



Ohio Legislative Service Commission

Bill Analysis

David M. Gold

H.B. 244

128th General Assembly
(As Introduced)

Reps. Harwood, Harris, Yuko, Murray, Huffman, Phillips, Stebelton, Letson

BILL SUMMARY

- Authorizes the court in a divorce or legal separation proceeding to modify a division or disbursement of property or a distributive award upon the express written consent or agreement of both spouses.
- Permits the spouses in a dissolution of marriage proceeding to include in the separation agreement authorization for the court to modify the division of property and requires that any modification be made only with the express written consent or agreement of both spouses.

CONTENT AND OPERATION

Modification of a division or distribution of property in a divorce or legal separation proceeding

In a divorce proceeding, the court must determine what property of the spouses is marital property and what is separate property (see **COMMENT** for definitions). In a proceeding for a legal separation, the court may make such a determination upon the request of either party. In either case, the court must divide the marital and separate property equitably between the spouses. The court must divide the marital property equally between the spouses and disburse to each spouse that spouse's separate property, except as follows (R.C. 3105.171(B), (C), (D), and (E)):

(1) If an equal division of marital property would be inequitable, the court must divide the marital property in an equitable manner, taking into account the duration of the marriage, the assets and liabilities of the spouses, and other specified factors.

(2) The court may make a distributive award (see **COMMENT** for definition) to facilitate, effectuate, or supplement a division of marital property or, if the court

determines that a division of the marital property in kind or in money would be impractical or burdensome, make a distributive award in lieu of a division of marital property in order to achieve equity between the spouses. If a spouse has engaged in financial misconduct, including, but not limited to, the dissipation, destruction, concealment, or fraudulent disposition of assets, the court may compensate the offended spouse with a distributive award or with a greater award of marital property.

Under existing law, a division or disbursement of property or a distributive award made under R.C. 3105.171 is not subject to future modification by the court. The bill authorizes the court to modify a division or disbursement of property or a distributive award upon the express written consent or agreement of both spouses. (R.C. 3105.171(I).)

Modification of division of property in a dissolution of marriage proceeding

In a proceeding for a dissolution of marriage, the spouses must jointly petition the court for a dissolution and incorporate into the petition a separation agreement that provides for spousal support and a division of all property. The spouses may, but need not, also authorize the court to modify the amount or terms of spousal support provided in the separation agreement. The bill also permits the spouses to include in the separation agreement authorization for the court to modify the division of property. If the petition for dissolution of marriage contains such an authorization, the modification may be made only with the express written consent or agreement of both spouses. (R.C. 3105.63(A)(1) and (C)(2) and 3105.65(B).)

COMMENT

"Marital property" means all of the following, unless it is separate property: (1) all real and personal property that currently is owned by either or both of the spouses or in which either or both of the spouses have an interest and that was acquired during the marriage, (2) generally, 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, and (3) money that has been put into a public employee deferred compensation account during the marriage and any income derived from the investment of that money during the marriage (R.C. 3105.171(A)(3)).

"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: (1) an inheritance by one spouse by bequest, devise, or descent during the marriage, (2) any real or personal property or interest in real or personal property that was acquired by one spouse before the marriage, (3) passive income and appreciation acquired from separate property by one spouse during the marriage, (4) any real or personal property

or interest in real or personal property acquired by one spouse after a decree of legal separation, (5) any real or personal property or interest in real or personal property that is excluded by a valid antenuptial agreement, (6) compensation to a spouse for the spouse's personal injury, except for loss of marital earnings and compensation for expenses paid from marital assets, and (7) any gift of any real or personal property or of an interest in real or personal property that is made after the marriage and that is proven by clear and convincing evidence to have been given to only one spouse (R.C. 3105.171(A)(6)).

"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 (R.C. 3105.171(A)(1)).

HISTORY

ACTION	DATE
Introduced	06-29-09

H0244-I-128.docx/jc

