1988

Session Law 88-098

Florida Senate & House of Representatives

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**Committee Records**

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**Senate/House Journals**

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**Committee/Floor Tapes**

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**NOTES**

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|     |          | 1981 | SB 654                               | 18/1292  |
|     |          | 1980 | SB 211                               | 18/327   |</p>
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responsible for implementation and oversight of such facility's risk management programs. Risk managers shall not be responsible for risk management programs in more than four such facilities. Regarding facilities licensed under chapter 390, each such facility shall designate one or more individuals as the "risk managers" for the purpose of this section.

Section 4. Notwithstanding the provisions of the Regulatory Sunset Act or of any other provision of law which provides for review and repeal in accordance with s. 11.61, Florida Statutes, subsection (2) of section 390.011, Florida Statutes, and sections 390.012, 390.013, 390.014, 390.015, 390.016, 390.017, 390.018, 390.019, 390.021, Florida Statutes, shall not stand repealed on October 1, 1988, and shall continue in full force and effect as amended herein.

Section 5. Subsection (2) of section 390.011, Florida Statutes, and sections 390.012, 390.013, 390.014, 390.015, 390.016, 390.017, 390.018, 390.019, and 390.021, Florida Statutes, are amended, and section 390.001, Florida Statutes, is added to subsection (10) of said section, to read:

390.001 Termination of pregnancies.--

(4) CONSENTS REQUIRED.--Prior to terminating a pregnancy, the physician shall obtain the written informed consent of the pregnant woman or, in the case of a mental incompetent, the written consent of her court-appointed guardian.

(a) If the pregnant woman is under 18 years of age and unmarried, in addition to her written request, the physician shall obtain the written informed consent of a parent, custodian, or legal guardian of such unmarried minor, or the physician may rely on an order of the circuit court, on petition of the pregnant unmarried minor or another person on her behalf, authorizing, for good cause shown, such termination of pregnancy without the written consent of her parent, custodian, or legal guardian. The cause may be based on a showing that the minor is sufficiently mature to give an informed consent to the procedure, or based on the fact that a parent, custodian, or legal guardian unreasonably withheld consent by her parent, custodian, or legal guardian, or based on the minor's fear of physical or emotional abuse if her parent, custodian, or legal guardian were requested to consent, or based upon any other good cause shown. At its discretion, the court may enter its order ex parte. If the court determines that the minor is sufficiently mature to give an informed consent to the procedure, the court shall issue an order authorizing the procedure without the consent of her parent, custodian, or legal guardian. If the court determines that the minor is not sufficiently mature, the court shall determine the best interest of the minor and enter its order in accordance with such determination.

2. The court shall ensure that a minor who files a petition pursuant to this paragraph will remain anonymous. The minor may participate in proceedings in the court on her own or through another person on her behalf. Court proceedings brought pursuant to this paragraph are confidential a necessary
In a proceeding for dissolution of marriage, in addition to all other remedies available to a court to do equity between the parties, or in a proceeding for disposition of assets following a dissolution of marriage by a court which lacked jurisdiction over the absent spouse or lacked jurisdiction to dispose of the assets, the court shall set apart to each spouse that spouse's nonmarital assets and liabilities and shall distribute between the parties the marital assets and liabilities in such proportions as are equitable, after considering all relevant factors, including:

(a) The contribution to the marriage by each spouse, including contributions to the care and education of the children and services as homemaker.

(b) The economic circumstances of the parties.

(c) The duration of the marriage.

(d) Any interruption of personal careers or educational opportunities of either party.

(e) The contribution of one spouse to the personal career or educational opportunity of the other spouse.

(f) The desirability of retaining any asset, including an interest in a business, corporation, or professional practice, intact and free from any claim or interference by the other party.

(g) The contribution of each spouse to the acquisition, enhancement in value and appreciation of nonmarital assets or other forms of marital assets, or both;

(h) Any other factors necessary to do equity and justice between the parties.

(2) The judgment distributing assets shall have the effect of a duly executed instrument of conveyance, transfer, release, or acquisition which is recorded in the county where the property is located when the judgment, or a certified copy of the judgment, is recorded in the official records of the county in which the property is located.

(3) As used in this section:

(a) "Marital assets and liabilities" include:

1. Assets acquired and liabilities incurred during the marriage, individually by either spouse or jointly by them;

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

3. Interspousal gifts during the marriage;

4. All vested and nonvested benefits, rights, and funds accrued during the marriage in retirement, pension, profit-sharing, annuity, deferred compensation, and insurance plans and programs; and

5. All real property held by the parties as tenants by the entirety, whether acquired prior to or during the marriage, shall be presumed to be a marital asset. If, in any case, a party makes a claim to the contrary, the burden of proof shall be on the party asserting the claim for a special equity.

(b) "Nonmarital assets and liabilities" include:

1. Assets acquired and liabilities incurred by either party prior to the marriage and assets acquired and liabilities incurred in exchange for such assets and liabilities;

2. Assets acquired separately by either party by noninterspousal gift, bequest, devise, or descent and assets acquired in exchange for such assets;

3. All income derived from nonmarital assets during the marriage unless the income was treated, used, or relied upon by the parties as a marital asset; and

4. Assets and liabilities excluded from marital assets and liabilities by valid written agreement of the parties and assets acquired and liabilities incurred in exchange for such assets and liabilities.

(4) The date for determining marital assets and liabilities and the value of such assets and the amount of such liabilities is the earliest of the date the parties enter into a valid separation agreement, such other date as may be expressly established by such agreement or the date of the filing of a petition for dissolution of marriage, unless the trial judge determines another date is just and equitable under the circumstances.

(5) All assets acquired and liabilities incurred by either spouse subsequent to the date of the marriage and not specifically established as nonmarital assets or liabilities are presumed to be marital assets and liabilities. Such presumption is overcome by a showing that the assets and liabilities are nonmarital assets and liabilities. The presumption is only for evidentiary purposes in the dissolution proceeding and does not vest title. Title to disputed assets shall vest only by the judgment of a court. This section does not require the joinder of spouses in the conveyance, transfer, or hypothecation of a spouse's individual property; affect the laws of descent and distribution; or establish community property in this state.

(6) The court may provide for equitable distribution of the marital assets and liabilities without regard to alimony for either party. After the determination of an equitable distribution of the marital assets and liabilities, the court shall consider whether a judgment for alimony shall be made.

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

Section 2. Subsections (1) and (2) of section 61.08, Florida Statutes, are amended to read:

61.08 Alimony.--
CHAPTER 88-98  LAWS OF FLORIDA  CHAPTER 88-98

(1) In a proceeding for dissolution of marriage, the court may grant alimony to either party, which alimony may be rehabilitative or permanent in nature. In any award of alimony, the court may order periodic payments or payments in lump sum or both. The court may consider the adultery of either a spouse and the circumstances thereof in determining whether alimony will be awarded to such spouse and the amount of alimony, if any, to be awarded.

(2) In determining a proper award of alimony or maintenance, the court shall consider all relevant economic factors, including but not limited to:

(a) The standard of living established during the marriage.
(b) The duration of the marriage.
(c) The age and the physical and emotional condition of each party.
(d) The financial resources of each party and the marital assets and liabilities distributed to each.
(e) When applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.
(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.

The court may consider any other factor necessary to do equity and justice between the parties.

Section 3. Distribution of retirement plans upon dissolution of marriage.

(1) All vested and nonvested benefits, rights, and funds accrued during the marriage in retirement, pension, profit-sharing, annuity, deferred compensation, and insurance plans and programs are marital assets subject to equitable distribution.

(2) If the parties were married for at least 10 years, during which at least one of the parties who was a member of the federal uniformed services performed at least 10 years of creditable service, and if the division of marital property includes a division of uniformed services retired or retainer pay, the final judgment shall include the following:

(a) Sufficient information to identify the member of the uniformed services;
(b) Certification that the Soldiers' and Sailors' Civil Relief Act of 1940 was observed if the decree was issued while the member was on active duty and was not represented in court;
(c) A specification of the amount of retired or retainer pay to be distributed pursuant to the order, expressed in dollars or as a percentage of the disposable retired or retainer pay;
BILL VOTE SHEET

FILE WITH SECRETARY OF SENATE

COMMITTEE ON: Judiciary-Civil

BILL NO. SB 152

DATE: April 6, 1988
TIME: 2:00 to 5:00 P.M.
PLACE: Committee Room B

ACTION: Favorably with 2 amendments

OTHER COMMITTEE REFERENCES:
None

THE VOTE WAS:

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Please Complete: The Key sponsor appeared ( )
A Senator appeared ( )
Sponsor's aide appeared ( )
Other appearance ( X )
SENATE COMMITTEE AMENDMENT

SB 152

HB ___

The Committee on...Judiciary-Civil....recommended the following amendment which was moved by Senator...............and adopted:

and failed:Series Carton ❏

Senate Amendment

On page 5........, line 14........, strike
the word "periodic."

If amendment is text from another bill insert:

Bill No. Draft No. With Changes? Yes

CODING: Words striken are deletions; words underlined are additions.

* Amendment No. 1, taken up by committee: 4-6-88 Adopted x *
* Offered by Senator Frank Failed ❏ *

(Amendment No. ___ Adopted ___ Failed ___ Date ___/__/_)
SENATE COMMITTEE AMENDMENT
SB 152
HB ___

No. __1_ (reported favorably)

The Committee on...Judiciary-Civil....recommended the following
amendment which was moved by Senator...............and adopted:
and failed:

Senate Amendment

On page 5..........., line 14........, strike
the word "periodic,"

If amendment is text from another bill insert:

Bill No. _______ Draft No. _______ With Changes? Yes

CODING: Words stricken are deletions; words underlined are additions.

* Amendment No. __1_, taken up by committee: 4-6-88 Adopted x *
* Offered by Senator Frank Failed _

(Amendment No. ____ Adopted ___ Failed ___ Date __/__/__)
The Committee on...Judiciary-Civil....recommended the following amendment which was moved by Senator..............and adopted: and failed:

Senate Amendment

In title, on page 1........, line 16........, strike
All of said line

If amendment is text from another bill insert:

Bill No. Draft No. With Changes? Yes

CODING: Words stricken are deletions; words underlined are additions.

* Amendment No. 2, taken up by committee: 4/6/88 Adopted x *
* Offered by Senator Frank Failed *

(Amendment No. ___ Adopted ___ Failed ___ Date __/__/__)}
MEMORANDUM

TO: The File

FROM: Kevin Wiehle

SUBJECT: The Military Pension Amendment

DATE: September 13, 1988

A Las Vegas attorney, Mr. Marshell Willick, phone number (702) 384-3440, called today. He said that he specializes in divorce cases that involve the division of military pensions and that he is one of approximately a dozen experts on this subject in the country. Mr. Willick also said that he is working with several state legislatures in an attempt to pass a model act which he drafted. He is working toward having his model act become a uniform law.

Due to these nationwide activities, Willick has contacts with people who work with this subject across the country. One of his Florida contacts sent him a copy of SB 152, chapter law 88-98, and, apparently, my staff analysis. After studying this information, he says there is a potential problem with the bill as passed.

The potential problem concerns section 3 of the bill, which provides for distribution of retirement plans upon dissolution of marriage. This section was amended onto the bill by the House. It comes from HB 309, the companion bill to SB 228, Senator Ros-Lehtinen's bill on military pensions. The language that could cause problems is in (2)(c), tentatively s. 61.076(2)(c), which states that the judgment must include "... a specification of the amount of retired or retainer pay to be distributed pursuant to the order, expressed in dollars or as a percentage of the disposable retired or retainer pay."

The problem with this, according to Willick, is that "disposable retired or retainer pay" is largely controlled by the retiree. The retiree is to receive a certain amount as gross retirement pay. From this amount, however, he can
direct the administrator of the retirement program to make
direct payments on his debts. The remainder is his
disposable retirement pay. A retiree who has a judgment
entered against him ordering that his ex-wife get x% of his
disposable retired pay could direct that his debts be paid
from his gross retirement pay and leave his wife with x% of
a much smaller amount than was probably intended.

Willick also questioned how the language in newly
created s. 61.075(1), F.S., would be applied and
interpreted. His concern was with the language "in a
proceeding for dissolution of marriage ... or in a
proceeding for disposition of assets following a dissolution
of marriage by a court which ... lacked jurisdiction to
dispose of the assets...". I didn't fully understand what he
was trying to say about this. It might be related to the
concerns I had with the question of precisely when the
Florida courts had determined that pensions were
distributable in divorce actions. He said something to the
effect that if the courts hadn't made such a determination,
they lacked jurisdiction to dispose of the assets. He might
also have a broader concern in that any court in any state
which hadn't made such a determination would lack such
jurisdiction. I also don't know what resulting problem he
was worried about. The most likely problem would be re-
opening of these cases. However, he was not clear.
The Committee on Transportation recommended the following amendment which was moved by Senator Deratany and adopted:

**Amendment 1**—On page 1, strike all of lines 17 and 18 and insert: 316.2065(12), and violations of chapter 316 by persons under 14 years of age and who are operating bicycles.

On motion by Senator Deratany, by two-thirds vote SB 264 as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

**Yeas—38**

Mr President  Girardeau  Kirkpatrick  Ros-Lehtinen
Beard  Gordon  Kiser  Scott
Brown  Grant  Langley  Stuart
Childers, D.  Hzzle  Lehtinen  Thomas
Childers, W. D.  Hair  Margolis  Thurman
Crawford  Hill  McPherson  Weinsten
Crenshaw  Hollingsworth  Meek  Weinstock
Deratany  Jenne  Myers  Woodson
Dudley  Jennings  Peterson  Woodson
Frank  Johnson  Plummer

Nays—None

**SB 84**—A bill to be entitled An act relating to public food service establishments; amending s 509.214, F.S., requiring customer notification when automatic gratuity charges are imposed at such establishments; providing an effective date

—was read the second time by title On motion by Senator Kiser, by two-thirds vote SB 84 was read the third time by title, passed and certified to the House. The vote on passage was:

**Yeas—36**

Beard  Gordon  Kirkpatrick  Plummer
Brown  Grant  Kiser  Ros-Lehtinen
Childers, D  Grizzle  Langley  Scott
Childers, W. D.  Hair  Lehtinen  Stuart
Crawford  Hill  Margolis  Thomas
Crenshaw  Hollingsworth  McPherson  Thurman
Dudley  Jenne  Meek  Weinsten
Frank  Jennings  Myers  Weinstock
Girardeau  Johnson  Peterson  Woodson

Nays—None

Vote after roll call:

**Yea—Deratany**

**Explanation of Vote**

Any limitation on free speech which does not meet the Supreme Court test of obscenity is a violation of the first amendment. I do not wish to be recorded in opposition to our constitutional right of free speech.

Jack D. Gordon, 35th District

**Consideration of SB 36 was deferred.**

**SB 152**—A bill to be entitled An act relating to dissolution of marriage, creating s. 61.075, F.S., authorizing courts to equitably distribute marital assets and liabilities and prescribing factors for the court to consider in making such distributions; defining marital and nonmarital assets and liabilities, providing for the effect of a recorded judgment; establishing the date for determining marital assets and liabilities and the value thereof, providing a presumption as to marital assets and liabilities; providing for monetary payments in lump sum or installments; providing for the consideration of an alimony award; amending s. 61.98, F.S.; authorizing the award of periodic alimony; providing that the court may consider the adultery of either spouse in determining the amount of alimony to award, adding marital assets and liabilities as factors in the determination of an award of alimony or maintenance; providing an effective date.

—was read the second time by title

The Committee on Judiciary-Civil recommended the following amendment which was moved by Senator Langley and adopted.

**Amendment 1**—On page 5, line 5, after the semicolon (;) insert: creating s. 847.002, F.S., prohibiting persons who own or operate a motor vehicle from affixing to such vehicle any sticker, decal, emblem, or other device containing certain obscene descriptions, photographs or depictions; providing a penalty.

On motion by Senator Johnson, by two-thirds vote SB 331 as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

**Yeas—35**

Mr President  Girardeau  Kirkpatrick  Plummer
Beard  Grant  Kiser  Ros-Lehtinen
Brown  Grizzle  Langley  Scott
Childers, D  Hair  Lehtinen  Stuart
Childers, W. D.  Hill  Margolis  Thomas
Crawford  Hollingsworth  McPherson  Thurman
Crenshaw  Jenne  Meek  Weinsten
Dudley  Jennings  Myers  Woodson
Frank  Johnson  Peterson  Woodson

Nays—1

Gordon

Vote after roll call:

**Yea—Deratany, Weinstein**
(2) If the parties were married for at least 10 years, during which at least one of the parties who was a member of the federal uniformed services performed at least 10 years of creditable service, and if the division of marital property includes a division of uniformed services retired or retainer pay, the final judgment shall include the following:

(a) Sufficient information to identify the member of the uniformed services;

(b) Certification that the Soldiers’ and Sailors’ Civil Relief Act of 1940 was observed if the decree was issued while the member was on active duty and was not represented in court,

(c) A specification of the amount of retired or retainer pay to be distributed pursuant to the order, expressed in dollars or as a percentage of the disposable retired or retainer pay;

(3) An order which provides for distribution of retired or retainer pay from the federal uniformed services shall not provide for payment from this source more frequently than monthly and shall not require the payor to vary normal pay and disbursement cycles for retired or retainer pay in order to comply with the order.

