.

180 (2) INITIAL FINDINGS.—When a party has requested alimony  
181 in a dissolution of marriage proceeding, before granting or  
182 denying an award of alimony, the court shall make initial

183 written findings as to:

184 (a) The amount of each party's monthly gross income,  
 185 including, but not limited to, the actual or potential income,  
 186 and also including actual or potential income from nonmarital or  
 187 marital property distributed to each party.

188 (b) The years of marriage as determined from the date of  
 189 marriage through the date of the filing of the action for  
 190 dissolution of marriage.

191 (3) ALIMONY GUIDELINES.—After making the initial findings  
 192 described in subsection (2), the court shall calculate the  
 193 presumptive alimony amount range and the presumptive alimony  
 194 duration range. The court shall make written findings as to the  
 195 presumptive alimony amount range and presumptive alimony  
 196 duration range.

197 (a) Presumptive alimony amount range.—The low end of the  
 198 presumptive alimony amount range shall be calculated by using  
 199 the following formula:

200  
 201 (0.0125 x the years of marriage) x the difference between  
 202 the monthly gross incomes of the parties

203  
 204 The high end of the presumptive alimony amount range shall be  
 205 calculated by using the following formula:

206  
 207 (0.020 x the years of marriage) x the difference between  
 208 the monthly gross incomes of the parties



209  
210 For purposes of calculating the presumptive alimony amount  
211 range, 20 years of marriage shall be used in calculating the low  
212 end and high end for marriages of 20 years or more. In  
213 calculating the difference between the parties' monthly gross  
214 income, the income of the party seeking alimony shall be  
215 subtracted from the income of the other party. If the  
216 application of the formulas to establish a guideline range  
217 results in a negative number, the presumptive alimony amount  
218 shall be \$0.

219 (b) Presumptive alimony duration range.—The low end of the  
220 presumptive alimony duration range shall be calculated by using  
221 the following formula:

222  
223 0.25 x the years of marriage

224  
225 The high end of the presumptive alimony duration range shall be  
226 calculated by using the following formula:

227  
228 0.75 x the years of marriage

229  
230 (c) If a court establishes the duration of the alimony  
231 award at 50 percent or less of the length of the marriage, then  
232 notwithstanding paragraph (a), the court may use the actual  
233 years of the marriage to calculate the high end of the  
234 presumptive alimony amount range.

235 (4) ALIMONY AWARD.—

236 (a) Marriages of 2 years or less.—For marriages of 2 years  
237 or less, there is a rebuttable presumption that no alimony shall  
238 be awarded. The court may award alimony for a marriage with a  
239 duration of 2 years or less only if the court makes written  
240 findings that there is clear and convincing need for alimony,  
241 there is an ability to pay alimony, and that the failure to  
242 award alimony would be inequitable. The court shall then  
243 establish the alimony award in accordance with paragraph (b).

244 (b) Marriages of more than 2 years.—Absent an agreement of  
245 the parties, alimony shall presumptively be awarded in an amount  
246 within the alimony amount range calculated in paragraph (3)(a).  
247 Absent an agreement of the parties, alimony shall presumptively  
248 be awarded for a duration within the alimony duration range  
249 calculated in paragraph (3)(b). In determining the amount and  
250 duration of the alimony award, the court shall consider all of  
251 the following factors upon which evidence was presented:

252 1. The financial resources of the recipient spouse,  
253 including the actual or potential income from nonmarital or  
254 marital property or any other source and the ability of the  
255 recipient spouse to meet his or her reasonable needs  
256 independently.

257 2. The financial resources of the payor spouse, including  
258 the actual or potential income from nonmarital or marital  
259 property or any other source and the ability of the payor spouse  
260 to meet his or her reasonable needs while paying alimony.

261       3. The standard of living of the parties during the  
262 marriage with consideration that there will be two households to  
263 maintain after the dissolution of the marriage and that neither  
264 party may be able to maintain the same standard of living after  
265 the dissolution of the marriage.

266       4. The equitable distribution of marital property,  
267 including whether an unequal distribution of marital property  
268 was made to reduce or alleviate the need for alimony.

