

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 676

INTRODUCER: Rules Committee and Senator Passidomo

SUBJECT: Equitable Distribution of Marital Assets and Liabilities

DATE: February 22, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Tulloch</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
3.	<u>Tulloch</u>	<u>Phelps</u>	<u>RC</u>	<b>Fav/CS</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 676 amends the categories of “marital assets and liabilities” that may be equitably distributed during divorce proceedings in response to the Florida Supreme Court’s 2010 decision in *Kaaa v. Kaaa*. The bill partially codifies the *Kaaa* decision by expressly including the passive appreciation of real property owned by only one spouse as an asset that may be distributed between the spouses if marital funds are used to pay down the property’s mortgage principal.

However, the bill partially overrules the *Kaaa* decision in two ways. First, the bill provides that a nonowner spouse does not also have to actively contribute to the appreciation of the home in order to be entitled to passive appreciation. Rather, it is sufficient that marital funds are used to pay down the mortgage. Second, the bill replaces the calculation method set out in *Kaaa* with a three-step calculation method incorporating a “coverture fraction” designed to measure the parties’ actual marital contributions in paying down the mortgage.

Finally, with respect to any marital property that is equitably distributed, the bill authorizes the courts to recognize the time value of money in determining the amount of installment payments to be paid by one party to another. This may include requiring the party responsible for payments to provide security and a reasonable rate of interest or something similar.

## II. Present Situation:

### Statutory Framework for the Equitable Distribution of Marital Assets and Liabilities

When a couple divorces in Florida, assets (i.e., property) and liabilities (i.e., debts) acquired by the couple during the marriage are subject to “equitable distribution.”<sup>1</sup> Equitable distribution is based on the premise that “marriage is a partnership”<sup>2</sup> and the assets and liabilities acquired *during* the marriage belong to both spouses equally. Thus, Florida courts “must begin with the premise that the distribution” of marital assets and liabilities to divorcing spouses “should be equal.”<sup>3</sup>

Under Florida law, “marital assets and liabilities” generally include:

- Assets and liabilities acquired or incurred by either spouse during the marriage.<sup>4</sup>
- The appreciation in value of a nonmarital asset as a result of “either” the efforts or marital labor “of either party during the marriage” or from the contribution of marital funds, “or both.”<sup>5</sup>
- Gifts from one spouse to the other during the marriage.<sup>6</sup>
- Vested and non-vested retirement and insurance benefits that accrued during the marriage.<sup>7</sup>
- Real property held as tenants by the entirety during the marriage.<sup>8</sup>
- Jointly titled personal property held as tenants by the entirety during the marriage.<sup>9</sup>

However, Florida has a dual-property system, meaning “[t]he property of the parties is categorized either as ‘marital property,’ which can be equitably divided by the court at divorce, or ‘separate property,’ which is not subject to division.”<sup>10</sup> Florida law refers to separate property as “nonmarital assets and liabilities.”<sup>11</sup>

Nonmarital assets and liabilities generally include:

- Assets (property) or liabilities (debts) acquired *prior* to the marriage.<sup>12</sup>
- Gifts or an inheritance received separately by one spouse from a third party.<sup>13</sup>
- All income from nonmarital assets during the marriage (for example, income derived from renting a nonmarital home when deposited into a separate bank account) unless the income

<sup>1</sup> Section 61.075, F.S.

<sup>2</sup> Emily Osborn, *The Treatment of Unearned Separate Property at Divorce in Common Law Property Jurisdictions*, 1990 Wis. L. Rev. 903, 909 (1990) (noting Florida enacted uniform model legislation).

<sup>3</sup> Section 61.075(1), F.S.; *see also* Osborn, *supra* note 1, at 909-10 & n. 32.

<sup>4</sup> Section 61.075(6)(a)1.a., F.S. *See also Rosenfeld v. Rosenfeld*, 597 So.2d 835, 837 (Fla.3d DCA 1992) (stating that once the spouses married, “each spouse’s income during the marriage was marital income.”).

