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LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT

Sess. Law # 88-98	Sec. #	LOF cite
Prime Bill # SB.152	Comp./Sim. Bills [1980-1987]	
JLMC Hist. Cites	Senate	Comms. of Ref.
	House	
	Senate	House

COMMITTEE RECORDS					
H/S	Committee	Year	Record Series: Folder title, etc.	Loc. Cite	✓
H	Judicial	1988	Bill files: HE. 4 - 1988	---	
"	"	"	" " HB 806	19/1801	
"	"	"	" " HE 309		
"	"	1987	" " HB 1225	19 1225	
"	"	1986	" " HB 1173	19/1173	
"	"	1985	" " HE 1231	19/1231	
"	"	1984	[no bills filed]	---	
"	"	1985	" " "	---	
<input checked="" type="checkbox"/> continued on reverse					

Senate/House Journals					
Page #	?	Date	Page #	?	Date

Committee/Floor Tapes					
H/S	c/f	Committee/subcommittee name	Date	#	Location Cite

Other Documentation	
Record Series Title, folder title, etc.	Location Cite

COMMITTEE RECORDS (continued)					
H/S	Committee	Year	Record Series: Folder title, etc.	Loc. Cite	✓
H	Judic	1982	Bill files: HB 599 (no SA DIC - state filing?)	19/873	
"	"	"	" " HB 600	19/874	φ
"	"	1981	" " HB 54 NO BILL IN FILE	19/765	
"	"	1980	" " HB 438 bill only, no SA	19/647	φ
S	Judi-Civ	1988	Bill files: SB 152	18/1694	
"	"	"	" " SB 228 bill only, no SA	"	
"	"	1987	" " SB 402	18/1626	
"	"	1986	" " PCB 15 (?)	18/1555	
"	"	"	" " SB 1115	18/1559	
"	"	1985	" " SB 1036	18/1554	
"	"	"	" " SB 1238	"	
"	"	1984	[no bills filed]	—	
"	"	1983	" " "	—	

NOTES

[illegible]

LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT

r 788	Session Law No. 8898	LOF Cite I, 463-467	#pp 5
me 11# 58.157	Sponsor	Comp./Sim. Bills 58.228 58.707; HB.4; HB 806, HB 1360, HB 309	
4C Hist. 3. Cites	Senate pp.#s	House pp.#s	#pp
Committee Ref.	Senate Judic. Civ. House Judic.	Previous 1985. SB. 1036, SB. 1037 versions? HB. 1231 1986 SB 1115, HB 1173 1987 SB 1032, SB 1033	

Committee Records

S	Committee	Year	Record Series: Folder Title, etc.	Location Cite	#pp
				19/1800	-
				12/15	
"	"	"	HB 309	"	
				15/110	
				1/1	
			58.228 no SA, bill only	"	

Senate/House Journals

Page	?	Date	#pp	Page	?	Date	#pp

Tape Recordings

H/S	Floor	Committee/subcommittee	Date	# Tapes	Location Cite

Other Documentation

Record series title, folder title, etc.	Location Cite	#pp

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1981

Bills
+ GAS

SB. 656⁺
S. Jud-Civ

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18/1294

HB. 54
H. Jud.

19/765

1982

SAS
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SB. 316
CS/SB 316
S. Jud-Civ

18/1296

HB 599
H. Jud.
HB 600
H. Jud.

19/873 (you SA)
Died in Comm
19/874 ϕ -
no hearings?

1980 (over)

1980 file

SB. 241

HB. 438

18/12/29

19/647



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responsible for implementation and oversight of such facility's risk management program as required by this section. Part-time risk managers shall not be responsible for risk management programs in more than four such facilities. ~~Regarding facilities licensed under chapter 389 or chapter 390, each such facility shall designate one or more individuals as the "risk manager" 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, and 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 repealed on October 1, 1988, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 6. Paragraph (a) of subsection (4) and subsection (6) of section 390.001, Florida Statutes, are amended, and paragraph (c) 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)1. 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 and necessary

for the court to reach a decision promptly. The court shall rule within 48 hours after the petition is filed; but the 48 hour limitation may be extended at the request of the minor. An expedited anonymous appeal shall be made available to a minor who files a petition pursuant to this paragraph.

3. The Supreme Court may promulgate any rules it considers necessary to ensure that Proceedings brought pursuant to this paragraph are handled expeditiously and are kept confidential.

Section 7. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 8. This act shall take effect October 1, 1988.

Approved by the Governor June 15, 1988.

Filed in Office Secretary of State June 15, 1988.

CHAPTER 88-98

Senate Bill No. 152

An act relating to 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.; 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.

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.

(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.--

(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;

(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.

Section 4. This act applies to all proceedings commenced after the effective date of this act.

Section 5. Effective July 1, 1988, or upon becoming a law, whichever occurs later, 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 \$7.95, 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 \$4.92 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, or upon becoming a law, whichever occurs later, 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 \$4.93, to be distributed as provided by s. 382.022.

Section 7. Effective July 1, 1988, or upon becoming a law, whichever occurs later, 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 \$7.95 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.

Approved by the Governor June 16, 1988.

Filed in Office Secretary of State June 16, 1988.

BILL VOTE SHEET

File with Secretary of Senate)

BILL NO. SB 152

COMMITTEE ON: Judiciary-Civil

DATE: April 6, 1988

ACTION:

X Favorably with 2 amendments

TIME: 2:00 to 5:00 P.M.

Favorably with Committee Substitute

PLACE: Committee Room B

Unfavorably

OTHER COMMITTEE REFERENCES:
(in order shown)

Submitted as a Committee Bill

None

Temporarily Passed

Reconsidered

Not Considered

THE VOTE WAS:

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 Series _____ Carton 4074

04/06/88 04/06/88

FINAL BILL VOTE		SENATORS	AM 1 By Sen. Frank		AM 2 By Sen. Frank (Title)							
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
X		Crenshaw										
X		Dudley										
X		Frank										
X		Jenne										
X		Weinstein										
X		VICE-CHAIRMAN Grant										
X		CHAIRMAN Langley										
7	0	TOTAL	W/O	-	W/O	-						
Ave	Nay		Ave	Nay	Ave	Nay	Ave	Nay	Ave	Nay	Ave	Nay

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

COPY

SENATE COMMITTEE AMENDMENT

SB 152

No. 1
(reported favorably)

HB _____

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DEPARTMENT OF STATE

R A. GRAY BUILDING

Tallahassee, FL 32399-0250

The Committee on...Judiciary-Civil....recommended the following

amendment which was moved by Senator.....and adopted:

and failed: Series 18 Carton 14

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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	No

1

88s0152/jci01

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 __/__/__)

SENATE COMMITTEE AMENDMENT

SB 152

No. 1
(reported favorably)

HB _____

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

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Senate Amendment

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

If amendment is text from another bill insert:

			No
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 __/__/__)

SENATE COMMITTEE AMENDMENT

SB 152

No. 2
(reported favorably)

HB _____

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

1 Senate Amendment

2

3 In title, on page 1....., line 16....., strike

4 All of said line

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9 If amendment is text from another bill insert:

			No
10	Bill No. _____	Draft No. _____	With Changes? Yes

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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 __/__/__)



THE FLORIDA SENATE
COMMITTEE ON JUDICIARY-CIVIL
422 Senate Office Building
Tallahassee, Florida 32399-1100
(904) 487-5198

Richard H. Langley, *Chairman*
John Grant, *Vice-Chairman*

Robert B. Lester, III, *Staff Director*

C O P Y

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M E M O R A N D U M

TO: The File

FROM: Kevin Wiehle *KW*

SUBJECT: The Military Pension Amendment

DATE: September 13, 1988

A Las Vegas attorney, Mr. Marshall 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

MEMORANDUM

The File

September 13, 1988

Page 2

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.

KW:kc

Journal
of the
S E N A T E
State of Florida

TWENTIETH REGULAR SESSION
UNDER THE CONSTITUTION AS REVISED IN 1968
APRIL 5 THROUGH JUNE 7, 1988



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 bicyclists 14 years of age or ~~and~~ under 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.	Grizzle	Lehtinen	Thomas
Childers, W. D.	Hair	Margolis	Thurman
Crawford	Hill	McPherson	Weinstein
Crenshaw	Hollingsworth	Meek	Weinstock
Deratany	Jenne	Myers	Woodson
Dudley	Jennings	Peterson	
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	Weinstein
Frank	Jennings	Myers	Weinstock
Girardeau	Johnson	Peterson	Woodson

Nays—None

Vote after roll call:

Yea—Deratany

SB 331—A bill to be entitled An act relating to obscene materials, amending s. 847.001, F.S.; redefining the term "obscene" with respect to criminal offenses that relate to obscene materials, providing an effective date.

—was read the second time by title

Senator W. D. Childers moved the following amendment:

Amendment 1—On page 1, between lines 23 and 24, insert:

Section 2. Section 847.002, Florida Statutes, is created to read:

847.002 *Indecent devices prohibited, penalty* —

(1) No person owning or operating a motor vehicle in this state shall affix to any part of such motor vehicle which is visible to members of the public not occupying such motor vehicle any sticker, decal, emblem, or other device containing obscene descriptions, photographs, or depictions of deviate sexual intercourse, nudity, sadomasochistic abuse, sexual battery, sexual bestiality, sexual conduct, simulated sexual conduct, sexual excitement or excretory functions, or any of these when harmful to minors. All terminology in this section shall be defined and interpreted as provided in s. 847.001

(2) Any person who violates the provisions of subsection (1) is guilty of a misdemeanor of the second degree, punishable as provided in s 775 082 or s 775 083.

(Renumber subsequent section.)

Senator Gordon moved the following amendment to Amendment 1 which failed

Amendment 1A—insert: It is legal to quote any or all of the language of Section (1) in any sticker, decal, emblem or other device affixed to said motor vehicle

Amendment 1 was adopted.

Senator W. D. Childers moved the following amendment which was adopted

Amendment 2—In title, on page 1, 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	Weinstock
Dudley	Jennings	Myers	Woodson
Frank	Johnson	Peterson	

Nays—1

Gordon

Vote after roll call:

Yea—Deratany, Weinstein

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 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.

—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 14, strike " , periodic,"

Senator Ros-Lehtinen moved the following amendments which were adopted:

Amendment 2—On page 6, between lines 10 and 11, insert:

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;

(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—33

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

Nays—None

Vote after roll call.

Yea—Deratany, Kiser, Meek, Weinstein

Reconsideration

On motion by Senator W. D. Childers, the rules were waived and the Senate reconsidered the vote by which—

SB 331—A bill to be entitled An act relating to obscene materials; amending s. 847.001, F.S.; redefining the term "obscene" with respect to criminal offenses that relate to obscene materials, providing an effective date.

