

Committee on Judiciary

HB 639 — Equitable Distribution of Marital Assets and Liabilities

by Rep. Perez (CS/SB 676 by Rules Committee and Senator Passidomo)

In response to the Florida Supreme Court’s 2010 decision in *Kaaa v. Kaaa*, the bill changes the way courts are to determine the passive appreciation of nonmarital property which is subject to equitable distribution in divorce proceedings. By way of background, “equitable distribution” refers to the method a court must use in dividing up the assets (i.e., property) and liabilities (i.e., debts) acquired by a divorcing couple during their marriage. Florida has a dual-property system, meaning the property of the divorcing couple is either categorized as marital property, which is acquired during the marriage and can be divided equitably or equally by the court; or the property is categorized as separate property, which is not subject to being divided by a court. Florida law refers to separate property as “nonmarital assets and liabilities,” and the best example of separate property is a home purchased and owned by one of the parties before the marriage.

The Florida Supreme Court’s *Kaaa* decision concerned this type of separate property: a home purchased by the husband a few months prior to the marriage and held only in his name during the couple’s 27-year marriage. However, marital income was used to pay the mortgage on the property, and the property passively appreciated during those 27 years as a result of market forces. The *Kaaa* decision held that the use of marital funds to pay down the principle on the mortgage caused the passive appreciation of the property to become a marital asset. As a result, the passive appreciation was subject to equitable distribution.

The bill partially adopts the holding in the *Kaaa* decision and partially overrules the *Kaaa* decision. It partially adopts it by including the passive appreciation of real property owned by only one spouse as a marital asset that may be distributed between the spouses, but *only if* marital funds are used to pay down the property’s mortgage principal. The bill overrules *Kaaa* primarily by replacing the calculation method for determining passive appreciation set out in *Kaaa* with a three-step formula incorporating a “coverture fraction.” This coverture fraction is intended to more closely measure the parties’ actual marital contributions in paying down the mortgage so that the nonowner spouse does not end up with a windfall.

If approved by the Governor, these provisions take effect July 1, 2018.

Vote: Senate 31-0; House 112-1