

**As Reported by the House Juvenile and Family Law Committee**

**127th General Assembly**

**Regular Session**

**2007-2008**

**Sub. H. B. No. 395**

**Representative Hughes**

**Cosponsors: Representatives Flowers, Wagoner, Evans, Yuko, Williams, S.**

**—**

**A B I L L**

To amend section 3105.171 of the Revised Code to  
generally exclude a spouse's social security  
benefits from a divorce court's jurisdiction.

1  
2  
3

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

**Section 1.** That section 3105.171 of the Revised Code be  
amended to read as follows:

4  
5

**Sec. 3105.171.** (A) As used in this section:

6

(1) "Distributive award" means any payment or payments, in  
real or personal property, that are payable in a lump sum or over  
time, in fixed amounts, that are made from separate property or  
income, and that are not made from marital property and do not  
constitute payments of spousal support, as defined in section  
3105.18 of the Revised Code.

7  
8  
9  
10  
11  
12

(2) "During the marriage" means whichever of the following is  
applicable:

13  
14

(a) Except as provided in division (A)(2)(b) of this section,  
the period of time from the date of the marriage through the date  
of the final hearing in an action for divorce or in an action for  
legal separation;

15  
16  
17  
18

(b) If the court determines that the use of either or both of the dates specified in division (A)(2)(a) of this section would be inequitable, the court may select dates that it considers equitable in determining marital property. If the court selects dates that it considers equitable in determining marital property, "during the marriage" means the period of time between those dates selected and specified by the court.

(3)(a) "Marital property" means, subject to division (A)(3)(b) of this section, all of the following:

(i) All real and personal property that currently is owned by either or both of the spouses, including, but not limited to, the retirement benefits of the spouses, and that was acquired by either or both of the spouses during the marriage;

(ii) All interest that either or both of the spouses currently has in any real or personal property, including, but not limited to, the retirement benefits of the spouses, and that was acquired by either or both of the spouses during the marriage;

(iii) Except as otherwise provided in this section, all income and appreciation on separate property, due to the labor, monetary, or in-kind contribution of either or both of the spouses that occurred during the marriage;

(iv) A participant account, as defined in section 148.01 of the Revised Code, of either of the spouses, to the extent of the following: the moneys that have been deferred by a continuing member or participating employee, as defined in that section, and that have been transmitted to the Ohio public employees deferred compensation board during the marriage and any income that is derived from the investment of those moneys during the marriage; the moneys that have been deferred by an officer or employee of a municipal corporation and that have been transmitted to the governing board, administrator, depository, or trustee of the

deferred compensation program of the municipal corporation during 50  
the marriage and any income that is derived from the investment of 51  
those moneys during the marriage; or the moneys that have been 52  
deferred by an officer or employee of a government unit, as 53  
defined in section 148.06 of the Revised Code, and that have been 54  
transmitted to the governing board, as defined in that section, 55  
during the marriage and any income that is derived from the 56  
investment of those moneys during the marriage. 57

(b) "Marital property" does not include any separate 58  
property. 59

(4) "Passive income" means income acquired other than as a 60  
result of the labor, monetary, or in-kind contribution of either 61  
spouse. 62

(5) "Personal property" includes both tangible and intangible 63  
personal property. 64

(6)(a) "Separate property" means all real and personal 65  
property and any interest in real or personal property that is 66  
found by the court to be any of the following: 67

(i) An inheritance by one spouse by bequest, devise, or 68  
descent during the course of the marriage; 69

(ii) Any real or personal property or interest in real or 70  
personal property that was acquired by one spouse prior to the 71  
date of the marriage; 72

(iii) Passive income and appreciation acquired from separate 73  
property by one spouse during the marriage; 74

(iv) Any real or personal property or interest in real or 75  
personal property acquired by one spouse after a decree of legal 76  
separation issued under section 3105.17 of the Revised Code; 77

(v) Any real or personal property or interest in real or 78  
personal property that is excluded by a valid antenuptial 79

agreement; 80

(vi) Compensation to a spouse for the spouse's personal 81  
injury, except for loss of marital earnings and compensation for 82  
expenses paid from marital assets; 83

(vii) Any gift of any real or personal property or of an 84  
interest in real or personal property that is made after the date 85  
of the marriage and that is proven by clear and convincing 86  
evidence to have been given to only one spouse. 87

(b) The commingling of separate property with other property 88  
of any type does not destroy the identity of the separate property 89  
as separate property, except when the separate property is not 90  
traceable. 91

(B) In divorce proceedings, the court shall, and in legal 92  
separation proceedings upon the request of either spouse, the 93  
court may, determine what constitutes marital property and what 94  
constitutes separate property. In either case, upon making such a 95  
determination, the court shall divide the marital ~~and separate~~ 96  
property ~~equitably~~ between the spouses, in accordance with this 97  
section. For purposes of this section, the court has jurisdiction 98  
over all property, excluding the social security benefits of a 99  
spouse other than as set forth in division (F)(9) of this section, 100  
in which one or both spouses have an interest. 101