<sup>5</sup> Section 61.075(6)(a)1.b., F.S.

<sup>6</sup> Section 61.075(6)(a)1.c., F.S.

<sup>7</sup> Section 61.075(6)(a)1.d., F.S.

<sup>8</sup> Section 61.075(6)(a)2., F.S.

<sup>9</sup> Section 61.075(6)(a)3., F.S. The presumption that gifts and jointly held real and personal property are marital assets may be rebutted by the spouse claiming they are not marital property. s. 61.075(6)(a)2.-4., F.S.

<sup>10</sup> Osborn, *supra* note 1, at 910.

<sup>11</sup> Section 61.075(6)(b), F.S.

<sup>12</sup> Section 61.075(6)(b)1., F.S. If the asset or liability is exchanged to acquire a new asset or incur a new liability, the new asset or liability will also be deemed nonmarital. *Id.*

<sup>13</sup> Section 61.075(6)(b)2., F.S. If the gift or bequest is exchanged to acquire a new asset, the asset will be deemed nonmarital property. *Id.*

was treated as or relied on as a marital asset by the parties (for example, the income derived from renting a nonmarital home is deposited into a joint bank account and relied upon by both spouses as income).<sup>14</sup>

- Assets and liabilities excluded from marital property by agreement (for example, a prenuptial agreement).<sup>15</sup>
- Any liability incurred where one spouse forges the signature of the other spouse without authorization.<sup>16</sup>

### **Equitable Distribution of Passive Home Value Appreciation to the Nonowner Spouse under *Kaaa***<sup>17</sup>

In the case of *Kaaa v. Kaaa*, the Florida Supreme Court addressed how to calculate one specific type of marital asset: the appreciation of a nonmarital real property through either marital funds or marital effort or both.<sup>18</sup> The *Kaaa* Court held that, when marital funds are used to pay the mortgage on a home, a nonowner spouse may be entitled to half of not only the active appreciation in value of the home, but also the *passive* appreciation in the value of the home during the marriage.<sup>19</sup> Passive appreciation of a home is the increase in the value of the home caused by market forces (such as inflation),<sup>20</sup> whereas the active appreciation of a home is caused by the actions of the owner or nonowner spouse (such as reducing the mortgage principal, renovating a kitchen, or adding a carport).<sup>21</sup>

#### ***The Facts of Kaaa***

Mr. and Mrs. Kaaa were married for 27 years. They lived in a home purchased only six months prior to the marriage by the former husband, Mr. Kaaa.<sup>22</sup> During those 27 years, the home had passively increased in value from its original purchase price of \$36,500 in 1980, to \$225,000 in 2007. When he purchased the home, Mr. Kaaa made a \$2,000 down payment and secured a mortgage to finance the rest of the purchase price. The mortgage was refinanced multiple times during the marriage. The mortgage was paid by marital funds throughout the marriage, and at the time of divorce, the mortgage principal had been reduced by \$22,279, leaving a \$12,871 balance. Additionally, marital funds were used to add a carport, which increased the value of the home by \$14,400. However, Mrs. Kaaa, the former wife, was never granted any legal interest in the home

<sup>14</sup> Section 61.075(b)(b)3., F.S.

<sup>15</sup> Section 61.075(b)(b)4., F.S. If the excluded asset or liability is exchanged to acquire a new asset or incur a new liability, the new asset or liability is likewise excluded as marital property.

<sup>16</sup> Section 61.075(b)(b)5., F.S.

<sup>17</sup> 58 So.3d 867 (Fla. 2010).

<sup>18</sup> *Kaaa*, 58 So.3d at 872 (addressing how to determine an award of passive appreciation). The applicable provision was renumbered after *Kaaa* from s. 61.075(5)(a)(2), F.S. to s. 61.075(6)(a)1.b., F.S.