269       5. Both parties' income, employment, and employability,  
270 obtainable through reasonable diligence and additional training  
271 or education, if necessary, and any necessary reduction in  
272 employment due to the needs of an unemancipated child of the  
273 marriage or the circumstances of the parties.

274       6. Whether a party could become better able to support  
275 himself or herself and reduce the need for ongoing alimony by  
276 pursuing additional educational or vocational training along  
277 with all of the details of such educational or vocational plan,  
278 including, but not limited to, the length of time required and  
279 the anticipated costs of such educational or vocational plan.

280       7. Whether one party has historically earned higher or  
281 lower income than the income reflected at the time of trial and  
282 the duration and consistency of income from overtime or  
283 secondary employment.

284       8. Whether either party has foregone or postponed  
285 economic, educational, or employment opportunities during the  
286 course of the marriage.

287 9. Whether either party has caused the unreasonable  
288 depletion or dissipation of marital assets.

289 10. The amount of temporary alimony and the number of  
290 months that temporary alimony was paid to the recipient spouse.

291 11. The age, health, and physical and mental condition of  
292 the parties, including consideration of significant health care  
293 needs or uninsured or unreimbursed health care expenses.

294 12. Significant economic or noneconomic contributions to  
295 the marriage or to the economic, educational, or occupational  
296 advancement of a party, including, but not limited to, services  
297 rendered in homemaking, child care, education, and career  
298 building of the other party, payment by one spouse of the other  
299 spouse's separate debts, or enhancement of the other spouse's  
300 personal or real property.

301 13. The tax consequence of the alimony award.

302 14. Any other factor necessary to do equity and justice  
303 between the parties.

304 (c) Deviation from guidelines.—The court may establish an  
305 award of alimony that is outside either or both of the  
306 presumptive alimony amount and alimony duration ranges only if  
307 the court makes specific written findings that the application  
308 of the presumptive alimony amount and alimony duration ranges is  
309 inappropriate or inequitable after considering all of the  
310 factors in paragraph (b).

311 (d) Order establishing alimony award.—After consideration  
312 of the presumptive alimony amount and duration ranges in

313 accordance with paragraphs (3)(a), (b), and (c) and the factors  
314 upon which evidence was presented in accordance with paragraph  
315 (b), the court may establish an alimony award. An order  
316 establishing an alimony award must clearly set forth both the  
317 amount and the duration of the award. The court shall also make  
318 a written finding that the payor has the financial ability to  
319 pay the award.

320 (5) IMPUTATION OF INCOME.—If a party is voluntarily  
321 unemployed or underemployed, alimony shall be calculated based  
322 on a determination of potential income unless there are  
323 circumstances that make it inequitable to impute income.

324 (6) NOMINAL ALIMONY.—Notwithstanding subsections (1), (3),  
325 and (4), the court may make an award of nominal alimony in the  
326 amount of \$1 per year if, at the time of trial, a party who has  
327 traditionally provided the primary source of financial support  
328 to the family temporarily lacks the ability to pay support but  
329 is reasonably anticipated to have the ability to pay support in  
330 the future. The court may also award nominal alimony for an  
331 alimony recipient that is presently able to work but for whom a  
332 medical condition with a reasonable degree of medical certainty  
333 may inhibit or prevent his or her ability to work during the  
334 duration of the alimony period. The duration of the nominal  
335 alimony shall be established within the presumptive durational  
336 range based upon the length of the marriage subject to the  
337 alimony factors in paragraph (4)(b). Before the expiration of  
338 the durational period, nominal alimony may be modified in

339 accordance with s. 61.14 as to amount to a full alimony award  
340 using the alimony guidelines and factors in accordance with s.  
341 61.08.

342 (7) TAXABILITY AND DEDUCTIBILITY OF ALIMONY.—

343 (a) Unless otherwise stated in the judgment or order for  
344 alimony or in an agreement incorporated thereby, alimony shall  
345 be deductible from income by the payor under s. 215 of the  
346 Internal Revenue Code and includable in the income of the payee  
347 under s. 71 of the Internal Revenue Code.

348 (b) When making a judgment or order for alimony, the court  
349 may, in its discretion, order alimony be nondeductible from  
350 income by the payor and nonincludable in the income of the  
351 payee.