—as amended passed this day

Senator W. D. Childers moved the following amendment which was adopted by two-thirds vote

Amendment 3—On page 1, between lines 23 and 24, insert.

Section 3 If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable

(Renumber subsequent sections.)

Senator W. D. Childers moved the following amendment which was adopted

Amendment 4—In title, on page 1, line 5, after the semicolon (;) insert: providing severability;

SB 331 as amended was read 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
Deratany	Jenne	Meek	Weinstein
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 Weinstein, 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	Weinstein
Deratany	Jennings	Myers	Weinstock
Dudley	Johnson	Peterson	Woodson
Frank	Kirkpatrick	Plummer	
Gordon	Kiser	Ros-Lehtinen	

Nays—1

Grizzle

SB 18—A bill to be entitled An act relating to adult congregate living facilities, amending s. 400.435, F.S., directing the Department of Health and Rehabilitative Services to forward certain inspection results to public libraries or the county seat of counties in which an inspected facility is located; providing an effective date.

—was read the second time by title.

The Committee on Health and Rehabilitative Services recommended the following amendments which were moved by Senator Woodson and adopted:

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 Frankel 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, 457.105, 457.107, 458.347, 459.0055, 459.008, 459.022, 460.408, 461.007, 463.007, 464.013, 465.009, 466.006, 466.007, 466.0135, 466.014, 467.009, 467.012, 468.1685, 468.1715, 468.209, 468.219, 468.307, 468.309, 486.031, 486.085, 486.102, 486.108, 490.005, 490.007, 491.005, and 491.007, F.S., and creating ss. 458.318, 460.4066, 461.0061, 462.185, 463.0061, 464.0091, 465.0071, and 468.3611, 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, 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 licensure or certification; creating 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. 232.246, 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 and substance abuse prevention program for certain 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, 400.608, 400.621, and 402.305, F.S.; requiring education and training in the transmission, control, and prevention of 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, administrators and other staff of nursing homes 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, 483.051, and 483.154, 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. 943.172, F.S.; requiring basic skills training in HIV and AIDS for law enforcement 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 services, 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; creat-

ing 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. 384.28, 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 s. 627.429, F.S., for insurers, creating ss. 627.429 and 641.31092, 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. 641.28, 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 deferral of 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 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., 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 retiree 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 \$7 \$6, 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 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 \$4.00, 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 in s. 28.241, the clerk shall collect and receive a service charge of \$7.00 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 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;

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	Ros-Lehtinen
Brown	Gordon	Langley	Thomas
Childers, D.	Grant	Lehtinen	Thurman
Childers, W. D.	Grizzle	Malchon	Weinstein
Crawford	Hair	Margolis	Weinstock
Crenshaw	Hollingsworth	McPherson	Woodson
Deratany	Jenne	Meek	
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 26 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. 553.77, 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. 255.25, 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	Ros-Lehtinen
Beard	Girardeau	Langley	Scott
Brown	Gordon	Lehtinen	Thomas
Childers, D.	Grant	Margolis	Thurman
Childers, W. D.	Hair	McPherson	Weinstein
Crawford	Hollingsworth	Meek	Weinstock
Crenshaw	Jennings	Myers	
Deratany	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 s 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 insurance, amending s 626 729, F.S., increasing the limits of coverage for industrial fire insurance policies; providing an effective date.

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

CS/HB 555—A bill to be entitled An act relating to burglary and trespass, amending s 810 115, F.S., expanding provisions relating to willfully and maliciously breaking or injuring fences for which a penalty is provided, providing for compensation to the owner, providing an effective date

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

Consideration of HB 247 was temporarily deferred

HB 426—A bill to be entitled An act relating to probate of decedents estates, amending s 733 903, F.S., providing clarifying language to prohibit the subsequent administration of an estate based on the discovery of a will or later will, providing an effective date

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

HB 289 was taken up. On motion by Rep. Crotty, SB 329, a similar or companion measure, was substituted for HB 289. Under the rule, the House bill was laid on the table and—

SB 329—A bill to be entitled An act relating to motor vehicle service agreement companies, amending s 634.011, F.S., specifying who is a salesman for a motor vehicle service agreement company that operates from five or more locations, providing an effective date

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

the Engrossing Clerk

HB 806 was taken up. On motion by Rep. Simon, SB 152, a similar or companion measure, was substituted for HB 806. Under the rule, the House bill was laid on the table and—

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 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 \$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 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 \$3, 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 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 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 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;

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 ss 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 Gouls 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 ~~notarized~~ 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 (a) The religious institution maintains weekly attendance records and makes them available to the public school each student attends

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

3 (c) 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)(2) 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 (a) 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 (b) The student's grades are insufficient to allow for the student's promotion or graduation

(c)(3) 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

(2)(a) A 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 so excused 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 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, 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.; 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

(House Amendments attached to original bill and shown on pages 374-375, *House Journal*, May 9)

Senate Amendment 1 to House 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,

Senate Amendment 1 to House Amendment 2—In title, on page 1, line 2, strike "dissolution of"

Representative Simon offered the following title amendment to Senate Amendment 1 to House Amendment 2

House Amendment 1 to Senate Amendment 1 to House Amendment 2—On page 1, lines 3 and 4, strike all of said lines and entire Senate bill title and insert A bill to be entitled An act relating to 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.; 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

The Chair	Garcia	King	Rochlin
Abrams	Gardner	Langton	Rudd
Arnold	Glickman	Lawson	Rush
Ascherl	Gonzalez-	Lewis	Sample
Banjanin	Quevedo	Liberta	Sanderson
Bankhead	Goode	Lippman	Sansom
Bass	Gordon	Locke	Saunders
Bell	Grindle	Logan	Shelley
Bloom	Guber	Lombard	Simon
Bronson	Gustafson	Long	Simone
Brown	Gutman	Mackenzie	Smith
Burke	Hanson	Mackey	Souto
Burnsed	Harden	Martin	Starks
Carlton	Hargrett	Martinez	Stone
Carpenter	Harris	McEwan	Thomas
Casas	Hawkins	Meffert	Titone
Clark	Healey	Messersmith	Tobiasen
Clements	Hill	Metcalf	Tobin
Cosgrove	Hodges	Mitchell	Trammell
Crary	Holland	Morse	Troxler
Crotty	Holzendorf	Mortham	Upchurch
Dantzler	Ireland	Nergard	Wallace
Davis	Irvine	Ostrau	Webster
Deutsch	Jamerson	Patchett	Wetherell
Diaz-Balart	Jennings	Peeples	Wise
Dunbar	Johnson, B. L	Press	Woodruff
Figg	Johnson, R. C	Reaves	Young
Frankel	Jones, C. F	Reddick	
Friedman	Jones, D. L	Rehm	
Frishe	Kelly	Renke	

Nays—None

Votes after roll call

Yeas—Banter

So the bill passed, as further amended. The action, together with the bill and amendments thereto, was immediately certified to the Senate.

Special and Continuing Order Calendar

The Honorable Jon Mills
Speaker, House of Representatives

May 24, 1988

Sir

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

SUBCOMMITTEE REPORT AS REPORTED TO CLERK

House of Representatives

File with Parent Committee

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:

YEA	MEMBER	NAY
	Canady	
X	Dunbar	
	Ireland	
X	Liberti	
	Martinez	X
X	Peeples	

Total
Yea 4

YEA	MEMBER	NAY
	Rush	
	Woodruff	X
X	Simon, Chmn.	

Total
Nays 2

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Wm. H. ...
Subcommittee Chairman

SUBCOMMITTEE APPEARANCE RECORD

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

<u>Name</u>	<u>Representing</u>	<u>Address</u>

(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

House of Representatives

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

Bill No. PCB JUD 88-7

AS REPORTED TO CLERK

FINAL ACTION: X FAVORABLE
 _____ FAVORABLE WITH _____ AMENDMENTS
 _____ FAVORABLE WITH SUBSTITUTE
 _____ UNFAVORABLE

VOTE:

YEA	MEMBER	NAY
	CANADY	
X	COSGROVE	
X	DAVIS	
X	DIAZ-BALART	
	DRAGE	
	DUNBAR	
	IRELAND	
X	LAWSON	
X	LIBERTI	
	MARTINEZ	X
X	PEEPLES	
X	PRESS	
X	RUSH	
X	SAUNDERS	
X	SIMON	

YEA	MEMBER	NAY
X	TITONE	
	WEBSTER	
X	WOODRUFF	
X	UPCHURCH (Chmn.)	

Total
Yeas 13

Total
Nays 1

[Signature]
 Chairman

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COMMITTEE APPEARANCE RECORD

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

Name	Representing	Address

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-22(1976)

FLORIDA LEGISLATURE

History of Legislation

1987 Regular Session

1987 Special Session A



prepared by:

Joint Legislative Management Committee

**Legislative Information Division
Capitol Building, Room 826 — 488-4371**

HISTORY OF SENATE BILLS

S 399 (CONTINUED)

04/20/87 SENATE On Committee agenda—Personnel, Retirement and Collective Bargaining, 04/22/87, 9 00 am, Room—C. Extension of time granted Committee Personnel Retirement and Collective Bargaining

04/22/87 SENATE Comm Report CS by Personnel, Retirement and Collective Bargaining —SJ 141

04/23/87 SENATE CS read first time —SJ 158, Now in Appropriations —SJ 141

05/06/87 SENATE Extension of time granted Committee Appropriations

05/21/87 SENATE On Committee agenda—Appropriations, 05/22/87, 9 00 am, Room—A, Extension of time granted Committee Appropriations

05/22/87 SENATE Comm Report CS/CS by Appropriations, placed on Calendar —SJ 418

05/27/87 SENATE CS read first time —SJ 418

05/28/87 SENATE Placed on Special Order Calendar —SJ 452, CS passed as amended, YEAS 38 NAYS 0 —SJ 467, Immediately certified —SJ 467

05/28/87 HOUSE In Messages

05/29/87 HOUSE Received, referred to Appropriations —HJ 852

06/02/87 HOUSE Withdrawn from Appropriations —HJ 923, Placed on Calendar

06/05/87 HOUSE CS/CS/SB 399 was taken up in lieu of CS/CS/HB 381 —HJ 1293, Read second time, Amendments adopted, Read third time, CS passed as amended, YEAS 107 NAYS 0 —HJ 1301

06/05/87 SENATE In Messages, Message was taken up —SJ 840, Concurred, CS passed as amended, YEAS 40 NAYS 0 —SJ 843

