

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1236

SPONSOR: Judiciary Committee and Senator Jones

SUBJECT: Marital Assets and Liabilities

DATE: March 6, 2002

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Florida law regarding dissolution of marriage currently provides a presumption of equal distribution of marital assets, but also provides a list of factors that a trial court may optionally consider as grounds for an unequal distribution of marital assets.

Committee Substitute for Senate Bill 1236 amends s. 61.075(5), F.S., to provide that nonmarital assets and liabilities include any liability incurred by forgery or unauthorized signature of one spouse signing the name of the other spouse. Any such liability shall be a nonmarital liability only of the party who committed the forgery or affixed the unauthorized signature. The court may award attorney's fees and costs occasioned by the forgery or unauthorized signature. The provisions of this subsection do not apply to any forged or unauthorized signature that was subsequently ratified by the other spouse.

The bill has an effective date of July 1, 2002.

II. Present Situation:

Section 61.075(1), F.S., provides that the court must do equity in distribution of assets between the parties in a proceeding for dissolution of marriage. It further provides that each spouse will be attributed their non-marital assets or liabilities. The statute also provides that in distributing marital assets and liabilities the court must start with the premise that all marital assets and liabilities will be distributed equally. Paragraphs (a)-(j) of s. 61.075(1), F.S., set forth the factors to be considered as exceptions to this premise of equal distribution, including:

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

- The economic circumstances of the parties.
- The duration of the marriage.
- Any interruption of personal careers or educational opportunities of either party.
- 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.
- 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 non-marital assets of the parties.
- The desirability of retaining the marital home as a residence for any dependent child of the marriage, or any other party, when it would be equitable to do so, it is in the best interest of the child or that party, and it is financially feasible for the parties to maintain the residence until the child is emancipated or until the exclusive possession is otherwise terminated by a court of competent jurisdiction. In making this determination, the court must first determine if it would be in the best interest of the dependent child to remain in the marital home; and if not, whether other equities would be served by giving any other party exclusive use and possession of the marital home.
- The intentional dissipation, waste, depletion, or destruction of marital assets after the filing of the petition or within 2 years prior to filing the petition.
- Any other factors necessary to do equity and justice between the parties.

Florida case law regarding unequal division of marital property indicates that “a spouse’s misconduct is not a valid reason to award a disproportionate amount of the marital assets to the innocent spouse, unless the infidelity depleted marital assets.” See *Eckroade v. Eckroade*, 570 So.2d 1347, 1349 (Fla. 3rd DCA 1990), quoting *Noah v. Noah*, 491 So.2d 1124 (Fla. 1986). Florida case law also indicates that “where marital misconduct results in a depletion or dissipation of marital assets, such misconduct can serve as a basis for an unequal division of marital property, or can be assigned to the spending spouse as part of that spouse’s equitable distribution.” See *Romano v. Romano*, 632 So.2d 207, 210 (Fla. 4th DCA 1994).

III. Effect of Proposed Changes:

This Committee Substitute amends s. 61.075(5), F.S., to provide that nonmarital assets and liabilities include any liability incurred by forgery or unauthorized signature of one spouse signing the name of the other spouse. Any such liability shall be a nonmarital liability only of the party who committed the forgery or affixed the unauthorized signature. The court may award attorney’s fees and costs occasioned by the forgery or unauthorized signature. The provisions of this subsection do not apply to any forged or unauthorized signature that was subsequently ratified by the other spouse.

This bill will become effective on July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill could have an impact on those spouses who incur marital liabilities through the unauthorized use or forgery of the other spouse's signature. These spouses will be responsible for any such liabilities. The precise impact is unknown.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.