352 (c) The parties may, in a marital settlement agreement,  
353 separation agreement, or related agreement, specifically agree  
354 in writing that alimony be nondeductible from income by the  
355 payor and nonincludable in the income of the payee.

356 (8) MAXIMUM COMBINED AWARD.—In no event shall a combined  
357 award of alimony and child support constitute more than 55  
358 percent of the payor's net income.

359 (9) TERMINATION OF AWARD.—An alimony award shall terminate  
360 upon the death of either party or the remarriage of the obligee.

361 (10) (a) PAYMENT OF AWARD.—With respect to an order  
362 requiring the payment of alimony entered on or after January 1,  
363 1985, unless paragraph (c) or paragraph (d) applies, the court  
364 shall direct in the order that the payments of alimony be made

365 through the appropriate depository as provided in s. 61.181.

366 (b) With respect to an order requiring the payment of  
367 alimony entered before January 1, 1985, upon the subsequent  
368 appearance, on or after that date, of one or both parties before  
369 the court having jurisdiction for the purpose of modifying or  
370 enforcing the order or in any other proceeding related to the  
371 order, or upon the application of either party, unless paragraph  
372 (c) or paragraph (d) applies, the court shall modify the terms  
373 of the order as necessary to direct that payments of alimony be  
374 made through the appropriate depository as provided in s.  
375 61.181.

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

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

385 2. If subparagraph 1. applies, either party may  
386 subsequently file with the depository an affidavit alleging  
387 default or arrearages in payment and stating that the party  
388 wishes to initiate participation in the depository program. The  
389 party shall provide copies of the affidavit to the court and the  
390 other party or parties. Fifteen days after receipt of the

391 affidavit, the depository shall notify all parties that future  
 392 payments shall be directed to the depository.

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

396 Section 3. Subsection (1) of section 61.14, Florida  
 397 Statutes, is amended to read:

398 61.14 Enforcement and modification of support,  
 399 maintenance, or alimony agreements or orders.—

400 (1) (a) When the parties enter into an agreement for  
 401 payments for, or instead of, support, maintenance, or alimony,  
 402 whether in connection with a proceeding for dissolution or  
 403 separate maintenance or with any voluntary property settlement,  
 404 or when a party is required by court order to make any payments,  
 405 and the circumstances or the financial ability of either party  
 406 changes or the child who is a beneficiary of an agreement or  
 407 court order as described herein reaches majority after the  
 408 execution of the agreement or the rendition of the order, either  
 409 party may apply to the circuit court of the circuit in which the  
 410 parties, or either of them, resided at the date of the execution  
 411 of the agreement or reside at the date of the application, or in  
 412 which the agreement was executed or in which the order was  
 413 rendered, for an order decreasing or increasing the amount of  
 414 support, maintenance, or alimony, and the court has jurisdiction  
 415 to make orders as equity requires, with due regard to the  
 416 changed circumstances or the financial ability of the parties or



417 the child, decreasing, increasing, or confirming the amount of  
418 separate support, maintenance, or alimony provided for in the  
419 agreement or order. A party is entitled to pursue an immediate  
420 modification of alimony if the actual income earned by the other  
421 party exceeds the amount imputed to that party at the time the  
422 existing alimony award was determined and such circumstance  
423 shall constitute a substantial change in circumstances  
424 sufficient to support a modification of alimony. However, an  
425 increase in an alimony obligor's income does not constitute a  
426 basis for a modification to increase alimony unless at the time  
427 the alimony award was established it was determined that the  
428 obligor was underemployed or unemployed and the court did not  
429 impute income to that party at his or her maximum potential  
430 income. If an alimony obligor becomes involuntarily  
431 underemployed or unemployed for a period of 6 months following  
432 the entry of the last order requiring the payment of alimony,  
433 the obligor is entitled to an immediate modification of his or  
434 her existing alimony obligations and such circumstance shall  
435 constitute a substantial change in circumstance sufficient to  
436 support a modification of alimony. A finding that medical  
437 insurance is reasonably available or the child support  
438 guidelines schedule in s. 61.30 may constitute changed  
439 circumstances. Except as otherwise provided in s. 61.30(11)(c),  
440 the court may modify an order of support, maintenance, or  
441 alimony by increasing or decreasing the support, maintenance, or  
442 alimony retroactively to the date of the filing of the action or

HB 943

2015

443 supplemental action for modification as equity requires, giving  
444 due regard to the changed circumstances or the financial ability  
445 of the parties or the child.

