

**A BILL**

To amend sections 3105.171 and 3105.18, and to enact sections 3105.172 and 3105.181 to 3105.185 of the Revised Code relative to the equitable allocation of the financial consequences that arise from the termination of a marital relationship.

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 3105.171 and 3105.18 be amended and sections 3105.172, 3105.181, 3105.182, 3105.183, 3105.184 and 3105.185 of the Revised Code be enacted to read as follows:

**Sec. 3105.171.** (A) As used in this section:

(1) "During the marriage" means whichever of the following is applicable:

(a) Except as provided in division (A) (1) (b) of this section, the period of time from the date of the marriage through the date of the filing of the first complaint in an action for divorce or in an action for legal separation, if the complaint in fact leads to a decree of divorce or legal separation;

(b) If the court determines that the use of either or both of the dates specified in division (A) (1) (a) of this section would be inequitable, the court may select dates that it considers equitable in determining marital property. If the court selects dates that it considers equitable in determining marital property, "during the marriage" means the period of time between those dates selected and specified by the court.

(2)(a) "Marital property" means, subject to division (A) (2) (b) of this section, all of the following:

(i) All interest that either or both of the spouses currently has in any real or personal property, including, but not limited to, the retirement benefits of the spouses, and that was acquired by either or both of the spouses during the marriage;

(ii) Except as otherwise provided in this section, 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;

(iii) A participant account, as defined in section 148.01 of the Revised Code, of either of the spouses, to the extent of the following: the moneys that have been deferred by a continuing member or participating employee, as defined in that section, and that have been transmitted to the Ohio public employees deferred compensation board during the marriage and any income that is derived from the investment of those moneys during the marriage; the moneys that have been deferred by an officer or employee of a municipal corporation and that have been transmitted to the governing board, administrator, depository, or trustee of the deferred compensation program of the municipal corporation during the marriage and any income that is

39 derived from the investment of those moneys during the marriage; or the moneys that have been  
40 deferred by an officer or employee of a government unit, as defined in section 148.06 of the  
41 Revised Code, and that have been transmitted to the governing board, as defined in that section,  
42 during the marriage and any income that is derived from the investment of those moneys during  
43 the marriage.

44 (b) "Marital property" does not include any separate property.

45 (3) "Passive income" means income acquired other than as a result of the labor,  
46 monetary, or in-kind contribution of either spouse.

47 (4) "Personal property" includes both tangible and intangible personal property.

48 (5)(a) "Separate property" means all real and personal property and any interest in real or  
49 personal property that is found by the court to be any of the following:

50 (i) An inheritance by one spouse by bequest, devise, or descent during the course of the  
51 marriage;

52 (ii) Any real or personal property or interest in real or personal property that was acquired  
53 by one spouse prior to the date of the marriage;

54 (iii) Passive income and appreciation acquired from separate property by one spouse  
55 during the marriage;

56 (iv) Any real or personal property or interest in real or personal property acquired by one  
57 spouse after a decree of legal separation issued under section 3105.17 of the Revised Code;

58 (v) Any real or personal property or interest in real or personal property that is excluded  
59 by a valid antenuptial agreement;

60 (vi) Compensation to a spouse for the spouse's personal injury, except for loss of marital  
61 earnings and compensation for expenses paid from marital assets;

62 (vii) Any gift of any real or personal property or of an interest in real or personal property  
63 that is made after the date of the marriage and that is proven by clear and convincing evidence to  
64 have been given to only one spouse.

65 (b) The commingling of separate property with other property of any type does not  
66 destroy the identity of the separate property as separate property, except when the separate  
67 property is not traceable.

68 (B) In divorce proceedings, the court shall, and in legal separation proceedings upon the  
69 request of either spouse, the court may, determine what constitutes marital property and what  
70 constitutes separate property. In either case, upon making such a determination, the court shall  
71 divide the marital and separate property equitably between the spouses, in accordance with this

section. For purposes of this section, the court has jurisdiction over all property in which one or both spouses have an interest.

(C)(1) Except as provided in this division or division (E) of this section, the division of marital property shall be equal. If an equal division of marital property would be inequitable, the court shall not divide the marital property equally but instead shall divide it between the spouses in the manner the court determines equitable. In making a division of marital property, the court shall consider all relevant factors, including those set forth in division (F) of this section.

(2) Each spouse shall be considered to have contributed equally to the production and acquisition of marital property.

