

Legislative Analysis



DIVORCE: DIVISION OF PROPERTY

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House Bills 4672 and 4673
Sponsor: Rep. John Walsh
Committee: Judiciary

Complete to 6-22-11

A SUMMARY OF HOUSE BILLS 4672 AND 4673 AS INTRODUCED 5-24-11

House Bill 4672 would enact standards for the division of marital property and commingled marital and nonmarital property, and would exclude nonmarital property from division in most instances. House Bill 4673 would revise the manner in which property belonging to one spouse may be awarded to the other. The bills are tie-barred to each other.

House Bill 4672 would amend Chapter 84 of the Revised Statutes of 1846, known as the divorce law, to set in statute standards for the distribution of property acquired during a marriage when that marriage ends in annulment, divorce, or a judgment of separate maintenance (MCL 552.18 and 552.19). Significant changes are as follows:

- All property acquired by either spouse after their marriage and before a complaint for annulment or divorce is filed in court would be presumed to be marital property, including nonmarital property transferred into some form of co-ownership between the spouses. This would be so regardless of whether title to the property was held individually or jointly. The presumption could be rebutted by evidence that the property is nonmarital property.
- Under certain conditions, a stock option or stock award granted to a party after the marriage and before a judgment of annulment or divorce would be presumed to be marital property.
- Commingled marital and nonmarital property would be treated in the manner specified in the bill, unless otherwise agreed upon by the spouses.
- A court would be required to assign each spouse's nonmarital property to that spouse.
- Marital property would have to be divided in just proportions considering all relevant factors, including factors specified in the bill such as the contribution of each party to the acquisition, preservation, or increase or decrease in value of the marital property.

"Nonmarital property" would be defined to mean property that is either:

(1) Acquired by a spouse before the marriage regardless of the purpose or intent of the acquisition; and/or

(2) Property to which the following apply:

- Acquired by gift, devise, intestate distribution, or inheritance at any time.

- Acquired by a spouse in exchange for property acquired before the marriage or in exchange for property acquired by gift, devise, intestate distribution, or inheritance at any time.
- Acquired by a spouse after a judgment of separate maintenance.
- Excluded from marital property by valid agreement of the parties.
- Is the subject of a judgment or property obtained by a judgment awarded to the spouse from the other spouse.
- Consists of the increase in value of property described above, regardless of whether the increase resulted from a contribution of marital property, nonmarital property, or the personal effort of a spouse or from another source. (This property would be subject to the right of reimbursement created under the bill).
- Consists of income from property described above.

Further, the bill would revise current provisions regarding the distribution of pension, annuity, or retirement benefits. The act provides that rights in and to vested pension, annuity, or retirement benefits (or accumulated contributions in those systems), payable to or on behalf of a party on account of service credit accrued by the party during marriage are to be considered part of the marital estate subject to award by the court. The bill would instead specify that there is a presumption that rights to those benefits or contributions are marital property subject to award.

In addition, where current law says that rights or contingent rights in and to unvested pension, annuity, or retirement benefits accrued by a party during marriage may be considered part of the marital estate subject to award by the court where just and equitable, the bill would instead presume these unvested benefits to be marital property subject to award if just and equitable.

House Bill 4673 would amend Public Act 42 of 1949 (MCL 552.401). Under the act, a circuit court can include in a divorce decree or separate maintenance decree provisions awarding to one spouse all or part of the real or personal property owned by the other spouse as appears to the court to be equitable under all the circumstances of the case, if it appears from the evidence in the case that the first spouse contributed to the acquisition, improvement, or accumulation of the property. The underlined text would be deleted and such property would be awarded as provided by House Bill 4672.

FISCAL IMPACT:

House Bills 4672 and 4673 would have no fiscal impact on state or local government.

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