(Renumber subsequent sections.)

Amendment 3—In title, on page 1, line 22, after the semicolon (;) insert: providing that certain sources of income are marital property; providing that certain information must be included in final judgments of dissolution of marriage if funds are to come from retired or retainer pay of the federal uniformed services,

The Committee on Judiciary-Civil recommended the following amendment which was moved by Senator Langley and adopted.

Amendment 4—in title, on page 1, strike line 16

On motion by Senator Langley, by two-thirds vote SB 152 as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—36

Beard  Girardeau  Kirkpatrick  Plummer
Brown  Grant  Kiser  Ros-Lehtinen
Childers, D  Grizzle  Langley  Scott
Childers, W. D  Hair  Lehtinen  Stuart
Crawford  Hill  Margolis  Thomas
Crenshaw  Hollingsworth  McPherson  Thurman
Derany  Jenne  Meek  Weinstock
Dudley  Jennings  Myers  Weinstock
Frank  Johnson  Peterson  Woodson

Nays—1

Gordon

CS for SB 54—A bill to be entitled An act relating to condominiums, amending s. 718.115, F.S., providing for additional expense items to be treated as common expenses; providing an effective date—was read the second time by title. On motion by Senator Weinstock, by two-thirds vote CS for SB 54 was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—34

Beard  Grant  Langley  Scott
Brown  Hair  Lehtinen  Stuart
Childers, D  Hill  Margolis  Thomas
Childers, W D  Hollingsworth  McPherson  Thurman
Crenshaw  Jenne  Meek  Weinstock
Derany  Jennings  Myers  Weinstock
Dudley  Johnson  Peterson  Woodson
Frank  Kirkpatrick  Plummer
Gordon  Kiser  Ros-Lehtinen

Nays—1

Grizzle

Amendment 1—On page 1, strike all of lines 13-23 and insert:

Section 1 Subsection (2) of section 400.435, Florida Statutes, is amended and subsection (4) is added to said section to read:

400.435 Maintenance of records; reports —

(2) Within 60 days from the date of the annual inspection visit or within 30 days from the date of any interim visit, the department shall forward the results of the inspection to the district ombudsman council committee in whose district the facility is located and to at least one public library or, in the absence of a public library, the county seat in the county in which the inspected adult congregate living facility is located;

(4) Any records, reports, or documents which by state or federal law or regulation are deemed confidential may not be distributed or made available for purposes of compliance with this section unless and until such confidential status expires

Amendment 2—in title, on page 1, line 8, after the semicolon (:) insert: prohibiting the distribution of confidential material,

On motion by Senator Woodson, by two-thirds vote SB 18 as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:
By the Committees on Appropriations and Health Care and Representative Franke and others—

CS for HB 1519—A bill to be entitled An act relating to Acquired Immunodeficiency Syndrome (AIDS); creating the Florida Health Care Professional Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome Education Act, amending ss. 401.27, 455.213, 457.107, 458.347, 459.0055, 459.008, 459.022, 460.408, 461.007, 462.009, 463.007, 464.013, 465.009, 466.006, 466.007, 466.0135, 466.014, 467.009, 467.012, 468.1658, 468.1715, 468.209, 468.219, 468.307, 468.309, 468.031, 468.086, 468.102, 468.106, 469.005, 469.007, 491.005, and 491.007, F.S., and creating ss. 458.318, 460.4066, 461.0061, 462.185, 463.0061, 463.0071, and 465.3611, F.S., requiring education in the transmission, control, treatment, and prevention of Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS) as a condition for licensure or certification of emergency medical technicians, paramedics, acupuncturists, physicians, physician’s assistants, osteopathic physicians, osteopathic physician assistants, chiropractic physicians, podiatrists, naturopathic physicians, optometrists, nurses, pharmacists, dentists, dental hygienists, midwives, nursing home administrators, occupational therapists, and occupational therapy assistants, radiologic technologists, respiratory therapists, physical therapists, physical therapist assistants, psychologists, school psychologists, clinical social workers, marriage and family therapists, and mental health counselors, requiring continuing education on HIV and AIDS as a condition for renewal of such license or certification; amending the Florida Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome Education Act, creating s. 110.1125, F.S.; requiring state agencies to annually provide HIV and AIDS information to state employees, amending s. 322.246, F.S., including an HIV and AIDS education component in the life management skills requirement for high school graduation, providing an exemption, amending s. 233.0672, F.S., relating to health education in the public schools, providing content of instruction in acquired immune deficiency syndrome, sexually transmitted diseases, and human sexuality, amending s. 233.067, F.S., including such education component in the comprehensive health education substance abuse prevention program for cert. students; providing an exemption, amending s. 240.2097, F.S., requiring the Board of Regents to develop a State University System policy relating to HIV and AIDS; requiring a statement of such policy in universities’ student handbooks, creating s. 240.3192, F.S., requiring each community college to develop such a policy; creating s. 381.609, F.S., requiring the Department of Health and Rehabilitative Services to establish a program to educate the public on HIV and AIDS; providing requirements and components, authorizing the department to enter into contracts, amending ss. 393.067, 394.457, 395.005, 397.031, 400.141, 400.452, 400.497, 400.562, and 400.563, F.S., providing basic skills training in HIV and AIDS for clients and staff at residential facilities for the developmentally disabled, patients and staff at mental health facilities, employees of licensed hospitals and ambulatory surgical centers, participants and personnel of DATAP programs, and other staff of nursing and related health care facilities, agency personnel of home health services, certain personnel of adult day care centers, staff of hospice programs, persons providing care in adult foster homes, and personnel of child care facilities; amending ss. 476.144, 476.154, 477.019, 477.0201, 480.041, 480.0415, 485.051, and 485.154, F.S., and creating s. 470.0135, F.S., requiring such education and training as a condition for licensure, certification, or registration, and renewal thereof, for funeral directors, embalmers, direct disposers, barbers, cosmetologists, specialty practitioners in cosmetology, masseurs, and clinical laboratory personnel; creating s. 943.12, F.S.; requiring basic skills training in HIV and AIDS for correctional officers, creating s. 945.35, F.S., requiring a continuing education program in HIV and AIDS for all inmates and staff of correctional facilities, requiring an annual report; creating s. 381.607, F.S., providing for certification of laboratories to perform HIV-related tests; requiring written, informed consent for tests; providing exceptions, requiring certain counseling; providing confidentiality; requiring certain confirmatory testing; providing exemptions, providing penalties, creating s. 381.608, F.S.; providing testing and other requirements for donation and transfer of human tissue; providing penalties; prohibiting discrimination in employment, housing, public accommodations, and government employment on the basis of HIV or AIDS; providing penalties; amending s. 760.10, F.S., providing unlawful employment practices against persons with HIV or AIDS by employers, employment agencies, labor organizations, or joint labor-management committees; amending s. 760.22, F.S., prohibiting discrimination in the sale, rental, or financing of housing; providing that HIV infection is not a material fact in transactions of real property; creating s. 381.610, F.S., authorizing the Department of Health and Rehabilitative Services to establish patient care networks for care and treatment of persons with AIDS and AIDS-Related Complex (ARC), creating s. 381.611, F.S., requiring the department to conduct epidemiological research; amending s. 381.703, F.S., providing duties of the Statewide Health Council, local health councils, and department districts, amending s. 384.23, F.S., including HIV within the definition of "sexually transmissible disease," amending s. 384.24, F.S., relating to unlawful acts by persons with a sexually transmissible disease, amending s. 384.27, F.S., providing requirements and restrictions for court-ordered physical examination and treatment, amending s. 384.29, F.S., providing requirements and restrictions for court-ordered isolation, hospitalization, residential placement, or quarantine, creating s. 384.282, F.S.; protecting from disclosure the names of persons subject to court proceedings, amending ss. 384.34 and 796.08, F.S., providing penalties for certain acts by persons with HIV infection; amending s. 624.155, F.S., making the civil remedy apply to a violation of ss. 627.425, F.S., for insurers, creating ss. 627.429 and 641.3192, F.S., restricting inquiry and use of medical tests for HIV in underwriting life and health insurance policies, multiple-employer welfare arrangements, or health maintenance organization contracts; providing for counseling; providing for confidentiality; providing for certification of laboratories, restricting exclusions and limitations, amending s. 624.16, F.S.; providing a civil remedy; amending ss. 627.411 and 641.31, F.S., providing for Department of Insurance disapproval of health insurance policies or HMO contracts which exclude or limit coverage for HIV or AIDS, creating ss. 627.6265 and 627.6646, F.S.; prohibiting certain cancellation or nonrenewal of individual and group health insurance policies, providing duties of the Departments of Professional Regulation and Health and Rehabilitative Services, providing for deferred or continuing education requirements for certain health care professionals; requiring the Social Services Estimating Conference to include in its forecasts the impact of Acquired Immune Deficiency Syndrome; providing for review and repeal, providing effective dates

—was referred to the Committees on Health and Rehabilitative Services, Education; Commerce; and Appropriations.

The Honorable John W. Vogt, President

I am directed to inform the Senate that the House of Representatives has passed with amendments SB 152 and requests the concurrence of the Senate.

John B Phelps, Clerk

SB 152—A bill to be entitled An act relating to dissolution of marriage; creating s. 61.075, F.S., authorizing courts to equitably distribute the marital property and liabilities of persons with a sexually transmissible disease, amending ss. 61.12, 641.3192, F.S.; providing for the consideration of an alimony award; amending s. 61.08, F.S., providing that the court may consider the adultery of either spouse in determining the amount of alimony to award, adding marital assets and liabilities as factors in the determination of an award of alimony or maintenance; providing that certain sources of income are marital property; providing that certain information must be included in final judgments of dissolution of marriage if funds are to come from retired or retainer pay of the federal uniformed services, providing an effective date.

Amendment 1—On page 7, line 15, strike all of said line and insert:

Section 5. Effective July 1, 1988, subsection (2) of section 382.023, Florida Statutes, is amended to read:

382.023 Clerks of circuit courts to furnish department with record of dissolutions of marriage granted; charges.—

(2) Clerks of the circuit courts shall collect for their service at the time of the filing of a final judgment of dissolution of marriage a charge of $75, of which $3 shall be retained by the circuit court as a part of the cost in the cause in which the judgment is granted and of which $2 shall be collected and transmitted to the department as a part of the cost of maintaining the dissolution-of-marriage record system.

Section 6 Effective July 1, 1988, section 741.02, Florida Statutes, is amended to read.
741.02 Additional fee—Upon the receipt of each application for the issuance of a marriage license, the county court judge or clerk of the circuit court shall, in addition to the fee allowed by s. 741.01, collect and receive an additional fee of $4 per license to be distributed as provided by s. 382.022.

Section 7 Effective July 1, 1988, subsection (2) of section 28.101, Florida Statutes, is amended to read:

28.101 Petitions and records of dissolution of marriage, additional charges—

(2) Upon receipt of a final judgment of dissolution of marriage for filing, and in addition to the filing charges as set forth in s. 28.241, the clerk shall collect and receive an additional fee of $7 pursuant to s. 382.023 for the recording and reporting of such final judgment of dissolution of marriage to the Department of Health and Rehabilitative Services.

Section 8. Except as otherwise provided, this act shall take effect October 1, 1988.

Amendment 2—On page 1, in the title, line 26, strike nothing and after the semicolon, insert: amending s. 382.023, F.S., increasing the additional fee collected for application for the issuance of a marriage license; amending s. 28.101, F.S., to conform;

Amendment 3—On page 7, line 15, strike nothing and insert: Section 5

Subsection (6) is added to section 61.052, F.S., to read:

61.052 Dissolution of marriage.—

(6) In any action for dissolution of marriage, the court shall order both parties to take all steps solely within their power to remove any barrier to the other's remarriage. Failure to comply with the court's order shall constitute contempt of court. For purposes of this section, “barrier to remarriage” means any religious or conscientious restraint or inhibition, of which the party is aware, that is imposed on a party to a marriage, under the principles held by the clergyman or minister who has solemnized the marriage, by reason of the other party's commission or withholding of any voluntary act. Nothing in this section shall be construed to require any party to consult with any clergyman or minister to determine whether there exists any such religious or conscientious restraint or inhibition. It shall not be deemed a “barrier to remarriage” within the meaning of this section if the restraint or inhibition cannot be removed by the party's voluntary act. Nor shall it be deemed a “barrier to remarriage” if the party must incur expenses in connection with removal of the restraint or inhibition and the other party refuses to provide reasonable reimbursement for such expenses.

(Renumber subsequent section)

Amendment 4—On page 1, in the title, line 26, strike nothing and after the semicolon, insert: amending s. 61.052, F.S., providing that parties to a dissolution of marriage must remove all barriers to the other party's remarriage subsequent to the dissolution,

Senator Langley moved the following amendment to House Amendment 1 which was adopted:

Amendment 1—On page 1, lines 13 and 25, and on page 2, line 3, after “Effective July 1, 1988,” insert: or upon becoming a law, whichever occurs later,

Senator Langley moved the following amendment to House Amendment 2 which was adopted:

Amendment 1—In title, on page 1, line 2, strike “dissolution of”

On motions by Senator Langley, the Senate concurred in House Amendments 1 and 2 as amended and the House was requested to concur in the Senate amendments to the House amendments

On motions by Senator Langley, the Senate refused to concur in House Amendments 3 and 4 and the House was requested to recede. The action of the Senate was certified to the House. SB 152 passed as amended and the action of the Senate was certified to the House. The vote on passage was Yeas—33

Mr President Girardeau Kiser Ross-Lehenen
Brown Gordon Langley Thomas
Childers, D. Grant Lehtinen Thurman
Childers, W. D. Grizzle Malchon Weinstock
Crawford Hair Margolis Weinstein
Crenshaw Hollingsworth McPherson Weinstock
Derranty Jenne Meek Woodson
Dudley Jennings Myers
Frank Johnson Plummer

Nays—None

Vote after roll call:

Yea—Kirkpatrick, Peterson, Stuart

The Honorable John W Vogt, President

I am directed to inform the Senate that the House of Representatives has passed with amendment SB 28 and requests the concurrence of the Senate.

John B Phelps, Clerk

SB 26—A bill to be entitled An act relating to the State Minimum Building Codes; amending s. 355.77, F.S.; requiring the Board of Building Codes and Standards of the Department of Community Affairs to issue binding opinions relating to enforcement of specific model codes adopted by state agencies to regulate building construction and other matters related to such model codes; providing an effective date

Amendment 1—On page 1, line 29, insert: “before the period” or to any local regulatory boards or agencies with respect to non-governmental or private construction

Senator Margolis moved the following amendment to House Amendment 1 which was adopted

Amendment 1—On page 1, strike all of lines 28 and 29 and insert: to the Department of General Services made pursuant to the provisions of s. 355.25, Florida Statutes, or to any local government decision with respect to construction not subject to a state agency model code

On motion by Senator Margolis, the Senate concurred in the House amendment as amended and the House was requested to concur in the Senate amendment to the House amendment.

SB 26 passed as amended and the action of the Senate was certified to the House. The vote on passage was

Yeas—33

Mr. President Frank Kiser Ross-Lehenen
Beard Girardeau Langley Scott
Brown Gordon Lehtinen Thomas
Childers, D. Grant Margolis Thurman
Childers, W. D. Hair McPherson Weinstock
Crawford Hollingsworth Meek
Crenshaw Jennings Myers
Derranty Johnson Peterson
Dudley Kirkpatrick Plummer

Nays—None

Vote after roll call:

Yea—Stuart

The Honorable John W Vogt, President

I am directed to inform the Senate that the House of Representatives has passed CS for SB 447, Senate Bills 630, 631, 651, 671, 672, 867, 877 and 1220

John B Phelps, Clerk

The bills contained in the foregoing message were ordered enrolled.

SPECIAL ORDER

Consideration of CS for SB 111 was deferred
Journal of the Florida House of Representatives

Ninetieth Regular Session since Statehood in 1845

April 5 through June 7, 1988

[Including a record of transmittal of Acts subsequent to sine die adjournment]
support with the exception of those cases where there is any history of domestic violence,
to mediation, if an appropriate mediation program has been established in the circuit or county over which the court has jurisdiction (renumber subsequent sections).