(3) The court shall provide for an equitable division of marital property under this section prior to making any award of compensatory spousal support to either spouse under sections 3105.18 through 3105.185 of the Revised Code and without regard to any compensatory spousal support so awarded.

(4) If the marital property includes a participant account, as defined in section 148.01 of the Revised Code, the court shall not order the division or disbursement of the moneys and income described in division (A)(2)(a)(iv) of this section to occur in a manner that is inconsistent with the law, rules, or plan governing the deferred compensation program involved or prior to the time that the spouse in whose name the participant account is maintained commences receipt of the moneys and income credited to the account in accordance with that law, rules, and plan.

(D) Except as otherwise provided in division (E) of this section or by another provision of this section, the court shall disburse a spouse's separate property to that spouse. If a court does not disburse a spouse's separate property to that spouse, the court shall make written findings of fact that explain the factors that it considered in making its determination that the spouse's separate property should not be disbursed to that spouse.

(E) In making a division of marital property under this section, and in determining whether to make and the amount of any distributive award under section 3105.172 of the Revised Code, the court shall consider all of the following factors:

(1) The duration of the marriage;

(2) The assets and liabilities of the spouses;

(3) The desirability of awarding the family home, or the right to reside in the family home for reasonable periods of time, to the spouse with custody of the children of the marriage;

(4) The liquidity of the property to be distributed;

(5) The economic desirability of retaining intact an asset or an interest in an asset;

(6) The tax consequences of the property division upon the respective awards to be made to each spouse;

(7) The costs of sale, if it is necessary that an asset be sold to effectuate an equitable distribution of property;

(8) Any division or disbursement of property made in a separation agreement that was voluntarily entered into by the spouses;

(9) Any other factor that the court expressly finds to be relevant and equitable.

(F) In any order for the division or disbursement of property made pursuant to this section, the court shall make written findings of fact that support the determination that the marital property has been equitably divided and shall specify the dates it used in determining the meaning of "during the marriage."

(H) Except as otherwise provided in this section, the holding of title to property by one spouse individually or by both spouses in a form of co-ownership does not determine whether the property is marital property or separate property.

(H) A division or disbursement of property or a distributive award made under this section is not subject to future modification by the court.

(I) The court may issue any orders under this section that it determines equitable, including, but not limited to, either of the following types of orders:

(1) An order granting a spouse the right to use the marital dwelling or any other marital property or separate property for any reasonable period of time;

(2) An order requiring the sale or encumbrancing of any real or personal property, with the proceeds from the sale and the funds from any loan secured by the encumbrance to be applied as determined by the court.

**Sec. 3105.172.** (A) As used in the Revised Code, "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, from separate property or income, or from marital property, and not as compensatory spousal support as defined in section 3105.18 of the Revised Code, for the purpose of compensating a spouse for an economic loss suffered under certain circumstances, as the result of a marital relationship.

(B) The court may make a distributive award to facilitate, effectuate, or supplement a division of marital property.

(C) The court may make a distributive award in lieu of a division of marital property in order to achieve equity between the spouses, if the court determines that a division of the marital property in kind or in money would be impractical or burdensome.

(D) 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.

(E) In addition, in any divorce, legal separation or annulment action in which the length of the marital relationship is less than 5 years, a presumption arises that a spouse is entitled to a distributive award under any of the following circumstances:

(1) During the marital relationship, or in anticipation of it, the claimant spouse provided funds from the claimant's separate property or income, or funds were used from marital property or income, for the payment of tuition or other direct costs of the other spouse's education or training. An award under this division shall equal the total of the non-claimant's direct education and training costs paid from the claimant's separate property and income, and one-half of such total costs paid from marital property and income.

(2) During the marital relationship, or in anticipation of it, the claimant spouse expended or relinquished separate property or separate income, or gave up specific educational or occupational opportunities, that benefited the marital relationship or the non-claimant spouse, and, at the time of termination of the marital relationship, the expended separate property or income is otherwise unrecoverable by the claimant spouse, or the lost educational or occupational opportunities leave the claimant spouse with an income generating capacity that is significantly less than it was before the marital relationship commenced.

(F) In any divorce, legal separation or annulment action in which the length of the marital relationship is greater than 5 years, the court may make a distributive award, as provided in section 3105.172(E) of the Revised Code, if it finds that any of the circumstances set forth in sections 3105.172(E)(1) or (E)(2), or both, of the Revised Code arose during the marital relationship, and that it is equitable to make such an award regardless of the length of the marital relationship.

