

By Senator Jones

40-1011-02

See HB 315

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A bill to be entitled

An act relating to the equitable distribution of marital assets and liabilities; amending s. 61.075, F.S.; providing for the unequal distribution of marital assets and liabilities when one spouse forges or intentionally uses the unauthorized signature of the other spouse; providing an effective date.

WHEREAS, it is the intent of chapter 61, Florida Statutes, to provide for the equitable distribution of marital assets, and

WHEREAS, section 61.075(1), Florida Statutes, provides in part that "in distributing the marital assets and liabilities between the parties, the court must begin with the premise that the distribution should be equal, unless there is a justification for an unequal distribution based on all relevant factors," and

WHEREAS, section 673.4031(1), Florida Statutes, provides in part that "an unauthorized signature is ineffective except as the signature of the unauthorized signer" in order to protect the person whose signature was forged as well as the good faith receiver of the instrument or document, and

WHEREAS, there is a justification for an unequal distribution of marital assets and liabilities in the event that a spouse has forged or otherwise entered into any liability with the unauthorized use of his or her spouse's name or signature, and

WHEREAS, it is too often the case that courts hear during dissolution proceedings that a spouse forged or

1 otherwise misused without authority the signature of the other
2 spouse to cash joint instruments, to open credit card or other
3 credit accounts, or to encumber or otherwise dispose of a
4 marital asset or assets without the knowledge or consent of
5 the other spouse, and

6 WHEREAS, the State of Florida no longer follows the
7 doctrine of interspousal tort immunity, NOW, THEREFORE,

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

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11 Section 1. Subsection (1) of section 61.075, Florida
12 Statutes, is amended to read:

13 61.075 Equitable distribution of marital assets and
14 liabilities.--

15 (1) In a proceeding for dissolution of marriage, in
16 addition to all other remedies available to a court to do
17 equity between the parties, or in a proceeding for disposition
18 of assets following a dissolution of marriage by a court which
19 lacked jurisdiction over the absent spouse or lacked
20 jurisdiction to dispose of the assets, the court shall set
21 apart to each spouse that spouse's nonmarital assets and
22 liabilities, and in distributing the marital assets and
23 liabilities between the parties, the court must begin with the
24 premise that the distribution should be equal, unless there is
25 a justification for an unequal distribution based on all
26 relevant factors, including:

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

30 (b) The economic circumstances of the parties.

31 (c) The duration of the marriage.

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

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

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

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

13 (h) The desirability of retaining the marital home as
14 a residence for any dependent child of the marriage, or any
15 other party, when it would be equitable to do so, it is in the
16 best interest of the child or that party, and it is
17 financially feasible for the parties to maintain the residence
18 until the child is emancipated or until exclusive possession
19 is otherwise terminated by a court of competent jurisdiction.
20 In making this determination, the court shall first determine
21 if it would be in the best interest of the dependent child to
22 remain in the marital home; and, if not, whether other
23 equities would be served by giving any other party exclusive
24 use and possession of the marital home.

25 (i) The intentional dissipation, waste, depletion, or
26 destruction of marital assets after the filing of the petition
27 or within 2 years prior to the filing of the petition.

28 (j) The intentional forgery or unauthorized use of the
29 signature of one spouse by the other spouse. No spouse may be
30 unjustly enriched by the forgery or unauthorized use of the
31 signature of the other spouse. To that end, the provisions of

1 ss. 671.201, 673.4031, 817.54, 817.60, 831.01, and 831.02
2 shall apply to the provisions of this section and shall be
3 considered by the court in making an unequal distribution in
4 favor of the spouse whose signature was forged or used without
5 his or her knowledge or consent. The court shall make the
6 wrongdoing spouse fully and completely liable for any
7 liability or asset wrongfully disposed of. The court may
8 consider any other sanction inclusive of attorney's fees and
9 costs in making an unequal distribution pursuant to this
10 paragraph.

11 (k)(j) Any other factors necessary to do equity and
12 justice between the parties.

13 Section 2. This act shall take effect July 1, 2002.

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16 LEGISLATIVE SUMMARY

17 Provides for the unequal distribution of marital assets
18 and liabilities when one spouse forges the signature of
19 the other or uses the other spouse's signature without
20 authorization. (See bill for details.)
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