Rep Davis moved the adoption of the amendment, which was adopted without objection

Representative Davis offered the following title amendment:
Amendment 2—On page 1, line 2, insert after the semicolon amending § 44.302, F.S., requiring assignment of disputes involving child custody, visitation, and child support to existing mediation programs.

Rep Davis moved the adoption of the amendment, which was adopted without objection

Representative Davis offered the following amendment
Amendment 3—On page 2, line 3, strike “Subsection (12) is” and insert “Subsections (12) and (13) are” and on page 2, between lines 8 and 9, insert (13) This section shall not apply to any dispute involving child custody, visitation, or child support, or to any dispute which involves the rights of a third party not a party to the arbitration

Rep Davis moved the adoption of the amendment, which was adopted without objection

Representative Davis offered the following title amendment:
Amendment 4—On page 1, line 10, insert after the semicolon providing exceptions to disputes which may be referred to voluntary binding arbitration,

Rep Davis moved the adoption of the amendment, which was adopted without objection

Representative Davis offered the following title amendment:
Amendment 5—On page 1, line 2, strike “mediation” and insert alternative dispute resolution

Rep Davis moved the adoption of the amendment, which was adopted without objection

Under Rule 8 19, the bill was referred to the Engrossing Clerk.

HB 371 was taken up On motion by Rep Crotty, SB 328, a similar or companion measure, was substituted for HB 371 Under the rule, the House bill was laid on the table and—

SB 328—A bill to be entitled An act relating to dissolution of marriage, creating § 61.075, F.S., authorizing courts to equitably distribute marital assets and liabilities and prescribing factors for the court to consider in making such distributions, defining marital and nonmarital assets and liabilities, providing for the effect of a recorded judgment, establishing the date for determining marital assets and liabilities and the value thereof; providing a presumption as to marital assets and liabilities, providing for monetary payments in lump sum or installments, providing for the consideration of an alimony award, amending § 61.08, F.S., providing that the court may consider the adultery of either spouse in determining the amount of alimony to award, adding marital assets and liabilities as factors in the determination of an award of alimony or maintenance, providing that certain sources of income are marital property; providing that certain information must be included in final judgments of dissolution of marriage if funds are to come from retired or retainer pay of the federal uniformed services; providing an effective date

—was read the second time by title

Representative Simon offered the following amendment
Amendment 1—On page 7, line 15, strike all of said line and insert: Section 5 Effective July 1, 1988, subsection (2) of section 382.023, Florida Statutes, is amended to read

382.023 Clerks of circuit courts to furnish department with record of dissolutions of marriage granted, charges—

(2) Clerks of the circuit courts shall collect for their service at the time of the filing of a final judgment of dissolution of marriage a charge of $7, of which $3 shall be retained by the circuit court as a part of the cost in the cause in which the judgment is granted and of which $4 $3 shall be collected and transmitted to the department as a part of the cost of maintaining the dissolution-of-marriage record system

Section 6. Effective July 1, 1988, section 741.02, Florida Statutes, is amended to read:

Section 7 Effective July 1, 1988, subsection (2) of section 28.101, Florida Statutes, is amended to read

28.101 Petitions and records of dissolution of marriage, additional charges—

(2) Upon receipt of a final judgment of dissolution of marriage for filing, and in addition to the filing charges in s 28.241, the clerk shall collect and receive a service charge of $7 pursuant to s 382.023 for the recording and reporting of such final judgment of dissolution of marriage to the Department of Health and Rehabilitative Services

Section 8 Except as otherwise provided, this act shall take effect October 1, 1988.

Rep Simon moved the adoption of the amendment, which was adopted without objection

Representative Simon offered the following title amendment
Amendment 2—On page 1, line 26, after the semicolon insert amending § 382.023, F.S., increasing the filing charge for judgment of dissolution of marriage, amending § 741.02, F.S., increasing the additional fee collected for application for the issuance of a marriage license, amending § 28.101, F.S., to conform;

Rep Simon moved the adoption of the amendment, which was adopted without objection

Representatives Bloom and Rochlin offered the following amendment
Amendment 3—On page 7, line 15, insert Section 5 Subsection (6) is added to section 61.052, F.S., to read
61 052 Dissolution of marriage —

(6) In any action for dissolution of marriage, the court shall order both parties to take all steps solely within their power to remove any barrier to the other’s remarriage. Failure to comply with the court’s order shall constitute contempt of court. For purposes of this section, “barrier to remarriage” means any religious or conscientious restraint or inhibition, of which the party is aware, that is imposed on a party to a marriage, under the principles held by the clergyman or minister who has solemnized the marriage, by reason of the other party’s commission or withholding of any voluntary act. Nothing in this section shall be construed to require any party to consult with any clergyman or minister to determine whether there exists any such religious or conscientious restraint or inhibition. It shall not be deemed a “barrier to remarriage” within the meaning of this section if the restraint or inhibition cannot be removed by the party’s voluntary act. Nor shall it be deemed a “barrier to remarriage” if the party must incur expenses in connection with removal of the restraint or inhibition and the other party refuses to provide reasonable reimbursement for such expenses (renumber subsequent section).

Rep. Bloom moved the adoption of the amendment, which was adopted without objection.

Representative Bloom offered the following title amendment:

Amendment 4—On page 1, line 26, after the semicolon insert amending s 61.052, F.S., providing that parties to a dissolution of marriage must remove all barriers to the other party’s remarriage subsequent to the dissolution.

Rep. Bloom moved the adoption of the amendment, which was adopted without objection.

Under Rule 8 19, the bill was referred to the Engrossing Clerk.

CS/HB 284—A bill to be entitled An act relating to historic preservation, designating Historic Cauley Square in Goulds as a historic place; directing the Department of Transportation to erect an appropriate sign; providing an effective date

—was read the second time by title and, under Rule 8 19, referred to the Engrossing Clerk.

HB 247—A bill to be entitled An act relating to education; amending ss 228 041 and 236 02, F.S., providing for the designation of final examination days for secondary school students, providing for a decrease in the minimum length of the school day for such examination days; providing an effective date

—was read the second time by title

Representatives Gordon and Deutsch offered the following amendment:

Amendment 1—On page 1, line 11, insert. Section 1. Section 232 0225, Florida Statutes, is amended to read

232 0225 Absence for religious instruction or holidays —

(1)(a) A student with the written consent of his parents or guardian, or a student who has attained the age of majority, upon application of the student, may be excused from attendance in school in grades 9 through 12 for a period of not more than one class period, but not to exceed 1 hour, during each school day to participate in religious instruction at his place of worship or at any other suitable place away from school property designated by the religious group, church, or denomination. Such religious instruction shall not be the responsibility of the local school board, nor shall such instruction be conducted on school property. District school board permission shall not be granted unless the following conditions are met:

1. The religious institution maintains weekly attendance records and makes them available to the public school each student attends

2. Transportation to and from religious instruction is the complete responsibility of the religious institution or parent of the student.

3. Each school board specifies in advance its own requirements on liability involving students on released time and the religious institution or parents meet those requirements.

(b)(a) The principal shall reserve the right to refuse a student's request for released time if, according to the provisions of the district's pupil progression plan.

1. The student is not enrolled in sufficient courses to allow for the student's promotion or graduation and thus the released time would not be equivalent to an optional period

2. The student's grades are insufficient to allow for the student's promotion or graduation

(c)(c) Nothing in this subsection section shall be construed to require district school boards to permit religious instruction programs, nor to deny them the right to terminate an individual student's permission to attend a religious institution for nonattendance.

The student shall be excused from attendance in school in grades kindergarten through 12 on a particular day or days or at a particular time of day and shall be excused from any examination, study, or work assignment at such time for observance of a religious holiday or because the tenets of his religion forbid secular activity at such time. It shall be the responsibility of the administrative personnel and teachers of each school to make available to each student such an opportunity to make up any examination, study, or work assignment which has been missed, and no special fees shall be charged to the student for such opportunity.

(b) Each district school board shall adopt rules, in accordance with the Rules of the State Board of Education, for implementation of this subsection, including, but not limited to, a list of religious holidays on which absence shall be excused. Nothing in this paragraph shall be construed to limit the right of a school board, at its discretion, to excuse absence on any other day by reason of observance of a religious holiday. A school board may require the parent or guardian of a student who is to be excused from attendance pursuant to this subsection to give notice to the principal or other school personnel not more than 5 days prior to the absence. A written excuse for an absence pursuant to this subsection shall not be required upon return to school.

(c) No adverse or prejudicial effects shall result to any student availing himself of the provisions of this subsection.

Section 2 Section 240 134, Florida Statutes, is created to read

240 134 Religious observances — Each state university, community college, and postsecondary vocational education school shall adopt a policy, in accordance with rules of the Board of Regents, the State Board of Community Colleges, or the State Board of Education, which reasonably accommodates the religious observance, practice, and belief of individual students in regard to admissions, class attendance, and the scheduling of examinations and work assignments. Each policy shall include a grievance procedure by which a student who believes that he has been unreasonably denied an educational benefit due to his religious belief or practices may seek redress. Such policy shall be made known to faculty and students annually in inclusion in the institution’s handbook, manual, or other similar document regularly provided to faculty and students (renumber subsequent sections)

Rep. Gordon moved the adoption of the amendment, which was adopted without objection.

Representatives Gordon and Deutsch offered the following title amendment:

Amendment 2—On page 1, line 2, after the semicolon insert amending s 232 0225, F.S., revising requirements for excused public school absences for religious instruction, providing for excused public school absences for observance of religious holidays, providing for district school board rules, creating s 240 134, F.S.; requiring state university, community college, and vocational education school policies relating to religious observance by students, providing requirements;

Rep. Gordon moved the adoption of the amendment, which was adopted without objection.

Representative Silver offered the following amendment:

Amendment 3—On page 2, line 31, after the period insert: Section 3 Paragraph (c) of subsection (5) of section 232 246, Florida Statutes, is amended to read

232 246 General requirements for high school graduation —
Oversight Subcommittee on Nicaraguan Physicians Representative Morse, Chairperson; Representative Bloom, Co-chairperson, Representatives Langton, Saunders and Nergard The members of the Dade Legislative Delegation were invited to serve as ex-officio members.

Oversight Subcommittee on Physical Therapy and Allied Health Occupations Representative Mackey, Chairman, Representatives Harris, Ostrau, Grindle and D L Jones

Presentation of Guest

Rep Figg introduced Dr Francis Borkowski, newly elected President of the University of South Florida, who was visiting in the gallery.

Messages from the Senate

The Honorable Jon Mills, Speaker

I am directed to inform the House of Representatives that the Senate has passed CS/SB 1176 and requests the concurrence of the House.

Joe Brown, Secretary

By the Committee on Economic, Community and Consumer Affairs and Senator Margolis—

CS for SB 1176—A bill to be entitled An act relating to medical faculty certificates; amending s 458 3145, F.S., specifying the conditions under which a holder of such a certificate may practice medicine, providing an effective date

was read the first time by title and referred to the Committee on Appropriations.

The Honorable Jon Mills, Speaker

I am directed to inform the House of Representatives that the Senate has amended House Amendments 1 and 2, and concurred in same as amended, refused to concur in House Amendments 3 and 4, and requests the House to recede; and passed SB 152, as further amended.

Joe Brown, Secretary

SB 152—A bill to be entitled An act relating to dissolution of marriage; creating s 61.075, F.S., authorizing courts to equitably distribute marital assets and liabilities and prescribing factors for the court to consider in making such distributions, defining marital and nonmarital assets and liabilities, and the value thereof; providing for a presumption as to marital assets and liabilities; providing for monetary payments in lump sum or installments, for the consideration of an alimony award; amending s 61.08, F.S.; providing that the court may consider the adultery of either spouse in determining the amount of alimony to award, adding marital assets and liabilities as factors in the determination of an award of alimony or maintenance, providing that certain sources of income are marital property; providing that certain information must be included in final judgments of dissolution of marriage if funds are to come from retired or retainer pay of the federal uniformed services; amending s. 382.023, F.S., increasing the filing charge for judgment of dissolution of marriage; amending s. 741 02, F.S., increasing the additional fee collected for application for the issuance of a marriage license, amending s. 28 101, F.S., to conform; providing an effective date.

Rep Simon moved the adoption of the amendment to the amendment, which was adopted.

On motions by Rep Simon, the House concurred in Senate Amendment 1 to House Amendment 1 and in Senate Amendment 1 to House Amendment 2, as amended, and receded from House Amendments 3 and 4. The question recurred on the passage of SB 152, as further amended.

The vote was:

Yeas—116

Nays—None

Special and Continuing Order Calendar

The Honorable Jon Mills, Speaker, House of Representatives

May 24, 1988

In accordance with the vote of the House, the following report is submitted as the Special and Continuing Order Calendar beginning
AS REPORTED TO CLERK

To Chairman, Committee on Judiciary

Subcommittee on Real Property & Family Law

Date of meeting 3/2/88

Time 1:30 p.m.

Place 16 HOB

Bill No. PCB JUD 88-7

FINAL ACTION: X FAVORABLE

FAVORABLE WITH ___ AMENDMENTS

UNFAVORABLE

VOTE:

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Total Yeas 4  Total Nays 2

Signed: [Signature]
Subcommittee Chairman

SUBCOMMITTEE APPEARANCE RECORD

The following persons (other than legislators) appeared before the subcommittee during consideration of this bill:

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<tr>
<th>Name</th>
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(If additional persons, enter on reverse side and check here ___)

NOTE: Please indicate by an "X" any State employee appearing at the request of Subcommittee Chairman

Received by Parent Committee: Date __________________

Received by _____________________________
COMMITTEE INFORMATION RECORD

Committee on JUDICIARY

Date of meeting 3/9/88
Time 1:30 p.m.
Place 214 C

AS REPORTED TO CLERK

FINAL ACTION: X FAVORABLE

FAVORABLE WITH AMENDMENTS
FAVORABLE WITH SUBSTITUTE
UNFAVORABLE

VOTE:

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COMMITTEE APPEARANCE RECORD

The following persons (other than legislators) appeared before the committee during the consideration of this bill:

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NOTE: Please indicate by an "X" any State employee appearing at the request of Committee Chairman.

(If additional persons, enter on reverse side and check here.)

File 2 copies with Clerk
H 1222 GENERAL BILL/ENG by Governmental Operations; Hodges (Compare H 3 53, H 8 1, CS/H 1 44, ENG/H 5 49, CS/ENG/H 1 432, CS/8 64, ENG/S 209, CS/S 255, CS/ENG/S 446, CS/S 1012)
Voter Registration Records. (OPEN GOVERNMENT SUNSET REVIEW) revises limited exemption from public records requirements for production of voter registration & absentee ballot information, revises procedures & requirements for copying such information, requires certain districts to pay for their election costs, revises requirements re disposition of surplus funds by candidates, etc. Amends Chs. 97, 98, 100-104, 106, 125, 190. Effective Date 01/01/88 except as otherwise provided

04/09/87 HOUSE Filed
04/20/87 HOUSE Introduced, placed on Calendar – HJ 195
05/09/87 HOUSE Placed on Special Order Calendar
06/02/87 HOUSE Read second time – HJ 949, Amendments adopted, Read third time, Passed as amended, YEAS 112 NAYS 1 – HJ 952
06/03/87 SENATE In Messages, Received, referred to Governmental Operations, Judiciary – Civil – SJ 635
06/06/87 SENATE Died in Committee on Governmental Operations, Iden / Sim /Compare bill passed, refer to HB 549 (Ch. 87-184) & SB 209 (Ch. 87-363)

H 1223 RESOLUTION by Bass; R.C. Johnson; Mitchell; Lawson; B.L. Johnson
Northwest Florida/Designation directs that the 10 county area west of Apalachicola River (including Bay, Calhoun, Escambia, Gulf, Holmes, Jackson, Okaloosa, Santa Rosa, Walton & Washington Counties) shall be known as Northwest Florida.

