



# Judicial Impact Statement

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## House Bill 244 128th General Assembly

### Sponsor

Representative Sandra  
Stabile Harwood

### Status

House Judiciary Committee

### Version

As Introduced

### TITLE INFORMATION

To amend sections 3105.171, 3105.63, and 3105.65 of the Revised Code to permit a court to modify the division of property order in a divorce decree or decree of dissolution of marriage upon the express written consent or agreement of both spouses.

### IMPACT SUMMARY

The Ohio Judicial Conference's Domestic Relations Law and Procedure Committee and the Ohio Association of Domestic Relations Judges (OADRJ) worked with the bill sponsor to develop House Bill 244. House Bill 244 will impact court workload, improve the administration of justice and enhance public confidence in the law by allowing parties to a divorce decree or a decree of dissolution of marriage to modify a division or disbursement of property or a distributive award made in conjunction with such a decree, a concept that is included in the Ohio Judicial Conference's 2009-2010 legislative platform.

### BACKGROUND

House Bill 244 is the result of a joint effort between the Ohio Judicial Conference's Domestic Relations Law and Procedure Committee and the Ohio Association of Domestic Relations Judges to develop a legislative proposal to address a recurring problem in divorce cases.

Under current law, an Ohio court issuing a divorce decree, or a decree of dissolution of marriage, distributes marital property to each party according to what the court deems fair after assessing the unique situation of the parties, a process known as equitable distribution. This process requires the court to consider a variety of factors such as the duration of the marriage, the assets and liabilities of the spouses, the tax consequences of any property division or distribution and, among other

### What is a Judicial Impact Statement?

A Judicial Impact Statement describes as objectively and accurately as possible the probable, practical effects on Ohio's court system of the adoption of the particular bill. The court system includes people who use the courts (parties to suits, witnesses, attorneys and other deputies, probation officials, judges and others). The Ohio Judicial Conference prepares these statements pursuant to R.C. 105.911.

things, any agreement which the spouses have voluntarily entered into. Once the court enters a final order or decree, the only way to amend any distribution of property is to challenge the order on appeal or to file a Civ.R. 60(B) motion for relief from judgment, two remedies that are only successful in a narrow set of circumstances. Outside of this, a division or disbursement of property or a distributive award is not subject to future modification by the court. Importantly, this remains true even when the parties expressly agree to a modification of their original settlement.

The inability of trial courts to make modifications in these circumstances often results in what is ultimately an inequitable distribution of marital property, a situation that has become more pronounced during the current recession. This problem is most evident in the area of real property where the parties' agreement regarding the disposition of real estate is often not only inequitable but not even feasible. For example, parties to a decree of dissolution of marriage sometimes agree to sell the marital residence and divide the proceeds according to an agreed-upon percentage. They may, however, be unable to sell the house due to market conditions, thus creating a situation where the most valuable piece of marital property is illiquid and unoccupied and therefore of little value to either party. Alternatively, the parties may have agreed that one ex-spouse will remain living in the marital residence but will refinance any mortgage in his or her own name so as to relieve the other ex-spouse from responsibility for the mortgage. If, however, the remaining ex-spouse is unable to qualify for financing, a scenario that is increasingly likely given the recent tightening of lending standards, a variety of problems could arise. First, the ex-spouse who gave up the home will remain liable on the mortgage and as such, will assume the risk of foreclosure and any resulting impact on his or her credit score. Second, and perhaps more importantly, the ex-spouse who retains the home faces the possibility of being held in contempt of court for failing to comply with the court order when the circumstances of compliance were beyond his or her own control, a result that has serious implications for public confidence in the law.

Ultimately, a choice must be made between competing policy interests. As a society, we encourage both the finality of judgments and the freedom to enter into agreements and to contract without court interference, two policies that are in conflict where both parties to a divorce or legal separation wish to modify a separation agreement. Significantly, the need for finality is heightened in the area of divorce law where subsequent marriages and any children of those marriages might be involved and the legal relationships of all could be brought into question. Nevertheless, there are instances where public policy favors fairness over finality. In most other areas of contract law, parties are allowed to amend or modify the terms of their agreement by mutual consent. Even in divorce cases, current law gives courts continuing jurisdiction to modify court ordered spousal support where both parties have agreed to the modification and where the circumstances of one or both of the parties have changed. This bill makes clear that parties to a divorce or legal separation may modify a division of property order in the same manner.