(G) The court may require any distributive award to be secured by a lien on the obligor's specific marital property or separate property.

(H) An award made under this section is not a form of compensatory spousal support that can qualify as "alimony" under the provisions of the United States Internal Revenue Code.

(I) An award under this section is non-modifiable, and is not affected by the death or remarriage of either party.

(J) When a court makes a distributive award under this section, the court shall enter findings in the record that support the award.

**Sec. 3105.18.** (A) As used in sections 3105.18 through 3105.185, inclusive, of the Revised Code:

(1) "Compensatory spousal support award" means any payment or payments of cash to be made to a spouse or former spouse, or to a third party, for the benefit of support and maintenance of a spouse or former spouse, and for the purpose of allocating the financial consequences that arise from the termination of the marital relationship in an action for divorce, dissolution of marriage, legal separation or annulment; provided, however, the term does not include any cash 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 a result of a division or disbursement of property or a distributive award.

(2) "Financial consequences" means the economic ramifications for both spouses resulting from a termination of their marital relationship, including, but not limited to, the losses and benefits described in sections 3105.181 through 3105.185 of the Revised Code.

(3) "Income generating capacity" means the total of all earned and unearned gross income from all sources, whether or not the income is taxable, and any potential income of the spouse or former spouse.

(4) "Gross income" includes:

(a) Salaries, wages, tips, vacation pay and any other compensation, including voluntary employee contributions to deferred compensation plan accounts;

(b) Overtime pay, commissions, draws against commissions and bonuses to the extent of the lesser of the following amounts:

(i) The yearly average of all overtime, commissions, draws against commissions and bonuses received during the three calendar years immediately prior to the time when the compensatory award is being computed; or

(ii) The total overtime, commissions, draws against commissions and bonuses received during the calendar year immediately prior to the time when the compensatory award is being computed;

(c) Royalties, rents, dividends, severance pay, interest, trust income and annuities;

(d) Social security benefits, including retirement, disability, and survivor benefits that are not means-tested, and, pension, profit-sharing and retirement benefits in pay status, which were not previously divided as marital property between the parties, or considered as an offset of marital property between the parties in a division or distribution of property or a distributive award;

(e) Workers' compensation benefits, unemployment insurance benefits and disability insurance benefits;

(f) Benefits that are not means-tested and that are received by and in the possession of the veteran who is the beneficiary for any service-connected disability under a program or law administered by the United States department of veterans' affairs or veterans' administration;

(g) Spousal support or compensatory spousal support payments actually received from a former spouse;

(h) Income of members of any branch of the United States armed services or national guard, including, amounts representing base pay, basic allowance for quarters, basic allowance for subsistence, supplemental subsistence allowance, cost of living adjustment, specialty pay, variable housing allowance, and pay for training or other types of required drills;

(i) Self-generated income; and

(j) Potential cash flow from any source.

(5) "Gross income" does not include any of the following:

(a) Benefits received from means-tested government administered programs, including Ohio works first; prevention, retention, and contingency; means-tested veterans' benefits; supplemental security income; food stamps; disability assistance; or other assistance for which eligibility is determined on the basis of income or assets;

(b) Benefits for any service-connected disability under a program or law administered by the United States department of veterans' affairs or veterans' administration that are not means-tested, that have not been distributed to the veteran who is the beneficiary of the benefits, and that are in the possession of the United States department of veterans' affairs or veterans' administration;

(c) Nonrecurring or unsustainable gross income or cash flow items;

(d) Adoption assistance and foster care maintenance payments made pursuant to Title IV-E of the "Social Security Act," 94 Stat. 501, 42 U.S.C.A. 670 (1980), as amended;

(e) Child support received.

(6) "Gross income" shall be reduced by the following:

(a) Child support paid for a child not of a marriage with the payee.

(b) Spousal support or a compensatory spousal support award actually paid to a former spouse to whom the payor was obligated pursuant to an order pre-existing the date of the ceremonial marriage;

(c) Amounts paid for mandatory deductions from wages, such as union dues, but not taxes, social security, or retirement in lieu of social security;

(d) Adoption assistance and foster care maintenance payments made pursuant to Title IV-E of the "Social Security Act," 94 Stat. 501, 42 U.S.C.A. 670 (1980), as amended.

