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**Am. H. B. No. 244**

**Representative Harwood**

**Cosponsors: Representatives Harris, Yuko, Murray, Huffman, Phillips,  
Stebelton, Letson, Bacon, Beck, Belcher, Blessing, Bolon, Boyd, Brown,  
Bubp, Carney, Celeste, Chandler, Coley, Combs, DeBose, Domenick,  
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Newcomb, Oelslager, Patten, Pillich, Pryor, Snitchler, Stewart, Szollosi,  
Uecker, Weddington, Williams, B., Winburn, Yates**

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**A B I L L**

To amend sections 3105.171, 3105.63, and 3105.65 of 1  
the Revised Code to permit a court to modify a 2  
division of property in a divorce decree or decree 3  
of dissolution of marriage upon the express 4  
written consent or agreement of both spouses. 5

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

**Section 1.** That sections 3105.171, 3105.63, and 3105.65 of 6  
the Revised Code be amended to read as follows: 7

**Sec. 3105.171.** (A) As used in this section: 8

(1) "Distributive award" means any payment or payments, in 9  
real or personal property, that are payable in a lump sum or over 10  
time, in fixed amounts, that are made from separate property or 11  
income, and that are not made from marital property and do not 12

constitute payments of spousal support, as defined in section 13  
3105.18 of the Revised Code. 14

(2) "During the marriage" means whichever of the following is 15  
applicable: 16

(a) Except as provided in division (A)(2)(b) of this section, 17  
the period of time from the date of the marriage through the date 18  
of the final hearing in an action for divorce or in an action for 19  
legal separation; 20

(b) If the court determines that the use of either or both of 21  
the dates specified in division (A)(2)(a) of this section would be 22  
inequitable, the court may select dates that it considers 23  
equitable in determining marital property. If the court selects 24  
dates that it considers equitable in determining marital property, 25  
"during the marriage" means the period of time between those dates 26  
selected and specified by the court. 27

(3)(a) "Marital property" means, subject to division 28  
(A)(3)(b) of this section, all of the following: 29

(i) All real and personal property that currently is owned by 30  
either or both of the spouses, including, but not limited to, the 31  
retirement benefits of the spouses, and that was acquired by 32  
either or both of the spouses during the marriage; 33

(ii) All interest that either or both of the spouses 34  
currently has in any real or personal property, including, but not 35  
limited to, the retirement benefits of the spouses, and that was 36  
acquired by either or both of the spouses during the marriage; 37

(iii) Except as otherwise provided in this section, all 38  
income and appreciation on separate property, due to the labor, 39  
monetary, or in-kind contribution of either or both of the spouses 40  
that occurred during the marriage; 41

(iv) A participant account, as defined in section 148.01 of 42

the Revised Code, of either of the spouses, to the extent of the 43  
following: the moneys that have been deferred by a continuing 44  
member or participating employee, as defined in that section, and 45  
that have been transmitted to the Ohio public employees deferred 46  
compensation board during the marriage and any income that is 47  
derived from the investment of those moneys during the marriage; 48  
the moneys that have been deferred by an officer or employee of a 49  
municipal corporation and that have been transmitted to the 50  
governing board, administrator, depository, or trustee of the 51  
deferred compensation program of the municipal corporation during 52  
the marriage and any income that is derived from the investment of 53  
those moneys during the marriage; or the moneys that have been 54  
deferred by an officer or employee of a government unit, as 55  
defined in section 148.06 of the Revised Code, and that have been 56  
transmitted to the governing board, as defined in that section, 57  
during the marriage and any income that is derived from the 58  
investment of those moneys during the marriage. 59

(b) "Marital property" does not include any separate 60  
property. 61

(4) "Passive income" means income acquired other than as a 62  
result of the labor, monetary, or in-kind contribution of either 63  
spouse. 64

(5) "Personal property" includes both tangible and intangible 65  
personal property. 66

(6)(a) "Separate property" means all real and personal 67  
property and any interest in real or personal property that is 68  
found by the court to be any of the following: 69

