

**As Introduced**

**125th General Assembly  
Regular Session  
2003-2004**

**H. B. No. 36**

**Representative Willamowski**

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**A BILL**

To amend section 3105.18 and to enact section 3105.73 1  
of the Revised Code relative to the award of 2  
attorney's fees and litigation expenses in certain 3  
domestic relations cases. 4

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 3105.18 be amended and section 5  
3105.73 of the Revised Code be enacted to read as follows: 6

**Sec. 3105.18.** (A) As used in this section, "spousal support" 7  
means any payment or payments to be made to a spouse or former 8  
spouse, or to a third party for the benefit of a spouse or a 9  
former spouse, that is both for sustenance and for support of the 10  
spouse or former spouse. "Spousal support" does not include any 11  
payment made to a spouse or former spouse, or to a third party for 12  
the benefit of a spouse or former spouse, that is made as part of 13  
a division or distribution of property or a distributive award 14  
under section 3105.171 of the Revised Code. 15

(B) In divorce and legal separation proceedings, upon the 16  
request of either party and after the court determines the 17  
division or disbursement of property under section 3105.171 of the 18  
Revised Code, the court of common pleas may award reasonable 19  
spousal support to either party. During the pendency of any 20

divorce, or legal separation proceeding, the court may award 21  
reasonable temporary spousal support to either party. 22

An award of spousal support may be allowed in real or 23  
personal property, or both, or by decreeing a sum of money, 24  
payable either in gross or by installments, from future income or 25  
otherwise, as the court considers equitable. 26

Any award of spousal support made under this section shall 27  
terminate upon the death of either party, unless the order 28  
containing the award expressly provides otherwise. 29

(C)(1) In determining whether spousal support is appropriate 30  
and reasonable, and in determining the nature, amount, and terms 31  
of payment, and duration of spousal support, which is payable 32  
either in gross or in installments, the court shall consider all 33  
of the following factors: 34

(a) The income of the parties, from all sources, including, 35  
but not limited to, income derived from property divided, 36  
disbursed, or distributed under section 3105.171 of the Revised 37  
Code; 38

(b) The relative earning abilities of the parties; 39

(c) The ages and the physical, mental, and emotional 40  
conditions of the parties; 41

(d) The retirement benefits of the parties; 42

(e) The duration of the marriage; 43

(f) The extent to which it would be inappropriate for a 44  
party, because that party will be custodian of a minor child of 45  
the marriage, to seek employment outside the home; 46

(g) The standard of living of the parties established during 47  
the marriage; 48

(h) The relative extent of education of the parties; 49

(i) The relative assets and liabilities of the parties, 50  
including but not limited to any court-ordered payments by the 51  
parties; 52

(j) The contribution of each party to the education, 53  
training, or earning ability of the other party, including, but 54  
not limited to, any party's contribution to the acquisition of a 55  
professional degree of the other party; 56

(k) The time and expense necessary for the spouse who is 57  
seeking spousal support to acquire education, training, or job 58  
experience so that the spouse will be qualified to obtain 59  
appropriate employment, provided the education, training, or job 60  
experience, and employment is, in fact, sought; 61

(l) The tax consequences, for each party, of an award of 62  
spousal support; 63

(m) The lost income production capacity of either party that 64  
resulted from that party's marital responsibilities; 65

(n) Any other factor that the court expressly finds to be 66  
relevant and equitable. 67

(2) In determining whether spousal support is reasonable and 68  
in determining the amount and terms of payment of spousal support, 69  
each party shall be considered to have contributed equally to the 70  
production of marital income. 71

(D) In an action brought solely for an order for legal 72  
separation under section 3105.17 of the Revised Code, any 73  
continuing order for periodic payments of money entered pursuant 74  
to this section is subject to further order of the court upon 75  
changed circumstances of either party. 76

(E) If a continuing order for periodic payments of money as 77  
alimony is entered in a divorce or dissolution of marriage action 78  
that is determined on or after May 2, 1986, and before January 1, 79

