

**As Passed by the Senate**

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

**Sub. H. B. No. 36**

**Representatives Willamowski, Core, Latta, Book, Harwood, Schlichter, Seitz,  
Chandler, Cirelli, C. Evans, Flowers, Hagan, Hughes, Otterman, Reidelbach,  
Schmidt, J. Stewart  
Senators Blessing, Dann**

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**A B I L L**

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 Revised Code, the court of common pleas may award reasonable spousal support to either party. During the pendency of any divorce, or legal separation proceeding, the court may award reasonable temporary spousal support to either party.

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

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

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

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

(b) The relative earning abilities of the parties;

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

(d) The retirement benefits of the parties;

(e) The duration of the marriage;

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

(g) The standard of living of the parties established during

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the marriage;	48
(h) The relative extent of education of the parties;	49
(i) The relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties;	50 51 52
(j) The contribution of each party to the education, training, or earning ability of the other party, including, but not limited to, any party's contribution to the acquisition of a professional degree of the other party;	53 54 55 56
(k) The time and expense necessary for the spouse who is seeking spousal support to acquire education, training, or job experience so that the spouse will be qualified to obtain appropriate employment, provided the education, training, or job experience, and employment is, in fact, sought;	57 58 59 60 61
(l) The tax consequences, for each party, of an award of spousal support;	62 63
(m) The lost income production capacity of either party that resulted from that party's marital responsibilities;	64 65
(n) Any other factor that the court expressly finds to be relevant and equitable.	66 67
(2) In determining whether spousal support is reasonable and in determining the amount and terms of payment of spousal support, each party shall be considered to have contributed equally to the production of marital income.	68 69 70 71
(D) In an action brought solely for an order for legal separation under section 3105.17 of the Revised Code, any continuing order for periodic payments of money entered pursuant to this section is subject to further order of the court upon changed circumstances of either party.	72 73 74 75 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  
the court, that arose in relation to the act of contempt.

~~(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, dissolution,  
legal separation, or annulment of marriage or an appeal of that  
action, a court may award all or part of reasonable attorney's  
fees and litigation expenses to either party if the court finds  
the award equitable. In determining whether an award is equitable,  
the court may consider the parties' marital assets and income, any  
award of temporary spousal support, the conduct of the parties,  
and any other relevant factors the court deems appropriate.

(B) In any post-decree motion or proceeding that arises out  
of an action for divorce, dissolution, legal separation, or  
annulment of marriage or an appeal of that motion or proceeding,  
the court may award all or part of reasonable attorney's fees and  
litigation expenses to either party if the court finds the award  
equitable. In determining whether an award is equitable, the court  
may consider the parties' income, the conduct of the parties, and  
any other relevant factors the court deems appropriate, but it may  
not consider the parties' assets.

(C) 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 expenses under any other provision of the Revised Code or of the Rules of Civil Procedure. 140  
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(D) Nothing in this section prevents an award of attorney's fees and litigation expenses from being designated as spousal support, as defined in section 3105.18 of the Revised Code. 147  
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**Section 2.** That existing section 3105.18 of the Revised Code is hereby repealed. 150  
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**Section 3.** Section 3105.18 of the Revised Code, as amended by this act, and section 3105.73 of the Revised Code, as enacted by this act, apply to any action for divorce, legal separation, or annulment of marriage or any post-decree action or proceeding arising from a divorce, legal separation, annulment, or dissolution of marriage if any of the following apply: 152  
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(A) The action or proceeding is brought, or a notice of appeal in the action or proceeding is filed, on or after the effective date of this act. 158  
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(B) The action or proceeding is brought, or a notice of appeal in the action or proceeding is filed, prior to the effective date of this act, and the action or proceeding is pending in a trial or appellate court on the effective date of this act. 161  
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(C) Any proceeding arising from a motion to modify a prior order or decree in the action or proceeding is pending in a trial or appellate court on the effective date of this act. 166  
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