



Sub. H.B. 359*

124th General Assembly
(As Reported by H. Civil & Commercial Law)

Reps. Willamowski, Fessler

BILL SUMMARY

- Eliminates the restriction on a court in divorce or legal separation proceedings that it may award reasonable attorney's fees only if it determines that the party ordered to pay attorney's fees has the ability to do so.
- Eliminates the requirement that a court must determine whether either party will be prevented from fully litigating that party's rights and adequately protecting the party's interests if the court does not award reasonable attorney's fees in divorce or legal separation proceedings.
- Permits the court, in an action for divorce, annulment of marriage, or legal separation or in any post-decree action to award reasonable attorney's fees and litigation expenses when the court finds it appropriate under the totality of the circumstances.
- Requires the court, in determining whether an award is appropriate under the totality of the circumstances, to consider the moving party's need versus each party's ability to pay.
- Permits the court to make its award of attorney's fees and litigation expenses payable in gross or by installments.

* This analysis was prepared before the report of the House Civil and Commercial Law Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

CONTENT AND OPERATION

Award of reasonable attorney's fees

Current law provides that, in divorce or legal separation proceedings, the court of common pleas may award reasonable attorney's fees to either party at any stage of the proceedings if the court determines that the other party has the ability to pay the attorney's fees that the court awards. The proceedings include, but are 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. When the court determines whether to award reasonable attorney's fees to any party as described above, the court must 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. (R.C. 3105.18(H).)

Operation of the bill

The bill eliminates the existing statutory procedures and requirements for awarding attorney's fees in divorce or legal separation proceedings. It replaces that procedure and those requirements with new procedures for awarding attorney's fees and litigation expenses in an action for divorce, legal separation, or annulment of marriage or in any post-decree action.

Therefore, the bill eliminates the restriction on a court in divorce or legal separation proceedings that it may award reasonable attorney's fees only if it determines that the party ordered to pay attorney's fees has the ability to do so. The bill also eliminates the requirement that the court, when determining whether to order attorney's fees in such cases, must determine whether either party will be prevented from fully litigating the party's rights and adequately protecting the party's interests if the court does not award reasonable attorney's fees in divorce or legal separation proceedings.

The bill, in its new procedures, permits the court of common pleas to award reasonable attorney's fees and litigation expenses in an action for divorce, legal separation, or annulment of marriage or in any post-decree action if the court finds the award appropriate under the totality of the circumstances involved in the action. In determining whether an award is appropriate under the totality of the circumstances, a court must consider the moving party's need versus each party's ability to pay. The award may be for attorney's fees and litigation expenses that have been incurred or are reasonably anticipated. The bill permits the court to make the award at any stage of the proceedings, including, but not limited to, proceedings while the action is pending in the trial court, post-decree proceedings,

or appellate proceedings. The bill also allows either a trial court or an appellate court to make such an award. (R.C. 3105.73(A).)

Under the bill, the court may specify whether the award of attorney's fees and litigation expenses is payable in gross or by installments. The bill also permits the court to make an award of attorney's fees and litigation expenses 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. (R.C. 3105.73(B).)

Application of Revised Code sections

Section 3 of the bill states that R.C. 3105.18, as amended by the act, and R.C. 3105.73, as enacted by the act (the elimination of the existing procedure for awarding attorney's fees in divorce or legal separation proceedings and the enactment of new procedures for awarding attorney's fees and litigation expenses in divorce, legal separation, annulment of marriage or post-decree actions) apply to any action for divorce, legal separation, or annulment of marriage or any post-decree action if any of the following apply:

(1) The action is brought, or a notice of appeal in the action is filed, on or after the effective date of the act.

(2) The action is brought, or a notice of appeal in the action is filed, prior to the effective date of the act, and the action is pending in a trial or appellate court on the effective date of the act.

(3) Any proceeding arising from a motion to modify a prior order or decree in the action is pending in a trial or appellate court on the effective date of the act.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-05-01	p. 827
Reported, H. Civil & Commercial Law	---	---

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