06/05/87 Ordered engrossed, then enrolled —SJ 843

06/29/87 Signed by Officers and presented to Governor

07/14/87 Approved by Governor, Chapter No 87-373

S 400 GENERAL BILL/CS/CS/ENG by Appropriations; Commerce; Crenshaw; Weinstein; Gordon and others (Similar CS/CS/ENG/H 1247, Compare H 19, H 163, ENG/H 686, H 853, H 990, H 1201, S 12, S 328, CS/ENG/S 727)

State Lottery Act, (THIS BILL COMBINES S 400,328,12) creates said act, Lottery Department, Security Division, & Lottery Council, provides for employment of personnel, lottery games, advertising & promotion, investigations, & performance bond, specifies relationship with lottery retailers, provides for preferences & programs for minority business enterprises, provides for payment of prizes, exempts lottery tickets & prizes from taxation, etc Appropriation \$15,000,000. Effective Date. Upon becoming law

03/09/87 SENATE Prefiled

03/27/87 SENATE Referred to Commerce, Education, Finance, Taxation and Claims, Appropriations

04/07/87 SENATE Introduced, referred to Commerce, Education, Finance, Taxation and Claims, Appropriations —SJ 38

04/21/87 SENATE Extension of time granted Committee Commerce

05/04/87 SENATE On Committee agenda—Commerce, 05/06/87, 2 00 pm, Room—A

05/06/87 SENATE CS combines this bill and 328 & 12, Comm Report CS by Commerce —SJ 273

05/07/87 SENATE CS read first time —SJ 275, Now in Education —SJ 273

05/08/87 SENATE On Committee agenda—Education, 05/12/87, 2 00 pm, Room—A

05/12/87 SENATE Comm Report Favorable by Education —SJ 293

05/13/87 SENATE Now in Finance, Taxation and Claims —SJ 293, Withdrawn from Finance, Taxation and Claims —SJ 319, Now in Appropriations

05/21/87 SENATE On Committee agenda—Appropriations, 05/22/87, 9 00 am, Room—A, Extension of time granted Committee Appropriations

05/22/87 SENATE Comm Report CS/CS by Appropriations, placed on Calendar —SJ 388

05/25/87 SENATE CS read first time —SJ 389, Placed on Special Order Calendar —SJ 387, CS passed as amended, YEAS 38 NAYS 1 —SJ 397, Immediately certified —SJ 398

05/26/87 HOUSE In Messages

06/06/87 HOUSE Died in Messages, Iden /Sim /Compare Bill passed, refer to HB 686 (Ch 87-6) & CS/CS/HB 1247 (Ch 87-65)

S 401 GENERAL BILL/CS/ENG by Judiciary-Civil; Judiciary-Civil (Similar CS/ENG/H 12, Compare CS/ENG/H 73, H 74, CS/H 319, H 620, S 200, CS/S 239, S 642, S 814)

Condos, Co-ops & Mobile Home Parks, provides exemption for pools serving certain condominiums & cooperatives from certain requirements imposed by H R S, redefines "public lodging establishment" to include condos & co-ops, provides that title insurers may act as escrow agents in condo transactions; repeals provision re eviction from mobile home park based upon change of land use, to delete a repeal of procedures governing such eviction, etc Amends Chs 509, 514, 718, 719, 723 Effective Date 06/30/87

03/09/87 SENATE Prefiled

03/27/87 SENATE Referred to Judiciary-Civil

04/07/87 SENATE Introduced, referred to Judiciary-Civil —SJ 38

04/20/87 SENATE On Committee agenda—Judiciary-Civil, 04/22/87, 2 00 pm, Room—B

S 401 (CONTINUED)

04/22/87 SENATE Comm Report CS by Judiciary-Civil, placed on Calendar —SJ 196

04/28/87 SENATE CS read first time —SJ 215, Withdrawn from Calendar, referred to Appropriations —SJ 217

05/06/87 SENATE Extension of time granted Committee Appropriations

05/21/87 SENATE Withdrawn from Appropriations —SJ 369, Placed on Calendar

05/28/87 SENATE Placed on Special Order Calendar —SJ 452, CS passed as amended, YEAS 33 NAYS 0 —SJ 477, Immediately certified —SJ 477

05/28/87 HOUSE In Messages, Received, placed on Calendar —HJ 757, Read second time, Amendment adopted, Read third time, CS passed as amended, YEAS 103 NAYS 0 —HJ 757

05/28/87 SENATE In Messages

05/29/87 SENATE Concurred, CS passed as amended, YEAS 35 NAYS 0 —SJ 508, Reconsidered, Amendment to House amendment adopted, Concurred in House amendment as amended, Requested House to concur, CS passed as amended, YEAS 30 NAYS 0 —SJ 527

05/29/87 HOUSE In Messages

06/01/87 HOUSE Concurred, CS passed as further amended, YEAS 110 NAYS 0 —HJ 909

06/01/87 Ordered engrossed, then enrolled —SJ 554

06/16/87 Signed by Officers and presented to Governor

06/30/87 Approved by Governor, Chapter No 87-117

S 402 GENERAL BILL/CS by Judiciary-Civil; Judiciary-Civil (Similar H 1225)

Divorce/Marital Assets & Liabilities, authorizes courts to equitably distribute marital assets & liabilities, provides for effect of recorded judgment, establishes date for determining marital assets & liabilities & value thereof; provides presumption as to marital assets & liabilities, provides for monetary payments & for consideration of alimony award, etc Creates 61 075, amends 61 08 Effective Date 10/01/87

03/09/87 SENATE Prefiled

03/27/87 SENATE Referred to Judiciary-Civil

04/07/87 SENATE Introduced, referred to Judiciary-Civil —SJ 38

04/22/87 SENATE Extension of time granted Committee Judiciary-Civil

05/01/87 SENATE Extension of time granted Committee Judiciary-Civil

05/08/87 SENATE On Committee agenda—Judiciary-Civil, 05/12/87, 2 00 pm, Room—B

05/12/87 SENATE Comm Report CS by Judiciary-Civil, placed on Calendar —SJ 325

05/19/87 SENATE CS read first time —SJ 328

06/06/87 SENATE Died on Calendar

S 403 GENERAL BILL/CS by Judiciary-Criminal; Grant (Compare H 529, ENG/H 1479)

Justifiable Use of Force/Officers, revises provisions re justifiable use of force by officers in making an arrest, creates task force to study use of deadly force Amends 776 05 Effective Date 10/01/87

03/09/87 SENATE Prefiled

03/27/87 SENATE Referred to Judiciary-Criminal

04/07/87 SENATE Introduced, referred to Judiciary-Criminal —SJ 38

04/17/87 SENATE Extension of time granted Committee Judiciary-Criminal

05/04/87 SENATE On Committee agenda—Judiciary-Criminal, 05/06/87, 2 00 pm, Room—C

05/06/87 SENATE Comm Report CS by Judiciary-Criminal, placed on Calendar —SJ 273

05/12/87 SENATE CS read first time —SJ 275

06/02/87 SENATE Placed on Special Order Calendar —SJ 571, CS passed as amended, YEAS 34 NAYS 0 —SJ 620, Reconsidered, Iden./ Sim House Bill substituted, Laid on Table under Rule, Iden /Sim /Compare Bill passed, refer to HB 1479 (Ch 87-147) —SJ 625

S 404 GENERAL BILL/CS by Judiciary-Civil; Langley (Compare ENG/H 358)

Corporations/Affiliated Transactions, provides requirements regarding affiliated transactions involving interested shareholders, specifies powers of disinterested directors, provides exemptions, etc. Creates 607 108 Effective Date 07/01/87 or upon becoming law, whichever occurs later

03/09/87 SENATE Prefiled

03/27/87 SENATE Referred to Judiciary-Civil, Commerce

04/07/87 SENATE Introduced, referred to Judiciary-Civil, Commerce —SJ 38, On Committee agenda—Judiciary-Civil, 04/08/87, 2:00 pm, Room—B

04/08/87 SENATE Comm Report CS by Judiciary-Civil —SJ 68

04/10/87 SENATE CS read first time —SJ 76, Now in Commerce —SJ 68

04/23/87 SENATE On Committee agenda—Commerce, 04/27/87, 2:00 pm, Room—A

04/27/87 SENATE Comm Report Favorable by Commerce, placed on Calendar —SJ 233

06/06/87 SENATE Died on Calendar Iden /Sim /Compare Bill passed, refer to HB 358 (Ch 87-257)

HISTORY OF HOUSE BILLS

H 1221 (CONTINUED)

05/26/87 HOUSE Comm Report CS by Regulatory Reform -HJ 636, CS read first time -HJ 634, Now in Appropriations -HJ 636
 06/01/87 HOUSE On Committee agenda—Appropriations, 06/02/87, 8 00 am, 21 HOB
 06/02/87 HOUSE Withdrawn from Appropriations -HJ 923, Placed on Calendar, Placed on Special Order Calendar, Read second time -HJ 979, Amendment pending -HJ 979
 06/05/87 HOUSE Pending amendment adopted, Read third time, CS passed as amended, YEAS 63 NAYS 41 -HJ 1316, Motion to reconsider laid on Table -HJ 1316
 06/05/87 SENATE In Messages, Received -SJ 844, CS passed; YEAS 29 NAYS 7 -SJ 844
 06/05/87 Ordered enrolled
 06/23/87 Signed by Officers and presented to Governor
 07/09/87 Became Law without Governor's Signature, Chapter No 87-296

H 1222 GENERAL BILL/ENG by Governmental Operations; Hodges (Compare H 53, H 81, CS/H 148, CS/H 203, ENG/H 549, CS/ENG/H 1432, CS/S 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
 05/29/87 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 Condo & Mobile Homes TF, 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, 723. 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 273, 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
 05/19/87 HOUSE Read second time -HJ 484
 05/21/87 HOUSE Read third time, Passed, YEAS 107 NAYS 11 -HJ 523
 05/22/87 SENATE In Messages
 05/27/87 SENATE Received, referred to Commerce; Finance, Taxation and Claims -SJ 425
 05/29/87 SENATE Withdrawn from Commerce, Finance, Taxation and Claims, Rereferred to Finance, Taxation and Claims, Commerce -SJ 527, On Committee agenda—Finance, Taxation and Claims, 05/29/87, Upon adjournment, Room-1C -SJ 527, Comm Report Favorable with 1 amendment(s) by Finance, Taxation and Claims -SJ 531
 06/01/87 SENATE Now in Commerce -SJ 531, Withdrawn from Commerce -SJ 569, Placed on Calendar
 06/06/87 SENATE Died on Calendar, Iden./Sim / Compare Bill passed, refer to CS/SB 142 (Ch 87-102)

