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Pending Legislation-Sub. House Bill 359

Currently pending before the Ohio House of Representatives is Sub. H.B. 359 which will make changes in how and under what circumstances attorney's fees and litigation expenses may be awarded in domestic relations cases. The bill has passed the House Civil and Commercial Law Committee and is awaiting a vote by the full House.

Current law permits the award of 'reasonable attorney's fees' in divorce or legal separation cases 'at any stage of the proceeding' if the court determines 'that the other party has the ability to pay the attorney's fees that the court awards.' R.C. 3105.18(H). When the court determines to award attorney's fees, 'it shall determine whether either party will be prevented from fully litigating that party's rights and adequately protecting that party's interest if it does not award reasonable attorney's fees.' R.C. 3105.18(H). H.B. 359 would repeal this section and replace it with new R.C. 3105.73. Subsection (A) would provide that a court may award 'reasonable attorney's fees and litigation expenses' in any action for divorce, legal separation, annulment, or post-decree action, including appeals, 'if the court finds the award appropriate under the totality of the circumstances involved in the action.' In determining the appropriateness of an award under the 'totality of the circumstances' test, the court shall consider 'the moving party's need verses each party's ability to pay.' The award may be for fees and expenses already incurred or that are 'reasonably anticipated.' Proposed subsection (B) further provides that the court may order the fees and expenses in gross or by installments, and such an award may be in addition to any other award allowed by the Revised Code or the Rules of Civil Procedure.

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