

HOUSE BILL No. 4672

May 24, 2011, Introduced by Rep. Walsh and referred to the Committee on Judiciary.

A bill to amend 1846 RS 84, entitled
"Of divorce,"
by amending sections 18 and 19 (MCL 552.18 and 552.19), section 18
as amended by 1991 PA 86.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 18. (1) ~~Any~~ **THERE IS A PRESUMPTION THAT** rights in and to
2 vested pension, annuity, or retirement benefits, or accumulated
3 contributions in any pension, annuity, or retirement system,
4 payable to or on behalf of a party on account of service credit
5 accrued by the party during marriage ~~shall be considered part of~~
6 ~~the~~ **ARE** marital estate ~~PROPERTY~~ subject to award by the court under
7 this chapter.

8 (2) ~~Any~~ **THERE IS A PRESUMPTION THAT** rights or contingent
9 rights in and to unvested pension, annuity, or retirement benefits

1 payable to or on behalf of a party on account of service credit
 2 accrued by the party during marriage ~~may be considered part of the~~
 3 **ARE** marital estate ~~PROPERTY~~ subject to award by the court under
 4 this chapter ~~where IF~~ just and equitable.

5 (3) A PRESUMPTION UNDER THIS SECTION MAY BE REBUTTED BY THE
 6 INTRODUCTION OF EVIDENCE THAT THE PROPERTY IS NONMARITAL PROPERTY
 7 AS DEFINED IN SECTION 19 OF THIS CHAPTER.

8 (4) ~~(3)~~ Upon motion of a party or upon consent of the parties,
 9 an order of the court under this section entered before ~~the~~
 10 ~~effective date of the amendatory act that added this subsection~~
 11 **JULY 18, 1991** shall be amended to satisfy the requirements of an
 12 eligible domestic relations order and to effectuate the intent of
 13 the parties or the ruling of the court. As used in this subsection,
 14 "eligible domestic relations order" means a domestic relations
 15 order that is an eligible domestic relations order under the
 16 eligible domestic relations order act, **1991 PA 46, MCL 38.1701 TO**
 17 **38.1711.**

18 Sec. 19. (1) ~~Upon the annulment of a marriage, a divorce from~~
 19 ~~the bonds of matrimony or a judgment of separate maintenance, the~~
 20 ~~court may make a further judgment for restoring to either party the~~
 21 ~~whole, or such parts as it shall deem just and reasonable, of the~~
 22 ~~real and personal estate that shall have come to either party by~~
 23 ~~reason of the marriage, or for awarding to either party the value~~
 24 ~~thereof, to be paid by either party in money.~~ **FOR PURPOSES OF**
 25 **DISTRIBUTION OF PROPERTY UNDER THIS SECTION, ALL PROPERTY ACQUIRED**
 26 **BY EITHER SPOUSE AFTER THEIR MARRIAGE AND BEFORE EITHER SPOUSE**
 27 **FILES A COMPLAINT FOR ANNULMENT OR DIVORCE IN A PROPER COURT,**

1 INCLUDING NONMARITAL PROPERTY TRANSFERRED INTO SOME FORM OF CO-
2 OWNERSHIP BETWEEN THE SPOUSES, IS PRESUMED TO BE MARITAL PROPERTY,
3 REGARDLESS OF WHETHER TITLE IS HELD INDIVIDUALLY OR BY THE SPOUSES
4 IN SOME FORM OF CO-OWNERSHIP SUCH AS JOINT TENANCY, TENANCY IN
5 COMMON, OR TENANCY BY THE ENTIRETY. THE PRESUMPTION UNDER THIS
6 SUBSECTION MAY BE REBUTTED BY THE INTRODUCTION OF EVIDENCE THAT THE
7 PROPERTY IS NONMARITAL PROPERTY.

8 (2) FOR PURPOSES OF DISTRIBUTION OF PROPERTY UNDER THIS
9 SECTION, A STOCK OPTION OR STOCK AWARD GRANTED TO EITHER SPOUSE
10 AFTER THE MARRIAGE AND BEFORE A JUDGMENT OF ANNULMENT OR DIVORCE,
11 WHETHER VESTED OR NONVESTED OR WHETHER THE VALUE IS ASCERTAINABLE,
12 IS PRESUMED TO BE MARITAL PROPERTY. THIS PRESUMPTION MAY BE
13 REBUTTED BY THE INTRODUCTION OF EVIDENCE THAT THE STOCK OPTION OR
14 AWARD IS NONMARITAL PROPERTY. THE COURT SHALL AWARD A STOCK OPTION
15 OR AWARD OR DIVIDE IT BETWEEN THE PARTIES AT THE TIME OF A JUDGMENT
16 OF ANNULMENT, DIVORCE, OR SEPARATE MAINTENANCE RECOGNIZING THAT THE
17 VALUE OF THE STOCK OPTION OR AWARD MAY NOT THEN BE DETERMINABLE AND
18 THAT THE ACTUAL DIVISION OF THE OPTION OR AWARD MAY NOT OCCUR UNTIL
19 A FUTURE DATE. IN MAKING THE AWARD OR DIVISION BETWEEN THE PARTIES,
20 THE COURT SHALL CONSIDER, IN ADDITION TO THE FACTORS IN SUBSECTION
21 (4), ALL OF THE FOLLOWING:

22 (A) ALL CIRCUMSTANCES UNDERLYING THE GRANT OF THE STOCK OPTION
23 OR AWARD, INCLUDING WHETHER THE GRANT WAS FOR PAST, PRESENT, OR
24 FUTURE EFFORTS, WHETHER THE GRANT WAS TO ENCOURAGE THE SPOUSE TO
25 CONTINUE EMPLOYMENT WITH THE COMPANY, OR ANY COMBINATION OF THESE
26 CIRCUMSTANCES.

