

As Reported by the House Judiciary Committee

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Representative Harwood

**Cosponsors: Representatives Harris, Yuko, Murray, Huffman, Phillips,
Stebelton, Letson**

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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 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 the marriage and any income that is derived from the investment of those moneys during the marriage; or the moneys that have been deferred by an officer or employee of a government unit, as defined in section 148.06 of the Revised Code, and that have been transmitted to the governing board, as defined in that section, during the marriage and any income that is derived from the investment of those moneys during the marriage.

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

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

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

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

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

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

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

(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;	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 this section, the division of marital property shall be equal. If an equal division of marital property would be inequitable, the court shall not divide the marital property equally but instead shall divide it between the spouses in the manner the court determines equitable. In making a division of marital property,	104 105 106 107 108 109

the court shall consider all relevant factors, including those set forth in division (F) of this section.

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

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

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

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

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

(2) The court may make a distributive award in lieu of a division of marital property in order to achieve equity between the spouses, if the court determines that a division of the

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 relevant and equitable.

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

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

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

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

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

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

Sec. 3105.63. (A)(1) A petition for dissolution of marriage shall be signed by both spouses and shall have attached and incorporated a separation agreement agreed to by both spouses. The separation agreement shall provide for a division of all property;

spousal support; if there are minor children of the marriage, the allocation of parental rights and responsibilities for the care of the minor children, the designation of a residential parent and legal custodian of the minor children, child support, and parenting time rights; and, if the spouses so desire, an authorization for the court to modify the amount or terms of spousal support, or the division of property, provided in the separation agreement. If there are minor children of the marriage, the spouses may address the allocation of the parental rights and responsibilities for the care of the minor children by including in the separation agreement a plan under which both parents will have shared rights and responsibilities for the care of the minor children. The spouses shall file the plan with the petition for dissolution of marriage and shall include in the plan the provisions described in division (G) of section 3109.04 of the Revised Code.

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

(a) 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;

(b) 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 the marriage and any income that is derived from the investment of those moneys during the marriage;

(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 motion pursuant to division (C) of this section to convert the action to an action for divorce, the court shall dismiss the petition and refuse to validate the proposed separation agreement.

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

(C) At any time before a decree of dissolution of marriage has been granted under division (B) of this section, either spouse may convert the action for dissolution of marriage into a divorce

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