<sup>19</sup> *Id.* at 870-71 (“we conclude that the passive appreciation of a nonmarital asset, such as the Kaaa’s marital home, is properly considered a marital asset where marital funds or the efforts of either party contributed to the appreciation . . . We agree with the reasoning in *Stevens* to the extent that it concludes that the payment of the *mortgage* with marital funds subjected the passive appreciation to equitable distribution. However, we emphasize here that it is the passive appreciation in the value of the home that is the marital asset, not the home itself.”)

<sup>20</sup> *Id.* at 869-70.

<sup>21</sup> See generally *Mitchell v. Mitchell*, 841 So.2d 564, 567 (Fla.2d DCA 2003) (“the enhancement in value of a nonmarital asset resulting from either party’s nonpassive efforts or the expenditure of marital funds is a marital asset”) (*overruled sub silentio by Kaaa*, 58 So.3d at 870).

<sup>22</sup> *Kaaa*, 58 So.3d at 869.

even though the home was refinanced several times during the marriage. Thus, because the home was titled only to Mr. Kaaa, the home was determined to be his separate, nonmarital property.<sup>23</sup>

During the divorce proceedings, the nonowner spouse, Mrs. Kaaa, argued that she was entitled not only to half of the active appreciation in the value of the home (pay down of the mortgage principal and addition of the carport), but also the passive appreciation of the home during the 27-year marriage (increase from \$36,500 to \$225,000). However, the trial court held that she was only entitled to half of the active appreciation. The active appreciation was only \$36,679 (\$22,279 mortgage amount paid + \$14,400 for carport), so Mrs. Kaaa's half share was only \$18,339.50.<sup>24</sup>

Mrs. Kaaa appealed. On appeal, the Second District Court of Appeal affirmed the trial court's order awarding Mrs. Kaaa only active appreciation.<sup>25</sup> But the Second District certified conflict with a decision of the First District Court of Appeal, *Stevens v. Stevens*,<sup>26</sup> which held that passive appreciation may be treated as a marital asset subject to distribution.<sup>27</sup> The *Stevens* case also set out a fraction to calculate each former spouses' portion of the home's passive appreciation.<sup>28</sup>

### ***Calculating Passive Appreciation under Kaaa***

On review by the Florida Supreme Court, first, the Court reversed the Second District's *Kaaa* decision<sup>29</sup> and approved the holding in *Stevens*, that a nonowner spouse may be entitled to a portion of the value of passive appreciation of a home when marital funds paid the mortgage.<sup>30</sup> Second, the Court explained how to calculate the amount of passive appreciation to be equitably distributed and set out the following steps the trial court must take, which incorporates a fraction set out in *Stevens*:

- 1.) Determine the overall fair market value of the home.
- 2.) Determine whether there is passive appreciation in the home's value.
- 3.) Determine whether the passive appreciation is a marital asset. The *Kaaa* Court further announced that the trial court must make the following factual findings under this step:
  - (a) whether marital funds were used to pay the mortgage;
  - (b) whether the nonowner spouse made contributions to the property; and
  - (c) the extent to which the contributions of the nonowner spouse affected the appreciation of the property.<sup>31</sup>
- 4.) Determine the value of the passive appreciation subject to equitable distribution. Under this step, the *Kaaa* Court announced that courts should utilize the fraction set out in

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Kaaa v. Kaaa*, 9 So.3d 756, 757 (Fla.2d DCA 2009).

<sup>26</sup> *Id.*; *Stevens v. Stevens*, 651 So.2d 1306 (Fla. 1st DCA 1995).

<sup>27</sup> *Id.* at 1307.

<sup>28</sup> *Id.*

<sup>29</sup> *Kaaa v. Kaaa*, 9 So.3d 756, 757 (Fla.2d DCA 2009).

<sup>30</sup> *Kaaa*, 58 So.3d at 871.

<sup>31</sup> *Id.* at 872.

