

As Introduced

**134th General Assembly
Regular Session
2021-2022**

S. B. No. 210

Senator Gavarone

A BILL

To amend sections 2106.22, 3103.05, 3103.06, 1
3105.17, and 3105.171 and to enact section 2
3103.061 of the Revised Code regarding 3
agreements affecting legal relations between 4
spouses. 5

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2106.22, 3103.05, 3103.06, 6
3105.17, and 3105.171 be amended and section 3103.061 of the 7
Revised Code be enacted to read as follows: 8

Sec. 2106.22. Any antenuptial, postnuptial, or separation 9
agreement to which a decedent was a party is valid unless an 10
action to set it aside is commenced within four months after the 11
appointment of the executor or administrator of the estate of 12
the decedent, or unless, within the four-month period, the 13
validity of the agreement otherwise is attacked. 14

Sec. 3103.05. (A) A husband or wife may enter into any 15
engagement agreement or transaction with the either of the 16
following: 17

(1) The other spouse, or with any subject to the general 18
rules that control the actions of persons occupying the 19

confidential relations with each other; 20

(2) With any other person, which either might if 21
unmarried; subject, in transactions between themselves, to the 22
general rules which control the actions of persons occupying 23
confidential relations with each other. 24

(B) An agreement under division (A) (1) of this section 25
that alters the legal relations between the spouses shall comply 26
with section 3103.061 of the Revised Code. 27

Sec. 3103.06. (A) A husband and wife cannot may, by any 28
contract with each other, alter do any of the following: 29

(1) Enter into a postnuptial agreement that alters their 30
legal relations, except that they may agree with each other; 31

(2) Modify or terminate an antenuptial or postnuptial 32
agreement or any other agreement that alters their legal 33
relations with each other; 34

(3) Agree to an immediate separation and make provisions 35
for the division of property and support of either of them and 36
their children during the separation. 37

(B) An agreement under division (A) (1) or (2) of this 38
section shall comply with section 3103.061 of the Revised Code. 39

Sec. 3103.061. Any agreement altering legal relations 40
between spouses established under division (A) (1) of section 41
3103.05 or division (A) (1) or (2) of section 3103.06 of the 42
Revised Code shall be valid and enforceable, with or without 43
consideration, if all of the following apply: 44

(A) The agreement is in writing and signed by both 45
spouses; 46

(B) The agreement is entered into freely without fraud, 47
duress, coercion, or overreaching; 48

(C) There was full disclosure, or full knowledge, and 49
understanding of the nature, value, and extent of the property 50
of both spouses; 51

(D) The terms do not promote or encourage divorce or 52
profiteering by divorce. 53

Sec. 3105.17. (A) Either party to the marriage may file a 54
complaint for divorce or for legal separation, and when filed 55
the other may file a counterclaim for divorce or for legal 56
separation. The court of common pleas may grant divorces for the 57
causes set forth in section 3105.01 of the Revised Code. The 58
court of common pleas may grant legal separation on a complaint 59
or counterclaim, regardless of whether the parties are living 60
separately at the time the complaint or counterclaim is filed, 61
for the following causes: 62

(1) Either party had a husband or wife living at the time 63
of the marriage from which legal separation is sought; 64

(2) Willful absence of the adverse party for one year; 65

(3) Adultery; 66

(4) Extreme cruelty; 67

(5) Fraudulent contract; 68

(6) Any gross neglect of duty; 69

(7) Habitual drunkenness; 70

(8) Imprisonment of the adverse party in a state or 71
federal correctional institution at the time of filing the 72
complaint; 73

(9) On the application of either party, when husband and wife have, without interruption for one year, lived separate and apart without cohabitation;

(10) Incompatibility, unless denied by either party.

(B) The filing of a complaint or counterclaim for legal separation or the granting of a decree of legal separation under this section does not bar either party from filing a complaint or counterclaim for a divorce or annulment or obtaining a divorce or annulment.

(C) A decree of legal separation may be terminated by the court upon a motion signed by both spouses.

Sec. 3105.171. (A) As used in this section:

(1) "Distributive award" means any payment or payments, in real or personal property, that are payable in a lump sum or over time, in fixed amounts, that are made from separate property or income, and that are not made from marital property and do not constitute payments of spousal support, as defined in section 3105.18 of the Revised Code.

(2) "During the marriage" means whichever of the following is applicable:

(a) Except as provided in division (A) (2) (b) of this section, the period of time from the date of the marriage through the date of the final hearing in an action for divorce or in an action for legal separation;

(b) If the court determines that the use of either or both of the dates specified in division (A) (2) (a) of this section would be inequitable, the court may select dates that it considers equitable in determining marital property. If the

court selects dates that it considers equitable in determining 102
marital property, "during the marriage" means the period of time 103
between those dates selected and specified by the court. 104

(3) (a) "Marital property" means, subject to division (A) 105
(3) (b) of this section, all of the following: 106

(i) All real and personal property that currently is owned 107
by either or both of the spouses, including, but not limited to, 108
the retirement benefits of the spouses, and that was acquired by 109
either or both of the spouses during the marriage; 110

(ii) All interest that either or both of the spouses 111
currently has in any real or personal property, including, but 112
not limited to, the retirement benefits of the spouses, and that 113
was acquired by either or both of the spouses during the 114
marriage; 115

(iii) Except as otherwise provided in this section, all 116
income and appreciation on separate property, due to the labor, 117
monetary, or in-kind contribution of either or both of the 118
spouses that occurred during the marriage; 119