04/09/87 HOUSE Filed
04/20/87 HOUSE Introduced, referred to Community Affairs – HJ 195
06/06/87 HOUSE Died in Committee on Community Affairs

H 1224 GENERAL BILL by Judiciary; Dunbar (Compare CS/ENG/S 142)
Land Sales Cons & Mobile Home Trust Funds creates Fla. Land Sales, Condominiums & Mobile Homes Trust Fund Div to be used for designated purposes, eliminates Fla. Land Sales TF, Fla. Condominiums TF, Fla. Real Estate Time-Sharing TF, & Fla Mobile Home TF, increases unit fees paid by condominium & cooperative associations, etc. Amends Chs 498, 718, 719, 721, 722. Effective Date Upon becoming law

04/09/87 HOUSE Filed
04/20/87 HOUSE Introduced, referred to Finance & Taxation, Appropriations – HJ 196
04/27/87 HOUSE Withdrawn from Finance & Taxation – HJ 275, Now in Appropriations
05/04/87 HOUSE On Committee agenda – Appropriations, 05/06/87, 8:00 am, 21 HOB
05/07/87 HOUSE Comm. Report. Favorable by Appropriations, placed on Calendar – HJ 396
05/13/87 HOUSE Placed on Special Order Calendar
05/28/87 HOUSE Read second time – HJ 494
05/21/87 HOUSE Read third time, Passed, YEAS 107 NAYS 1 – HJ 523
05/22/87 SENATE In Messages
05/27/87 SENATE Received, referred to Commerce, Finance and Claims – SJ 426
05/29/87 SENATE Withdrawn from Commerce, Finance, Taxation and Claims, Referred to Finance, Taxation and Claims, Committee – SJ 527, On Committee agenda – Finance, Taxation and Claims, 05/29/87, Upon adjournment, Room – IC

06/01/87 SENATE In Messages, Received, referred to Commerce – From Commerce – SJ 569, Placed on Calendar
06/06/87 SENATE Died on Calendar, Iden / Sim / Compare Bill passed, refer to CS/S 142 (Ch. 87-102)

H 1225 GENERAL BILL by Judiciary; Simon, Dunbar (Similar CS/ENG/S 140)
Divorce/Marital Assets & Liabilities requires courts to equitably distribute marital assets & liabilities, establishes date for determining such assets & liabilities & value thereof, establishes vesting of rights in marital assets, includes marital assets & liabilities distributed to each party within last of economic factors considered by court in fixing alimony, etc. Creates 61 073, amends 61 088 Effective Date 10/01/87

04/09/87 HOUSE Filed
04/20/87 HOUSE Introduced, placed on Calendar – HJ 196
04/28/87 HOUSE Placed on Special Order Calendar; Read second time
04/29/87 HOUSE Read third time, Passed, YEAS 118 NAYS 0 – HJ 312
05/04/87 SENATE In Messages
05/13/87 SENATE Received, referred to Judiciary-Civil – SJ 298
05/15/87 SENATE Extension of time granted Committee Judiciary-Civil
05/29/87 SENATE Extension of time granted Committee Judiciary-Civil
06/06/87 SENATE Died in Committee on Judiciary-Civil

H 1226 GENERAL BILL by Judiciary; Canady; Simon (Similar ENG/S 318)
Adoption/Grandparent's Rights, provides that grandparental rights are not terminated by adoption under certain circumstances, provides that adoption by close relative does not affect child's relationship with natural family, relative to intestate succession, applies to all proceedings initiated after effective date of act. Amends 63 172, 722 108 Effective Date Upon becoming law

04/09/87 HOUSE Filed
04/14/87 HOUSE Introduced, referred to Natural Resources – HJ 129
04/15/87 HOUSE Withdrawn from Natural Resources – HJ 133, Placed on Calendar
05/05/87 HOUSE Read third time, Idem / Sim Senate Bill substituted, Laid on Table under Rule, Idem / Sim / Compare Bill passed, refer to SB 318 (Ch. 87-27) – HJ 355
05/05/87 SENATE In Messages
05/06/87 SENATE Received – SJ 269; Adopted, YEAS 40 NAYS 0 – SJ 269
05/12/87 Order enrolled
05/14/87 Signed by Officers and filed with Secretary of State

H 1227 RESOLUTION by Lawson; Trammell (Identical S 1121)
Franklin County Day. designates April 15, 1987, as Franklin County Day

04/09/87 HOUSE Filed
04/20/87 HOUSE Introduced, referred to Science & Technology – HJ 196
06/06/87 HOUSE Died in Committee on Science & Technology

H 1229 CONCURRENT RESOLUTION by Smith and others
VanBuren/Bunny Commendations Bunny VanBuren for her 30 years of service to State of Florida, and in particular honors her for 18 years as Division Director of Legislative Information Division, Joint Legislative Management Committee

04/10/87 HOUSE Filed
04/20/87 HOUSE Introduced, referred to Government Operations – HJ 196
04/29/87 HOUSE Withdrawn from Governmental Operations – HJ 315, Placed on Calendar
05/05/87 HOUSE Placed on Special Order Calendar; Read second time
05/05/87 HOUSE Adopted – HJ 355, Immediately certified – HJ 355
05/05/87 SENATE In Messages
05/06/87 SENATE Received – SJ 269; Adopted, YEAS 40 NAYS 0 – SJ 269
05/12/87 Order enrolled
05/14/87 Signed by Officers and filed with Secretary of State

H 1231 GENERAL BILL by Veterans, Military Affairs & Emergency Preparedness, Locke and others (Similar S 892)
Veterans Homes/Federal Funds: directs Secretary of Administration to apply to Veterans Administration for federal funds for state veterans' homes. Effective Date Upon becoming law

04/10/87 HOUSE Filed
04/20/87 HOUSE Introduced, referred to Appropriations – HJ 196
05/12/87 HOUSE Subreferred to Subcommittee on General Government
05/13/87 HOUSE Committee agenda – Appropriations, 05/15/87, 8:00 am, 21 HOB, for ratification of subreferral
06/06/87 HOUSE Died in Committee on Appropriations

H 1232 GENERAL BILL by Veterans, Military Affairs & Emergency Preparedness, Locke (Identical S 962)
Legion Plates/The Chomew Few: specifies persons eligible to receive "The Chomew Few" license plates without payment of license tax. Creates 320 0895 Effective Date 10/01/87

04/10/87 HOUSE Filed
04/20/87 HOUSE Introduced, referred to Finance & Taxation – HJ 196
05/05/87 HOUSE On Committee agenda – Finance & Taxation, 05/07/87, 1:30 pm, 21 HOB, for ratification of subreferral
06/06/87 HOUSE Died in Committee on Finance & Taxation

H 1233 GENERAL BILL/CS by Retirement, Personnel & Collective Bargaining; Veterans, Military Affairs & Emergency Preparedness; Locke (Similar S 815, Compare ENG/S 24)
(PAGE NUMBERS REFLECT DAILY SENATE AND HOUSE JOURNALS AND NOT FINAL BOUND JOURNALS)
A bill to be entitled
An act relating to dissolution of marriage;
creating s. 61.075, F.S.; authorizing courts to
equitably distribute marital assets and
liabilities; defining marital and nonmarital
assets and liabilities; providing for the
effect of a recorded judgment; establishing the
date for determining marital assets and
liabilities and the value thereof; providing a
presumption as to marital assets and
liabilities; providing for monetary payments;
providing for the consideration of an alimony
award; amending s. 61.08, F.S.; adding marital
assets and liabilities as factors in the
determination of an award of alimony or
maintenance; providing an effective date.

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

Section 1. Section 61.075, Florida Statutes, is
created to read:

61.075 Equitable distribution of marital assets and
liabilities.--

(1) In a proceeding for dissolution of marriage, in
addition to all other remedies available to a court to do
equity between the parties, or in a proceeding for disposition
of assets following a dissolution of marriage by a court which
lacked jurisdiction over the absent spouse or lacked
jurisdiction to dispose of the assets, the court shall set
apart to each spouse his or her nonmarital assets and
liabilities and shall distribute between the parties the

CODING: Words struck are deletions; words underlined are additions.
marital assets and liabilities in such proportions as are equitable, after considering all relevant factors, including:

(a) The contribution to the marriage by each spouse, including contributions to the care and education of the children and services as homemaker.

(b) The economic circumstances of the parties.

(c) The duration of the marriage.

(d) Any interruption of personal careers or educational opportunities of either party.

(e) The contribution of one spouse to the personal career or educational opportunity of the other spouse.

(f) The desirability of retaining any asset, including an interest in a business, corporation, or professional practice, intact and free from any claim or interference by the other party.

(g) The contribution of each spouse to the acquisition, enhancement, and production of income or the improvement of, or the incurring of liabilities to, both the marital assets and the nonmarital assets of the parties.

(h) Any other factors necessary to do equity and justice between the parties.

(2) The judgment distributing assets shall have the effect of a duly executed conveyance, transfer, release, or acquisition which is recorded in the county where the property is located when the judgment, or a certified copy of the judgment, is recorded in the official records of the county in which the property is located.

(3) As used in this section:

(a) "Marital assets and liabilities" include:

1. Assets acquired and liabilities incurred during the marriage, individually by either spouse or jointly by them;
2. The enhancement in value and appreciation of nonmarital assets resulting either from the efforts of either party during the marriage or from the contribution to or expenditure thereon of marital funds or other forms of marital assets, or both;

3. Interspousal gifts during the marriage; and

4. All vested and nonvested benefits, rights, and funds accrued during the marriage in retirement, pension, profit-sharing, annuity, and insurance plans and programs.

5. All real property held by the parties as tenants by the entireties, whether acquired prior to or during the marriage, shall be presumed to be owned in equal shares. If, in any case, a party makes a claim to the contrary, the burden of proof shall be on the party asserting the claim for a special equity.

(b) "Nonmarital assets and liabilities" are:

1. Assets acquired and liabilities incurred by either party prior to the marriage and assets acquired and liabilities incurred in exchange for such assets and liabilities;

2. Assets acquired separately by either party by noninterspousal gift, bequest, devise, or descent and assets acquired in exchange for such assets; and

3. Assets and liabilities excluded from marital assets and liabilities by valid written agreement of the parties and assets acquired and liabilities incurred in exchange for such assets and liabilities.

(4) The date for determining marital assets and liabilities and the value of such assets and the amount of such liabilities is the earlier of the date the parties enter into a valid separation agreement or such other date as may be
expressly established by such agreement or the date of the filing of a petition for dissolution of marriage, unless the trial judge determines another date is just and equitable under the circumstances.

(5) All assets acquired and liabilities incurred by either spouse subsequent to the date of the marriage and not specifically established as nonmarital assets or liabilities are presumed to be marital assets and liabilities. Such presumption is overcome by a showing that the assets and liabilities are nonmarital assets and liabilities. The presumption is only for evidentiary purposes in the dissolution proceeding and does not vest title. Title to disputed assets shall vest only by the judgment of a court.

This section does not require the joinder of spouses in the conveyance, transfer, or hypothecation of a spouse's individual property; affect the laws of descent and distribution; or establish community property in this state.

(6) The court may provide for equitable distribution of the marital assets and liabilities without regard to alimony for either party. After the determination of an equitable distribution of the marital assets and liabilities, the court shall consider whether a judgment for alimony shall be made.

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

Section 2. Subsection (2) of section 61.08, Florida Statutes, 1986 Supplement, is amended to read:

61.08 Alimony.--
and liabilities" by providing what types of are to be included in each category. One is that all real property held by the part entitles, whether acquired prior to or after marriage, is to be presumed to be owned in equal share unless the parties made a claim to the contrary, the on that party to show a special equity.

The committee substitute provides for sale of jointly owned property and debts of the parties owed jointly or individually, are to be id if categorized as marital or nonmarital. This earlier of these alternative dates: the dissolution of marriage, or such other date from a valid separation agreement, a date by the parties in the agreement, the date for dissolution of marriage, or such other date may deem equitable.

All nonmarital assets and liabilities are

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(2) In determining a proper award of alimony or maintenance, the court shall consider all relevant economic factors, including but not limited to:

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

(b) The duration of the marriage.

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

(d) The financial resources of each party and the marital assets and liabilities distributed to each.

(e) When applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.

(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.

The court may consider any other factor necessary to do equity and justice between the parties.

Section 3. This act applies to all proceedings commenced after the effective date of this act.

Section 4. This act shall take effect October 1, 1987.

CODING: Words struck out are deletions; words underlined are additions.
STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 402

The committee substitute changes the presumption provision as to property held by the parties as tenants by the entirety. This presumption would now apply only to real property. The presumption would now be overcome by a showing of special equity.

The provision for selection of a date for determining marital assets and liabilities is reworded to clearly provide three alternatives. These alternatives would be the earlier of the date the parties enter into a valid separation agreement, a date expressly established by the parties in the agreement, or the date of filing the petition for dissolution.

The committee substitute would include in nonmarital assets and liabilities any assets acquired or liabilities incurred in exchange for assets and liabilities excluded from marital assets and liabilities by agreement of the parties.

The committee substitute would apply only to dissolution proceedings commenced after the effective date.
I. SUMMARY:

A. Present Situation:

Section 61.08(2), F.S., requires a court to consider all relevant economic factors in determining a proper award of alimony or maintenance including "any other factor necessary to do equity and justice between the parties."

The Florida Supreme Court, in Canakaris v. Canakaris, 382 So. 2d 1197 (1980), stated that the above provision would allow a judge to award lump sum alimony to ensure an equitable distribution of property acquired during the marriage, provided that the evidence reflects (1) a justification for such lump sum payment and (2) financial ability of the other spouse to make such payment without substantially endangering his or her economic status. Since Canakaris, numerous cases have expanded and developed this idea of using lump sum alimony for "equitable distribution" of the marital property. However, there appear to be questions left unanswered by these cases.

B. Effect of Proposed Changes:

The committee substitute creates a new s. 61.075, F.S., which sets forth the definitions and procedures for a statutory system of equitable distribution of marital property. The bill defines "marital assets and liabilities" and "nonmarital assets and liabilities" by providing what types of property and debt are to be included in each category. One of these provisions is that all real property held by the parties as tenants by the entireties, whether acquired prior to or during the marriage, is to be presumed to be owned in equal shares. If one of the parties made a claim to the contrary, the burden of proof would be on that party to show a special equity.

The committee substitute provides for selection of a date upon which all property and debts of the parties, whether owned or owed jointly or individually, are to be identified and categorized as marital or nonmarital. This date would be the earlier of these alternative dates: the date the parties enter into a valid separation agreement, a date expressly established by the parties in the agreement, the date of filing a petition for dissolution of marriage, or such other date as the court may deem equitable.

All nonmarital assets and liabilities are to be set aside to the spouse owning or owing such property or debt. The marital property is then to be valued as of the date of identifying and categorizing the property. The marital property is divided among the spouses in such proportion and in such manner as the court deems equitable. In making this determination of equity, the court is to examine and consider a list of factors contained in the bill. This list includes factors the consideration of which should place greater emphasis and
importance on the contributions of the homemaker to the marriage.

The bill also provides that the court may order a monetary payment, either in lump sum or in installments to supplement or effectuate the equitable distribution. This should allow the court greater flexibility in awarding specific parcels of property to do equity.

The bill also provides that the court may equitably distribute the marital assets and liabilities without regard to alimony.

II. ECONOMIC IMPACT AND FISCAL NOTE:
A. Public:
   Not ascertainable.
B. Government:
   None.

III. COMMENTS:

There have been bills similar to this one in both houses of the Legislature the past two sessions. There is a similar House bill, HB 1225.

IV. AMENDMENTS:

None.
The committee substitute changes the presumption provision as to property held by the parties as tenants by the entireties. This presumption would now apply only to real property. The presumption would now be overcome by a showing of a special equity.

The provision for selection of a date for determining marital assets and liabilities is reworded to clearly provide three alternatives. These alternatives would be the earlier of the date the parties enter into a valid separation agreement, a date expressly established by the parties in the agreement, or the date of filing the petition for dissolution.

The committee substitute would include in nonmarital assets and liabilities any assets acquired or liabilities incurred in exchange for assets and liabilities excluded from marital assets and liabilities by agreement of the parties.

The committee substitute would apply only to dissolution proceedings commenced after the effective date.
A bill to be entitled
An act relating to dissolution of marriage;
creating s. 61.075, F.S., requiring courts to
equitably distribute marital assets and
liabilities; defining marital and nonmarital
assets and liabilities; establishing the date
for determining such assets and liabilities and
the value thereof; providing a presumption as
to marital assets and liabilities; establishing
the vesting of rights in marital assets;
amending s. 61.08, F.S., including marital
assets and liabilities distributed to each
party within a list of economic factors
considered by the court in fixing alimony;
providing for the application of the act;
providing an effective date.

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

Section 1. Section 61.075, Florida Statutes, is
created to read:

61.075 Equitable distribution of marital assets and
liabilities.--

(1) In a proceeding for dissolution of marriage, in
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equity between the parties, or in a proceeding for disposition
of assets following a dissolution of marriage by a court which
lacked jurisdiction over the absent spouse or lacked
jurisdiction to dispose of the assets, the court shall set
apart to each spouse his or her nonmarital assets and
liabilities and shall distribute between the parties the

CODING: Words stricken are deletions; words underlined are additions.
marital assets and liabilities in such proportions as is equitable, after considering all relevant factors, including:

(a) The contribution to the marriage by each spouse, including contributions to the care and education of the children and services as homemaker,

(b) The economic circumstances of the parties,

(c) The duration of the marriage,

(d) Any interruption of personal careers or educational opportunities of either party,

(e) The contribution of one spouse to the personal career or educational opportunity of the other spouse,

(f) The desirability of retaining any asset, including an interest in a business, corporation or professional practice, intact and free from any claim or interference by the other party,

(g) The contribution of each spouse to the acquisition, enhancement, and production of income or the improvement of, or the incurring of liabilities to, both the marital assets and the nonmarital assets of the parties.

