

## MODIFY NO-FAULT DIVORCE

House Bill 5168

Sponsor: Rep. Joanne Voorhees

Committee: Civil Law and the Judiciary

Complete to 10-12-01

### A SUMMARY OF HOUSE BILL 5168 AS INTRODUCED 10-9-01

Current law allows for no-fault divorces, meaning that a couple may be divorced upon an allegation and the presentation of evidence that there has been a breakdown in the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved. The couple need not show any further grounds to support the entry of a judgment of divorce.

House Bill 5168 would amend Chapter 84 of the Revised Statutes of 1846, entitled "Of divorce", to limit no-fault divorces to cases in which both parties agree to voluntarily end the marriage, and only if the parties have complied with other provisions of the act (including the requirement for parties to complete a divorce effects educational program if there are minor children, proposed in House Bill 5166). If either party to a marriage did not consent to a divorce, the person seeking the divorce would file as the plaintiff and a divorce could be granted only under one of the following circumstances.

Divorce granted to prevent harm to a minor child. A divorce could be granted if the court found that there was a breakdown in the marriage relationship to the extent that the objects of matrimony have been destroyed, that there remains no reasonable likelihood that the marriage could be preserved, and that not granting a divorce would likely cause harm to a minor child who resides in the home of one of the parties. In determining whether a child would be harmed, the court would be required to consider the likely emotional, mental, and physical health of the child; the likely impact on the financial status of the child; the likely educational attainment of the child; the capacity and disposition of the parents to provide love, affection, guidance, and continuation of religious upbringing, if any; and any other factor relevant to the dissolution of the marriage and the well-being of the child.

Nonconsensual divorce without cause. A court could grant a "nonconsensual divorce granted without cause" upon the request of the person seeking the divorce (the plaintiff), in which case the court would have to weigh that request "substantially in favor" of the other party when making a property settlement.

Conduct-based divorce. A court could grant a divorce upon a finding that the conduct of the defendant had led to a breakdown of the marriage. In making that determination, the court would have to consider the amount of time that had passed since the occurrence of the conduct in question.

Under the bill, a defendant could admit alleged conduct, deny conduct without further explanation, or counterclaim based on the conduct of the plaintiff. A defendant's admission of alleged conduct would not be an admission of destroying the objects of matrimony and would

not be a voluntary consent to the divorce. The court could consider an admission of the defendant as proof of the particular conduct admitted to, but would not be bound by it.

Spousal support and division of marital property. In cases where a divorce was nonconsensual, the court would have to consider the finding or grant of divorce (i.e., the conduct of the parties, and the “fault” of the parties) in ordering spousal support and in the division of property. It would have to weigh such conduct or fault “substantially in favor” of the party who is found to *not* have engaged in the conduct. Likewise, the same provision would apply in the division of marital property. The bill specifies that a division of property that granted an otherwise disproportionate portion of property or its value to the “not-at-fault” party would be considered to be a just and reasonable division, unless the court found on the record that the facts of the particular case made such an award unfair. The same standard would apply in granting a disproportionate portion of property to the defendant in a “nonconsensual divorce granted without good cause”.

Under current law, an award of alimony may be terminated by the court upon remarriage of the party receiving alimony. The bill would specify, instead, that the party required to pay spousal support could petition the court for modification or termination of that obligation if the party receiving the support remarries or cohabits with a person of the opposite sex to whom the party is not related, and the court could grant a modification or termination under these circumstances unless a contrary agreement is specifically stated in the judgment of divorce.

Separate maintenance. Under current law, an action for separate maintenance may be filed in the same manner and on the same grounds as an action for divorce. The bill would delete the current provisions regarding separate maintenance. Instead, it would specify that upon the filing of an action for separate maintenance, the court would enter a judgment of separate maintenance along with a notice stating that, if the judgment remains in effect for longer than three years, either party, without the consent of the other, could file a complaint for divorce and have it granted without an allegation or proof of conduct as described above. At any time after a judgment of separate maintenance, both parties could file a sworn statement seeking to void the judgment, and it would be void.

Ex parte orders. Under the bill, a court could not issue an ex parte order (an order granted on behalf of one party only, without notification to the other) in a divorce proceeding unless it related to:

- Physical abuse of a party or of a child involved in the proceeding;
- Disposal or alteration of an asset involved in the proceeding; or,
- A personal protection order issued under the Revised Judicature Act.

Statements of assets and liabilities, employment. The bill would require each party to a divorce action to file with the court, within 28 days after service of the defendant in an action for divorce (or an extension of that time period if granted by the court for good cause), a sworn statement that identifies his or her place of employment and other sources of income, and that lists assets and liabilities. The court would have to attempt to release these sworn statements to the opposite parties at approximately the same time. The statements would have to include at

least all of the following assets: real property; checking and savings account balances; stocks and bonds; income tax refunds due the parties; life insurance; loans held as a creditor or money owed to the parties in whatever form; retirement funds and pension benefits; professional licenses; motor vehicles, boats, mobile homes, or any other type of vehicle, including untitled vehicles; extraordinary tools of a trade; cemetery lots; and other assets in whatever form. In addition, the statements would have to list liabilities, including, at least: secured and unsecured credits; taxes; rents and security deposits; and all other liabilities in whatever form. If the list of liabilities included a major debt for which the parties are jointly liable, such as a home mortgage or credit card debt, the parties would have to file an agreed-upon debt retirement plan, or, if the parties could not agree, each would file a proposed plan.

Each party to the divorce action would be under a continuing duty to supplement his or her statements of assets and liabilities if there were a newly discovered asset or liability. If one party discovered an asset that the other party was aware of and failed to list, the party that failed to list the item would be liable for attorney fees and other costs or expenses incurred by the other party as a result of the nondisclosure.

A party to a divorce action would be prohibited from disposing of or altering an asset that is under the jurisdiction of the court in the divorce action, unless permitted by an order of the court or by the written, voluntary consent of the other party.

Venue for divorce actions. A divorce could only be filed in:

- the county where the parties to the marriage most recently cohabited;
- if that place was not within Michigan, then the county where either party has lived for longer than 180 days;
- if both parties are a minor child's parents, the county where one party has resided with the minor child for longer than 180 days; or,
- if it were an action for separate maintenance, in the county where either party resides.

If a complaint were not filed in the proper county as required by the bill, a court could not issue a judgment of divorce without a showing of good cause on the record. These requirements would be in addition to and not instead of other residency requirements prescribed by the act or other law.

MCL 552.6 et al.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.