(7) "Nonrecurring or unsustainable gross income" means cash flow the party receives in any year or for any number of years not to exceed three years that the party does not expect to continue to receive on a regular basis. "Nonrecurring or unsustainable gross income" does not include a lottery prize award that is not paid in a lump sum, or any other item of gross income that the party receives or expects to receive for each year for a period of more than three years or that the party receives and invests or otherwise uses to produce gross income for a period of more than three years.

(8) "Ordinary and necessary expenses incurred in generating gross receipts" means actual cash items expended by the party or the party's business and includes depreciation expenses of business equipment as shown on the books of a business entity. Except as specifically included in "ordinary and necessary expenses incurred in generating gross receipts" in this division, "ordinary and necessary expenses incurred in generating gross receipts" does not include depreciation expenses and other non-cash items that are allowed as deductions on any federal tax return of the party or the party's business.

(9) "Potential income" means both of the following for a party who the court determines is voluntarily unemployed or voluntarily underemployed:

(a) Imputed income that the court determines the party would have earned if fully employed, as determined from the following criteria:

- (i) The party's prior employment experience;
- (ii) The party's education;
- (iii) The party's physical and mental disabilities, if any;
- (iv) The availability of employment in the geographic area in which the party resides;
- (v) The prevailing wage and salary levels in the geographic area in which the party resides;
- (vi) The party's special skills and training;
- (vii) Whether there is evidence that the party has the ability to earn the imputed income;
- (viii) The party's increased income generating capacity because of experience; and
- (ix) Any other relevant factor.



(b) Imputed income from any non-income-producing assets of a party, excluding the primary residence of each party, as determined from the local passbook savings rate or another appropriate rate as determined by the court or agency, not to exceed the rate of interest specified in division (A) of section 1343.03 of the Revised Code, if the income is significant.

(10) "Self-generated income" means gross receipts received by a party from self-employment, proprietorship of a business, joint ownership of a partnership or closely held corporation, and rents minus ordinary and necessary expenses incurred by the party in generating the gross receipts. "Self-generated income" includes expense reimbursements or in-kind payments received by a party from self-employment, the operation of a business, or rents, including company cars, free housing, reimbursed meals, and other benefits, if the reimbursements are significant and reduce personal living expenses.

(B) Upon the request of either spouse, and after the court determines a division or disbursement of property, or a distributive award, and before the court determines child support, if any, the court of common pleas in divorce and legal separation proceedings shall, and in an annulment proceeding may, determine a compensatory spousal support award, as provided in sections 3105.18 through 3105.185, inclusive, of the Revised Code.

(1) In determining a compensatory spousal support award, the court shall consider any evidence offered by the parties regarding the impact of all applicable federal, state and local income tax laws upon both spouses.

(2) In determining a compensatory spousal support award, each spouse shall be considered as having contributed equally to the production of marital income.

(C) Nothing in sections 3105.18 through 3105.185, inclusive, of the Revised Code is intended to foreclose a spouse from bringing a recognizable claim for injuries or losses resulting from conduct by the other spouse that occurred during the marriage.

(D) The "length of the marital relationship" shall be the period of time from the date of the ceremonial marriage through the date of the filing of the first complaint in any action seeking a legal separation or a termination of marriage, if the complaint in fact leads to a decree of divorce or legal separation; provided, however, if the court determines that the length of the marital relationship as determined by such dates would be inequitable, the court may adjust the length of the marital relationship by selecting dates that it considers equitable in determining any compensatory spousal support award. In determining whether the length of the marital relationship should be adjusted, the court may consider the nature and extent of the financial circumstances of the spouses during any period of premarital cohabitation between the spouses; provided, however, the court may not adjust the length of the marital relationship to include any portion of such period of premarital cohabitation unless the court, by clear and convincing evidence, specifically finds that a failure to do so will create an inequitable result. If the court adjusts the dates that it considers equitable in determining any compensatory spousal support award, the "length of the marital relationship" means the period of time between those dates selected and specified by the court.

(E) A court may reserve jurisdiction in the original decree to make a compensatory spousal support award under sections 3105.18 through 3105.184, inclusive, of the Revised Code at a later date, without making an initial nominal award, where a change of circumstances warrant that such an award is equitable.

(F) The following types of circumstances shall be presumed to be appropriate reasons for making a compensatory spousal support award in a proceeding for divorce, dissolution of marriage or legal separation, and may be appropriate reasons for making such an award in an annulment:

(1) The loss in the ability of a spouse to maintain the marital standard of living after termination of a marital relationship, as provided in Section 3105.181 of the Revised Code.