## **JUDICIAL IMPACT**

Current law does not permit parties to modify property division agreements once the court has entered its final judgment. This creates finality in the law, a policy that is of paramount importance to the courts under most circumstances. Nevertheless, there are instances where inflexibility can be

problematic for the parties, especially when unforeseen circumstances make compliance with the court order very difficult or even impossible. House Bill 244 will amend sections 3105.171, 3105.63 and 3105.65 of the Revised Code to permit a court, with the consent of the parties, to modify a division of property order made in conjunction with a divorce decree or decree of dissolution of marriage. The Ohio Judicial Conference and The Ohio Association of Domestic Relations Judges (OADRJ) believe that this legislation will have an overall positive impact on Ohio's courts. Though additional post-decree hearings will increase court workload and administrative expenses, Ohio judges believe that any negative impact will be minimal and should be far outweighed by the positive benefits in the administration of justice and public confidence in the law. These considerations are discussed below:

Increased court workload: House Bill 244 will impact court workload in two significant ways. First, there will be an increase in the number of post-decree hearings, as courts may have to determine whether the agreed upon motion for modification is being made voluntarily and with full disclosure. Second, as House Bill 244 creates an incentive to settle property disputes in divorce amicably, there may be a corresponding reduction in court workload as judges will spend less time overseeing lengthy, contentious divorce battles, ruling on Civ.R. 60(B) motions for relief from judgment, and clarifying ambiguities in decrees that have been sent back to them after appeal.

Despite any potential increase in workload, Ohio's judges encourage this amendment to the law and welcome these new hearings because allowing post-decree modifications under these circumstances will result in better outcomes for the parties involved.

Increased administrative expenses: House Bill 244 will have a limited fiscal impact on the courts as there will be only minimal costs associated with the implementation of the new procedures described in the preceding paragraph. Most costs will result from the filing of modified orders. There should, however, be very little fiscal impact relative to staff training or docket management as the additional hearings are similar in kind to other post-decree hearings, such as those involving modification of spousal support orders. Finally, while additional docket time will need to be devoted to these hearings, additional judgeships should not be necessary, as it should be easy for current judges to incorporate these hearings into their regular work schedule.

Improvements in the administration of justice: The lack of a definitive tool for judges to use to solve the problems being described has caused a divide among the Courts of Appeals who either hold that the trial court lacks jurisdiction to modify these settlements under RC 3105.171 or find that the court has continuing jurisdiction to modify pursuant to the Supreme Court of Ohio's decision in *In re Whitman*. In *In re Whitman*, the court held that trial courts may modify division of property orders pursuant to a Civ.R. 60(B) motion when the parties to a decree of dissolution have expressly agreed to any such future modification. The remedy developed by the Supreme Court is however restricted by two requirements of the applicable sections of Civ.R. 60(B). First, the rule requires that any motion for relief be made not more than one year after judgment. Second, it requires that the original order contain material omissions, mistakes and/or misstatements that the party making the motion for relief was unaware of at the time the agreement was entered into. These restrictions severely limit the applicability of Civ.R. 60(B) given the fact that the problems being described often occur outside of

the rule's one year time frame and that the parties seeking relief have often made full disclosure of their assets.

House Bill 244 takes the decision in *In re Whitman* one step further by giving judges the authority, upon the express agreement of the parties, to modify division of property orders outside of the requirements of Civ.R. 60(B). Given the current divide in the Courts of Appeals on this issue, this amendment will provide for a more uniform application of Ohio law and improve the administration of justice as domestic relations courts will no longer be forced to decide whether they do or do not have jurisdiction to modify these orders.

Improvements in public confidence: House Bill 244 would not be necessary if parties could simply ignore the court order and divide the property in a manner that best fit their needs. This is not however, a viable option as parties cannot simply ignore court orders without experiencing some side effects of doing so. This becomes particularly evident when one considers the possibility of contempt. For example, in the scenario above where one ex-spouse remains in the house but is unable to refinance the mortgage, he or she could potentially face foreclosure proceedings and be held in contempt for violating the division of property order, a result that seems particularly unfair considering the fact that the violation was unintentional. Another area where the viability of this option is evident is in real estate, where a future sale may be jeopardized because the title examiner finds the divorce decree to be a lien or impediment to good title. The same is true in probate cases where one of the parties dies with unresolved divorce decree issues. Additionally, there may be tax issues that result from transactions not included in a decree. When courts are forced to follow a statutory scheme that results in inherently unfair outcomes such as these, public confidence in the law and in the courts suffers.

The Ohio Judicial Conference expects the enactment of House Bill 244 to enhance public confidence in the law by enabling domestic relations courts to reach more equitable outcomes in divorce and legal separation proceedings. Increasing the flexibility of the law to allow consenting parties to divide marital property, subsequent to separation, in a manner that is consistent with their changing economic needs, will enable parties avoid title, probate, tax and other serious legal issues down the road. Consequently, this will increase the perception that the law is fair and that courts are responsive to those who are in need of a solution.

## CONCLUSION

The Ohio Judicial Conference, the voice of Ohio's judges, encourages the passage of House Bill 244. The bill will promote public confidence in the law and improve the administration of justice by ensuring that marital property is distributed in a more equitable fashion and in a manner that is more in line with the parties' desires and needs.