H 1225 GENERAL BILL by Judiciary; Simon, Dunbar (Similar CS/S 402)

Divorce/Marital Assets & Liabilities, requires courts to equitably distribute mar-

H 1225 (CONTINUED)

ital 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 list of economic factors considered by court in fixing alimony, etc. Creates 61 075, amends 61 08 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 -HJ 294
 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/Grandparents' 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, 732 108 Effective Date Upon becoming law
 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 -HJ 294
 05/04/87 HOUSE Read third time, Iden / Sim Senate Bill substituted, Laid on Table under Rule, Iden / Sim / Compare Bill passed, refer to SB 318 (Ch 87-27) -HJ 335

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
 04/14/87 HOUSE Introduced, referred to Natural Resources -HJ 129
 04/15/87 HOUSE Withdrawn from Natural Resources -HJ 133, Placed on Calendar, Read second time, Adopted -HJ 137

H 1228 MEMORIAL by Banjanin and others

Strategic Defense System, urges the U.S. Congress to fund research & development of a strategic defense system
 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

VanBrunt Bunny Commendation, commends Bunny VanBrunt 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 Governmental 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 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 Ordered enrolled
 05/14/87 Signed by Officers and filed with Secretary of State -HJ 470

H 1230 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 On 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 1231 GENERAL BILL by Veterans, Military Affairs & Emergency Preparedness; Locke (Identical S 952)

License Plates/The Chosen Few, specifies persons eligible to receive "The Chosen 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 1232 GENERAL BILL/CS by Retirement, Personnel & Collective Bargaining; Veterans, Military Affairs & Emergency Preparedness; Locke (Similar S 615, Compare ENG/S 24)

(CONTINUED ON NEXT PAGE)

By the Committee on Judiciary-Civil

Cost of 1.5 cents per page
-structure and the public.

This publication was produced at an average
for the information of members of the Legislature.

1 A bill to be entitled
2 An act relating to dissolution of marriage;
3 creating s. 61.075, F.S.; authorizing courts to
4 equitably distribute marital assets and
5 liabilities; defining marital and nonmarital
6 assets and liabilities; providing for the
7 effect of a recorded judgment; establishing the
8 date for determining marital assets and
9 liabilities and the value thereof; providing a
10 presumption as to marital assets and
11 liabilities; providing for monetary payments;
12 providing for the consideration of an alimony
13 award; amending s. 61.08, F.S.; adding marital
14 assets and liabilities as factors in the
15 determination of an award of alimony or
16 maintenance; providing an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Section 61.075, Florida Statutes, is
21 created to read:

22 61.075 Equitable distribution of marital assets and
23 liabilities.--

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

- 1 marital assets and liabilities in such proportions as are
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) Any other factors necessary to do equity and
21 justice between the parties.
- 22 (2) The judgment distributing assets shall have the
23 effect of a duly executed conveyance, transfer, release, or
24 acquisition which is recorded in the county where the property
25 is located when the judgment, or a certified copy of the
26 judgment, is recorded in the official records of the county in
27 which the property is located.
- 28 (3) As used in this section:
- 29 (a) "Marital assets and liabilities" include:
- 30 1. Assets acquired and liabilities incurred during the
31 marriage, individually by either spouse or jointly by them;

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

6 3. Interspousal gifts during the marriage; and

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

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

16 (b) "Nonmarital assets and liabilities" are:

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

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

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

28 (4) The date for determining marital assets and
29 liabilities and the value of such assets and the amount of
30 such liabilities is the earlier of the date the parties enter
31 into a valid separation agreement or such other date as may be

1 expressly established by such agreement or the date of the
2 filing of a petition for dissolution of marriage, unless the
3 trial judge determines another date is just and equitable
4 under the circumstances.

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

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

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

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

31 61.08 Alimony.--

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

6 (b) The duration of the marriage.

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

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

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

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

18
19 The court may consider any other factor necessary to do equity
20 and justice between the parties.

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

23 Section 4. This act shall take effect October 1, 1987.
24
25
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27
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29
30
31

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 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.

REVISED: _____

BILL NO. CS/SB 402DATE: May 14, 1987Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Wiehle</u> ^{KW}	<u>Lester</u> ^{BL}	1. <u>JCI</u>	<u>FAV/CS</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Divorce/Marital Assets
& Liabilities

BILL NO. AND SPONSOR:

CS/SB 402 by
Judiciary-Civil CommitteeI. 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

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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.

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 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.

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Committee on Judiciary-Civil

Bob Foster
Staff Director

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186-450C-12-6

Proposed Committee Bill 8

1	A bill to be entitled	1:btc
2	An act relating to dissolution of marriage;	1.3
3	creating s. 61.075, F.S., requiring courts to	
4	equitably distribute marital assets and	1.4
5	liabilities; defining marital and nonmarital	
6	assets and liabilities; establishing the date	1.5
7	for determining such assets and liabilities and	
8	the value thereof; providing a presumption as	1.7
9	to marital assets and liabilities; establishing	
10	the vesting of rights in marital assets;	1.8
11	amending s. 61.08, F.S., including marital	
12	assets and liabilities distributed to each	
13	party within a list of economic factors	1.9
14	considered by the court in fixing alimony;	
15	providing for the application of the act;	1.10
16	providing an effective date.	
17		
18	Be It Enacted by the Legislature of the State of Florida:	1:enc
19		
20	Section 1. Section 61.075, Florida Statutes, is	1.12
21	created to read:	
22	<u>61.075 Equitable distribution of marital assets and</u>	1:lus
23	<u>liabilities.--</u>	
24	<u>(1) In a proceeding for dissolution of marriage, in</u>	1:lus
25	<u>addition to all other remedies available to a court to do</u>	1.15
26	<u>equity between the parties, or in a proceeding for disposition</u>	
27	<u>of assets following a dissolution of marriage by a court which</u>	1.16
28	<u>lacked jurisdiction over the absent spouse or lacked</u>	1.17
29	<u>jurisdiction to dispose of the assets, the court shall set</u>	
30	<u>apart to each spouse his or her nonmarital assets and</u>	1.18
31	<u>liabilities and shall distribute between the parties the</u>	

1	<u>marital assets and liabilities in such proportions as is</u>	1.19
2	<u>equitable, after considering all relevant factors, including:</u>	
3	<u>(a) The contribution to the marriage by each spouse,</u>	1:1us
4	<u>including contributions to the care and education of the</u>	1.21
5	<u>children and services as homemaker.</u>	
6	<u>(b) The economic circumstances of the parties.</u>	1:1us
7	<u>(c) The duration of the marriage.</u>	1:1us
8	<u>(d) Any interruption of personal careers or</u>	1:1us
9	<u>educational opportunities of either party.</u>	1.25
10	<u>(e) The contribution of one spouse to the personal</u>	1:1us
11	<u>career or educational opportunity of the other spouse.</u>	1.27
12	<u>(f) The desirability of retaining any asset, including</u>	1:1us
13	<u>an interest in a business, corporation or professional</u>	1.29
14	<u>practice, intact and free from any claim or interference by</u>	
15	<u>the other party.</u>	1.30
16	<u>(g) The contribution of each spouse to the</u>	1:1us
17	<u>acquisition, enhancement, and production of income or the</u>	1.32
18	<u>improvement of, or the incurring of liabilities to, both the</u>	
19	<u>marital assets and the nonmarital assets of the parties.</u>	1.34
20	<u>(h) The court may consider any other factors necessary</u>	1:1us
21	<u>to do equity and justice between the parties.</u>	1.36
22	<u>(2) The judgment of award distributing assets shall</u>	1:1us
23	<u>have the effect of a duly executed conveyance, transfer,</u>	1.38
24	<u>release, or acquisition that is recorded in the county where</u>	
25	<u>the property is located when the judgment or certified copy of</u>	1.39
26	<u>the judgment is recorded in the official records of the county</u>	1.40
27	<u>in which the property is located.</u>	
28	<u>(3) As used in this section, unless the context</u>	1:1us
29	<u>requires otherwise:</u>	
30	<u>(a) Marital assets and liabilities include:</u>	1:1us
31		

1	<u>1. Assets acquired and liabilities incurred during the</u>	1:1us
2	<u>marriage, individually by either spouse or jointly by them;</u>	1.44
3	<u>2. All income derived from nonmarital assets during</u>	1:1us
4	<u>the marriage;</u>	
5	<u>3. The enhancement in value and appreciation of</u>	1:1us
6	<u>nonmarital assets resulting either from the efforts of either</u>	1.47
7	<u>party during the marriage or from the contribution to or</u>	
8	<u>expenditure thereon of marital funds or other forms of marital</u>	1.48
9	<u>assets, or both;</u>	
10	<u>4. Interspousal gifts during the marriage;</u>	1:1us
11	<u>5. Vested and nonvested benefits, rights, and funds</u>	1:1us
12	<u>accrued during the marriage of all retirement, pension,</u>	1.51
13	<u>profit-sharing, annuity, and insurance plans and programs.</u>	
14	<u>(b) Nonmarital assets and liabilities are:</u>	1:1us
15	<u>1. Assets acquired and liabilities incurred by either</u>	1:1us
16	<u>party prior to the marriage and assets acquired and</u>	1.54
17	<u>liabilities incurred in exchange for such assets and</u>	
18	<u>liabilities;</u>	
19	<u>2. Assets acquired separately by either party by</u>	1:1us
20	<u>noninterspousal gift, bequest, devise, or descent and assets</u>	1.56
21	<u>acquired in exchange for such assets;</u>	
22	<u>3. Assets and liabilities excluded by valid written</u>	1:1us
23	<u>agreement of the parties and assets acquired and liabilities</u>	1.58
24	<u>incurred in exchange for such assets and liabilities.</u>	
25	<u>(4) The date for determining marital assets and</u>	1:1us
26	<u>liabilities and the value of such assets and the amount of</u>	1.60
27	<u>such liabilities is the earlier of the date the parties enter</u>	
28	<u>into a valid separation agreement or such other date as may be</u>	1.61
29	<u>expressly established by such agreement or the date of the</u>	1.62
30	<u>filing of a petition for dissolution of marriage, unless the</u>	
31		