*Stevens* to allocate the value of passive appreciation when the mortgage on nonmarital real property is repaid entirely by marital funds.<sup>32</sup>

$$\begin{aligned} \text{\% of Passive Appreciation Subject to Distribution} &= \left( \frac{\text{Amount of mortgage on real property at time of marriage}}{\text{Value of real property at time of marriage}} \right) \\ \text{Total Amount of Passive Appreciation to be Divided Equally} &= \left( \text{\% of Passive Appreciation Subject to Distribution} \times \text{Amount of real property's Passive Appreciation at time of divorce} \right) - \text{Unpaid mortgage balance at time of divorce} \end{aligned}$$

The Florida Supreme Court remanded the case to the trial court to do the math, so the ultimate result is unknown. But applying the fraction above to the known numbers in the *Kaaa* case, the result appears to be that Mrs. Kaaa would have been entitled to \$83,102 for passive appreciation:

$$\begin{aligned} \text{95\% of Kaaa Passive Appreciation Subject to Distribution} &= \left( \frac{\$34,500 \text{ (amount of Kaaa mortgage on home at time of marriage in 1980)}}{\$36,500 \text{ (value of Kaaa home at time of marriage)}} \right) \\ \text{\$166,204 Total Amount of Kaaa Passive Appreciation to be divided equally} &= \left( 95\% \times \begin{matrix} \$188,500 \\ (\$225,000 \text{ ('07)} \\ - \$36,500 \text{ ('80)}) \end{matrix} \right) - \$12,871 \text{ (mortgage balance at time of divorce)} \\ \text{Mrs. Kaaa's } \frac{1}{2} \text{ portion of passive appreciation:} &= \$83,102 \end{aligned}$$

Adding together Mrs. Kaaa's share of the passive appreciation (\$83,102) to her share of the active appreciation based on the pay down of the mortgage and the carport renovation (\$18,339.50), Mrs. Kaaa's share of the home value appreciation may have been around \$101,441.50. This combined total amount of appreciation is approximately 45 percent of the home's fair market value.

<sup>32</sup> *Id.*

**The Florida Bar Family Law Section’s Concern with the *Kaaa*<sup>33</sup> Formulation**

While The Florida Bar Family Law Section (Section) agrees with *Kaaa*’s holding that a nonowner spouse should be entitled to some portion of the passive appreciation value when the mortgage on a real property is paid down with marital funds, the Section is concerned about the formula set out in *Kaaa*. The Section views the *Kaaa* formula as arbitrary because it fails to take into account the actual contributions of each party in paying down the mortgage during the marriage. The Section proposes, instead, that a “coverture fraction” be utilized in place of the *Stevens* fraction adopted by *Kaaa*, which replaces the numerator (top number) with the amount of mortgage principal paid down *during* the marriage.<sup>34</sup>

$$\begin{array}{l} \% \text{ of Passive} \\ \text{Appreciation} \\ \text{Subject to} \\ \text{Distribution} \end{array} = \left( \frac{\begin{array}{l} \text{Total payment of mortgage} \\ \text{principal from marital funds} \\ \text{during marriage} \end{array}}{\begin{array}{l} \text{Value of real property at time} \\ \text{of marriage or of mortgage} \end{array}} \right)$$

In Florida, coverture<sup>35</sup> fractions are often used in determining a spouse’s marital share of military and pension or retirement benefits, which are viewed as moving targets since these benefits may increase or decrease based on the markets.<sup>36</sup> In the retirement context, “[t]he coverture fraction is the proportion of years worked during the marriage to total number of years worked.”<sup>37</sup> “The numerator [top number] represents that portion of the benefit, enhanced or not, that was legally and beneficially acquired during the marriage.”<sup>38</sup> “The denominator [bottom number] is the total number of years worked up to retirement.”<sup>39</sup> “The longer the employee spouse works, the larger the denominator [of the coverture fraction], thus reducing the non-employee spouse’s percentage share and assuring the employee spouse the benefits of his or her post-divorce labors.”<sup>40</sup>

A coverture fraction generally works the same outside the retirement context. It is a specifically tailored fraction based on the divorcing couple’s particular circumstances that aims to insure “that the equitable distribution pot includes only that portion of the working spouse’s labor

<sup>33</sup> 58 So.3d 867 (Fla. 2010).