(i) An inheritance by one spouse by bequest, devise, or 70  
descent during the course of the marriage; 71

(ii) Any real or personal property or interest in real or 72  
personal property that was acquired by one spouse prior to the 73

date of the marriage;	74
(iii) Passive income and appreciation acquired from separate property by one spouse during the marriage;	75 76
(iv) Any real or personal property or interest in real or personal property acquired by one spouse after a decree of legal separation issued under section 3105.17 of the Revised Code;	77 78 79
(v) Any real or personal property or interest in real or personal property that is excluded by a valid antenuptial agreement;	80 81 82
(vi) Compensation to a spouse for the spouse's personal injury, except for loss of marital earnings and compensation for expenses paid from marital assets;	83 84 85
(vii) Any gift of any real or personal property or of an interest in real or personal property that is made after the date of the marriage and that is proven by clear and convincing evidence to have been given to only one spouse.	86 87 88 89
(b) The commingling of separate property with other property of any type does not destroy the identity of the separate property as separate property, except when the separate property is not traceable.	90 91 92 93
(B) In divorce proceedings, the court shall, and in legal separation proceedings upon the request of either spouse, the court may, determine what constitutes marital property and what constitutes separate property. In either case, upon making such a determination, the court shall divide the marital and separate property equitably between the spouses, in accordance with this section. For purposes of this section, the court has jurisdiction over all property, excluding the social security benefits of a spouse other than as set forth in division (F)(9) of this section, in which one or both spouses have an interest.	94 95 96 97 98 99 100 101 102 103

(C)(1) Except as provided in this division or division (E) of 104  
this section, the division of marital property shall be equal. If 105  
an equal division of marital property would be inequitable, the 106  
court shall not divide the marital property equally but instead 107  
shall divide it between the spouses in the manner the court 108  
determines equitable. In making a division of marital property, 109  
the court shall consider all relevant factors, including those set 110  
forth in division (F) of this section. 111

(2) Each spouse shall be considered to have contributed 112  
equally to the production and acquisition of marital property. 113

(3) The court shall provide for an equitable division of 114  
marital property under this section prior to making any award of 115  
spousal support to either spouse under section 3105.18 of the 116  
Revised Code and without regard to any spousal support so awarded. 117

(4) If the marital property includes a participant account, 118  
as defined in section 148.01 of the Revised Code, the court shall 119  
not order the division or disbursement of the moneys and income 120  
described in division (A)(3)(a)(iv) of this section to occur in a 121  
manner that is inconsistent with the law, rules, or plan governing 122  
the deferred compensation program involved or prior to the time 123  
that the spouse in whose name the participant account is 124  
maintained commences receipt of the moneys and income credited to 125  
the account in accordance with that law, rules, and plan. 126

(D) Except as otherwise provided in division (E) of this 127  
section or by another provision of this section, the court shall 128  
disburse a spouse's separate property to that spouse. If a court 129  
does not disburse a spouse's separate property to that spouse, the 130  
court shall make written findings of fact that explain the factors 131  
that it considered in making its determination that the spouse's 132  
separate property should not be disbursed to that spouse. 133

(E)(1) The court may make a distributive award to facilitate, 134

effectuate, or supplement a division of marital property. The 135  
court may require any distributive award to be secured by a lien 136  
on the payor's specific marital property or separate property. 137

(2) The court may make a distributive award in lieu of a 138  
division of marital property in order to achieve equity between 139  
the spouses, if the court determines that a division of the 140  
marital property in kind or in money would be impractical or 141  
burdensome. 142

(3) If a spouse has engaged in financial misconduct, 143  
including, but not limited to, the dissipation, destruction, 144  
concealment, or fraudulent disposition of assets, the court may 145  
compensate the offended spouse with a distributive award or with a 146  
greater award of marital property. 147

(F) In making a division of marital property and in 148  
determining whether to make and the amount of any distributive 149  
award under this section, the court shall consider all of the 150  
following factors: 151