27 (B) THE LENGTH OF TIME FROM THE GRANT OF THE OPTION TO THE

1 TIME THE OPTION IS EXERCISABLE.

2 (3) COMMINGLED MARITAL AND NONMARITAL PROPERTY SHALL BE
3 TREATED IN THE FOLLOWING MANNER, UNLESS OTHERWISE AGREED BY THE
4 SPOUSES:

5 (A) IF THE MARITAL AND NONMARITAL PROPERTY WERE COMMINGLED BY
6 CONTRIBUTING 1 ESTATE OF PROPERTY INTO ANOTHER RESULTING IN A LOSS
7 OF IDENTITY OF THE CONTRIBUTED PROPERTY, THE CLASSIFICATION OF THE
8 CONTRIBUTED PROPERTY IS TRANSMUTED TO THE ESTATE RECEIVING THE
9 CONTRIBUTION, SUBJECT TO SUBDIVISION (B). HOWEVER, IF MARITAL AND
10 NONMARITAL PROPERTY ARE COMMINGLED INTO NEWLY ACQUIRED PROPERTY
11 RESULTING IN A LOSS OF IDENTITY OF THE CONTRIBUTING ESTATES, THE
12 COMMINGLED PROPERTY SHALL BE CONSIDERED TRANSMUTED TO MARITAL
13 PROPERTY, SUBJECT TO SUBDIVISION (B).

14 (B) IF 1 ESTATE OF PROPERTY MAKES A CONTRIBUTION TO ANOTHER
15 ESTATE OF PROPERTY, OR IF A SPOUSE CONTRIBUTES PERSONAL EFFORT TO
16 NONMARITAL PROPERTY, THE CONTRIBUTING ESTATE SHALL BE REIMBURSED
17 FROM THE ESTATE RECEIVING THE CONTRIBUTION FOR ANY CONTRIBUTION FOR
18 WHICH THE CONTRIBUTING SPOUSE WAS NOT REASONABLY COMPENSATED
19 NOTWITHSTANDING ANY TRANSMUTATION. HOWEVER, THIS SUBDIVISION DOES
20 NOT APPLY IF THE CONTRIBUTION IS NOT RETRACEABLE BY A PREPONDERANCE
21 OF THE EVIDENCE, IF THE CONTRIBUTION WAS A GIFT, OR, FOR A
22 CONTRIBUTION BY A SPOUSE OF PERSONAL EFFORT TO NONMARITAL PROPERTY,
23 UNLESS THE EFFORT IS SIGNIFICANT AND RESULTS IN SUBSTANTIAL
24 APPRECIATION OF THE NONMARITAL PROPERTY. PERSONAL EFFORT OF A
25 SPOUSE THAT HAS NOT BEEN REASONABLY COMPENSATED SHALL BE CONSIDERED
26 A CONTRIBUTION BY THE MARITAL ESTATE. THE COURT MAY PROVIDE FOR
27 REIMBURSEMENT OUT OF THE MARITAL PROPERTY TO BE DIVIDED OR BY

1 IMPOSING A LIEN AGAINST THE NONMARITAL PROPERTY THAT RECEIVED THE
2 CONTRIBUTION.

3 (4) IN AN ACTION FOR ANNULMENT, DIVORCE, OR SEPARATE
4 MAINTENANCE, THE COURT SHALL ASSIGN EACH SPOUSE'S NONMARITAL
5 PROPERTY TO THAT SPOUSE. IT ALSO SHALL DIVIDE THE MARITAL PROPERTY
6 IN JUST PROPORTIONS CONSIDERING ALL RELEVANT FACTORS, INCLUDING ALL
7 OF THE FOLLOWING:

8 (A) THE CONTRIBUTION OF EACH PARTY TO THE ACQUISITION,
9 PRESERVATION, OR INCREASE OR DECREASE IN VALUE OF THE MARITAL
10 PROPERTY, INCLUDING BOTH OF THE FOLLOWING:

11 (i) ANY DECREASE IN VALUE OF THE MARITAL PROPERTY ATTRIBUTABLE
12 TO A PAYMENT CONSIDERED TO HAVE BEEN AN ADVANCE FROM THE PARTIES'
13 MARITAL ESTATE FOR THE INTERIM PAYMENT OF ATTORNEY FEES AS ORDERED
14 BY A COURT OR BY AGREEMENT OF THE PARTIES. PAYMENTS FROM A SPOUSE'S
15 NONMARITAL ESTATE FOR THE OTHER SPOUSE'S ATTORNEY FEES OR COSTS
16 SHALL BE REIMBURSED FROM THE MARITAL ESTATE.