<sup>34</sup> Conversation with David Manz, The Florida Bar Family Law Section (Nov. 16, 2017); Family Law Section of The Florida Bar, *Proposed Equitable Distribution Legislation* (2017) (on file with the Senate Judiciary Committee).

<sup>35</sup> “Coverture is by law applied to the state and condition of a married woman, who is *sub potestati viri*, (under the power of her husband) and therefore unable to contract with any to the damage of herself or husband, without his consent and privity, or his allowance and confirmation thereof.” BLACK’S LAW DICTIONARY (10th ed. 2014) (citing *The Pocket Lawyer and Family Conveyancer* 96 (3d ed. 1833)).

<sup>36</sup> See *Parry v. Parry*, 933 So.2d 9, 14 (Fla. 2d DCA 2006); *In re Marriage of Hug*, 201 Cal. Rptr. 676, 681 (Ct. App. 1984). See also JERRY REISS & KDOUGLAS H. REYNOLDS, *The Not-So-Simple Coverture Fraction: Do Attorneys Risk More Than Embittered Clients?*, Fla. B.J., MAY 1996, at 62, 63

<sup>37</sup> *Eisenhardt v. Eisenhardt*, 740 A.2d 164, 166 (App. Div. 1999).

<sup>38</sup> *Id.* (citations and internal quotation marks omitted).

<sup>39</sup> *Id.*

<sup>40</sup> *Barr v. Barr*, 11 A.3d 875, 884 (App. Div. 2011). (quoting *Reinbold v Reinbold*, 710 A.2d 556 (App. Div.1998)).

which constitutes a ‘shared enterprise.’”<sup>41</sup> Generally, large denominators [bottom numbers] favor the owner spouse, whereas large numerators [top numbers] favor nonowner spouses.<sup>42</sup> According to the Section, the proposed coverture fraction is designed to measure the actual marital contributions of each party in paying down the mortgage during the marriage when measuring passive appreciation. The Section believes the formula is more fair and equitable to the owner spouse. While the nonowner spouse may receive much less under the coverture formula than the *Kaaa* formula, the Section notes that the coverture formula *only* applies to passive appreciation (market forces and inflation), and that the nonowner spouse is still entitled to a 50 percent share of active appreciation.<sup>43</sup>

Additionally, the Section notes that the removal of the word “either” in the current statutory definition of “marital assets and liabilities” further ensures that a nonowner spouse does not *actively* have to contribute anything financially to be entitled to passive appreciation, as suggested by *Kaaa*.<sup>44</sup> Rather, all income earned *during* the marriage, even if earned by only one spouse, is marital income, and all contributions towards the home during the marriage, even if contributed by only one spouse, are deemed marital labor.<sup>45</sup>

### III. Effect of Proposed Changes:

The bill amends the categories of “marital assets and liabilities” that may be divided between divorcing spouses to partially codify the Florida Supreme Court’s 2010 *Kaaa* decision, by specifically including the situation addressed in *Kaaa*—where “marital funds” were used to help pay down the mortgage principal on a separate, nonmarital home.

The bill also partially overrules the *Kaaa* decision in two ways. First, the bill removes the word “either” in defining appreciation as a marital asset to clarify that a nonowner spouse does not have to actively contribute to the appreciation of the home in order to be entitled to passive appreciation. Second, to determine the amount of passive appreciation subject to distribution, the bill replaces the calculation method and *Stevens* fraction set out in *Kaaa* with a three-step calculation method incorporating a “coverture fraction.”