(2) The loss either spouse incurs as a result of that spouse's personal and financial contribution or investment in the training, education and income generating capacity of the other spouse, as provided in section 3105.182 of the Revised Code.

(3) The loss in income generating capacity of either spouse resulting from the performance of marital responsibilities, including, but not limited to, any such loss that arises from a spouse's disproportionate share, during the marital relationship, of the care of the marital children, care of the children of the other spouse, or the care of a third party, as provided in section 3105.183 of the Revised Code.

(G) All presumptions set forth in sections 3105.181 through 3105.185 of the Revised Code may be rebutted by a preponderance of the evidence.

(H) None of the provisions in sections 3105.172 or 3105.18 through 3105.185, inclusive, of the Revised Code shall prevent or limit a court from granting an award of temporary spousal support, pursuant to the Rules of Civil Procedure, while any divorce, legal separation or annulment action, or any post-decree motion or appeal to a court of appeals, is pending final disposition. The amount and terms of any order for temporary spousal support shall be equitable based upon the facts and circumstances of each case, as determined within the court's discretion.

**Sec. 3105.181.** (A) A person married to someone with significantly greater income generating capacity is entitled, in a divorce, dissolution or legal separation proceeding, and may be entitled in an annulment proceeding, to a compensatory spousal support award for a portion of the loss of the standard of living he or she would otherwise experience, when the length of the marital relationship was of sufficient duration that equity requires that a portion of the loss be treated as the joint responsibility of both spouses.

(B) A presumption arises that a spouse is entitled to a compensatory spousal support award pursuant to this section, when the length of the marital relationship has been at least five years, and the claimant's income generating capacity is 60 percent or less of the other spouse's income generating capacity.

(C) When the length of the marital relationship has been less than five years, and the parties have any child or children of their marriage, and the claimant spouse's income generating capacity is 60% or less of the other spouse's income generating capacity; the court may make an award of compensatory spousal support. The amount and terms of any such award shall be equitable based upon the facts and circumstances of each case, as determined within the court's discretion.

**Sec. 3105.182.** (A) A spouse is entitled to a compensatory spousal support award for the investment made in the other spouse's income generating capacity by providing support, by relocating from one locale to another for the other spouse's employment, which relocation adversely affected the ability to further a career, or by any similar personal or financial investment made in the other spouse's income generating capacity.

(B) If the claimant spouse meets the criteria set forth in section 3105.182(A) of the Revised Code, a presumption arises that a spouse is entitled to a compensatory spousal support award when the length of the marital relationship has been at least five years, and the claimant's income generating capacity is 70 percent or less of the other spouse's income generating capacity.

(C) When the length of the marital relationship has been less than five years, and the parties have any child or children of their marriage, and the claimant spouse's income generating capacity is 70% or less of the other spouse's income generating capacity; the court may make an award of compensatory spousal support. The amount and terms of any such award shall be equitable based upon the facts and circumstances of each case, as determined within the court's discretion.

**Sec. 3105.183.** (A) A spouse is entitled to a compensatory spousal support award for the loss of income generating capacity resulting from the performance of marital responsibilities, including, but not limited to, any such loss arising from his or her disproportionate share of the care, during the marital relationship, of a marital child or of a child of the other spouse, or the care of any sick, elderly or disabled third party in fulfillment of a marital responsibility.

(B) If the claimant spouse meets the criteria set forth in section 3105.183(A) of the Revised Code, a presumption arises that a spouse is entitled to a compensatory spousal support award when the length of the marital relationship has been at least five years, and the claimant's income generating capacity is 75 percent or less of the other spouse's income generating

(C) When the length of the marital relationship has been less than five years, and the parties have any child or children of their marriage, and the claimant spouse's income generating capacity is 75% or less of the other spouse's income generating capacity; the court may make an award of compensatory spousal support. The amount and terms of any such award shall be equitable based upon the facts and circumstances of each case, as determined within the court's discretion.

**Sec. 3105.184.** (A) After a court determines that a claimant spouse is entitled to a compensatory spousal support award, pursuant to any one of the provisions of sections 3105.181

through 3105.183, inclusive, of the Revised Code, the court shall determine the duration and amount of such award in accordance with the provisions of this section of the Revised Code. A compensatory spousal support award may be made in the form of real or personal property, or both, or a sum of money, payable either in a lump sum or periodic payments of cash from future income or otherwise, as the court considers equitable. Regardless of the number of sections under which a spouse may qualify for a compensatory spousal support award, only one award shall be made pursuant to the provisions of this section.