1	<u>trial judge determines another date is just and equitable</u>	1.63
2	<u>under the circumstances.</u>	
3	<u>(5) All assets acquired and liabilities incurred by</u>	1:lus
4	<u>either spouse subsequent to the date of the marriage and not</u>	1.65
5	<u>specifically established as nonmarital assets or liabilities</u>	
6	<u>are presumed to be marital assets and liabilities. The</u>	1.67
7	<u>presumption of marital assets and liabilities is overcome by a</u>	
8	<u>showing that the assets and liabilities come within the</u>	1.68
9	<u>definition of nonmarital assets and liabilities. The</u>	1.69
10	<u>presumption is only for evidentiary purposes in a dissolution</u>	
11	<u>proceeding and does not vest title until a judgment of a court</u>	1.70
12	<u>is entered. Nothing herein shall require a joinder of spouses</u>	1.71
13	<u>in the conveyance, transfer, or hypothecation of their</u>	1.72
14	<u>individual property, and nothing herein shall affect the laws</u>	
15	<u>of descent or distribution or establish community property in</u>	1.73
16	<u>this state.</u>	
17	<u>(6) The court may provide for equitable distribution</u>	1:lus
18	<u>of the marital assets and liabilities without regard to</u>	1.75
19	<u>alimony for either party. After the determination of an</u>	1.76
20	<u>equitable distribution of the marital assets and liabilities,</u>	
21	<u>the court shall consider whether a judgment for alimony shall</u>	1.77
22	<u>be made.</u>	
23	<u>(7) The court, to do equity between the parties, may,</u>	1:lus
24	<u>in lieu of or in supplement thereto, facilitate or effectuate</u>	1.80
25	<u>the equitable division of marital assets and liabilities, and</u>	
26	<u>order the payment of a monetary sum in lump sum or over a</u>	1.81
27	<u>fixed period of time.</u>	
28	Section 2. Paragraph (d) of subsection (2) of section	2.1
29	61.08, Florida Statutes, 1986 Supplement, is amended to read:	2.3
30	61.08 Alimony.--	2.4
31		

1	(2) In determining a proper award of alimony or	2.5
2	maintenance, the court shall consider all relevant economic	2.6
3	factors, including, but not limited to:	
4	(d) The financial resources of each party <u>and the</u>	2.7
5	<u>marital assets and liabilities distributed to each party.</u>	
6		
7	The court may consider any other factor necessary to do equity	2.8
8	and justice between the parties.	2.9
9	Section 3. <u>This act applies to all proceedings pending</u>	2.10
10	<u>at the effective date of the enactment hereof in which a final</u>	2.12
11	<u>judgment has not been entered and to all proceedings commenced</u>	
12	<u>after the effective date of the enactment hereof.</u>	2.13
13	Section 4. This act shall take effect October 1, 1987.	2.14
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1	*****	1:hbs
2	HOUSE SUMMARY	1:hbs
3	Requires courts to equitably distribute marital assets	2.32
4	and liabilities along described lines. Provides that the	2.34
5	judgment of award distributing assets shall have the	
6	effect of a duly executed conveyance, transfer, release,	2.35
7	or acquisition recorded in the county where the property	
8	is located when the judgment is recorded in the official	2.36
9	records of such county. Provides a procedure for	2.37
10	establishing the date on which marital assets and	
11	liabilities shall be determined and their respective	2.38
12	values and amounts assigned. Provides that all assets	2.39
13	acquired and liabilities incurred by either spouse	
14	subsequent to the date of the marriage and not	2.40
15	specifically established as nonmarital assets or	
16	liabilities are presumed to be marital assets and	2.41
17	liabilities. Provides for the award of alimony after the	2.42
18	equitable distribution of marital assets and liabilities.	2.43
19	Includes marital assets and liabilities distributed to	2.44
20	each party within a list of economic factors considered	2.45
21	by the court in fixing alimony.	
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Date: December 23, 1986
Revised: _____
Final: _____

Oliver

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
STAFF ANALYSIS

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BILL# PCB 08
COMPANION BILL(S) _____
RELATING TO Dissolution of marriage
SPONSOR(S) Committee on Judiciary
EFFECTIVE DATE October 1, 1987
OTHER COMMITTEES OF REFERENCE (1) _____
(2) _____

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 

Date: December 23, 1986
Revised: March 13, 1987
Final: _____

AS REPORTED TO CLERK

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
STAFF ANALYSIS

HB 1225

BILL# PCB JUD 87-08
COMPANION BILL(S) _____
RELATING TO Dissolution of marriage
SPONSOR(S) Committee on Judiciary
EFFECTIVE DATE October 1, 1987
OTHER COMMITTEES OF REFERENCE (1) _____
(2) _____

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DEPARTMENT OF STATE
R. A. GRAY BUILDING

Tallahassee, FL 32399-0250

Series 19 Carton 1602

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.

Storage Name: 87 SS PCB 08
Page 2
Bill #PCB 08-87
Date: March 13, 1987

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.

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 *dk*

VII. STAFF DIRECTOR: Richard Hixson *rh*

By the Committee on Judiciary and Representatives Simon and Dunbar

This publication was produced at an average cost of 1.5 cents per single page in compliance with the Rules and for the information of members of the Legislature and the public.

1 A bill to be entitled
2 An act relating to dissolution of marriage;
3 creating s. 61.075, F.S., requiring courts to
4 equitably distribute marital assets and
5 liabilities; defining marital and nonmarital
6 assets and liabilities; establishing the date
7 for determining such assets and liabilities and
8 the value thereof; providing a presumption as
9 to marital assets and liabilities; establishing
10 the vesting of rights in marital assets;
11 amending s. 61.08, F.S., including marital
12 assets and liabilities distributed to each
13 party within a list of economic factors
14 considered by the court in fixing alimony;
15 providing for the application of the act;
16 providing an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Section 61.075, Florida Statutes, is
21 created to read:

22 61.075 Equitable distribution of marital assets and
23 liabilities.--

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

1	<u>marital assets and liabilities in such proportions as is</u>	1.20
2	<u>equitable, after considering all relevant factors, including:</u>	
3	<u>(a) The contribution to the marriage by each spouse,</u>	1:1us
4	<u>including contributions to the care and education of the</u>	1.22
5	<u>children and services as homemaker.</u>	
6	<u>(b) The economic circumstances of the parties.</u>	1:1us
7	<u>(c) The duration of the marriage.</u>	1:1us
8	<u>(d) Any interruption of personal careers or</u>	1:1us
9	<u>educational opportunities of either party.</u>	1.26
10	<u>(e) The contribution of one spouse to the personal</u>	1:1us
11	<u>career or educational opportunity of the other spouse.</u>	1.28
12	<u>(f) The desirability of retaining any asset, including</u>	1:1us
13	<u>an interest in a business, corporation or professional</u>	1.30
14	<u>practice, intact and free from any claim or interference by</u>	
15	<u>the other party.</u>	1.31
16	<u>(g) The contribution of each spouse to the</u>	1:1i
17	<u>acquisition, enhancement, and production of income or the</u>	1.33
18	<u>improvement of, or the incurring of liabilities to, both the</u>	
19	<u>marital assets and the nonmarital assets of the parties.</u>	1.35
20	<u>(h) The court may consider any other factors necessary</u>	1:1us
21	<u>to do equity and justice between the parties.</u>	1.37
22	<u>(2) The judgment of award distributing assets shall</u>	1:1us
23	<u>have the effect of a duly executed conveyance, transfer,</u>	1.39
24	<u>release, or acquisition that is recorded in the county where</u>	
25	<u>the property is located when the judgment or certified copy of</u>	1.40
26	<u>the judgment is recorded in the official records of the county</u>	1.41
27	<u>in which the property is located.</u>	
28	<u>(3) As used in this section, unless the context</u>	1:1us
29	<u>requires otherwise:</u>	
30	<u>(a) Marital assets and liabilities include:</u>	1:1.
31		

1	<u>1. Assets acquired and liabilities incurred during the</u>	1:1us
2	<u>marriage, individually by either spouse or jointly by them;</u>	1.45
3	<u>2. All income derived from nonmarital assets during</u>	1:1us
4	<u>the marriage;</u>	
5	<u>3. The enhancement in value and appreciation of</u>	1:1us
6	<u>nonmarital assets resulting either from the efforts of either</u>	1.48
7	<u>party during the marriage or from the contribution to or</u>	
8	<u>expenditure thereon of marital funds or other forms of marital</u>	1.49
9	<u>assets, or both;</u>	
10	<u>4. Interspousal gifts during the marriage;</u>	1:1us
11	<u>5. Vested and nonvested benefits, rights, and funds</u>	1:1us
12	<u>accrued during the marriage of all retirement, pension,</u>	1.52
13	<u>profit-sharing, annuity, and insurance plans and programs.</u>	
14	<u>(b) Nonmarital assets and liabilities are:</u>	1:1us
15	<u>1. Assets acquired and liabilities incurred by either</u>	1:1us
16	<u>party prior to the marriage and assets acquired and</u>	1.55
17	<u>liabilities incurred in exchange for such assets and</u>	
18	<u>liabilities;</u>	
19	<u>2. Assets acquired separately by either party by</u>	1:1us
20	<u>noninterspousal gift, bequest, devise, or descent and assets</u>	1.57
21	<u>acquired in exchange for such assets;</u>	
22	<u>3. Assets and liabilities excluded by valid written</u>	1:1us
23	<u>agreement of the parties and assets acquired and liabilities</u>	1.59
24	<u>incurred in exchange for such assets and liabilities.</u>	
25	<u>(4) The date for determining marital assets and</u>	1:1us
26	<u>liabilities and the value of such assets and the amount of</u>	1.61
27	<u>such liabilities is the earlier of the date the parties enter</u>	
28	<u>into a valid separation agreement or such other date as may be</u>	1.62
29	<u>expressly established by such agreement or the date of the</u>	1.63
30	<u>filing of a petition for dissolution of marriage, unless the</u>	
31		