446 (b)1. The court may reduce or terminate an award of  
447 alimony upon specific written findings by the court that since  
448 the granting of a divorce and the award of alimony a supportive  
449 relationship exists or has existed within the previous year  
450 before the date of the filing of the petition for modification  
451 or termination between the obligee and another a person with  
452 ~~whom the obligee resides. On the issue of whether alimony should~~  
453 ~~be reduced or terminated under this paragraph, the burden is on~~  
454 ~~the obligor to prove by a preponderance of the evidence that a~~  
455 ~~supportive relationship exists.~~

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

465 a. The extent to which the obligee and the other person  
466 have held themselves out as a married couple by engaging in  
467 conduct such as using the same last name, using a common mailing  
468 address, referring to each other in terms such as "my spouse"

469 ~~"my husband" or "my wife,"~~ or otherwise conducting themselves in  
 470 a manner that evidences a permanent supportive relationship.

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

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

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

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

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

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

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

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

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

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

495 1. Whether the obligor's failure, in whole or in part, to  
496 comply with all court-ordered financial obligations to the  
497 obligee constituted a significant factor in the establishment of  
498 the supportive relationship.

499 m. The need and extent to which an obligee provides  
500 caretaking assistance to a person related by consanguinity with  
501 whom the obligee resides, or receives caretaking assistance from  
502 that person.

503 3. In any proceeding to modify an alimony award based upon  
504 a supportive relationship, the obligor has the burden of proof  
505 to establish, by a preponderance of the evidence, that a  
506 supportive relationship exists or has existed within the  
507 previous year before the date of the filing of the petition for  
508 modification or termination. Once the supportive relationship is  
509 demonstrated by a preponderance of the evidence, the burden of  
510 proof is on the obligee to disprove the supportive nature of the  
511 relationship. The obligor is not required to prove cohabitation  
512 of the obligee and the third party.

513 4. Notwithstanding paragraph (f), if a reduction or  
514 termination is granted under this paragraph, the reduction or  
515 termination is retroactive to the date of filing of the petition  
516 for reduction or termination.

517 5.3. This paragraph does not abrogate the requirement that  
518 every marriage in this state be solemnized under a license, does  
519 not recognize a common law marriage as valid, and does not  
520 recognize a de facto marriage. This paragraph recognizes only

521 that relationships do exist that provide economic support  
522 equivalent to a marriage and that alimony terminable on  
523 remarriage may be reduced or terminated upon the establishment  
524 of equivalent equitable circumstances as described in this  
525 paragraph. The existence of a conjugal relationship, though it  
526 may be relevant to the nature and extent of the relationship, is  
527 not necessary for the application of the provisions of this  
528 paragraph.

529 (c)1. For purposes of this section, the remarriage of an  
530 alimony obligor does not constitute a substantial change in  
531 circumstance or a basis for a modification of alimony.

532 2. The financial information, including, but not limited  
533 to, information related to assets and income, of a subsequent  
534 spouse of a party paying or receiving alimony is inadmissible  
535 and may not be considered as a part of any modification action  
536 unless a party is claiming that his or her income has decreased  
537 since the marriage. If a party makes such a claim, the financial  
538 information of the subsequent spouse is discoverable and  
539 admissible only to the extent necessary to establish whether the  
540 party claiming that his or her income has decreased is diverting  
541 income or assets to the subsequent spouse that might otherwise  
542 be available for the payment of alimony. However, this  
543 subparagraph may not be used to prevent the discovery of or  
544 admissibility in evidence of the income or assets of a party  
545 when those assets are held jointly with a subsequent spouse.  
546 This subparagraph is not intended to prohibit the discovery or

547 admissibility of a joint tax return filed by a party and his or  
548 her subsequent spouse in connection with a modification of  
549 alimony.

