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*Bill Analysis*  
*Legislative Service Commission*

## **Am. H.B. 36**

125th General Assembly  
(As Passed by the House)

**Reps. Willamowski, Core, Latta, Book, Harwood, Schlichter, Seitz, Chandler, Cirelli, C. Evans, Flowers, Hagan, Hughes, Otterman, Reidelbach, Schmidt, J. Stewart**

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### **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 that party's interests if the court does not award reasonable attorney's fees in divorce or legal separation proceedings.
- Permits a trial court, in an action for divorce, annulment of marriage, or legal separation or in any post-decree action or proceeding arising from a divorce, legal separation, annulment, or dissolution of marriage to award reasonable attorney's fees and litigation expenses to either party when the court finds it appropriate under the totality of the circumstances.
- Requires the court, in determining whether an award of attorney's fees 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.

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## 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 procedure and the existing statutory 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 or proceeding arising from a divorce, legal separation, annulment, or dissolution of marriage.

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 a trial court to award reasonable attorney's fees and litigation expenses to either party in an action for divorce, legal separation, or annulment of marriage or in any post-decree action or proceeding arising from a divorce, legal separation, annulment, or dissolution of marriage if the court finds the award appropriate under the totality of the circumstances involved in the action or proceeding. In determining whether an award is appropriate under the totality of the circumstances, the 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 trial 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. (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 under the bill's provisions 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).)

The bill provides that nothing in its provisions prevents an award of attorney's fees and litigation expenses from being designated as *spousal support* (see **COMMENT**) (R.C. 3105.73(C)).

### **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, or annulment of marriage actions or post-decree actions or proceedings) apply to any action for divorce, legal separation, or annulment of marriage or any post-decree action or proceeding arising from a divorce, legal separation annulment, or dissolution of marriage if any of the following apply:

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

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

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## **COMMENT**

For the purposes of the new procedures for awarding attorney's fees and litigation expenses in the cases specified in the bill, "spousal support" has the same meaning as in R.C. 3105.18(A), which defines the term as any payment or

payments to be made to a spouse or former spouse, or to a third party for the benefit of a spouse or a former spouse, that is both for sustenance and for support of the spouse or former spouse. "Spousal support" does not include any payment made to a spouse or former spouse, or to a third party for the benefit of a spouse or former spouse, that is made as part of a division or distribution of property or a distributive award under R.C. 3105.171. (R.C. 3105.73(C).)

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-03-03	p. 85
Reported, H. Civil & Commercial Law	03-19-03	pp. 264-265
Passed House (97-0)	04-01-03	p. 312

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