(h) The court may consider any other factors necessary to do equity and justice between the parties.

(2) The judgment of award distributing assets shall have the effect of a duly executed conveyance, transfer, release, or acquisition that is recorded in the county where the property is located when the judgment or certified copy of the judgment is recorded in the official records of the county in which the property is located.

(3) As used in this section, unless the context requires otherwise:

(a) Marital assets and liabilities include:

CODING: Words stricken are deletions; words underlined are additions.
1. Assets acquired and liabilities incurred during the marriage, individually by either spouse or jointly by them;
2. All income derived from nonmarital assets during the marriage;
3. The enhancement in value and appreciation of nonmarital assets resulting either from the efforts of either party during the marriage or from the contribution to or expenditure thereon of marital funds or other forms of marital assets, or both;
4. Interspousal gifts during the marriage;
5. Vested and nonvested benefits, rights, and funds accrued during the marriage of all retirement, pension, profit-sharing, annuity, and insurance plans and programs.
(b) Nonmarital assets and liabilities are:
1. Assets acquired and liabilities incurred by either party prior to the marriage and assets acquired and liabilities incurred in exchange for such assets and liabilities;
2. Assets acquired separately by either party by noninterspousal gift, bequest, devise, or descent and assets acquired in exchange for such assets;
3. Assets and liabilities excluded by valid written agreement of the parties and assets acquired and liabilities incurred in exchange for such assets and liabilities.
(4) The date for determining marital assets and liabilities and the value of such assets and the amount of such liabilities is the earlier of the date the parties enter into a valid separation agreement or such other date as may be expressly established by such agreement or the date of the filing of a petition for dissolution of marriage, unless the

CODING: Words stricken are deletions; words underlined are additions.
trial judge determines another date is just and equitable under the circumstances.

(5) All assets acquired and liabilities incurred by either spouse subsequent to the date of the marriage and not specifically established as nonmarital assets or liabilities are presumed to be marital assets and liabilities. The presumption of marital assets and liabilities is overcome by a showing that the assets and liabilities come within the definition of nonmarital assets and liabilities. The presumption is only for evidentiary purposes in a dissolution proceeding and does not vest title until a judgment of a court is entered. Nothing herein shall require a joinder of spouses in the conveyance, transfer, or hypothecation of their individual property, and nothing herein shall affect the laws of descent or distribution or establish community property in this state.

(6) The court may provide for equitable distribution of the marital assets and liabilities without regard to alimony for either party. After the determination of an equitable distribution of the marital assets and liabilities, the court shall consider whether a judgment for alimony shall be made.

(7) The court, to do equity between the parties, may, in lieu of or in supplement thereto, facilitate or effectuate the equitable division of marital assets and liabilities, and order the payment of a monetary sum in lump sum or over a fixed period of time.

Section 2. Paragraph (d) of subsection (2) of section 61.08, Florida Statutes, 1986 Supplement, is amended to read:

61.08 Alimony.--

CODING: Words struck are deletions; words underlined are additions.
(2) In determining a proper award of alimony or maintenance, the court shall consider all relevant economic factors, including, but not limited to:

(d) The financial resources of each party and the marital assets and liabilities distributed to each party.

The court may consider any other factor necessary to do equity and justice between the parties.

Section 3. This act applies to all proceedings pending at the effective date of the enactment hereof in which a final judgment has not been entered and to all proceedings commenced after the effective date of the enactment hereof.

Section 4. This act shall take effect October 1, 1987.
HOUSE SUMMARY

Requires courts to equitably distribute marital assets and liabilities along described lines. Provides that the judgment of award distributing assets shall have the effect of a duly executed conveyance, transfer, release, or acquisition recorded in the county where the property is located when the judgment is recorded in the official records of such county. Provides a procedure for establishing the date on which marital assets and liabilities shall be determined and their respective values and amounts assigned. Provides that all assets acquired and liabilities incurred by either spouse subsequent to the date of the marriage and not specifically established as nonmarital assets or liabilities are presumed to be marital assets and liabilities. Provides for the award of alimony after the equitable distribution of marital assets and liabilities. Includes marital assets and liabilities distributed to each party within a list of economic factors considered by the court in fixing alimony.

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I. SUMMARY

A. Present Situation:

There are two principal methods relating to distribution of marital property upon dissolution of marriage; these are based upon community property and common law property theories. In a "community property" jurisdiction, all of the marital property is divided, one-half to each party, at dissolution. The majority of states including Florida, have distributed property in accordance with the more traditional common law property theory which provides generally that title to property is the principal determinant of ownership. The Florida Statutes, however, direct that any factor may be considered to do equity and justice between the parties and the Florida Supreme Court has held that the end of a marriage is a dissolution of a "marital partnership" requiring equitable distribution of property acquired during the marriage regardless of who holds title. Canakaris v. Canakaris, 382 So.2d 1197 (Fla. 1980).

Pursuant to either theory, it is necessary to determine what property is subject to distribution. There is currently no statutory definition of marital property, and what constitutes marital property is determined on a case-by-case basis in Florida.

B. Effect of Proposed Changes:

This bill defines "marital" and "nonmarital" assets and liabilities to be equitably divided. A list of factors is provided to guide the court in making such a division.
Assets acquired and liabilities incurred after the date of the marriage are presumed to be marital assets and liabilities; also included is income derived from nonmarital assets, enhancement in value of nonmarital assets resulting from the efforts of either party or the contribution of marital funds, gifts from one spouse to the other, and all retirement, pension, profit sharing, annuity, and insurance plans.

Separate or "nonmarital" assets and liabilities are those acquired or incurred prior to the marriage, those acquired by gift, bequest, devise or descent, and those excluded by valid written agreement.

The date for determining the value of the assets and liabilities is the earlier of the date a valid separation agreement is entered into or the date established by such an agreement, or the date of filing of a petition for dissolution. The provisions of this bill would apply to all proceedings pending on October 1, 1987 or commenced thereafter.

II. ECONOMIC IMPACT:

A. Public:

The public should benefit through increased predictability and fairness in the disposition of property upon dissolution of marriage, which would presumably result in a reduction in the number of these cases that go to trial.

B. Government:

A reduction in the number of dissolution cases being tried would result in cost savings to the courts.

III. STATE COMPREHENSIVE PLAN IMPACT

None.

IV. COMMENTS

This bill is a proposal of the Supreme Court Matrimonial Law Commission.

V. AMENDMENTS:

VI. PREPARED BY: Debby Kearney

VII. STAFF DIRECTOR: Richard Hixson
I. SUMMARY

A. Present Situation:

There are two principal methods relating to distribution of marital property upon dissolution of marriage; these are based upon community property and common law property theories. In a "community property" jurisdiction, all of the marital property is divided, one-half to each party, at dissolution. The majority of states including Florida, have distributed property in accordance with the more traditional common law property theory which provides generally that title to property is the principal determinant of ownership. The Florida Statutes, however, direct that any factor may be considered to do equity and justice between the parties and the Florida Supreme Court has held that the end of a marriage is a dissolution of a "marital partnership" requiring equitable distribution of property acquired during the marriage regardless of who holds title. Canakaris v. Canakaris, 382 So.2d 1197 (Fla. 1980).

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This bill defines "marital" and "nonmarital" assets and liabilities to be equitably divided. A list of factors is provided to guide the court in making such a division.
Assets acquired and liabilities incurred after the date of the marriage are presumed to be marital assets and liabilities; also included is income derived from nonmarital assets, enhancement in value of nonmarital assets resulting from the efforts of either party or the contribution of marital funds, gifts from one spouse to the other, and all retirement, pension, profit sharing, annuity, and insurance plans.

Separate or "nonmarital" assets and liabilities are those acquired or incurred prior to the marriage, those acquired by gift, bequest, devise or descent, and those excluded by valid written agreement.

The date for determining the value of the assets and liabilities is the earlier of the date a valid separation agreement is entered into or the date established by such an agreement, or the date of filing of a petition for dissolution. The provisions of this bill would apply to all proceedings commenced after October 1, 1987.

II. ECONOMIC IMPACT:

A. Public:

The public should benefit through increased predictability and fairness in the disposition of property upon dissolution of marriage, which would presumably result in a reduction in the number of these cases that go to trial.

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A reduction in the number of dissolution cases being tried would result in cost savings to the courts.

III. STATE COMPREHENSIVE PLAN IMPACT

None.

IV. COMMENTS

This bill is a proposal of the Supreme Court Matrimonial Law Commission.

V. AMENDMENTS:

VI. PREPARED BY: Debby Kearney

VII. STAFF DIRECTOR: Richard Hixson
A bill to be entitled
An act relating to dissolution of marriage;
creating s. 61.075, F.S., requiring courts to
equitably distribute marital assets and
liabilities; defining marital and nonmarital
assets and liabilities; establishing the date
for determining such assets and liabilities and
the value thereof; providing a presumption as
to marital assets and liabilities; establishing
the vesting of rights in marital assets;
amending s. 61.08, F.S., including marital
assets and liabilities distributed to each
party within a list of economic factors
considered by the court in fixing alimony;
providing for the application of the act;
providing an effective date.

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

Section 1. Section 61.075, Florida Statutes, is
created to read:

61.075 Equitable distribution of marital assets and
liabilities.--
(1) In a proceeding for dissolution of marriage, in
addition to all other remedies available to a court to do
equity between the parties, or in a proceeding for disposition
of assets following a dissolution of marriage by a court which
lacked jurisdiction over the absent spouse or lacked
jurisdiction to dispose of the assets, the court shall set
apart to each spouse his or her nonmarital assets and
liabilities and shall distribute between the parties the
1 marital assets and liabilities in such proportions as is
2 equitable, after considering all relevant factors, including:
3   (a) The contribution to the marriage by each spouse,
4 including contributions to the care and education of the
5 children and services as homemaker.
6   (b) The economic circumstances of the parties.
7   (c) The duration of the marriage.
8   (d) Any interruption of personal careers or
9 educational opportunities of either party.
10   (e) The contribution of one spouse to the personal
11 career or educational opportunity of the other spouse.
12   (f) The desirability of retaining any asset, including
13 an interest in a business, corporation or professional
14 practice, intact and free from any claim or interference by
15 the other party.
16   (g) The contribution of each spouse to the
17 acquisition, enhancement, and production of income or the
18 improvement of, or the incurring of liabilities to, both the
19 marital assets and the nonmarital assets of the parties.
20   (h) The court may consider any other factors necessary
21 to do equity and justice between the parties.
22 (1) The judgment of award distributing assets shall
23 have the effect of a duly executed conveyance, transfer,
24 release, or acquisition that is recorded in the county where
25 the property is located when the judgment or certified copy of
26 the judgment is recorded in the official records of the county
27 in which the property is located.
28 (3) As used in this section, unless the context
29 requires otherwise:
30   (a) Marital assets and liabilities include:
31
CODING: Words strikenn are deletions; words underlined are additions.
1. Assets acquired and liabilities incurred during the marriage, individually by either spouse or jointly by them;

2. All income derived from nonmarital assets during the marriage;

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

4. Interspousal gifts during the marriage;

5. Vested and nonvested benefits, rights, and funds accrued during the marriage of all retirement, pension, profit-sharing, annuity, and insurance plans and programs.

(b) Nonmarital assets and liabilities are:

1. Assets acquired and liabilities incurred by either party before the marriage and assets acquired and liabilities incurred in exchange for such assets and liabilities;

2. Assets acquired separately by either party by noninterspousal gift, bequest, devise, or descent and assets acquired in exchange for such assets;

3. Assets and liabilities excluded by valid written agreement of the parties and assets acquired and liabilities incurred in exchange for such assets and liabilities;

4. The date for determining marital assets and liabilities and the value of such assets and the amount of such liabilities as the earlier of the date the parties enter into a valid separation agreement or such other date as may be expressly established by such agreement or the date of the filing of a petition for dissolution of marriage, unless the

CODING: Words stricken are deletions; words underlined are additions.
trial judge determines another date is just and equitable under the circumstances.

(5) All assets acquired and liabilities incurred by either spouse subsequent to the date of the marriage and not specifically established as nonmarital assets or liabilities are presumed to be marital assets and liabilities. The presumption of marital assets and liabilities is overcome by a showing that the assets and liabilities come within the definition of nonmarital assets and liabilities. The presumption is only for evidentiary purposes in a dissolution proceeding and does not vest title until a Judgment of a court is entered. Nothing herein shall require a joinder of spouses in the conveyance, transfer, or hypothecation of their individual property, and nothing herein shall affect the laws of descent or distribution or establish community property in this state.

(6) The court may provide for equitable distribution of the marital assets and liabilities without regard to alimony for either party. After the determination of an equitable distribution of the marital assets and liabilities, the court shall consider whether a judgment for alimony shall be made.

(7) The court, to do equity between the parties, may, in lieu of or in supplement thereto, facilitate or effectuate the equitable division of marital assets and liabilities, and order the payment of a monetary sum in lump sum or over a fixed period of time.

Section 2. Paragraph (d) of subsection (2) of section 61.08, Florida Statutes, 1986 Supplement, is amended to read:

61.08 Alimony.--

CODING: Words stricken are deletions, words underlined are additions.
1. In determining a proper award of alimony or
2. maintenance, the court shall consider all relevant economic
3. factors, including, but not limited to:
4. {e} The financial resources of each party and the
5. marital assets and liabilities distributed to each party.
6. The court may consider any other factor necessary to do equity
7. and justice between the parties.
8. Section 3. This act applies to all proceedings
9. commenced after the effective date of the enactment hereof.
10. Section 4. This act shall take effect October 1, 1987.

********************

HOUSE SUMMARY
Requires courts to equitably distribute marital assets
and liabilities along described lines. Provides that the
judgment of award distributing assets shall have the
effect of a duly executed conveyance, transfer, release,
or acquisition recorded in the county where the property
is located when the judgment is recorded in the official
records of such county. Provides a procedure for
establishing the date on which marital assets and
liabilities shall be determined and their respective
values and amounts assigned. Provides that all assets
acquired and liabilities incurred by either spouse
subsequent to the date of the marriage and not
specifically established as nonmarital assets or
liabilities are presumed to be marital assets and
liabilities. Provides for the award of alimony after the
equitable distribution of marital assets and liabilities.
Includes marital assets and liabilities distributed to
each party within a list of economic factors considered
by the court in fixing alimony.

CODING: Words stricken are deletions; words underlined are additions.
A bill to be entitled
An act relating to dissolution of marriage;
creating s. 61.075, F.S.; authorizing courts to
equitably distribute marital assets and
liabilities and prescribing factors for the
court to consider in making such distributions;
defining marital and nonmarital assets and
liabilities; providing for the effect of a
recorded judgment; establishing the date for
determining marital assets and liabilities and
the value thereof; providing a presumption as
to marital assets and liabilities; providing
for monetary payments in lump sum or
installments; providing for the consideration
of an alimony award; amending s. 61.08, F.S.;
authorizing the award of periodic alimony;
providing that the court may consider the
adultery of either spouse in determining the
amount of alimony to award; adding marital
assets and liabilities as factors in the
determination of an award of alimony or
maintenance; providing an effective date.

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

Section 1. Section 61.075, Florida Statutes, is
created to read:

61.075 Equitable distribution of marital assets and
liabilities.--

(1) In a proceeding for dissolution of marriage, in
addition to all other remedies available to a court to do
equity between the parties, or in a proceeding for disposition of assets following a dissolution of marriage by a court which lacked jurisdiction over the absent spouse or lacked jurisdiction to dispose of the assets, the court shall set apart to each spouse that spouse's nonmarital assets and liabilities and shall distribute between the parties the marital assets and liabilities in such proportions as are equitable, after considering all relevant factors, including:

(a) The contribution to the marriage by each spouse, including contributions to the care and education of the children and services as homemaker.

(b) The economic circumstances of the parties.

(c) The duration of the marriage.

(d) Any interruption of personal careers or educational opportunities of either party.

(e) The contribution of one spouse to the personal career or educational opportunity of the other spouse.

(f) The desirability of retaining any asset, including an interest in a business, corporation, or professional practice, intact and free from any claim or interference by the other party.

(g) The contribution of each spouse to the acquisition, enhancement, and production of income or the improvement of, or the incurring of liabilities to, both the marital assets and the nonmarital assets of the parties.

(h) Any other factors necessary to do equity and justice between the parties.

