



Ohio Legislative Service Commission

Bill Analysis

David M. Gold

H.B. 238

128th General Assembly
(As Introduced)

Reps. Harwood, Murray, B. Williams, Pillich, Yuko, Chandler, Huffman, Letson

BILL SUMMARY

- Requires that the court in a divorce or legal separation proceeding require each spouse to disclose in a full and complete manner all of that spouse's marital property, separate property, and other assets.
- Treats nondisclosure of assets as a form of financial misconduct for which the court may compensate the offended spouse with a distributive award or with a greater award of marital property.

CONTENT AND OPERATION

Disclosure of assets in a divorce or 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 spouse. In either case, the court must divide the marital and separate property equitably between the spouses. The court must divide the marital property equally, except as follows (R.C. 3105.171(B), (C), 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 the bill, the court must require each spouse to disclose in a full and complete manner all marital property, separate property, and other assets of the spouse. The bill treats nondisclosure of assets as a form of financial misconduct for which the court may compensate the offended spouse with a distributive award or with a greater award of marital property. (R.C. 3105.171(E)(3) and (4).)

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, and all interest that either or both of the spouses has in any real or personal property, and that was acquired by either or both 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

06-23-09

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