1	<u>trial judge determines another date is just and equitable</u>	1.64
2	<u>under the circumstances.</u>	
3	<u>(5) All assets acquired and liabilities incurred by</u>	1:1us
4	<u>either spouse subsequent to the date of the marriage and not</u>	1.66
5	<u>specifically established as nonmarital assets or liabilities</u>	
6	<u>are presumed to be marital assets and liabilities. The</u>	2.2
7	<u>presumption of marital assets and liabilities is overcome by a</u>	
8	<u>showing that the assets and liabilities come within the</u>	2.3
9	<u>definition of nonmarital assets and liabilities. The</u>	2.4
10	<u>presumption is only for evidentiary purposes in a dissolution</u>	
11	<u>proceeding and does not vest title until a judgment of a court</u>	2.5
12	<u>is entered. Nothing herein shall require a joinder of spouses</u>	2.6
13	<u>in the conveyance, transfer, or hypothecation of their</u>	2.7
14	<u>individual property, and nothing herein shall affect the laws</u>	
15	<u>of descent or distribution or establish community property in</u>	2.8
16	<u>this state.</u>	
17	<u>(6) The court may provide for equitable distribution</u>	1:1us
18	<u>of the marital assets and liabilities without regard to</u>	2.10
19	<u>alimony for either party. After the determination of an</u>	2.11
20	<u>equitable distribution of the marital assets and liabilities,</u>	
21	<u>the court shall consider whether a judgment for alimony shall</u>	2.12
22	<u>be made.</u>	
23	<u>(7) The court, to do equity between the parties, may,</u>	1:1us
24	<u>in lieu of or in supplement thereto, facilitate or effectuate</u>	2.15
25	<u>the equitable division of marital assets and liabilities, and</u>	
26	<u>order the payment of a monetary sum in lump sum or over a</u>	2.16
27	<u>fixed period of time.</u>	
28	Section 2. Paragraph (d) of subsection (2) of section	2.17
29	61.08, Florida Statutes, 1986 Supplement, is amended to read:	2 19
30	61.08 Alimony.--	2.20
31		

1	(2) In determining a proper award of alimony or	2.21
2	maintenance, the court shall consider all relevant economic	2.22
3	factors, including, but not limited to:	
4	(4) The financial resources of each party <u>and the</u>	2.23
5	<u>marital assets and liabilities distributed to each party.</u>	
6		
7	The court may consider any other factor necessary to do equity	2.24
8	and justice between the parties.	2.25
9	Section 3. <u>This act applies to all proceedings</u>	2.26
10	<u>commenced after the effective date of the enactment hereof.</u>	2.27
11	Section 4. This act shall take effect October 1, 1987.	2.28
12	*****	
13		
14	HOUSE SUMMARY	
15	Requires courts to equitably distribute marital assets	
16	and liabilities along described lines. Provides that the	
17	judgment of award distributing assets shall have the	
18	effect of a duly executed conveyance, transfer, release,	
19	or acquisition recorded in the county where the property	
20	is located when the judgment is recorded in the official	
21	records of such county. Provides a procedure for	
22	establishing the date on which marital assets and	
23	liabilities shall be determined and their respective	
24	values and amounts assigned. Provides that all assets	
25	acquired and liabilities incurred by either spouse	
26	subsequent to the date of the marriage and not	
27	specifically established as nonmarital assets or	
28	liabilities are presumed to be marital assets and	
29	liabilities. Provides for the award of alimony after the	
30	equitable distribution of marital assets and liabilities.	
31	Includes marital assets and liabilities distributed to	
	each party within a list of economic factors considered	
	by the court in fixing alimony.	

b, the Committee on Judiciary-Civil

This publication was produced at an average cost of 1.5 cents per page for the information of members of the Legislature and the public.

1 A bill to be entitled
2 An act relating to dissolution of marriage;
3 creating s. 61.075, F.S.; authorizing courts to
4 equitably distribute marital assets and
5 liabilities and prescribing factors for the
6 court to consider in making such distributions;
7 defining marital and nonmarital assets and
8 liabilities; providing for the effect of a
9 recorded judgment; establishing the date for
10 determining marital assets and liabilities and
11 the value thereof; providing a presumption as
12 to marital assets and liabilities; providing
13 for monetary payments in lump sum or
14 installments; providing for the consideration
15 of an alimony award; amending s. 61.08, F.S.;
16 authorizing the award of periodic alimony;
17 providing that the court may consider the
18 adultery of either spouse in determining the
19 amount of alimony to award; adding marital
20 assets and liabilities as factors in the
21 determination of an award of alimony or
22 maintenance; providing an effective date.
23
24 Be It Enacted by the Legislature of the State of Florida:
25
26 Section 1. Section 61.075, Florida Statutes, is
27 created to read:
28 61.075 Equitable distribution of marital assets and
29 liabilities.--
30 (1) In a proceeding for dissolution of marriage, in
addition to all other remedies available to a court to do

1 equity between the parties, or in a proceeding for disposition
 2 of assets following a dissolution of marriage by a court which
 3 lacked jurisdiction over the absent spouse or lacked
 4 jurisdiction to dispose of the assets, the court shall set
 5 apart to each spouse that spouse's nonmarital assets and
 6 liabilities and shall distribute between the parties the
 7 marital assets and liabilities in such proportions as are
 8 equitable, after considering all relevant factors, including:

- 9 (a) The contribution to the marriage by each spouse,
 10 including contributions to the care and education of the
 11 children and services as homemaker.
- 12 (b) The economic circumstances of the parties.
- 13 (c) The duration of the marriage.
- 14 (d) Any interruption of personal careers or
 15 educational opportunities of either party.
- 16 (e) The contribution of one spouse to the personal
 17 career or educational opportunity of the other spouse.
- 18 (f) The desirability of retaining any asset, including
 19 an interest in a business, corporation, or professional
 20 practice, intact and free from any claim or interference by
 21 the other party.
- 22 (g) The contribution of each spouse to the
 23 acquisition, enhancement, and production of income or the
 24 improvement of, or the incurring of liabilities to, both the
 25 marital assets and the nonmarital assets of the parties.
- 26 (h) Any other factors necessary to do equity and
 27 justice between the parties.
- 28 (2) The judgment distributing assets shall have the
 29 effect of a duly executed instrument of conveyance, transfer,
 30 release, or acquisition which is recorded in the county where
 31 the property is located when the judgment, or a certified copy

1 of the judgment, is recorded in the official records of the
2 county in which the property is located.

3 (3) As used in this section:

4 (a) "Marital assets and liabilities" include:

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

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

12 3. Interspousal gifts during the marriage;

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

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

23 (b) "Nonmarital assets and liabilities" include:

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

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

1

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

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

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

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

29 (6) The court may provide for equitable distribution
30 of the marital assets and liabilities without regard to
31 alimony for either party. After the determination of an

1 equitable distribution of the marital assets and liabilities,
2 the court shall consider whether a judgment for alimony shall
3 be made.

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

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

11 61.08 Alimony.--

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

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

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

25 (b) The duration of the marriage.

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

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

30

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

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

8
9 The court may consider any other factor necessary to do equity
10 and justice between the parties.

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

13 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.

By Representative Dunbar

This publication was produced at a single page in compliance with the average cost of 1.5 cents per page and for the information of members of the Legislature and the public.

1 A bill to be entitled
2 An act relating to dissolution of marriage;
3 creating s. 61.075, F.S.; authorizing courts to
4 equitably distribute marital assets and
5 liabilities; defining marital and nonmarital
6 assets and liabilities; providing for the
7 effect of a recorded judgment; establishing the
8 date for determining marital assets and
9 liabilities and the value thereof; providing a
10 presumption as to marital assets and
11 liabilities; providing for monetary payments;
12 providing for the consideration of an alimony
13 award; amending s. 61.08, F.S.; adding marital
14 assets and liabilities as factors in the
15 determination of an award of alimony or
16 maintenance; providing an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Section 61.075, Florida Statutes, is
21 created to read:

22 61.075 Equitable distribution of marital assets and
23 liabilities.--

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

1	<u>marital assets and liabilities in such proportions as are</u>	
2	<u>equitable, after considering all relevant factors, including:</u>	1.22
3	<u>(a) The contribution to the marriage by each spouse,</u>	1
4	<u>including contributions to the care and education of the</u>	1
5	<u>children and services as homemaker.</u>	
6	<u>(b) The economic circumstances of the parties.</u>	1:1us
7	<u>(c) The duration of the marriage.</u>	1.27
8	<u>(d) Any interruption of personal careers or</u>	1:1us
9	<u>educational opportunities of either party.</u>	1.28
10	<u>(e) The contribution of one spouse to the personal</u>	1:1us
11	<u>career or educational opportunity of the other spouse.</u>	1.31
12	<u>(f) The desirability of retaining any asset, including</u>	1:1us
13	<u>an interest in a business, corporation, or professional</u>	1.33
14	<u>practice, intact and free from any claim or interference by</u>	
15	<u>the other party.</u>	1.34
16	<u>(g) The contribution of each spouse to the</u>	1
17	<u>acquisition, enhancement, and production of income or the</u>	1.37
18	<u>improvement of, or the incurring of liabilities to, both the</u>	
19	<u>marital assets and the nonmarital assets of the parties.</u>	1.38
20	<u>(h) Any other factors necessary to do equity and</u>	1:1us
21	<u>justice between the parties.</u>	
22	<u>(2) The judgment distributing assets shall have the</u>	1:1us
23	<u>effect of a duly executed conveyance, transfer, release, or</u>	1.42
24	<u>acquisition which is recorded in the county where the property</u>	
25	<u>is located when the judgment, or a certified copy of the</u>	1.43
26	<u>judgment, is recorded in the official records of the county in</u>	1.44
27	<u>which the property is located.</u>	
28	<u>(3) As used in this section:</u>	1:1us
29	<u>(a) "Marital assets and liabilities" include:</u>	
30	<u>1. Assets acquired and liabilities incurred during the</u>	1:1us
31	<u>marriage, individually by either spouse or jointly by them;</u>	1.49

- 1 2. The enhancement in value and appreciation of 1:
 2 nonmarital assets resulting either from the efforts of either 1.
 3 party during the marriage or from the contribution to or
 4 expenditure thereon of marital funds or other forms of marital 1.
 5 assets, or both;
- 6 3. Interspousal gifts during the marriage; 1:
 7 4. All vested and nonvested benefits, rights, and 1:
 8 funds accrued during the marriage in retirement, pension, 1.
 9 profit-sharing, annuity, and insurance plans and programs, and
- 10 5. All property held by the parties as tenants by the 1:
 11 entireties, whether acquired prior to or during the marriage, 1.
 12 shall be presumed to be owned in equal shares. If, in any 1
 13 case, a party makes a claim to the contrary, the burden of
 14 proof shall be on the party asserting such a claim to prove 1.
 15 that the property was not held in equal shares.
- 16 (b) "Nonmarital assets and liabilities" are: 1.
 17 1. Assets acquired and liabilities incurred by either 1:
 18 party prior to the marriage and assets acquired and 1.
 19 liabilities incurred in exchange for such assets and
 20 liabilities;
- 21 2. Assets acquired separately by either party by 1:
 22 noninterspousal gift, bequest, devise, or descent and assets 1.
 23 acquired in exchange for such assets;
- 24 3. All income derived from nonmarital assets during 1
 25 the marriage unless the income was treated, used, or relied 1
 26 upon by the parties as a marital asset; and
- 27 4. Assets and liabilities excluded from marital assets 1
 28 and liabilities by valid written agreement of the parties. 1.
- 29 (4) The date for determining marital assets and 1
 30 liabilities and the value of such assets and the amount of 1
 31 such liabilities is the earlier of the date the parties enter