(B) The duration of a compensatory spousal support award shall be equitable based upon the facts and circumstances of each case as determined within the court's discretion. In determining the duration of a compensatory spousal support award for periodic payments, the court shall consider the length of the marital relationship of the spouses.

(C) A presumption arises that the duration of such a compensatory spousal support award shall be indefinite if the length of the marital relationship is 25 years or longer, and shall be definite if the length of the marital relationship is less than 25 years. The guideline for computing the length of a definite duration is the length of the marital relationship in months multiplied by an appropriate percentage selected by the court from the applicable range of percentages, as follows:

(1) For a marital relationship of at least five years, but less than 10 years, the percentage range is 30 to 40 per cent;

(2) For a marital relationship of at least 10 years, but less than 15 years, the percentage range is 35 to 45 per cent;

(3) For a marital relationship of at least 15 years, but less than 25 years, the percentage range is 40 to 60 per cent;

(D) The amount of a compensatory spousal support award shall be equitable based upon the facts and circumstances of each case as determined within the court's discretion. The guideline for computing the amount of such an award is the amount that equals the difference in the income generating capacities of both spouses multiplied by an appropriate percentage selected by the court from the applicable range of percentages, as follows:

(1) For a marital relationship of at least five years, but less than 10 years, the percentage range is 20 to 30 per cent;

(2) For a marital relationship of at least 10 years, but less than 20 years, the percentage range is 30 to 40 per cent;

(3) For a marital relationship of at least 20 years, but less than 25 years, the percentage range is 35 to 45 per cent;

(4) For a marital relationship of 25 years or more, the percentage range is 40 to 50 per cent.

(E) In selecting an appropriate percentage figure within any range for the duration and amount of a compensatory spousal support award, or in exercising discretion to deviate from such ranges, the court may consider the following factors:

(1) The ages and the physical, mental and emotional conditions of the parties;

(2) The extent to which it would be inappropriate for a party, because that party will be custodian of a minor or dependent child of the marital relationship, to seek employment outside the home;

(3) The standard of living of the parties established during the marital relationship and the future cost of living of both parties after their separation;

(4) The relative extent of education of the parties;

(5) The contribution of each party to the education, training or earning ability of the other party, including, but not limited to, any party's contribution to the acquisition of a professional degree of the other party;

(6) The time and expense necessary for the spouse who is seeking spousal support to acquire education, training or job experience so that the spouse will be qualified to obtain appropriate employment, provided the education, training or job experience and employment is, in fact, sought;

(7) The extent to which the claimant has provided a disproportionate share, during the marital relationship, of the care of one or more of the individuals described in section 3105.183 of the Revised Code;

(8) Any other factor that the court expressly finds to be relevant and equitable.

(F) If an award is made pursuant to this section in which the duration or amount deviates from the guidelines set forth in this section, the court shall make written findings of fact that the result would be unreasonable or inappropriate without such deviation.

(G) Unless the original compensatory spousal support award specifically states otherwise, an obligation to make periodic payments pursuant to sections 3105.181 through 3105.185, inclusive, of the Revised Code, shall terminate upon the death of either the obligor or the obligee, or the remarriage of the obligee.

(H) The amount and terms of any order for temporary spousal support shall be equitable based upon the facts and circumstances of each case, as determined within the court's discretion; provided however, the court shall give the payor credit for any temporary spousal support payments made as an offset against any compensatory spousal support award entered by the court as part of the final decree or order.

551       **Sec. 3105.185.** (A) For any compensatory spousal support awards made under chapter  
552 3105 of the Revised Code, or, if a continuing order for periodic payments of money as alimony  
553 was entered in a divorce or dissolution of marriage action that was determined on or after May 2,  
554 1986 and before January 1, 1991, or if a continuing order for periodic payments of money as  
555 spousal support was entered in a divorce or dissolution of marriage action that was determined  
556 on or after January 1, 1991, the court that entered the decree of divorce or dissolution of  
557 marriage does not have jurisdiction to modify the amount or terms of the alimony, spousal  
558 support or compensatory spousal support award, unless the court determines that the  
559 circumstances of either party have changed and unless one of the following applies:

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561       (1) In the case of a divorce, the decree or separation agreement of the parties to the  
562 divorce that is incorporated into the decree contains a provision specifically authorizing the court  
563 to modify the amount or terms of alimony, spousal support or compensatory spousal support  
564 award.