1991, or if a continuing order for periodic payments of money as 80  
spousal support is entered in a divorce or dissolution of marriage 81  
action that is determined on or after January 1, 1991, the court 82  
that enters the decree of divorce or dissolution of marriage does 83  
not have jurisdiction to modify the amount or terms of the alimony 84  
or spousal support unless the court determines that the 85  
circumstances of either party have changed and unless one of the 86  
following applies: 87

(1) In the case of a divorce, the decree or a separation 88  
agreement of the parties to the divorce that is incorporated into 89  
the decree contains a provision specifically authorizing the court 90  
to modify the amount or terms of alimony or spousal support. 91

(2) In the case of a dissolution of marriage, the separation 92  
agreement that is approved by the court and incorporated into the 93  
decree contains a provision specifically authorizing the court to 94  
modify the amount or terms of alimony or spousal support. 95

(F) For purposes of divisions (D) and (E) of this section, a 96  
change in the circumstances of a party includes, but is not 97  
limited to, any increase or involuntary decrease in the party's 98  
wages, salary, bonuses, living expenses, or medical expenses. 99

(G) If any person required to pay alimony under an order made 100  
or modified by a court on or after December 1, 1986, and before 101  
January 1, 1991, or any person required to pay spousal support 102  
under an order made or modified by a court on or after January 1, 103  
1991, is found in contempt of court for failure to make alimony or 104  
spousal support payments under the order, the court that makes the 105  
finding, in addition to any other penalty or remedy imposed, shall 106  
assess all court costs arising out of the contempt proceeding 107  
against the person and shall require the person to pay any 108  
reasonable attorney's fees of any adverse party, as determined by 109  
the court, that arose in relation to the act of contempt. 110

~~(H) In divorce or legal separation proceedings, the court may award reasonable attorney's fees to either party at any stage of the proceedings, including, but not limited to, any appeal, any proceeding arising from a motion to modify a prior order or decree, and any proceeding to enforce a prior order or decree, if it determines that the other party has the ability to pay the attorney's fees that the court awards. When the court determines whether to award reasonable attorney's fees to any party pursuant to this division, it shall determine whether either party will be prevented from fully litigating that party's rights and adequately protecting that party's interests if it does not award reasonable attorney's fees.~~

Sec. 3105.73. (A) In an action for divorce, legal separation, or annulment of marriage or in any post-decree action or proceeding arising from a divorce, legal separation, annulment, or dissolution of marriage, a court may award reasonable attorney's fees and litigation expenses to either party if the court finds the award appropriate under the totality of the circumstances involved in the action or proceeding. In determining whether an award is appropriate under the totality of the circumstances, a court shall consider the moving party's need versus each party's ability to pay. The award may be for attorney's fees and litigation expenses that have been incurred or are reasonably anticipated. The court may make the award at any stage of the proceedings, including, but not limited to, proceedings while the action is pending in the trial court, post-decree proceedings, or appellate proceedings.

(B) The court may specify whether the award of attorney's fees and litigation expenses under this section is payable in gross or by installments. The court may make an award of attorney's fees and litigation expenses under this section in

addition to making an award of attorney's fees and litigation 142  
expenses under any other provision of the Revised Code or of the 143  
Rules of Civil Procedure. 144

**Section 2.** That existing section 3105.18 of the Revised Code 145  
is hereby repealed. 146

**Section 3.** Section 3105.18 of the Revised Code, as amended by 147  
this act, and section 3105.73 of the Revised Code, as enacted by 148  
this act, apply to any action for divorce, legal separation, or 149  
annulment of marriage or any post-decree action or proceeding 150  
arising from a divorce, legal separation, annulment, or 151  
dissolution of marriage if any of the following apply: 152

(A) The action or proceeding is brought, or a notice of 153  
appeal in the action or proceeding is filed, on or after the 154  
effective date of this act. 155

(B) The action or proceeding is brought, or a notice of 156  
appeal in the action or proceeding is filed, prior to the 157  
effective date of this act, and the action or proceeding is 158  
pending in a trial or appellate court on the effective date of 159  
this act. 160

(C) Any proceeding arising from a motion to modify a prior 161  
order or decree in the action or proceeding is pending in a trial 162  
or appellate court on the effective date of this act. 163