550 (d)1. An obligor may file a petition for modification or  
551 termination of an alimony award based upon his or her actual  
552 retirement.

553 a. A substantial change in circumstance is deemed to exist  
554 if:

555 (I) The obligor has reached the age for eligibility to  
556 receive full retirement benefits under s. 216 of the Social  
557 Security Act, 42 U.S.C. s. 416 and has retired; or

558 (II) The obligor has reached the customary retirement age  
559 for his or her occupation and has retired from that occupation.

560 b. If an obligor voluntarily retires before reaching any  
561 of the ages described in sub-subparagraph a., the court shall  
562 determine whether the obligor's retirement is reasonable upon  
563 consideration of the obligor's age, health, and motivation for  
564 retirement and the financial impact on the obligee. A finding of  
565 reasonableness by the court shall constitute a substantial  
566 change in circumstance.

567 2. Upon a finding of a substantial change in circumstance,  
568 there is a rebuttable presumption that an obligor's existing  
569 alimony obligation shall be modified or terminated. The court  
570 shall modify or terminate the alimony obligation, or make a  
571 determination regarding whether the rebuttable presumption has  
572 been overcome, based upon the following factors applied to the

573 current circumstances of the obligor and obligee:

574 a. The age of the parties.

575 b. The health of the parties.

576 c. The assets and liabilities of the parties.

577 d. The earned or imputed income of the parties as provided

578 in s. 61.08(1)(a) and (5).

579 e. The ability of the parties to maintain part-time or

580 full-time employment.

581 f. Any other factor deemed relevant by the court.

582 3. The court shall temporarily suspend the obligor's

583 payment of alimony while his or her petition for modification or

584 termination under this paragraph is pending.

585 (e) A party who unreasonably pursues or defends an action

586 for modification of alimony shall be required to pay the

587 reasonable attorney fees and costs of the prevailing party.

588 Further, a party obligated to pay prevailing party attorney fees

589 and costs in connection with unreasonably pursuing or defending

590 an action for modification is not entitled to an award of

591 attorney fees and cost in accordance with s. 61.16.

592 (f) There is a rebuttable presumption that a modification

593 or termination of an alimony award is retroactive to the date of

594 the filing of the petition, unless the obligee demonstrates that

595 the result is inequitable.

596 (g)-(e) For each support order reviewed by the department

597 as required by s. 409.2564(11), if the amount of the child

598 support award under the order differs by at least 10 percent but

HB 943

2015

599 not less than \$25 from the amount that would be awarded under s.  
 600 61.30, the department shall seek to have the order modified and  
 601 any modification shall be made without a requirement for proof  
 602 or showing of a change in circumstances.

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

605 Section 4. Paragraph (d) is added to subsection (11) of  
 606 section 61.30, Florida Statutes, to read:

607 61.30 Child support guidelines; retroactive child  
 608 support.—

609 (11)

610 (d) Whenever a combined alimony and child support award  
 611 constitutes more than 55 percent of the payor's net income, the  
 612 court shall adjust the award of child support to ensure that the  
 613 55 percent cap is not exceeded.

614 Section 5. Section 61.192, Florida Statutes, is created to  
 615 read:

616 61.192 Advancing trial.—In an action brought pursuant to  
 617 this chapter, if more than 2 years have passed since the initial  
 618 petition was served on the respondent, either party may move the  
 619 court to advance the trial of their action on the docket. This  
 620 motion may be made at any time after 2 years have passed since  
 621 the petition was served, and once made the court must give the  
 622 case priority on the court's calendar.

623 Section 6. The amendments made by this act to chapter 61,  
 624 Florida Statutes, with the exception of amendments relating to



HB 943

2015

625 the calculation of the duration of an alimony award, apply to  
626 all alimony modification petitions pending as of the effective  
627 date of this act and to all alimony modification petitions filed  
628 on or after the effective date of this act. The changes to the  
629 law made by this act do not constitute a substantial change in  
630 circumstances and may not serve as the sole basis to seek a  
631 modification of an alimony award made before the effective date  
632 of this act.

633 Section 7. This act shall take effect October 1, 2015.