(1) The duration of the marriage; 152

(2) The assets and liabilities of the spouses; 153

(3) The desirability of awarding the family home, or the 154  
right to reside in the family home for reasonable periods of time, 155  
to the spouse with custody of the children of the marriage; 156

(4) The liquidity of the property to be distributed; 157

(5) The economic desirability of retaining intact an asset or 158  
an interest in an asset; 159

(6) The tax consequences of the property division upon the 160  
respective awards to be made to each spouse; 161

(7) The costs of sale, if it is necessary that an asset be 162  
sold to effectuate an equitable distribution of property; 163

(8) Any division or disbursement of property made in a 164

separation agreement that was voluntarily entered into by the 165  
spouses; 166

(9) Any retirement benefits of the spouses, excluding the 167  
social security benefits of a spouse except as may be relevant for 168  
purposes of dividing a public pension; 169

(10) Any other factor that the court expressly finds to be 170  
relevant and equitable. 171

(G) In any order for the division or disbursement of property 172  
or a distributive award made pursuant to this section, the court 173  
shall make written findings of fact that support the determination 174  
that the marital property has been equitably divided and shall 175  
specify the dates it used in determining the meaning of "during 176  
the marriage." 177

(H) Except as otherwise provided in this section, the holding 178  
of title to property by one spouse individually or by both spouses 179  
in a form of co-ownership does not determine whether the property 180  
is marital property or separate property. 181

(I) A division or disbursement of property or a distributive 182  
award made under this section is not subject to future 183  
modification by the court except upon the express written consent 184  
or agreement of both spouses to the modification. 185

(J) The court may issue any orders under this section that it 186  
determines equitable, including, but not limited to, either of the 187  
following types of orders: 188

(1) An order granting a spouse the right to use the marital 189  
dwelling or any other marital property or separate property for 190  
any reasonable period of time; 191

(2) An order requiring the sale or encumbrancing of any real 192  
or personal property, with the proceeds from the sale and the 193  
funds from any loan secured by the encumbrance to be applied as 194

determined by the court. 195

**Sec. 3105.63.** (A)(1) A petition for dissolution of marriage 196  
shall be signed by both spouses and shall have attached and 197  
incorporated a separation agreement agreed to by both spouses. The 198  
separation agreement shall provide for a division of all property; 199  
spousal support; if there are minor children of the marriage, the 200  
allocation of parental rights and responsibilities for the care of 201  
the minor children, the designation of a residential parent and 202  
legal custodian of the minor children, child support, and 203  
parenting time rights; and, if the spouses so desire, an 204  
authorization for the court to modify the amount or terms of 205  
spousal support, or the division of property, provided in the 206  
separation agreement. If there are minor children of the marriage, 207  
the spouses may address the allocation of the parental rights and 208  
responsibilities for the care of the minor children by including 209  
in the separation agreement a plan under which both parents will 210  
have shared rights and responsibilities for the care of the minor 211  
children. The spouses shall file the plan with the petition for 212  
dissolution of marriage and shall include in the plan the 213  
provisions described in division (G) of section 3109.04 of the 214  
Revised Code. 215

(2) The division of property in the separation agreement 216  
shall include any participant account, as defined in section 217  
148.01 of the Revised Code, of either of the spouses, to the 218  
extent of the following: 219

(a) The moneys that have been deferred by a continuing member 220  
or participating employee, as defined in that section, and that 221  
have been transmitted to the Ohio public employees deferred 222  
compensation board during the marriage and any income that is 223  
derived from the investment of those moneys during the marriage; 224

(b) The moneys that have been deferred by an officer or 225

employee of a municipal corporation and that have been transmitted 226  
to the governing board, administrator, depository, or trustee of 227  
the deferred compensation program of the municipal corporation 228  
during the marriage and any income that is derived from the 229  
investment of those moneys during the marriage; 230

(c) The moneys that have been deferred by an officer or 231  
employee of a government unit, as defined in section 148.06 of the 232  
Revised Code, and that have been transmitted to the governing 233  
board, as defined in that section, during the marriage and any 234  
income that is derived from the investment of those moneys during 235  
the marriage. 236

