



H.B. 45

126th General Assembly
(As Introduced)

Reps. Webster, Calvert, McGregor, Setzer, Aslanides, Kearns, Woodard

BILL SUMMARY

- Requires the court, in proceedings for divorce, dissolution, legal separation, annulment, and the allocation of parental rights and responsibilities for the care of children, to require parents to consider the possible or actual postsecondary education expenses of each child of the marriage.
- Allows parents to place a portion of the marital property into an escrow account for payment of each child's postsecondary education expenses and requires an agreement to do this to be included in the court's decree or an order issued by the court.
- Provides that the court is not responsible for creating, supervising, or managing such an escrow account but that the court has power to enforce an agreement to establish such an escrow account that has been incorporated into a decree or order.

CONTENT AND OPERATION

Consideration of postsecondary education expenses

Existing law requires that in divorce proceedings the court must and in legal separation proceedings, upon the request of either party, the court may determine what constitutes marital property and what constitutes the separate property of each party. In general, marital property is property that is owned by either party or both parties and that was earned or acquired during the course of the marriage, other than property inherited by one of the spouses, gifts given to only one spouse, and compensation for a spouse's personal injury not related to marital assets. Generally, separate property is (1) property acquired by one spouse before the marriage or after a legal separation or inherited by one spouse during the marriage, (2) property excluded by a valid antenuptial agreement, (3) gifts

given to only one spouse, and (4) compensation for a spouse's personal injury not related to marital assets. Upon making the determination, the court must divide the marital and separate property equitably between the parties. An equitable division is not necessarily an equal division. In dividing the property, the court must consider certain enumerated factors and any other factor it considers relevant and equitable. (R.C. 3105.171(A)(3) and (6), (B), (C)(1), and (F).)

The bill provides for an exception to the requirement that marital property be divided between the parties. Under the bill, in a proceeding for a divorce, dissolution of marriage, legal separation, annulment, or the allocation of parental rights and responsibilities for the care of one or more children, the court must require parents to consider the possible or actual postsecondary education expenses of each child of the marriage. The bill authorizes the parents to agree to place a portion of the marital property into an escrow account for payment of these expenses. If the parents enter into an agreement, the court must include the agreement in a decree or order. (R.C. 3105.171(K)(1).)

Management of an escrow account and enforcement of an escrow agreement

Under the bill, the court is not responsible for creating, supervising, or managing an educational escrow account that the parents agree to establish for their children. The bill provides that a person for whom an escrow account is established under the bill is not a third-party beneficiary of the agreement. (Under the common law, a third-party beneficiary is a person who, by virtue of being the intended beneficiary of an agreement, may enforce the agreement even though he or she is not a party to it.) A court that incorporates into a decree or order an escrow agreement of the type described in the bill has all powers necessary to enforce the agreement.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-08-05	p. 191

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