<sup>41</sup> *Id.* (quoting *Eisenhardt* at 581).

<sup>42</sup> David Clayton Conrad, *The Complete QDRO Handbook, Dividing ERISA, Military, and Civil Service Pensions and Collecting Child Support from Employee Benefit Plans*, p. 53, American Bar Association, Section of Family Law, (3d ed. 2009), available at [https://books.google.com/books?id=huTtOPnR318C&pg=PA57&lpg=PA57&dq=simple+definition+coverture+fraction&source=bl&ots=cj8On51Qu7&sig=9oaLHheB\\_HQ7Fa7-O4gtZf6l6aA&hl=en&sa=X&ved=0ahUKEwiH9euM5qrYAhXLS98KHZVJAeY4ChDoAQhEMAU#v=onepage&q=simple%20definition%20coverture%20fraction&f=false](https://books.google.com/books?id=huTtOPnR318C&pg=PA57&lpg=PA57&dq=simple+definition+coverture+fraction&source=bl&ots=cj8On51Qu7&sig=9oaLHheB_HQ7Fa7-O4gtZf6l6aA&hl=en&sa=X&ved=0ahUKEwiH9euM5qrYAhXLS98KHZVJAeY4ChDoAQhEMAU#v=onepage&q=simple%20definition%20coverture%20fraction&f=false) (last visited Dec. 27, 2017).

<sup>43</sup> Conversation with David Manz, The Florida Bar Family Law Section (Nov. 16, 2017); Family Law Section of the Florida Bar, *Proposed Equitable Distribution Legislation* (2017) (on file with the Senate Judiciary Committee).

<sup>44</sup> *Kaaa v. Kaaa*, 58 So.3d at 872 (“Third, the court must determine whether the passive appreciation is a marital asset under section 61.075(5)(a)(2). This step must include findings of fact by the trial court that marital funds were used to pay the mortgage *and* that the nonowner spouse made contributions to the property.”) (emphasis added).

<sup>45</sup> Conversation with David Manz, The Florida Bar Family Law Section (Nov. 16, 2017); Family Law Section of the Florida Bar, *Proposed Equitable Distribution Legislation* (2017) (on file with the Senate Judiciary Committee).

The calculation set out in the bill consists of three steps:

Proposed Bill: Step 1 – Determine Amount of Passive Appreciation

$$\begin{aligned}
 & \text{Property Value on} \\
 & \text{divorce date} \\
 & \quad (- \text{ Active appreciation}) \\
 & \quad (- \text{ Additional encumbrances}) \\
 & \\
 & - \text{ Value on Date of} \\
 & - \text{ Marriage} \\
 \hline
 & = \text{ *Amount of Passive} \\
 & = \text{ Appreciation}
 \end{aligned}$$

Proposed Bill: Step 2 –Use Coverture Formula to Find % of Real Property’s Passive Appreciation Value Accrued During Marriage, Subject to Equitable Distribution

$$\begin{aligned}
 \text{ % of Passive} \\
 \text{ Appreciation} \\
 \text{ Subject to} \\
 \text{ Distribution}
 \end{aligned}
 = \left( \frac{\text{ Total payment of mortgage} \\
 \text{ principal from marital funds} \\
 \text{ during marriage}}{\text{ Value of real property at time} \\
 \text{ of marriage or of mortgage}} \right)$$

Proposed Bill: Step 3 – Multiply Step 1 Answer and Step 2 Answer to Determine Amount of Passive Appreciation to be Divided Equally Among Spouses

$$\begin{aligned}
 \text{ Value of Passive} \\
 \text{ Appreciation} \\
 \text{ Divided 50/50} \\
 \text{ between} \\
 \text{ Spouses}
 \end{aligned}
 = \left( \begin{aligned}
 & \text{ % of Value of} \\
 & \text{ Passive} \\
 & \text{ Appreciation}
 \end{aligned} \times \begin{aligned}
 & \text{ *Amount of} \\
 & \text{ Real Property's} \\
 & \text{ Passive} \\
 & \text{ Appreciation}
 \end{aligned} \right)$$