(3) The separation agreement shall not require or permit the 237  
division or disbursement of the moneys and income described in 238  
division (A)(2) of this section to occur in a manner that is 239  
inconsistent with the law, rules, or plan governing the deferred 240  
compensation program involved or prior to the time that the spouse 241  
in whose name the participant account is maintained commences 242  
receipt of the moneys and income credited to the account in 243  
accordance with that law, rules, and plan. 244

(B) An amended separation agreement may be filed at any time 245  
prior to or during the hearing on the petition for dissolution of 246  
marriage. Upon receipt of a petition for dissolution of marriage, 247  
the court may cause an investigation to be made pursuant to the 248  
Rules of Civil Procedure. 249

(C)(1) If a petition for dissolution of marriage contains an 250  
authorization for the court to modify the amount or terms of 251  
spousal support provided in the separation agreement, the 252  
modification shall be in accordance with section 3105.18 of the 253  
Revised Code. 254

(2) If a petition for dissolution of marriage contains an 255  
authorization for the court to modify the division of property 256

provided in the separation agreement, the modification shall be 257  
made with the express written consent or agreement of both 258  
spouses. 259

**Sec. 3105.65.** (A) If, at the time of the hearing, either 260  
spouse is not satisfied with the separation agreement or does not 261  
wish a dissolution of the marriage and if neither spouse files a 262  
motion pursuant to division (C) of this section to convert the 263  
action to an action for divorce, the court shall dismiss the 264  
petition and refuse to validate the proposed separation agreement. 265

(B) If, upon review of the testimony of both spouses and of 266  
the report of the investigator pursuant to the Rules of Civil 267  
Procedure, the court approves the separation agreement and any 268  
amendments to it agreed upon by the parties, it shall grant a 269  
decree of dissolution of marriage that incorporates the separation 270  
agreement. If the separation agreement contains a plan for the 271  
exercise of shared parenting by the spouses, the court shall 272  
review the plan in accordance with the provisions of division 273  
(D)(1) of section 3109.04 of the Revised Code that govern the 274  
review of a pleading or motion requesting shared parenting jointly 275  
submitted by both spouses to a marriage. A decree of dissolution 276  
of marriage has the same effect upon the property rights of the 277  
parties, including rights of dower and inheritance, as a decree of 278  
divorce. The court has full power to enforce its decree and 279  
retains jurisdiction to modify all matters pertaining to the 280  
allocation of parental rights and responsibilities for the care of 281  
the children, to the designation ~~of~~ of a residential parent and 282  
legal custodian of the children, to child support, to parenting 283  
time of parents with the children, and to visitation for persons 284  
who are not the children's parents. The court, only in accordance 285  
with division (E)(2) of section 3105.18 of the Revised Code, may 286  
modify the amount or terms of spousal support. The court may 287  
modify the division of property provided in the separation 288

agreement only upon the express written consent or agreement of 289  
both spouses. 290

(C) At any time before a decree of dissolution of marriage 291  
has been granted under division (B) of this section, either spouse 292  
may convert the action for dissolution of marriage into a divorce 293  
action by filing a motion with the court in which the action for 294  
dissolution of marriage is pending for conversion of the action 295  
for dissolution of marriage. The motion shall contain a complaint 296  
for divorce that contains grounds for a divorce and that otherwise 297  
complies with the Rules of Civil Procedure and this chapter. The 298  
divorce action then shall proceed in accordance with the Rules of 299  
Civil Procedure in the same manner as if the motion had been the 300  
original complaint in the action, including, but not limited to, 301  
the issuance and service of summons pursuant to Civil Rules 4 to 302  
4.6, except that no court fees shall be charged upon conversion of 303  
the action for dissolution of marriage into a divorce action under 304  
this division. 305

**Section 2.** That existing sections 3105.171, 3105.63, and 306  
3105.65 of the Revised Code are hereby repealed. 307