1	<u>into a valid separation agreement expressly establishing such</u>	1.78
2	<u>date or the date of the filing of a petition for dissolution</u>	1.79
3	<u>of marriage, unless the trial judge determines another date is</u>	
4	<u>just and equitable under the circumstances.</u>	*
5	(5) <u>All assets acquired and liabilities incurred by</u>	1:1us
6	<u>either spouse subsequent to the date of the marriage and not</u>	1.84
7	<u>specifically established as nonmarital assets or liabilities</u>	
8	<u>are presumed to be marital assets and liabilities. Such</u>	2.2
9	<u>presumption is overcome by a showing that the assets and</u>	
10	<u>liabilities are nonmarital assets and liabilities. The</u>	2.4
11	<u>presumption is only for evidentiary purposes in the</u>	
12	<u>dissolution proceeding and does not vest title. Title to</u>	2.6
13	<u>disputed assets shall vest only by the judgment of a court.</u>	
14	<u>This section does not require the joinder of spouses in the</u>	2.7
15	<u>conveyance, transfer, or hypothecation of a spouse's</u>	2.8
16	<u>individual property; affect the laws of descent and</u>	
17	<u>distribution; or establish community property in this state.</u>	2.
18	(6) <u>The court may provide for equitable distribution</u>	1:1us
19	<u>of the marital assets and liabilities without regard to</u>	2.11
20	<u>alimony for either party. After the determination of an</u>	2.12
21	<u>equitable distribution of the marital assets and liabilities,</u>	
22	<u>the court shall consider whether a judgment for alimony shall</u>	2.13
23	<u>be made.</u>	
24	(7) <u>To do equity between the parties, the court may,</u>	1:1us
25	<u>in lieu of or to supplement, facilitate, or effectuate the</u>	2.15
26	<u>equitable division of marital assets and liabilities, order a</u>	
27	<u>monetary payment in a lump sum or in installments paid over a</u>	2.16
28	<u>fixed period of time.</u>	
29	Section 2. Subsection (2) of section 61.08, Florida	*
30	Statutes, 1986 Supplement, is amended to read:	*
31	61.08 Alimony.--	2.19

1	(2) In determining a proper award of alimony or	2.20
2	maintenance, the court shall consider all relevant economic	2.21
3	factors, including but not limited to:	
4	(a) The standard of living established during the	2.22
5	marriage.	
6	(b) The duration of the marriage.	2.24
7	(c) The age and the physical and emotional condition	2.25
8	of each party.	
9	(d) The financial resources of each party <u>and the</u>	2.27
10	<u>marital assets and liabilities distributed to each.</u>	2.28
11	(e) When applicable, the time necessary for either	2.29
12	party to acquire sufficient education or training to enable	
13	such party to find appropriate employment.	2.30
14	(f) The contribution of each party to the marriage,	2.30
15	including, but not limited to, services rendered in	2.32
16	homemaking, child care, education, and career building of the	2.33
17	other party.	
18		
19	The court may consider any other factor necessary to do equity	2.36
20	and justice between the parties.	2.38
21	Section 3. This act applies to all proceedings pending	2.39
22	on the effective date of this act in which a final judgment	2.40
23	has not been entered and to all proceedings commenced after	
24	the effective date of this act.	2.41
25	Section 4. This act shall take effect October 1, 1988.	2.42
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1	*****	1:hbs
2	HOUSE SUMMARY	1:hbs
3	Provides for the distribution of assets and liabilities	2.44
4	in connection with a dissolution of marriage. Authorizes	
5	courts to equitably distribute marital assets and	
6	liabilities and lists factors to be considered.	2.48
7	Distinguishes such assets and liabilities from nonmarital	2.49
8	ones. Provides for the effect of a recorded judgment.	2.50
9	Establishes the date for determining what is a marital	2.51
10	asset or liability and what it is worth. Provides an	
11	evidentiary presumption as to marital assets or	2.52
12	liabilities. Provides that title vests only by the	2.53
13	judgment of a court. Provides for the consideration of	2.54
14	an alimony award. Provides for monetary payments as a	2.55
15	lump sum or in installments. Adds as a factor to be	
16	considered in awarding alimony or maintenance the marital	2.56
17	assets and liabilities distributed to each party.	
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By the Committee on Judiciary and Representatives Simon,
Dunbar

A bill to be entitled

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

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Section 61.075, Florida Statutes, is
21 created to read:

22 61.075 Equitable distribution of marital assets and
23 liabilities.--

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

- 1 marital assets and liabilities in such proportions as are
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) Any other factors necessary to do equity and
21 justice between the parties,
22 (2) The judgment distributing assets shall have the
23 effect of a duly executed instrument of conveyance, transfer,
24 release, or acquisition which is recorded in the county where
25 the property is located when the judgment, or a certified copy
26 of the judgment, is recorded in the official records of the
27 county in which the property is located,
28 (3) As used in this section:
29 (a) "Marital assets and liabilities" include:
30 1. Assets acquired and liabilities incurred during the
31 marriage, individually by either spouse or jointly by them;

2. The enhancement in value and appreciation of
2 nonmarital assets resulting either from the efforts of either
3 party during the marriage or from the contribution to or
4 expenditure thereon of marital funds or other forms of marital
5 assets, or both;
3. Interspousal gifts during the marriage;
4. All vested and nonvested benefits, rights, and
8 funds accrued during the marriage in retirement, pension,
9 profit-sharing, annuity, deferred compensation, and insurance
10 plans and programs; and
5. All real property held by the parties as tenants by
12 the entireties, whether acquired prior to or during the
13 marriage, shall be presumed to be marital assets. If, in any
case, a party makes a claim to the contrary, the burden of
14 proof shall be on the party asserting the claim for a special
16 equity.
- (b) "Nonmarital assets and liabilities" are:
1. Assets acquired and liabilities incurred by either
19 party prior to the marriage and assets acquired and
20 liabilities incurred in exchange for such assets and
21 liabilities;
2. Assets acquired separately by either party by
23 noninterspousal gift, bequest, devise, or descent and assets
24 acquired in exchange for such assets;
3. All income derived from nonmarital assets during
26 the marriage unless the income was treated, used, or relied
27 upon by the parties as a marital asset; and
4. Assets and liabilities excluded from marital assets
29 and liabilities by valid written agreement of the parties and
30 assets acquired and liabilities incurred in exchange for such
31 assets and liabilities.

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

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

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

28 (7) To do equity between the parties, the court may,
29 in lieu of or to supplement, facilitate, or effectuate the
30 equitable division of marital assets and liabilities, order a
31

monetary payment in a lump sum or in installments paid over a
2 fixed period of time.

3 Section 2. Paragraphs (d) and (f) of subsection (2) of
4 section 61.08, Florida Statutes, are amended to read:

5 61.08 Alimony.--

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

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

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

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

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

By Senators Ros-Lehtinen, Jennings, Meek, Grizzle, Weinstock, Woodson, Thurman, Malchon, Margolis and Frank

This publication was produced at an average cost of 1.5 cents per page for the information of members of the Legislature and the public.

1 A bill to be entitled
2 An act relating to dissolution of marriage;
3 providing that the right to a military pension
4 or military retirement benefits must be
5 considered a marital asset in equitably
6 distributing marital property; allowing the
7 court to specify the scheme of distribution;
8 providing that the act does not nullify certain
9 awards; allowing a court to modify certain
10 judgments to distribute the rights to military
11 pension or military retirement benefits;
12 providing an effective date.
13
14 Be It Enacted by the Legislature of the State of Florida:
15
16 Section 1. Distribution by court of marital property
17 upon dissolution of marriage.--
18 (1) In a proceeding for dissolution of marriage, a
19 spouse's entitlement to military pension or military
20 retirement benefits must be considered a marital asset for
21 purposes of equitably distributing marital property. The
22 scheme of distribution may be designed as the court finds
23 reasonable. The court may not order the Federal Government to
24 pay directly to a former spouse an amount of military pension
25 or military retirement benefits in excess of the maximum
26 amount allowed by Federal law.
27 (2) This section may not be construed to nullify any
28 rights to military pension or military retirement benefits
29 which were awarded by a court of competent jurisdiction before
30 the effective date of this act.
31

1 (3) If a court otherwise has jurisdiction to modify a
2 judgment of dissolution of marriage, the court may modify such
3 judgment to provide for the distribution of military pension
4 or retirement benefits, if that judgment was issued on or
5 after June 26, 1981. Only those installments accruing
6 subsequent to the application for modification may be
7 modified.

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

10 *****

11 SENATE SUMMARY

12 In a proceeding for dissolution of marriage, requires a
13 court to consider certain military pension or retirement
14 benefits as marital assets in distributing marital
15 property. Gives the court great latitude in devising the
16 scheme of distribution. Provides that the act does not
17 nullify awards of such benefits that were previously
18 made. Allows a court to modify judgments issued on June
19 26, 1981, or later, to distribute such benefits.

By Senator Woodson

ge cost of 1.5 cents per page
for the information of members of the
legislature and the public.

This publication was produced at an
estimated cost of 1.5 cents per page
for the information of members of the
legislature and the public.

1 A bill to be entitled
2 An act relating to marriage and the dissolution
3 thereof; amending ss. 28.101, 382.023, F.S.;
4 increasing fees for filing, recording, and
5 reporting final judgments of dissolution of
6 marriage; amending s. 741.02, F.S.; increasing
7 the fees for issuing marriage licenses;
8 providing an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Subsection (2) of section 28.101, Florida
13 Statutes, is amended to read:

14 28.101 Petitions and records of dissolution of
15 marriage; additional charges.--

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

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

24 382.023 Clerks of circuit courts to furnish department
25 with record of dissolutions of marriage granted; charges.--

26 (2) Clerks of the circuit courts shall collect for
27 their service at the time of the filing of a final judgment of
28 dissolution of marriage a charge of \$7 ~~\$5~~, of which \$3 shall
29 be retained by the circuit court as a part of the cost in the
30 cause in which the judgment is granted and of which \$4 ~~\$2~~
31 shall be collected and transmitted to the department as a part

1 of the cost of maintaining the dissolution-of-marriage record
2 system.

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

5 741.02 Additional fee.--Upon the receipt of each
6 application for the issuance of a marriage license, the county
7 court judge or clerk of the circuit court shall, in addition
8 to the fee allowed by s. 741.01, collect and receive an
9 additional fee of \$4 \$3, to be distributed as provided by s.
10 382.022.