17 (ii) ANY SIGNIFICANT CONTRIBUTION OF A SPOUSE AS A HOMEMAKER OR
18 TO THE FAMILY UNIT.

19 (B) THE DISSIPATION BY EACH PARTY OF THE MARITAL OR NONMARITAL
20 PROPERTY.

21 (C) THE VALUE OF THE PROPERTY ASSIGNED TO EACH SPOUSE.

22 (D) THE DURATION OF THE MARRIAGE.

23 (E) THE RELEVANT ECONOMIC CIRCUMSTANCES OF EACH SPOUSE WHEN
24 THE DIVISION OF PROPERTY IS TO BECOME EFFECTIVE, INCLUDING THE
25 DESIRABILITY OF AWARDING THE FAMILY HOME, OR THE RIGHT TO LIVE IN
26 THE FAMILY HOME FOR REASONABLE PERIODS, TO THE SPOUSE THAT HAS
27 CUSTODY OF ANY CHILDREN.

1 (F) ANY OBLIGATIONS AND RIGHTS ARISING FROM A PREVIOUS
2 MARRIAGE OF EITHER PARTY.

3 (G) ANY PRENUPTIAL AGREEMENT OF THE PARTIES.

4 (H) THE AGE, HEALTH, STATION, OCCUPATION, AMOUNT AND SOURCES
5 OF INCOME, VOCATIONAL SKILLS, EMPLOYABILITY, ESTATE, LIABILITIES,
6 AND NEEDS OF EACH OF THE PARTIES.

7 (I) THE CUSTODIAL PROVISIONS FOR ANY CHILDREN.

8 (J) WHETHER THE APPORTIONMENT IS IN LIEU OF OR IN ADDITION TO
9 SPOUSAL SUPPORT.

10 (K) THE REASONABLE OPPORTUNITY OF EACH SPOUSE FOR FUTURE
11 ACQUISITION OF CAPITAL ASSETS AND INCOME.

12 (L) THE TAX CONSEQUENCES OF THE PROPERTY DIVISION ON THE
13 RESPECTIVE ECONOMIC CIRCUMSTANCES OF THE PARTIES.

14 (5) AS USED IN THIS SECTION, "NONMARITAL PROPERTY" MEANS
15 PROPERTY THAT IS EITHER OR BOTH OF THE FOLLOWING:

16 (A) PROPERTY ACQUIRED BY A SPOUSE BEFORE THE MARRIAGE
17 REGARDLESS OF THE PURPOSE OR INTENT OF THE ACQUISITION.

18 (B) PROPERTY TO WHICH 1 OR MORE OF THE FOLLOWING APPLY:

19 (i) THE PROPERTY WAS ACQUIRED BY GIFT, DEVISE, INTESTATE
20 DISTRIBUTION, OR INHERITANCE AT ANY TIME.

21 (ii) THE PROPERTY WAS ACQUIRED BY A SPOUSE IN EXCHANGE FOR
22 PROPERTY ACQUIRED BEFORE THE MARRIAGE OR IN EXCHANGE FOR PROPERTY
23 ACQUIRED BY GIFT, DEVISE, INTESTATE DISTRIBUTION, OR INHERITANCE AT
24 ANY TIME.

25 (iii) THE PROPERTY WAS ACQUIRED BY A SPOUSE AFTER A JUDGMENT
26 OF SEPARATE MAINTENANCE.

27 (iv) THE PROPERTY IS EXCLUDED FROM MARITAL PROPERTY BY VALID

1 AGREEMENT OF THE PARTIES.

2 (v) THE PROPERTY IS THE SUBJECT OF A JUDGMENT OR PROPERTY
3 OBTAINED BY A JUDGMENT AWARDED TO THE SPOUSE FROM THE OTHER SPOUSE.

4 (vi) THE PROPERTY CONSISTS OF THE INCREASE IN VALUE OF PROPERTY
5 DESCRIBED IN SUBPARAGRAPHS (i) TO (v), REGARDLESS OF WHETHER THE
6 INCREASE RESULTS FROM A CONTRIBUTION OF MARITAL PROPERTY,
7 NONMARITAL PROPERTY, OR THE PERSONAL EFFORT OF A SPOUSE OR FROM
8 ANOTHER SOURCE. PROPERTY DESCRIBED IN THIS SUBDIVISION IS SUBJECT
9 TO THE RIGHT OF REIMBURSEMENT UNDER SUBSECTION (3).

10 (vii) THE PROPERTY CONSISTS OF INCOME FROM PROPERTY DESCRIBED
11 IN SUBPARAGRAPHS (i) TO (vi).

12 Enacting section 1. This amendatory act does not take effect
13 unless Senate Bill No. _____ or House Bill No. 4673 (request no.
14 02213'11 a *) of the 96th Legislature is enacted into law.