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566       (2) In the case of a dissolution of marriage, the separation agreement that is approved by  
567 the court and incorporated into the decree contains a provision specifically authorizing the court  
568 to modify the amount or terms of alimony, spousal support or compensatory spousal support  
569 award.

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571       (B) In an action brought solely for an order for legal separation under section 3105.17 of  
572 the Revised Code, any continuing order for periodic payments of money entered pursuant to  
573 sections 3105.18 through 3105.184, inclusive, of the Revised Code is subject to further order of  
574 the court upon changed circumstances of either party.

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576       (C) Any modified compensatory spousal support award is subject to the same continuing  
577 jurisdiction of the court, as provided in the original decree, unless the order modifying the prior  
578 compensatory spousal support award specifically provides otherwise.

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580       (D) For purposes of this section, a change of circumstances of a party, whether  
581 foreseeable or not, includes, but is not limited to, any increase or involuntary decrease in a  
582 party's income, living expenses, or medical expenses, and may include retirement of either party.

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584       (E) The amount and duration of any compensatory spousal support award which  
585 modifies an existing order for alimony, spousal support or compensatory spousal support award  
586 shall be determined by applying all provisions set forth in section 3105.184, of the Revised  
587 Code, even if not applied in determining the existing award, except that the provisions found in  
588 section 3105.184 of the Revised Code shall not constitute the sole change in circumstances for  
589 any such order or award existing before section 3105.184 was enacted.

590  
591       (F) In determining whether to modify an existing order for alimony, spousal support or  
592 compensatory spousal support award, the court shall consider any purpose expressed in the initial  
593 order or award.

595 (G) In post-decree modification proceedings, the court may consider whether to include  
596 or exclude current income attributable to assets that were previously divided between these  
597 parties as marital assets.  
598

599 (H) A court's authority to modify an award includes the authority to defer payment of,  
600 suspend, or terminate the award. Except in the case of a deferral, jurisdiction to modify an award  
601 of definite duration shall not include jurisdiction to extend the duration of an award unless the  
602 decree specifically states otherwise. A deferral of payment of spousal support may extend the  
603 original term of periodic payments, not to exceed the period of deferral. During a suspension  
604 period, no obligation to pay spousal support shall accrue. During a deferral period, the obligation  
605 to pay spousal support shall accrue. Once an award is terminated, it cannot be revived.  
606

607 (I) An obligation to make periodic payments pursuant to sections 3105.184 through  
608 3105.185, inclusive, of the Revised Code, may be modified or terminated, in the discretion of the  
609 court, if the obligee and a third person have cohabited. In determining whether persons cohabit,  
610 the court may consider the extent to which their relationship fosters the parties' economic  
611 interdependence, or the economic dependence of one party upon the other, and the extent to  
612 which they intermingle the financial obligations of the common household, and any other factor  
613 the court expressly finds to be relevant and equitable.  
614

615 (J) An award modified or terminated pursuant to this section shall be effective on the  
616 date the motion is filed, unless the court determines otherwise.  
617

618 (K) If a person required to pay alimony under an order made or modified by a court on  
619 or after December 1, 1986, and before January 1, 1991, or any person required to pay spousal  
620 support under an order made or modified by a court on or after January 1, 1991, (or any person  
621 required to pay compensatory spousal support under an order made or modified by the court on  
622 or after the effective date of this statute) is found in contempt of court for failure to make any  
623 such payments due under the order, the court that makes the finding, in addition to any other  
624 penalty or remedy imposed, shall assess all court costs arising out of the contempt proceeding  
625 against the person, and shall require the person to pay any reasonable attorney's fees of any  
626 adverse party, as determined by the court, that arose in relation to the act of contempt.

627 **Section 2.** That existing sections 3105.171 and 3105.18 of the Revised Code are hereby  
628 repealed.

629 **Section 3.** Sections 1 and 2 of this act shall govern any relevant action pending in a court  
630 in which a final order of disposition has not been entered by the court.

631 **Section 4.** Sections 1, 2 and 3 of this act shall take effect six months after the effective  
632 date of this act.

633 **Section 5.** If any provision of this act or its application to any person or circumstance is  
634 held invalid, the invalidity does not affect other provisions or applications of this act that can be  
635 given effect without the invalid provision or application, and to this end the provisions of this act  
636 are severable.