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

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20 *****

21 SENATE SUMMARY

22 Increases the fees for filing, recording, and reporting
23 final judgments of dissolution of marriage and for
24 issuing marriage licenses.
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31

By Representative Patchett

1 A bill to be entitled
2 An act relating to domestic relations; amending
3 s. 382.023, F.S., increasing the filing charge
4 for judgment of dissolution of marriage;
5 amending s. 741.02, F.S., increasing the
6 additional fee collected for application for
7 the issuance of a marriage license; amending s.
8 28.101, F.S., to conform; providing an
9 effective date.
10
11 Be It Enacted by the Legislature of the State of Florida:
12
13 Section 1. Subsection (2) of section 382.023, Florida
14 Statutes, is amended to read:
15 382.023 Clerks of circuit courts to furnish department
16 with record of dissolutions of marriage granted; charges.--
17 (2) Clerks of the circuit courts shall collect for
18 their service at the time of the filing of a final judgment of
19 dissolution of marriage a charge of \$7 \$5, of which \$3 shall
20 be retained by the circuit court as a part of the cost in the
21 cause in which the judgment is granted and of which \$4 \$2
22 shall be collected and transmitted to the department as a part
23 of the cost of maintaining the dissolution-of-marriage record
24 system.
25 Section 2. Section 741.02, Florida Statutes, is
26 amended to read:
27 741.02 Additional fee.--Upon the receipt of each
28 application for the issuance of a marriage license, the county
29 court judge or clerk of the circuit court shall, in addition
30 to the fee allowed by s. 741.01, collect and receive an
31

1 additional fee of \$4 \$3, to be distributed as provided by s.
2 382.022.

3 Section 3. Subsection (2) of section 28.101, Florida
4 Statutes, is amended to read:

5 28.101 Petitions and records of dissolution of
6 marriage; additional charges.--

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

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

15 *****

16
17 HOUSE SUMMARY

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

21
22
23 This publication was produced at an average cost of 1.12 cents
24 per single page in compliance with the Rules and for
25 the information of members of the Legislature and the public.

S 152 GENERAL BILL/ENG by Judiciary-Civil (Similar H 4, H 806, Compare CS/H 309, H 1360, S 228, S 707)

-p. 53

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.

01/13/88 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

04/25/88 HOUSE Received, placed on Calendar -HJ 235

05/04/88 HOUSE Placed on Special Order Calendar

05/09/88 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)

-pp. 337-338

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

05/04/88 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

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Wiehle	Lester <i>RL</i>	1. JCI	
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Divorce/Marital Assets
and Liabilities

BILL NO. AND SPONSOR:

SB 152 by
Judiciary-Civil CommitteeI. 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

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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.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Wiehle</u>	<u>Lester</u> <u>BL</u>	1. <u>JCI</u>	<u>Fav/2 amend.</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT: Divorce/Marital Assets and Liabilities

BILL NO. AND SPONSOR: SB 152 by Judiciary-Civil Committee

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, Burnsed,
Brown, Frankel, Hawkins, Mortham, Sanderson, Stone,
Messersmith, Hanson, Frishe, Bainter, Irvine, Metcalf, Carlton,
(Additional Sponsors on Last Printed Page)

1 A bill to be entitled
2 An act relating to dissolution of marriage;
3 providing that the right to a military pension
4 or military retirement benefits must be
5 considered a marital asset in equitably
6 distributing marital property; allowing the
7 court to specify the scheme of distribution;
8 providing that the act does not nullify certain
9 awards; allowing a court to modify certain
10 judgments to distribute the rights to military
11 pension or military retirement benefits;
12 providing an effective date.
13
14 Be It Enacted by the Legislature of the State of Florida:

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

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

27 (2) This section may not be construed to nullify any
28 rights to military pension or military retirement benefits
29 which were awarded by a court of competent jurisdiction before
30 the effective date of this act.
31

1 13) If a court otherwise has jurisdiction to modify a
2 judgment of dissolution of marriage, the court may modify such
3 judgment to provide for the distribution of military pension
4 or retirement benefits, if that judgment was issued on or
5 after June 26, 1981. Only those installments accruing
6 subsequent to the application for modification may be
7 modified.

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

10 *****

11
12 HOUSE SUMMARY

13 In a proceeding for dissolution of marriage, requires a
14 court to consider certain military pension or retirement
15 benefits as marital assets in distributing marital
16 property. Gives the court great latitude in devising the
17 scheme of distribution. Provides that the act does not
18 nullify awards of such benefits that were previously
19 made. Allows a court to modify judgments issued on June
20 26, 1981, or later, to distribute such benefits.

21 *****

22 ADDITIONAL SPONSORS

23 Young, Tobin, Carpenter, Guber
24
25

26 This publication was produced at an average cost of 1.12 cents
27 per single page in compliance with the Rules and for
the information of members of the Legislature and the public.
28
29
30
31

STORAGE NAME: 8HB309.SUM
Date: March 30, 1988
Revised: March 31, 1988
Final: _____

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

COPY

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Series 19 - Carton 1801

BILL #: HB309
RELATING TO: Military pensions as marital assets
SPONSOR(S): Lewis, Gordon and others
EFFECTIVE DATE: Upon becoming law
COMPANION BILL(S): SB228
OTHER COMMITTEES OF REFERENCE: (1) Appropriations
(2) _____

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 KPT

Staff Director:

Richard Hixson RH

FINANCE & TAXATION:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:

STORAGE NAME: 8HB309.SUM
Date: March 30, 1988
Revised: April 9, 1988
Final: _____

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HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

Series 19 Carton 1801

BILL #: HB 309
RELATING TO: Military pensions as marital assets
SPONSOR(S): Lewis, Gordon and others
EFFECTIVE DATE: Upon becoming law
COMPANION BILL(S): SB 228
OTHER COMMITTEES OF REFERENCE: (1) Appropriations
(2) _____

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

KPT

Staff Director:

Richard Hixson

RH

FINANCE & TAXATION:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:

House of Representatives

File with Parent Committee

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
 X FAVORABLE WITH 1 AMENDMENTS
 UNFAVORABLE

VOTE:

YEA	MEMBER	NAY
X	Canady	
X	Dunbar	
X	Ireland	
X	Liberti	
	Martinez	
X	Peeples	

Total
Years 7

YEA	MEMBER	WAV
	Rush	
X	Woodruff	
X	Simon, Chmn.	

Total
Naye 0

C O P Y

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Anthony J. Pichard
Subcommittee Chairman

SUBCOMMITTEE APPEARANCE RECORD

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

Name

Representing

Address[illegible]

(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 on JUDICIARYBill No. HB 309Date of meeting 4/14/88Time 3:30 p.m.Place 214 C

AS REPORTED TO CLERK

FINAL ACTION: FAVORABLE
 FAVORABLE WITH AMENDMENTS
 X FAVORABLE WITH SUBSTITUTE
 UNFAVORABLE

VOTE:

YEA	MEMBER	NAY
	CANADY	
X	COSGROVE	
	DAVIS	
X	DIAZ-BALART	
X	DRAKE	
	DUNBAR	
X	IRELAND	
X	LAWSON	
	LIBERTI	
X	MARTINEZ	
X	PEEPLER	
X	PRESS	
X	RUSH	
X	SIMON	
X	TITONE	

YEA	MEMBER	NAY
	WEBSTER	
X	WOODRUFF	
X	UPCHURCH (Chmn.)	

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Series 19 Carton 1801

Total
Yeas 13Total
Nays 0

[Signature]
Chairman

COMMITTEE APPEARANCE RECORD

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

Name	Representing	Address

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)

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)

1 A bill to be entitled

2 An act relating to dissolution of marriage;

3 providing that specified sources of income

4 shall be considered marital assets subject to

5 equitable distribution; requiring certain

6 information to be included in final judgments

7 for dissolution of marriage if the division of

8 marital property includes a division of

9 retirement or retainer pay from the federal

10 uniformed services; providing an effective

11 date.

12

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

14

15 Section 1. Distribution of retirement plans upon

16 dissolution of marriage.--

17 (1) All vested and nonvested benefits, rights, and

18 funds accrued during a marriage in retirement, pension,

19 profit-sharing, annuity, deferred compensation, and insurance

20 plans and programs shall be considered marital assets subject

21 to equitable distribution.

22 (2) If the parties in an action for dissolution of

23 marriage were married for at least 10 years, during which time

24 at least one of the parties who was a member of the federal

25 uniformed services performed at least 10 years of creditable

26 service, and if the division of marital property includes a

27 division of retirement or retainer pay earned as the result of

28 such service in the federal uniformed services, the final

29 judgment shall include the following:

30 (a) Sufficient information to identify the member of

31 the uniformed services;

1 **(b) Certification that the Soldiers' and Sailors'**
2 **Civil Relief Act of 1940 was observed if the decree was issued**
3 **while the member was on active duty and was not represented in**
4 **court;**

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

9 **(3) An order which provides for distribution of**
10 **retirement or retainer pay from the federal uniformed services**
11 **shall not provide for payment from such source more frequently**
12 **than monthly and shall not require the payor to vary normal**
13 **pay and disbursement cycles for retirement or retainer pay in**
14 **order to comply with the order.**

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

17
18 *****

19 HOUSE SUMMARY

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

26 Requires the inclusion of specified information in final
27 judgments for dissolution of marriage if the division of
28 marital property includes a division of retirement or
29 retainer pay from the federal uniformed services, under
30 certain conditions.
31

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.

STORAGE NAME: 8HB309.SUM
Date: March 30, 1988
Revised: April 18, 1988
Final: _____

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY **CS/HB 309**
STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 309
RELATING TO: Military pensions as marital assets
SPONSOR(S): Judiciary, Lewis, Gordon & others
EFFECTIVE DATE: Upon becoming law
COMPANION BILL(S): SB 228
OTHER COMMITTEES OF REFERENCE: (1) Appropriations
(2) _____

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.

1417
MAY 25 1988

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 *KPT*

Staff Director:

Richard Hixson *RH*

FINANCE & TAXATION:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:

STORAGE NAME: 8pcb7k.sum
Date: February 23, 1988
Revised:
Final:

AS REPORTED TO CLERK

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
STAFF ANALYSIS

BILL #: PCB T HB 806
RELATING TO: Dissolution of marriage
SPONSOR(S): Committee on Judiciary
EFFECTIVE DATE: October 1, 1988
COMPANION BILLS: HB 4, SB 152
OTHER COMMITTEES OF REFERENCE: (1) _____
(2) _____

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 dk

VII. STAFF DIRECTOR: Richard Hixson