(2) The judgment distributing assets shall have the effect of a duly executed instrument of conveyance, transfer, release, or acquisition which is recorded in the county where the property is located when the judgment, or a certified copy
of the judgment, is recorded in the official records of the county in which the property is located.

As used in this section:

(a) "Marital assets and liabilities" include:
1. Assets acquired and liabilities incurred during the marriage, individually by either spouse or jointly by them;
2. The enhancement in value and appreciation of nonmarital assets resulting either from the efforts of either party during the marriage or from the contribution to or expenditure thereon of marital funds or other forms of marital assets, or both;
3. Interspousal gifts during the marriage;
4. All vested and nonvested benefits, rights, and funds accrued during the marriage in retirement, pension, profit-sharing, annuity, deferred compensation, and insurance plans and programs; and
5. All real property held by the parties as tenants by the entireties, whether acquired prior to or during the marriage, shall be presumed to be a marital asset. If, in any case, a party makes a claim to the contrary, the burden of proof shall be on the party asserting the claim for a special equity.

(b) "Nonmarital assets and liabilities" include:
1. Assets acquired and liabilities incurred by either party prior to the marriage and assets acquired and liabilities incurred in exchange for such assets and liabilities;
2. Assets acquired separately by either party by noninterspousal gift, bequest, devise, or descent and assets acquired in exchange for such assets;
3. All income derived from nonmarital assets during the marriage unless the income was treated, used, or relied upon by the parties as a marital asset; and

4. Assets and liabilities excluded from marital assets and liabilities by valid written agreement of the parties and assets acquired and liabilities incurred in exchange for such assets and liabilities.

   (4) The date for determining marital assets and liabilities and the value of such assets and the amount of such liabilities is the earliest of the date the parties enter into a valid separation agreement, such other date as may be expressly established by such agreement, or the date of the filing of a petition for dissolution of marriage, unless the trial judge determines another date is just and equitable under the circumstances.

   (5) All assets acquired and liabilities incurred by either spouse subsequent to the date of the marriage and not specifically established as nonmarital assets or liabilities are presumed to be marital assets and liabilities. Such presumption is overcome by a showing that the assets and liabilities are nonmarital assets and liabilities. The presumption is only for evidentiary purposes in the dissolution proceeding and does not vest title. Title to disputed assets shall vest only by the judgment of a court. This section does not require the joinder of spouses in the conveyance, transfer, or hypothecation of a spouse's individual property; affect the laws of descent and distribution; or establish community property in this state.

   (6) The court may provide for equitable distribution of the marital assets and liabilities without regard to alimony for either party. After the determination of an
equitable distribution of the marital assets and liabilities, the court shall consider whether a judgment for alimony shall be made.

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

Section 2. Subsections (1) and (2) of section 61.08, Florida Statutes, are amended to read:

61.08 Alimony. --

(1) In a proceeding for dissolution of marriage, the court may grant alimony to either party, which alimony may be rehabilitative, periodic, or permanent in nature. In any award of alimony, the court may order periodic payments or payments in lump sum or both. The court may consider the adultery of either a spouse and the circumstances thereof in determining whether alimony will be awarded to such spouse and the amount of alimony, if any, to be awarded.

(2) In determining a proper award of alimony or maintenance, the court shall consider all relevant economic factors, including but not limited to:

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

(b) The duration of the marriage.

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

(d) The financial resources of each party and the marital assets and liabilities distributed to each.

CODING: Words struck out are deletions; words underlined are additions.
(e) When applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.

(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.

The court may consider any other factor necessary to do equity and justice between the parties.

Section 3. This act applies to all proceedings commenced after the effective date of this act.

Section 4. This act shall take effect October 1, 1988.
SENATE SUMMARY

Authorizes courts to equitably distribute marital assets and liabilities, in a proceeding for dissolution of marriage or a proceeding for disposition of assets following dissolution of marriage by a court that lacked jurisdiction over the absent spouse or jurisdiction to dispose of the assets. Prescribes factors the court must consider in making such distribution. Defines marital and nonmarital assets and liabilities. Establishes the date for determining marital assets and liabilities and the value thereof. Provides a rebuttable presumption as to marital assets acquired and liabilities incurred subsequent to marriage. Provides for the consideration of an alimony award. Provides for effectuation of a division by ordering monetary payment payable in a lump sum or in installments.

Authorizes the award of periodic alimony. Provides that the court may consider the adultery of either spouse in awarding alimony. Adds the distribution of marital assets and liabilities to the list of factors to be considered in determining an award of alimony or maintenance.

CODING: Words stricken are deletions; words underlined are additions.
A bill to be entitled
An act relating to dissolution of marriage;
creating s. 61.075, F.S.; authorizing courts to
equitably distribute marital assets and
liabilities; defining marital and nonmarital
assets and liabilities; providing for the
effect of a recorded judgment; establishing the
date for determining marital assets and
liabilities and the value thereof; providing a
presumption as to marital assets and
liabilities; providing for monetary payments;
providing for the consideration of an alimony
award; amending s. 61.08, F.S.; adding marital
assets and liabilities as factors in the
determination of an award of alimony or
maintenance; providing an effective date.

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

Section 1. Section 61.075, Florida Statutes, is
created to read:

61.075 Equitable distribution of marital assets and
liabilities.--

(1) In a proceeding for dissolution of marriage, in
addition to all other remedies available to a court to do
equity between the parties, or in a proceeding for disposition
of assets following a dissolution of marriage by a court which
lacked jurisdiction over the absent spouse or lacked
jurisdiction to dispose of the assets, the court shall set
apart to each spouse his or her nonmarital assets and
liabilities and shall distribute between the parties the

CODING: Words in square brackets are deletions from existing law; words underlined are additions.
marital assets and liabilities in such proportions as are equitable, after considering all relevant factors, including:

(a) The contribution to the marriage by each spouse, including contributions to the care and education of the children and services as homemaker.

(b) The economic circumstances of the parties.

(c) The duration of the marriage.

(d) Any interruption of personal careers or educational opportunities of either party.

(e) The contribution of one spouse to the personal career or educational opportunity of the other spouse.

(f) The desirability of retaining any asset, including an interest in a business, corporation, or professional practice, intact and free from any claim or interference by the other party.

(g) The contribution of each spouse to the acquisition, enhancement, and production of income or the improvement of, or the incurring of liabilities to, both the marital assets and the nonmarital assets of the parties.

(h) Any other factors necessary to do equity and justice between the parties.

(2) The judgment distributing assets shall have the effect of a duly executed conveyance, transfer, release, or acquisition which is recorded in the county where the property is located when the judgment, or a certified copy of the judgment, is recorded in the official records of the county in which the property is located.

(3) As used in this section:

(a) "Marital assets and liabilities" include:

1. Assets acquired and liabilities incurred during the marriage, individually by either spouse or jointly by them;
2. The enhancement in value and appreciation of nonmarital assets resulting either from the efforts of either party during the marriage or from the contribution to or expenditure thereon of marital funds or other forms of marital assets, or both:

3. Interspousal gifts during the marriage;

4. All vested and nonvested benefits, rights, and funds accrued during the marriage in retirement, pension, profit-sharing, annuity, and insurance plans and programs, and

5. All property held by the parties as tenants by the entireties, whether acquired prior to or during the marriage, shall be presumed to be owned in equal shares. If, in any case, a party makes a claim to the contrary, the burden of proof shall be on the party asserting such a claim to prove that the property was not held in equal shares.

(b) "Nonmarital assets and liabilities" are:

1. Assets acquired and liabilities incurred by either party prior to the marriage and assets acquired and liabilities incurred in exchange for such assets and liabilities:

2. Assets acquired separately by either party by noninterspousal gift, bequest, devise, or descent and assets acquired in exchange for such assets;

3. All income derived from nonmarital assets during the marriage unless the income was treated, used, or relied upon by the parties as a marital asset; and

4. Assets and liabilities excluded from marital assets and liabilities by valid written agreement of the parties.

(4) The date for determining marital assets and liabilities and the value of such assets and the amount of such liabilities is the earlier of the date the parties enter...
into a valid separation agreement expressly establishing such
date or the date of the filing of a petition for dissolution
of marriage, unless the trial judge determines another date is
just and equitable under the circumstances.

(5) All assets acquired and liabilities incurred by
either spouse subsequent to the date of the marriage and not
specifically established as nonmarital assets or liabilities
are presumed to be marital assets and liabilities. Such
presumption is overcome by a showing that the assets and
liabilities are nonmarital assets and liabilities. The
presumption is only for evidentiary purposes in the
dissolution proceeding and does not vest title. Title to
disputed assets shall vest only by the judgment of a court.
This section does not require the joinder of spouses in the
conveyance, transfer, or hypothecation of a spouse's
individual property; affect the laws of descent and
distribution; or establish community property in this state.

(6) The court may provide for equitable distribution
of the marital assets and liabilities without regard to
alimony for either party. After the determination of an
equitable distribution of the marital assets and liabilities,
the court shall consider whether a judgment for alimony shall
be made.

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

Section 2. Subsection (2) of section 61.08, Florida
Statutes, 1986 Supplement, is amended to read:

61.08 Alimony.--
(2) In determining a proper award of alimony or maintenance, the court shall consider all relevant economic factors, including but not limited to:

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

(b) The duration of the marriage.

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

(d) The financial resources of each party and the marital assets and liabilities distributed to each.

(e) When applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.

(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.

The court may consider any other factor necessary to do equity and justice between the parties.

Section 3. This act applies to all proceedings pending on the effective date of this act in which a final judgment has not been entered and to all proceedings commenced after the effective date of this act.

Section 4. This act shall take effect October 1, 1988.
HOUSE SUMMARY

Provides for the distribution of assets and liabilities in connection with a dissolution of marriage. Authorizes courts to equitably distribute marital assets and liabilities and lists factors to be considered. Distinguishes such assets and liabilities from nonmarital ones. Provides for the effect of a recorded judgment. Establishes the date for determining what is a marital asset or liability and what it is worth. Provides an evidentiary presumption as to marital assets or liabilities. Provides that title vests only by the judgment of a court. Provides for the consideration of an alimony award. Provides for monetary payments as a lump sum or in installments. Adds as a factor to be considered in awarding alimony or maintenance the marital assets and liabilities distributed to each party.

CODING: Words strucken are deletions; words underlined are additions.
A bill to be entitled

An act relating to dissolution of marriage;
creating s. 61.075, F.S.; directing courts to
equitably distribute marital assets and
liabilities; defining marital and nonmarital
assets and liabilities; providing for the
effect of a recorded judgment; establishing the
date for determining marital assets and
liabilities and the value thereof; providing a
presumption as to marital assets and
liabilities; providing for monetary payments;
providing for the consideration of an alimony
award; amending s. 61.08, F.S.; adding marital
assets and liabilities as factors in the
determination of an award of alimony or
maintenance; providing an effective date.

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

Section 1. Section 61.075, Florida Statutes, is
created to read:

61.075 Equitable distribution of marital assets and
liabilities.—

(1) In a proceeding for dissolution of marriage, in
addition to all other remedies available to a court to do
equity between the parties, or in a proceeding for disposition
of assets following a dissolution of marriage by a court which
lacked jurisdiction over the absent spouse or lacked
jurisdiction to dispose of the assets, the court shall set
apart to each spouse his or her nonmarital assets and
liabilities and shall distribute between the parties the

CODING: Words stricken are deletions; words underlined are additions
marital assets and liabilities in such proportions as are 
equitable, after considering all relevant factors, including:

(a) The contribution to the marriage by each spouse,
including contributions to the care and education of the
children and services as homemaker.

(b) The economic circumstances of the parties.

(c) The duration of the marriage.

(d) Any interruption of personal careers or
educational opportunities of either party.

(e) The contribution of one spouse to the personal
career or educational opportunity of the other spouse.

(f) The desirability of retaining any asset, including
an interest in a business, corporation, or professional
practice, intact and free from any claim or interference by
the other party.

(g) The contribution of each spouse to the
acquisition, enhancement, and production of income or the
improvement of, or the incurring of liabilities to, both the
marital assets and the nonmarital assets of the parties.

(h) Any other factors necessary to do equity and
justice between the parties.

(2) The judgment distributing assets shall have the
effect of a duly executed instrument of conveyance, transfer,
release, or acquisition which is recorded in the county where
the property is located when the judgment, or a certified copy
of the judgment, is recorded in the official records of the
county in which the property is located.

(3) As used in this section:
(a) "Marital assets and liabilities" include:
1. Assets acquired and liabilities incurred during the
marriage, individually by either spouse or jointly by them,
2. CODING: Words stricken are deletions; words underlined are additions.
2. The enhancement in value and appreciation of nonmarital assets resulting either from the efforts of either party during the marriage or from the contribution to or expenditure thereon of marital funds or other forms of marital assets, or both.

2. Interspousal gifts during the marriage;

4. All vested and nonvested benefits, rights, and funds accrued during the marriage in retirement, pension, profit-sharing, annuity, deferred compensation, and insurance plans and programs; and

5. All real property held by the parties as tenants by the entirety, whether acquired prior to or during the marriage, shall be presumed to be marital assets. If, in any case, a party makes a claim to the contrary, the burden of proof shall be on the party asserting the claim for a special equity.

(b) "Nonmarital assets and liabilities" are:

1. Assets acquired and liabilities incurred by either party prior to the marriage and assets acquired and liabilities incurred in exchange for such assets and liabilities;

2. Assets acquired separately by either party by noninterspousal gift, bequest, devise, or descent and assets acquired in exchange for such assets;

3. All income derived from nonmarital assets during the marriage unless the income was treated, used, or relied upon by the parties as a marital asset; and

4. Assets and liabilities excluded from marital assets and liabilities by valid written agreement of the parties and assets acquired and liabilities incurred in exchange for such assets and liabilities.

CODING: Words stricken are deletions; words underlined are additions.
(4) The date for determining marital assets and liabilities and the value of such assets and the amount of such liabilities is the earliest of the date the parties enter into a valid separation agreement, such other date as may be expressly established by such agreement, or the date of the filing of a petition for dissolution of marriage, unless the trial judge determines another date is just and equitable under the circumstances.

(5) All assets acquired and liabilities incurred by either spouse subsequent to the date of the marriage and not specifically established as nonmarital assets or liabilities are presumed to be marital assets and liabilities. Such presumption is overcome by a showing that the assets and liabilities are nonmarital assets and liabilities. The presumption is only for evidentiary purposes in the dissolution proceeding and does not vest title. Title to disputed assets shall vest only by the judgment of a court. This section does not require the joinder of spouses in the conveyance, transfer, or hypothecation of a spouse’s individual property, affect the laws of descent and distribution, or establish community property in this state.

(6) The court may provide for equitable distribution of the marital assets and liabilities without regard to alimony for either party. After the determination of an equitable distribution of the marital assets and liabilities, the court shall consider whether a judgment for alimony shall be made.

(7) To do equity between the parties, the court may, in lieu of or to supplement, facilitate, or effectuate the equitable division of marital assets and liabilities, order a
Section 2. Paragraphs (d) and (f) of subsection (2) of section 61.08, Florida Statutes, are amended to read:

61.08 Alimony.--

(2) In determining a proper award of alimony or maintenance, the court shall consider all relevant economic factors, including but not limited to:

(d) The financial resources of each party and the marital assets and liabilities distributed to each.

(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.

The court may consider any other factor necessary to do equity and justice between the parties.

Section 3. This act shall take effect October 1, 1988, and shall apply to all proceedings commenced after such date.
**HOUSE SUMMARY**

Directs the court to set apart to each spouse his or her nonmarital assets and liabilities and to distribute between the parties marital assets and liabilities in equitable proportions. Provides factors to be used in determining such a distribution. Provides that the judgment distributing assets shall have the effect of a duly executed instrument of conveyance, transfer, release, or acquisition. Provides detailed criteria to be used in the determination of any such distributions. Adds marital assets and liabilities as factors in the determination of an award of alimony or maintenance. See bill for details.

This publication was produced at an average cost of 1.12 cents per single page in compliance with the Rules and for the information of members of the Legislature and the public.
A bill to be entitled
An act relating to dissolution of marriage;
providing that the right to a military pension
or military retirement benefits must be
considered a marital asset in equitably
distributing marital property; allowing the
court to specify the scheme of distribution;
providing that the act does not nullify certain
awards; allowing a court to modify certain
judgments to distribute the rights to military
pension or military retirement benefits;
providing an effective date.

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

Section 1. Distribution by court of marital property
upon dissolution of marriage.--

(1) In a proceeding for dissolution of marriage, a
spouse's entitlement to military pension or military
retirement benefits must be considered a marital asset for
purposes of equitably distributing marital property. The
scheme of distribution may be designed as the court finds
reasonable. The court may not order the Federal Government to
pay directly to a former spouse an amount of military pension
or military retirement benefits in excess of the maximum
amount allowed by Federal law.