For example, applying the three-step calculation above to the *Kaaa* numbers, Mrs. Kaaa would have been entitled to 50 percent less passive appreciation:

Step 1:

$$\begin{aligned}
 & \$225,000 \text{ Property Value on divorce date} \\
 & \quad (- \$36,679 \text{ Active appreciation}) \\
 & \quad (- \$12,871 \text{ Additional encumbrances (mortgage balance)}) \\
 & \\
 & - \$36,500 \text{ Value on Date of Marriage} \\
 \hline
 & = \$138,950 \text{ *Amount of Passive Appreciation}
 \end{aligned}$$

Step 2:

$$\begin{array}{l}
 .61 \text{ or } 61\% \text{ of} \\
 \text{Passive} \\
 \text{Appreciation} \\
 \text{Subject to} \\
 \text{Distribution}
 \end{array}
 = \left( \frac{\$22,279 \text{ Total payment of} \\
 \text{mortgage principal from} \\
 \text{marital funds during marriage}}{\$36,500 \text{ Value of home at time} \\
 \text{of marriage or of mortgage}} \right)$$

Step 3:

$$\begin{array}{l}
 \$84,759.50 \\
 \text{Passive} \\
 \text{Appreciation} \\
 \text{Divided } 50/50 \\
 \text{between Spouses}
 \end{array}
 = \left( \begin{array}{l}
 .61 \text{ Value of} \\
 \text{Passive} \\
 \text{Appreciation}
 \end{array} \times \begin{array}{l}
 *\$138,950 \\
 \text{Amount of} \\
 \text{Home's Passive} \\
 \text{Appreciation}
 \end{array} \right)$$

Thus, Mrs. Kaaa was entitled to \$83,102 under *Kaaa* but only \$42,379.75 under the new calculation method and coverture formula.

The bill also provides that the courts must apply the new calculation method and coverture formula *unless* a party makes a showing that it would be inequitable to apply the calculation under the circumstances. Thus, returning to the *Kaaa* case by way of example, Mrs. Kaaa could argue that the result of applying the new calculation method and coverture formula would be inequitable in light of her 27-year marriage and loss of her marital home, and the court could agree and equitably distribute the home’s appreciation value in a different way.

Additionally, the bill authorizes the court to require a person who is ordered to make installment payments as part of the equitable distribution of any marital assets and liabilities to provide security and a reasonable rate of interest, or otherwise recognize the time value of money in determining the amount of the installments. The bill does not preclude the intended recipient of the installment payments from taking action under the procedures to enforce a judgment, in chapter 55, F.S., to collect any funds from a person who fails to make the court-ordered payments.

The bill takes effect July 1, 2018.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill is likely to have limited impact since it only applies in cases where one spouse owns a separate piece of property that has both appreciated in value and has a mortgage paid down by marital funds. In those limited cases, it appears that the nonowner spouse will receive a much smaller percentage of the passive appreciation under the new calculation method and coverture fraction. However, the bill entitles more nonowner spouses to a portion of the passive appreciation by no longer requiring the nonowner spouse to make active contributions to the property as a prerequisite. Additionally, if a party shows that application of the coverture formula would be inequitable under the circumstances, a court may decide to allocate the passive appreciation differently.

**C. Government Sector Impact:**

The state court system has not provided information on the fiscal impact of the bill to committee staff. However, the bill appears unlikely to add significantly to the workload of the courts because the courts already calculate and allocate any passive appreciation in divorce cases under the *Kaaa* formulation.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 61.075 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Rules on February 22, 2018:**

The committee substitute strikes the word “gross” from the “gross value of property” language in line 40 and replaces it with the “value of property” language from line 42 in order to reflect the intent that both lines refer to the same method of determining value.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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