

By the Committee on Judiciary; and Senator Joyner

590-06964-08

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1 A bill to be entitled

2 An act relating to dissolution of marriage; amending s.
3 61.075, F.S.; providing for interim partial distributions
4 during dissolution actions; providing for motions;
5 providing for effect on final distributions; providing
6 factors to be considered; revising the definition of the
7 term "marital assets and liabilities"; providing a
8 presumption concerning certain personal property acquired
9 during the marriage; specifying the burden of proof
10 necessary to overcome the gift presumption; abolishing
11 special equity; providing for claims formerly identified
12 as special equity; amending s. 741.0306, F.S.; conforming
13 provisions to changes made by the act; providing an
14 effective date.

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

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18 Section 1. Subsections (5) through (9) of section 61.075,
19 Florida Statutes, are redesignated as subsections (6) through
20 (10), respectively, a new subsection (5) is added to that
21 section, paragraph (a) of present subsection (5) of that section
22 is amended, and subsection (11) is added to that section, to
23 read:

24 61.075 Equitable distribution of marital assets and
25 liabilities.--

26 (5) If the court finds good cause that there should be an
27 interim partial distribution during the pendency of a dissolution
28 action, the court may enter an interim order that shall identify
29 and value the marital and nonmarital assets and liabilities made

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30 the subject of the sworn motion, set apart such nonmarital assets
31 and liabilities, and provide for a partial distribution of such
32 marital assets and liabilities. An interim order may be entered
33 at any time after the date the dissolution of marriage is filed
34 and served and before the final distribution of marital and
35 nonmarital assets and marital and nonmarital liabilities.

36 (a) Such an interim order shall be entered only upon good
37 cause shown and upon a sworn motion establishing a specific
38 factual basis for the motion. The motion may be filed by either
39 party and shall demonstrate good cause why the matter should not
40 be deferred until the final hearing.

41 (b) The court shall specifically take into account and give
42 appropriate credit for any partial distribution of marital assets
43 or liabilities in its final allocation of marital assets or
44 liabilities. Further, the court shall make specific findings in
45 any interim order under this section that any partial
46 distribution may not cause inequity or prejudice to either party
47 as to either party's claims for support or attorney's fees.

48 (c) Any interim order partially distributing marital assets
49 or liabilities as provided in this subsection shall be pursuant
50 to and comport with the factors in subsections (1) and (3) as
51 such factors pertain to the assets or liabilities made the
52 subject of the sworn motion.

53 (d) As used in this subsection, the term "good cause" means
54 extraordinary circumstances that require an interim partial
55 distribution.

56 (6) ~~(5)~~ As used in this section:

57 (a) 1. "Marital assets and liabilities" include:

58 a. ~~1.~~ Assets acquired and liabilities incurred during the

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59 marriage, individually by either spouse or jointly by them.~~†~~

60 ~~b.2.~~ The enhancement in value and appreciation of
61 nonmarital assets resulting either from the efforts of either
62 party during the marriage or from the contribution to or
63 expenditure thereon of marital funds or other forms of marital
64 assets, or both.~~†~~

65 ~~c.3.~~ Interspousal gifts during the marriage.~~†~~

66 ~~d.4.~~ All vested and nonvested benefits, rights, and funds
67 accrued during the marriage in retirement, pension, profit-
68 sharing, annuity, deferred compensation, and insurance plans and
69 programs.~~†~~ and

70 ~~2.5.~~ All real property held by the parties as tenants by
71 the entireties, whether acquired prior to or during the marriage,
72 shall be presumed to be a marital asset. If, in any case, a party
73 makes a claim to the contrary, the burden of proof shall be on
74 the party asserting the claim that the subject property, or some
75 portion thereof, is nonmarital ~~for a special equity.~~

76 3. Any personal property titled jointly by the parties as
77 tenants by the entireties, whether acquired before or during the
78 marriage, shall be presumed to be a marital asset. If a party
79 makes a claim to the contrary, the burden of proof shall be on
80 the party asserting the claim that the subject property, or some
81 portion thereof, is nonmarital.

82 4. The burden of proof to overcome the gift presumption
83 shall be by clear and convincing evidence.

84 (11) Special equity is abolished. All claims formerly
85 identified as special equity, and all special equity
86 calculations, are abolished and shall be asserted as a claim for
87 unequal distribution of marital property and resolved by the

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88 factors set forth in subsection (1) or as a claim of enhancement
89 in value or appreciation of nonmarital property.

90 Section 2. Paragraph (e) of subsection (3) of section
91 741.0306, Florida Statutes, is amended to read:

92 741.0306 Creation of a family law handbook.--

93 (3) The information contained in the handbook or other
94 electronic media presentation may be reviewed and updated
95 annually, and may include, but need not be limited to:

96 (e) Property rights, including equitable distribution,
97 ~~special equity~~, premarital property, and nonmarital property.

98 Section 3. This act shall take effect July 1, 2008.