(C)(1) Except as provided in this division or division (E) of 102  
this section, the division of marital property shall be equal. If 103  
an equal division of marital property would be inequitable, the 104  
court shall not divide the marital property equally but instead 105  
shall divide it between the spouses in the manner the court 106  
determines equitable. In making a division of marital property, 107  
the court shall consider all relevant factors, including those set 108  
forth in division (F) of this section. 109

(2) Each spouse shall be considered to have contributed 110

equally to the production and acquisition of marital property. 111

(3) The court shall provide for ~~an equitable~~ a division of 112  
marital property under this section prior to making any award of 113  
spousal support to either spouse under section 3105.18 of the 114  
Revised Code and without regard to any spousal support so awarded. 115

(4) If the marital property includes a participant account, 116  
as defined in section 148.01 of the Revised Code, the court shall 117  
not order the division or disbursement of the moneys and income 118  
described in division (A)(3)(a)(iv) of this section to occur in a 119  
manner that is inconsistent with the law, rules, or plan governing 120  
the deferred compensation program involved or prior to the time 121  
that the spouse in whose name the participant account is 122  
maintained commences receipt of the moneys and income credited to 123  
the account in accordance with that law, rules, and plan. 124

(D) Except as otherwise provided in division (E) of this 125  
section or by another provision of this section, the court shall 126  
disburse a spouse's separate property to that spouse. If a court 127  
does not disburse a spouse's separate property to that spouse, the 128  
court shall make written findings of fact that explain the factors 129  
that it considered in making its determination that the spouse's 130  
separate property should not be disbursed to that spouse. 131

(E)(1) The court may make a distributive award to facilitate, 132  
effectuate, or supplement a division of marital property. The 133  
court may require any distributive award to be secured by a lien 134  
on the payor's specific marital property or separate property. 135

(2) The court may make a distributive award in lieu of a 136  
division of marital property in order to achieve equity between 137  
the spouses, if the court determines that a division of the 138  
marital property in kind or in money would be impractical or 139  
burdensome. 140

(3) If a spouse has engaged in financial misconduct, 141

including, but not limited to, the dissipation, destruction, 142  
concealment, or fraudulent disposition of assets, the court may 143  
compensate the offended spouse with a distributive award or with a 144  
greater award of marital property. 145

(F) In making a division of marital property and in 146  
determining whether to make and the amount of any distributive 147  
award under this section, the court shall consider all of the 148  
following factors: 149

(1) The duration of the marriage; 150

(2) The assets and liabilities of the spouses; 151

(3) The desirability of awarding the family home, or the 152  
right to reside in the family home for reasonable periods of time, 153  
to the spouse with custody of the children of the marriage; 154

(4) The liquidity of the property to be distributed; 155

(5) The economic desirability of retaining intact an asset or 156  
an interest in an asset; 157

(6) The tax consequences of the property division upon the 158  
respective awards to be made to each spouse; 159

(7) The costs of sale, if it is necessary that an asset be 160  
sold to effectuate an equitable distribution of property; 161

(8) Any division or disbursement of property made in a 162  
separation agreement that was voluntarily entered into by the 163  
spouses; 164

(9) Any retirement benefits of the spouses, excluding the 165  
social security benefits of a spouse except as may be relevant for 166  
purposes of dividing a public pension; 167

(10) Any other factor that the court expressly finds to be 168  
relevant and equitable. 169

(G) In any order for the division or disbursement of property 170

or a distributive award made pursuant to this section, the court 171  
shall make written findings of fact that support the determination 172  
that the marital property has been ~~equitably~~ divided and shall 173  
specify the dates it used in determining the meaning of "during 174  
the marriage." 175

(H) Except as otherwise provided in this section, the holding 176  
of title to property by one spouse individually or by both spouses 177  
in a form of co-ownership does not determine whether the property 178  
is marital property or separate property. 179

(I) A division or disbursement of property or a distributive 180  
award made under this section is not subject to future 181  
modification by the court. 182

(J) The court may issue any orders under this section that it 183  
determines equitable, including, but not limited to, either of the 184  
following types of orders: 185

(1) An order granting a spouse the right to use the marital 186  
dwelling or any other marital property or separate property for 187  
any reasonable period of time; 188

(2) An order requiring the sale or encumberancing of any real 189  
or personal property, with the proceeds from the sale and the 190  
funds from any loan secured by the encumbrance to be applied as 191  
determined by the court. 192

**Section 2.** That existing section 3105.171 of the Revised Code 193  
is hereby repealed. 194