(2) This section may not be construed to nullify any
rights to military pension or military retirement benefits
which were awarded by a court of competent jurisdiction before
the effective date of this act.
If a court otherwise has jurisdiction to modify a judgment of dissolution of marriage, the court may modify such judgment to provide for the distribution of military pension or retirement benefits, if that judgment was issued on or after June 26, 1981. Only those installments accruing subsequent to the application for modification may be modified.

Section 2. This act shall take effect upon becoming a law.

SENATE SUMMARY

In a proceeding for dissolution of marriage, requires a court to consider certain military pension or retirement benefits as marital assets in distributing marital property. Gives the court great latitude in devising the scheme of distribution. Provides that the act does not nullify awards of such benefits that were previously made. Allows a court to modify judgments issued on June 26, 1981, or later, to distribute such benefits.
A bill to be entitled 
An act relating to marriage and the dissolution 
thereof; amending ss. 28.101, 382.023, F.S.; 
increasing fees for filing, recording, and 
reporting final judgments of dissolution of 
marriage; amending s. 741.02, F.S.; increasing 
the fees for issuing marriage licenses; 
providing an effective date.

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

Section 1. Subsection (2) of section 28.101, Florida 
Statutes, is amended to read:

28.101 Petitions and records of dissolution of 
marriage; additional charges.--

(2) Upon receipt of a final judgment of dissolution of 
marriage for filing, and in addition to the filing charges in 
s. 28.241, the clerk shall collect and receive a service 
charge of $7 $5 pursuant to s. 382.023 for the recording and 
reporting of such final judgment of dissolution of marriage to 
the Department of Health and Rehabilitative Services.

Section 2. Subsection (2) of section 382.023, Florida 
Statutes, is amended to read:

382.023 Clerks of circuit courts to furnish department 
with record of dissolutions of marriage granted; charges.--

(2) Clerks of the circuit courts shall collect for 
their service at the time of the filing of a final judgment of 
dissolution of marriage a charge of $7 $5, of which $3 shall 
be retained by the circuit court as a part of the cost in the 
cause in which the judgment is granted and of which $4 $2 
shall be collected and transmitted to the department as a part
24-1180-88

Section 3. Section 741.02, Florida Statutes, is amended to read:

741.02 Additional fee.--Upon the receipt of each application for the issuance of a marriage license, the county court judge or clerk of the circuit court shall, in addition to the fee allowed by s. 741.01, collect and receive an additional fee of §4 $3, to be distributed as provided by s. 382.022.

Section 4. This act shall take effect July 1, 1988, or upon becoming a law, whichever occurs later.

SENATE SUMMARY

Increases the fees for filing, recording, and reporting final judgments of dissolution of marriage and for issuing marriage licenses.

CODING: Words stricken are deletions; words underlined are additions.
A bill to be entitled
An act relating to domestic relations; amending
s 382.023, F.S., increasing the filing charge
for judgment of dissolution of marriage;
amending s. 741.02, F.S., increasing the
additional fee collected for application for
the issuance of a marriage license; amending s.
28.101, F.S., to conform; providing an
effective date.

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

Section 1. Subsection (2) of section 382.023, Florida
Statutes, is amended to read:

382.023 Clerks of circuit courts to furnish department
with record of dissolutions of marriage granted; charges.--
(2) Clerks of the circuit courts shall collect for
their service at the time of the filing of a final judgment of
dissolution of marriage a charge of $7.65, of which $3 shall
be retained by the circuit court as a part of the cost in the
cause in which the judgment is granted and of which $4.62
shall be collected and transmitted to the department as a part
of the cost of maintaining the dissolution-of-marriage record
system.

Section 2. Section 741.02, Florida Statutes, is
amended to read:

741.02 Additional fee.--Upon the receipt of each
application for the issuance of a marriage license, the county
court judge or clerk of the circuit court shall, in addition
to the fee allowed by s. 741.01, collect and receive an
Section 3. Subsection (2) of section 28.101, Florida Statutes, is amended to read:

28.101 Petitions and records of dissolution of marriage; additional charges.--

(2) Upon receipt of a final judgment of dissolution of marriage for filing, and in addition to the filing charges in s. 26.241, the clerk shall collect and receive a service charge of $7 $5 pursuant to s. 382.023 for the recording and reporting of such final judgment of dissolution of marriage to the Department of Health and Rehabilitative Services.

Section 4. This act shall take effect July 1, 1988, or upon becoming a law, whichever occurs later.

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HOUSE SUMMARY

Increases the filing charge for judgment of dissolution of marriage and increases the additional fee collected for application for issuance of a marriage license.

This publication was produced at an average cost of 1.12 cents per single page in compliance with the Rules and for the information of members of the Legislature and the public.

CODING: Words stricken are deletions; words underlined are additions.
RE: Chapter 88-98 (from FINAL LEGISLATIVE BILL INFORMATION, 1998 Sessions)

S 152 GENERAL BILL/ENG by Judiciary-Civil (Similar H 4, H 806, Compare CS/H 309, H 1360, S 228, S 707)
Marital Assets & Liabilities: authorizes courts to equitably distribute such assets & liabilities & prescribes factors for court to consider in making such distributions; establishes date for determining such assets & liabilities & value thereof; provides for consideration of alimony award; provides that court may consider adultery of either spouse in determining amount of alimony, etc. Creates 61.075; amends 61.08, 382.023, 741.02, 28.101. Effective Date: 10/01/88 except as otherwise provided.
01/15/88 SENATE Prefiled
01/15/88 SENATE Referred to Judiciary-Civil
04/05/88 SENATE Introduced, referred to Judiciary-Civil -SJ 20; On Committee agenda—Judiciary-Civil, 04/06/88, 2:00 pm, Room-B
04/06/88 SENATE Comm. Report: Favorable with 2 amendment(s) by Judiciary-Civil, placed on Calendar -SJ 68
04/19/88 SENATE Placed on Special Order Calendar -SJ 129; Passed as amended; YEAS 33 NAYS 0 -SJ 140; Immediately certified -SJ 141
04/19/88 HOUSE In Messages
04/23/88 HOUSE Received, placed on Calendar -HJ 235
05/04/88 HOUSE Placed on Special Order Calendar
05/08/88 HOUSE Substituted for HB 806; Read second time; Amendments adopted -HJ 374
05/10/88 HOUSE Read third time; Passed as amended; YEAS 118 NAYS 0 -HJ 392
05/11/88 SENATE In Messages
05/17/88 SENATE Was taken up -SJ 299; Amendments to House amendments adopted; Concurred in House amendments as amended; Requested House to concur; Refused to concur in amendments totaling 2; Requested House to recede; Passed as amended; YEAS 33 NAYS 0 -SJ 300
05/18/88 HOUSE In Messages
05/25/88 HOUSE Concurred in Senate amendment to House amendment; Amendment to Senate amendment to House amendment adopted; Concurred in Senate amendment to House amendment as amended; Receded from amendments totaling 2; Passed as further amended; YEAS 116 NAYS 0 -HJ 678
05/25/88 SENATE In Messages
05/26/88 SENATE Concurred; Passed as amended; YEAS 31 NAYS 0 -SJ 431
05/26/88 ORDERED engrossed, then enrolled -SJ 431
06/01/88 Signed by Officers and presented to Governor -SJ 713
06/16/88 Approved by Governor; Chapter No. 88-98

H 806 GENERAL BILL by Judiciary; Simon; Dunbar and others (Similar H 4, ENG/S 152, Compare CS/H 309)
Divorce/Marital Assets & Liabilities: directs courts to equitably distribute marital assets & liabilities; defines marital & nonmarital assets & liabilities; provides for effect of recorded judgment; provides for monetary payments & for consideration of alimony award; adds such assets & liabilities as factors in determination of award of alimony or maintenance; applies to all proceedings commenced after 10/01/88, etc. Creates 61.075; amends 61.08 Effective Date: 10/01/88.
03/28/88 HOUSE Prefiled
04/01/88 HOUSE Placed on Calendar
04/05/88 HOUSE Introduced, placed on Calendar -HJ 75
05/09/88 HOUSE Placed on Special Order Calendar
05/09/88 HOUSE Iden./Sim. Senate Bill substituted; Laid on Table under Rule, Iden./Sim./Compare Bill passed, refer to SB 152 (Ch. 88-98) -HJ 374

-pp. 337-338
I. SUMMARY:

A. Present Situation:

Section 61.08(2), F.S., requires a court to consider all relevant economic factors in determining a proper award of alimony or maintenance including "any other factor necessary to do equity and justice between the parties."

The Florida Supreme Court, in Canakaris v. Canakaris, 382 So. 2d 1197 (1980), stated that the above provision would allow a judge to award lump sum alimony to ensure an equitable distribution of property acquired during the marriage, provided that the evidence reflects (1) a justification for such lump sum payment and (2) financial ability of the other spouse to make such payment without substantially endangering his or her economic status. Since Canakaris, numerous cases have expanded and developed this idea of using lump sum alimony for "equitable distribution" of the marital property. However, there appear to be questions left unanswered by these cases.

B. Effect of Proposed Changes:

The bill creates a new s. 61.075, F.S., which sets forth the definitions and procedures for a statutory system of equitable distribution of marital property. The bill defines "marital assets and liabilities" and "nonmarital assets and liabilities" by providing what types of property and debt are to be included in each category. Two of these provisions are relatively new to the legislative consideration of equitable distribution. The first provides that all real property held by the parties as tenants by the entireties, whether acquired prior to or during the marriage, is presumed to be marital property, if one of the parties makes a claim to the contrary, the burden of proof is on that party to show a special equity. The second provision includes in nonmarital property all income derived from nonmarital assets during the marriage unless the income was treated, used or relied upon by the parties as a marital asset. This provision applies only to income from nonmarital assets that was received during the marriage.

The bill provides for selection of a date upon which all property and debts of the parties, whether owned or owed jointly or individually, are to be identified and categorized as marital or nonmarital. This date would be the earlier of these alternative dates: the date the parties enter into a valid separation agreement, a date expressly established by the parties in the agreement, the date of filing a petition for dissolution of marriage, or such other date as the court may deem equitable.

All nonmarital assets and liabilities are to be set aside to the spouse owning such property or owing the debt. The marital property is then to be valued as of the date of identifying and
categorizing the property. The marital property is divided among the spouses in such proportion and in such manner as the court deems equitable. In making this determination of equity, the court is to examine and consider a list of factors contained in the bill. This list includes factors the consideration of which should place greater emphasis and importance on the contributions of the homemaker to the marriage.

The bill also provides that the court may order a monetary payment, either in lump sum or in installments to supplement or effectuate the equitable distribution. This should allow the court greater flexibility in awarding specific parcels of property to do equity.

The bill also provides that the court may equitably distribute the marital assets and liabilities without regard to alimony.

The bill also provides that the court may consider the adultery of either spouse in determining whether to award alimony and, if so, how much alimony to award.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Not ascertainable.

B. Government:

None.

III. COMMENTS:

There have been bills similar to this one in both houses of the Legislature the past three sessions. There is a similar House bill, HB 4.

IV. AMENDMENTS:

None.
I. SUMMARY:

A. Present Situation:

Section 61.08(2), F.S., requires a court to consider all relevant economic factors in determining a proper award of alimony or maintenance including "any other factor necessary to do equity and justice between the parties."

The Florida Supreme Court, in Canakaris v. Canakaris, 382 So. 2d 1197 (1980), stated that the above provision would allow a judge to award lump sum alimony to ensure an equitable distribution of property acquired during the marriage, provided that the evidence reflects (1) a justification for such lump sum payment and (2) financial ability of the other spouse to make such payment without substantially endangering his or her economic status. Since Canakaris, numerous cases have expanded and developed this idea of using lump sum alimony for "equitable distribution" of the marital property. However, there appear to be questions left unanswered by these cases.

B. Effect of Proposed Changes:

The bill creates a new s. 61.075, F.S., which sets forth the definitions and procedures for a statutory system of equitable distribution of marital property. The bill defines "marital assets and liabilities" and "nonmarital assets and liabilities" by providing what types of property and debt are to be included in each category. Two of these provisions are relatively new to the legislative consideration of equitable distribution. The first provides that all real property held by the parties as tenants by the entireties, whether acquired prior to or during the marriage, is presumed to be marital property. If one of the parties makes a claim to the contrary, the burden of proof is on that party to show a special equity. The second provision includes in nonmarital property all income derived from nonmarital assets during the marriage unless the income was treated, used or relied upon by the parties as a marital asset. This provision applies only to income from nonmarital assets that was received during the marriage.

The bill provides for selection of a date upon which all property and debts of the parties, whether owned or owed jointly or individually, are to be identified and categorized as marital or nonmarital. This date would be the earlier of these alternative dates: the date the parties enter into a valid separation agreement, a date expressly established by the parties in the agreement, the date of filing a petition for dissolution of marriage, or such other date as the court may deem equitable.

All nonmarital assets and liabilities are to be set aside to the spouse owning such property or owing the debt. The marital property is then to be valued as of the date of identifying and
categorizing the property. The marital property is divided among the spouses in such proportion and in such manner as the court deems equitable. In making this determination of equity, the court is to examine and consider a list of factors contained in the bill. This list includes factors the consideration of which should place greater emphasis and importance on the contributions of the homemaker to the marriage.

The bill also provides that the court may order a monetary payment, either in lump sum or in installments to supplement or effectuate the equitable distribution. This should allow the court greater flexibility in awarding specific parcels of property to do equity.

The bill also provides that the court may equitably distribute the marital assets and liabilities without regard to alimony.

The bill also provides that the court may consider the adultery of either spouse in determining whether to award alimony and, if so, how much alimony to award.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Not ascertainable.

B. Government:

None.

III. COMMENTS:

There have been bills similar to this one in both houses of the Legislature the past three sessions. There is a similar House bill, HB 4.

IV. AMENDMENTS:

#1 by Judiciary-Civil:
Deletes the proposed insertion of "periodic" from the initial grant of authority to the courts to award alimony.

#2 by Judiciary-Civil:
Title.
Florida House of Representatives - 1988

By Representatives Lewis, Gordon, Rochlin, Jennings, Sansom, Gonzalez-Quevedo, Bloom, Mackenzie, Rush, Burns, Brown, Frankel, Hawkins, Northam, Sanderson, Stone, Messersmith, Hanson, Frishe, Bainter, Irvine, Metcalf, Carlton, (Additional Sponsors on Last Printed Page)

A bill to be entitled
An act relating to dissolution of marriage;
providing that the right to a military pension
or military retirement benefits must be
considered a marital asset in equitably
distributing marital property; allowing the
court to specify the scheme of distribution;
providing that the act does not nullify certain
awards; allowing a court to modify certain
judgments to distribute the rights to military
pension or military retirement benefits;
providing an effective date.

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

Section 1. Distribution by court of marital property
upon dissolution of marriage.--

(1) In a proceeding for dissolution of marriage, a
spouse's entitlement to military pension or military
retirement benefits must be considered a marital asset for
purposes of equitably distributing marital property. The
scheme of distribution may be designed as the court finds
reasonable. The court may not order the Federal Government
to pay directly to a former spouse an amount of military pension
or military retirement benefits in excess of the maximum
amount allowed by Federal law.

(2) This section may not be construed to nullify any
rights to military pension or military retirement benefits
which were awarded by a court of competent jurisdiction before
the effective date of this act.

CODING: Words stricken are deletions; words underlined are additions.
13) If a court otherwise has jurisdiction to modify a
judgment of dissolution of marriage, the court may modify such
judgment to provide for the distribution of military pension
or retirement benefits; if that judgment was issued on or
after June 26, 1981. Only those installments accruing
subsequent to the application for modification may be
modified.

Section 2. This act shall take effect upon becoming a
law.

**********************************************************************

HOUSE SUMMARY

In a proceeding for dissolution of marriage, requires a
court to consider certain military pension or retirement
benefits as marital assets in distributing marital
property. Gives the court great latitude in devising the
scheme of distribution. Provides that the act does not
nullify awards of such benefits that were previously
made. Allows a court to modify judgments issued on June
26, 1981, or later, to distribute such benefits.

**********************************************************************

ADDITIONAL SPONSORS
Young, Tobin, Carpenter, Guber

This publication was produced at an average cost of 1.12 cents
per single page in compliance with the Rules and for
the information of members of the Legislature and the public.
I. SUMMARY:

A. PRESENT SITUATION:

In 1981, the United States Supreme Court, in the case of McCarty v. McCarty, 453 U.S. 210, 101 S. Ct. 2728, 69 L. Ed. 589 (1981), held that federal law precludes a state court from dividing military retired pay pursuant to state community property laws. The Court held that if a state law clearly and substantially interferes with a federal interest, the Supremacy Clause requires that the state law be overridden. Referring to the federal military retirement statutes, the court reasoned that application of community property principles would threaten grave harm to "clear and substantial" federal interests by frustrating the congressional objective of providing the military retirement system as an inducement for enlistment and re-enlistment. Congress intended military retirement pay to be a personal entitlement payable to the retiree; therefore, it must be considered as separate property, not community property.

In response to McCarty, supra, Congress passed the Uniformed Services Former Spouses' Protection Act, 10 U.S.C. s. 1408, Pub. L. No. 97-252, providing that a court may treat disposable retired or retainer pay payable to a member for pay periods beginning after June 25, 1981, either as property solely of the member or as property of the member and his spouse in accordance with the law of the jurisdiction of the court. The law permits payment of up to 50 percent of disposable retired pay as alimony, child support or property division directly to a former spouse. In order to obtain direct payment based upon the division of retired pay as property, the marriage must have existed a minimum of 10 years during which the member performed service creditable toward military retirement eligibility. Payments will terminate upon the death of the service member or the former spouse, whichever is earlier.

In contrast to community property states, Florida does not provide for a right to one-half interest in all property earned by either spouse during the marriage. Both prior and subsequent to the McCarty decision, Florida courts have concluded that permanent periodic alimony may be based on a percentage of military retirement pensions. The courts distinguished McCarty on the grounds
that Florida is not a community property state. The United States Supreme Court held that military pensions are not community property subject to distribution by a state divorce court; it did not hold that pensions could not be drawn on to provide support for the ex-spouse and children. See Higgins v. Higgins, 408 So. 2d 731 (Fla. 1st DCA 1982); Cullen v. Cullen, 413 So. 2d 1196 (Fla. 1st DCA 1982); Baker v. Baker, 419 So. 2d 735 (Fla. 1st DCA 1982).

B. EFFECT OF PROPOSED CHANGES:

This bill does not alter existing law, which currently provides that military pensions are subject to equitable distribution.

C. SECTION-BY-SECTION ANALYSIS:

Section 1. Distribution by court of marital property. The purpose of this bill is to provide that military pension or military retirement benefits are a marital asset and should be considered for purposes of equitably distributing marital property, in accordance with federal limitations. Section 1 further provides that this act shall not nullify existing awards. In cases where the order for alimony has not been finalized, the court may provide for the distribution of military pension or retirement benefits, if that judgment was issued on or after June 26, 1981.

Section 2. Provides for an effective date upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:
   NONE

2. Recurring or Annualized Continuation Effects:
   NONE

3. Long Run Effects Other Than Normal Growth:
   NONE

4. Appropriations Consequences:
   NONE

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:
   NONE

2. Recurring or Annualized Continuation Effects:
   NONE
3. Long Run Effects Other Than Normal Growth:
NONE

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:
NONE

2. Direct Private Sector Benefits:
NONE

3. Effects on Competition, Private Enterprise, and Employment Markets:
NONE

D. FISCAL COMMENTS:
NONE

III. LONG RANGE CONSEQUENCES:
NONE

IV. COMMENTS:

This bill does, to some degree, conflict with provisions of HB 806, the Judiciary Committee bill regulating equitable distribution, which provides that "marital assets" are, among other things, "all vested and nonvested benefits, rights, and funds accrued during the marriage in retirement, pension... plans and programs..." This bill could have the effect of expanding the amount of military pension funds subject to distribution by allowing distribution of all funds whether or not they accrued during the marriage.

V. AMENDMENTS:

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by:
Kathleen P. Toolan

FINANCE & TAXATION:
Prepared by:

APPROPRIATIONS:
Prepared by:
I. SUMMARY:

A. PRESENT SITUATION:

In 1981, the United States Supreme Court, in the case of McCarty v. McCarty, 453 U.S. 210, 101 S. Ct. 2728, 69 L. Ed. 589 (1981), held that federal law precludes a state court from dividing military retirement income pursuant to state community property laws. The Court held that if a state law clearly and substantially interferes with a federal interest, the state law is invalid under the Supremacy Clause of the United States Constitution. As to the federal military retirement statutes, the court reasoned that application of state community property principles would threaten grave harm to "clear and substantial" federal interests by frustrating the congressional objective of providing the military retirement system as an inducement for enlistment and re-enlistment. Congress intended military retirement income to be a personal entitlement payable to the retiree; therefore, it must be considered as separate property, not community property.

In response to McCarty, supra, Congress passed the Uniformed Services Former Spouses' Protection Act, 10 U.S.C. s. 1408, Pub. L. No. 97-252, providing that a court may treat disposable retired or retainer pay payable to a member for pay periods beginning after June 25, 1981, either as property solely of the member or as property of the member and his spouse in accordance with the law of the jurisdiction of the court. The law permits payment of up to 50 percent of disposable retirement income as alimony, child support or property division directly to a former spouse. In order to obtain direct payment based upon the division of retirement income as property, the marriage must have existed a minimum of 10 years during which the member performed service creditable toward military retirement eligibility. Payments will terminate upon the death of the service member or the former spouse, whichever is earlier.

In contrast to community property states, Florida does not provide for a right to one-half interest in all property earned by either spouse during the marriage, but instead, equitably distributes the property of the parties.
3. Long Run Effects Other Than Normal Growth:
NONE

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
1. Direct Private Sector Costs:
NONE
2. Direct Private Sector Benefits:
NONE
3. Effects on Competition, Private Enterprise, and Employment Markets:
NONE

D. FISCAL COMMENTS:
NONE

III. LONG RANGE CONSEQUENCES:
NONE

IV. COMMENTS:
This bill does, to some degree, conflict with provisions of HB 806, the Judiciary Committee bill regulating equitable distribution, which provides that "marital assets" are, among other things, "all vested and nonvested benefits, rights, and funds accrued during the marriage in retirement, pension,... plans and programs..." This bill could have the effect of expanding the amount of military pension funds subject to distribution by allowing distribution of all funds whether or not they accrued during the marriage.

V. AMENDMENTS:

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by: Kathleen P. Toolan

FINANCE & TAXATION:
Prepared by:

APPROPRIATIONS:
Prepared by:
SUBCOMMITTEE REPORT

AS REPORTED TO CLERK

House of Representatives

To Chairman, Committee on ________________:

Judiciary

Subcommittee on __Real Property & Family Law__

Date of meeting __4/13/88__

Time __8:00 a.m._

Place __217 HOB__

Bill No. __HB 309__

FINAL ACTION: ___ FAVORABLE

___ FAVORABLE WITH 2 AMENDMENTS

___ UNFAVORABLE

VOTE:

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Total Yeas: __7__

Total Nays: __9__

SUBCOMMITTEE APPEARANCE RECORD

The following persons (other than legislators) appeared before the subcommittee during consideration of this bill:

<table>
<thead>
<tr>
<th>Name</th>
<th>Representing</th>
<th>Address</th>
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(If additional persons, enter on reverse side and check here.)

NOTE: Please indicate by an "X" any State employee appearing at the request of Subcommittee Chairman

Received by Parent Committee.

Date __________________________

Received by _____________________

H-74(1976)
COMMITTEE INFORMATION RECORD

Committee on: JUDICIARY
Date of meeting: 4/14/88
Time: 3:30 p.m.
Place: 214 C

Bill No.: HB 309

AS REPORTED TO CLERK

Final Action: ___ Favorable
___ Favorable with ____ Amendments
X Favorable with Substitute
___ Unfavorable

Vote:

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Total Yeas: 13
Total Nays: 0

Committee Appearance Record

The following persons (other than legislators) appeared before the committee during the consideration of this bill:

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<th>Name</th>
<th>Representing</th>
<th>Address</th>
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NOTE: Please indicate by an "X" any State employee appearing at the request of Committee Chairman.

(File 2 copies with Clerk)
Florida House of Representatives - 1988

By the Committee on Judiciary and Representatives Lewis, Gordon, Rochlin, Jennings, Sansom, Gonzalez-Quevedo, Bloom, Mackenzie, Rush, Burnsed, Brown, Frankel, Hawkins, Mortham, Sanderson, Stone, Messersmith, Hanson, Frishe, Bainter, Irvine, (Additional Sponsors on Last Printed Page)

A bill to be entitled

An act relating to dissolution of marriage;

providing that specified sources of income

shall be considered marital assets subject to

equitable distribution; requiring certain

information to be included in final judgments

for dissolution of marriage if the division of

marital property includes a division of

retirement or retainer pay from the federal

uniformed services; providing an effective

date.

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

Section 1. Distribution of retirement plans upon
dissolution of marriage:

(1) All vested and nonvested benefits, rights, and
funds accrued during a marriage in retirement, pension,
profit-sharing, annuity, deferred compensation, and insurance
plans and programs shall be considered marital assets subject
to equitable distribution.

(2) If the parties in an action for dissolution of
marriage were married for at least 10 years, during which time
at least one of the parties who was a member of the federal
uniformed services performed at least 10 years of creditable
service, and if the division of marital property includes a
division of retirement or retainer pay earned as the result of
such service in the federal uniformed services, the final
judgment shall include the following:

(a) Sufficient information to identify the member of
the uniformed services:

CODING: Words stricken are deletions; words underlined are additions.
(b) Certification that the Soldiers' and Sailors' Civil Relief Act of 1940 was observed if the decree was issued while the member was on active duty and was not represented in court;

(c) A specification of the amount of retirement or retainer pay to be distributed pursuant to the order, expressed in dollars or as a percentage of the disposable retirement or retainer pay;

(d) An order which provides for distribution of retirement or retainer pay from the federal uniformed services shall not provide for payment from such source more frequently than monthly and shall not require the payee to vary normal pay and disbursement cycles for retirement or retainer pay in order to comply with the order.

Section 2. This act shall take effect upon becoming a law.

**HOUSE SUMMARY**

With respect to dissolution of marriage, provides that all vested and nonvested benefits, rights and funds in retirement, pension, profit-sharing, annuity, deferred compensation, and insurance plans and programs accrued during a marriage shall be considered marital assets subject to equitable distribution.

Requires the inclusion of specified information in final judgments for dissolution of marriage if the division of marital property includes a division of retirement or retainer pay from the federal uniformed services, under certain conditions.

CODING: Words struck are deletions; words underlined are additions.
ADDITIONAL SPONSORS
Metcalf, Carlton, Young, Tobin, Carpenter, Guber

This publication was produced at an average cost of 1.12 cents per single page in compliance with the Rules and for the information of members of the Legislature and the public.

CODING: Words stricken are deletions; words underlined are additions.
I. SUMMARY:

A. PRESENT SITUATION:

In 1981, the United States Supreme Court, in the case of McCarty v. McCarty, 453 U.S. 210, 101 S. Ct. 2728, 69 L. Ed. 589 (1981), held that federal law precludes a state court from dividing military retirement income pursuant to state community property laws. The Court held that if a state law clearly and substantially interferes with a federal interest, the state law is invalid under the Supremacy Clause of the United States Constitution. As to the federal military retirement statutes, the court reasoned that application of state community property principles would threaten grave harm to "clear and substantial" federal interests by frustrating the congressional objective of providing the military retirement system as an inducement for enlistment and re-enlistment. Congress intended military retirement income to be a personal entitlement payable to the retiree; therefore, it must be considered as separate property, not community property.

In response to McCarty, supra, Congress passed the Uniformed Services Former Spouses' Protection Act, 10 U.S.C. s. 1408, Pub. L. No. 97-252, providing that a court may treat disposable retired or retainer pay payable to a member for pay periods beginning after June 25, 1981, either as property solely of the member or as property of the member and his spouse in accordance with the law of the jurisdiction of the court. The law permits payment of up to 50 percent of disposable retirement income as alimony, child support or property division directly to a former spouse. In order to obtain direct payment based upon the division of retirement income as property, the marriage must have existed a minimum of 10 years during which the member performed service creditable toward military retirement eligibility. Payments will terminate upon the death of the service member or the former spouse, whichever is earlier.

In contrast to community property states, Florida does not provide for a right to one-half interest in all property earned by either spouse during the marriage, but instead, equitably distributes the property of the parties.
The federal statute that provides for direct payment of military pension benefits provides that the state may treat these benefits as property solely of the member or as property of the member and his spouse. Until the Florida Supreme Court decided the case of Diffenderfer v. Diffenderfer, 491 So.2d 265 (Fla. 1986), the Florida law was unclear as to the rights of the parties to military retirement or retainer pay. Until the Diffenderfer case was decided, the military services routinely rejected demands for direct payment by former military spouses for distribution of the property. Since the law of Florida on this issue was settled in June of 1986, there has been little problem in this regard.

B. EFFECT OF PROPOSED CHANGES:

This bill does not alter existing law, which currently provides that military pensions are subject to equitable distribution.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 provides that funds accrued during the marriage in all vested and nonvested retirement plans is considered marital property and is thereby subject to being equitably distributed upon dissolution of the marriage.

The bill sets out the provision that must be contained in the final judgment if the parties were married for at least 10 years during which a party performed 10 years of creditable service in the federal uniformed services, and the property division includes adoption of uniformed services retired pay. The uniformed services, pursuant to 32CFR s. 63.2, include the Army, Navy, Air Force, Marine Corps, Coast Guard, Commissioned Corps of the Public Health Service and the Commissioned Corps of the National Oceanic and Atmospheric Administration. With the inclusion of the designated information, the ex-spouse of a person retired from the military is entitled to receive direct payment from the military of his or her share of the pay. Section 10 USCS s. 1408;32 CFR Part 63.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:
   NONE

2. Recurring or Annualized Continuation Effects:
   NONE

3. Long Run Effects Other Than Normal Growth:
   NONE

4. Appropriations Consequences:
   NONE

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1418
1. Non-recurring or First Year Start-Up Effects:
   NONE

2. Recurring or Annualized Continuation Effects:
   NONE

3. Long Run Effects Other Than Normal Growth:
   NONE

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:
   NONE

2. Direct Private Sector Benefits:
   NONE

3. Effects on Competition, Private Enterprise, and Employment Markets:
   NONE

D. FISCAL COMMENTS:
   NONE

III. LONG RANGE CONSEQUENCES:
    NONE

IV. COMMENTS:

V. AMENDMENTS:

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by: 
Kathleen P. Toolan

FINANCE & TAXATION:
Prepared by: 

APPROPRIATIONS:
Prepared by: 

Staff Director:
Richard Hixson
I. SUMMARY:
   A. Present Situation:

   There are two principal methods of distributing marital property upon dissolution of marriage; these are based upon community property and common law property theories. In a "community property" jurisdiction, all of the marital property is divided, one-half to each party, at dissolution. The majority of states, including Florida, have distributed property in accordance with the more traditional common law property theory, which provides generally that title to property is the principal determinant of ownership. The Florida Statutes, however, direct that any factor may be considered to do equity and justice between the parties and the Florida Supreme Court has held that the end of a marriage is a dissolution of a "marital partnership" requiring equitable distribution of property acquired during the marriage regardless of who holds title. Canakaris v. Canakaris, 382 So.2d 1197 (Fla. 1980).

   Pursuant to either theory, it is necessary to determine what property is subject to distribution. There is currently no statutory definition of marital property, and what constitutes marital property has been determined on a case-by-case basis in Florida.

   B. Effect of Proposed Changes:

   This bill defines the "marital" and "nonmarital" assets and liabilities to be equitably divided. A list of factors is provided to guide the court in making such a division.

   Assets acquired and liabilities incurred after the date of the marriage are presumed to be marital assets and liabilities; also
included is the enhancement in value of nonmarital assets resulting from the efforts of either party or the contribution of marital funds, gifts from one spouse to the other, and all retirement, pension, profit sharing, annuity, and insurance plans.

Separate of "nonmarital" assets and liabilities are those acquired or incurred prior to the marriage, those acquire by gift, bequest, devise or descent, those excluded by valid written agreement, and income derived from nonmarital assets during the marriage unless the income was treated as a marital asset, (i.e., the parties used the income for living expenses).

The date for determining the value of the assets and liabilities is the earlier of the date a valid separation agreement is entered into or the date established by such an agreement, or the date of filing of a petition for dissolution. The provisions of this bill would apply to all proceedings commenced after October 1, 1988.

II. ECONOMIC IMPACT:

A. Public:

The public should benefit through increased predictability and fairness in the disposition of property upon dissolution of marriage, which would presumably result in a reduction in the number of these cases that go to trial.

B. Government:

A reduction in the number of dissolution cases being tried would result in cost savings to the court.

III. STATE COMPREHENSIVE PLAN IMPACT:

None

IV. COMMENTS:

This bill is a proposal of the Supreme Court Matrimonial Law Commission and the Family Law Section of the Florida Bar.

V. AMENDMENTS:

VI. PREPARED BY: Debby Kearney

VII. STAFF DIRECTOR: Richard Hixson

STANDARD FORM 10-30-87