(iv) A participant account, as defined in section 148.01 120
of the Revised Code, of either of the spouses, to the extent of 121
the following: the moneys that have been deferred by a 122
continuing member or participating employee, as defined in that 123
section, and that have been transmitted to the Ohio public 124
employees deferred compensation board during the marriage and 125
any income that is derived from the investment of those moneys 126
during the marriage; the moneys that have been deferred by an 127
officer or employee of a municipal corporation and that have 128
been transmitted to the governing board, administrator, 129
depository, or trustee of the deferred compensation program of 130

the municipal corporation during the marriage and any income	131
that is derived from the investment of those moneys during the	132
marriage; or the moneys that have been deferred by an officer or	133
employee of a government unit, as defined in section 148.06 of	134
the Revised Code, and that have been transmitted to the	135
governing board, as defined in that section, during the marriage	136
and any income that is derived from the investment of those	137
moneys during the marriage.	138
(b) "Marital property" does not include any separate	139
property.	140
(4) "Passive income" means income acquired other than as a	141
result of the labor, monetary, or in-kind contribution of either	142
spouse.	143
(5) "Personal property" includes both tangible and	144
intangible personal property.	145
(6) (a) "Separate property" means all real and personal	146
property and any interest in real or personal property that is	147
found by the court to be any of the following:	148
(i) An inheritance by one spouse by bequest, devise, or	149
descent during the course of the marriage;	150
(ii) Any real or personal property or interest in real or	151
personal property that was acquired by one spouse prior to the	152
date of the marriage;	153
(iii) Passive income and appreciation acquired from	154
separate property by one spouse during the marriage;	155
(iv) Any real or personal property or interest in real or	156
personal property acquired by one spouse after a decree of legal	157
separation issued under section 3105.17 of the Revised Code;	158

(v) Any real or personal property or interest in real or personal property that is excluded by a valid antenuptial <u>or</u> <u>postnuptial</u> agreement;	159 160 161
(vi) Compensation to a spouse for the spouse's personal injury, except for loss of marital earnings and compensation for expenses paid from marital assets;	162 163 164
(vii) Any gift of any real or personal property or of an interest in real or personal property that is made after the date of the marriage and that is proven by clear and convincing evidence to have been given to only one spouse.	165 166 167 168
(b) The commingling of separate property with other property of any type does not destroy the identity of the separate property as separate property, except when the separate property is not traceable.	169 170 171 172
(B) In divorce proceedings, the court shall, and in legal separation proceedings upon the request of either spouse, the court may, determine what constitutes marital property and what constitutes separate property. In either case, upon making such a determination, the court shall divide the marital and separate property equitably between the spouses, in accordance with this section. For purposes of this section, the court has jurisdiction over all property, excluding the social security benefits of a spouse other than as set forth in division (F) (9) of this section, in which one or both spouses have an interest.	173 174 175 176 177 178 179 180 181 182
(C) (1) Except as provided in this division or division (E) of this section, the division of marital property shall be equal. If an equal division of marital property would be inequitable, the court shall not divide the marital property equally but instead shall divide it between the spouses in the	183 184 185 186 187

manner the court determines equitable. In making a division of 188
marital property, the court shall consider all relevant factors, 189
including those set forth in division (F) of this section. 190

(2) Each spouse shall be considered to have contributed 191
equally to the production and acquisition of marital property. 192

(3) The court shall provide for an equitable division of 193
marital property under this section prior to making any award of 194
spousal support to either spouse under section 3105.18 of the 195
Revised Code and without regard to any spousal support so 196
awarded. 197

(4) If the marital property includes a participant 198
account, as defined in section 148.01 of the Revised Code, the 199
court shall not order the division or disbursement of the moneys 200
and income described in division (A) (3) (a) (iv) of this section 201
to occur in a manner that is inconsistent with the law, rules, 202
or plan governing the deferred compensation program involved or 203
prior to the time that the spouse in whose name the participant 204
account is maintained commences receipt of the moneys and income 205
credited to the account in accordance with that law, rules, and 206
plan. 207

(D) Except as otherwise provided in division (E) of this 208
section or by another provision of this section, the court shall 209
disburse a spouse's separate property to that spouse. If a court 210
does not disburse a spouse's separate property to that spouse, 211
the court shall make written findings of fact that explain the 212
factors that it considered in making its determination that the 213
spouse's separate property should not be disbursed to that 214
spouse. 215

(E) (1) The court may make a distributive award to 216

facilitate, effectuate, or supplement a division of marital 217
property. The court may require any distributive award to be 218
secured by a lien on the payor's specific marital property or 219
separate property. 220

(2) The court may make a distributive award in lieu of a 221
division of marital property in order to achieve equity between 222
the spouses, if the court determines that a division of the 223
marital property in kind or in money would be impractical or 224
burdensome. 225

(3) The court shall require each spouse to disclose in a 226
full and complete manner all marital property, separate 227
property, and other assets, debts, income, and expenses of the 228
spouse. 229

(4) If a spouse has engaged in financial misconduct, 230
including, but not limited to, the dissipation, destruction, 231
concealment, nondisclosure, or fraudulent disposition of assets, 232
the court may compensate the offended spouse with a distributive 233
award or with a greater award of marital property. 234

(5) If a spouse has substantially and willfully failed to 235
disclose marital property, separate property, or other assets, 236
debts, income, or expenses as required under division (E) (3) of 237
this section, the court may compensate the offended spouse with 238
a distributive award or with a greater award of marital property 239
not to exceed three times the value of the marital property, 240
separate property, or other assets, debts, income, or expenses 241
that are not disclosed by the other spouse. 242

(F) In making a division of marital property and in 243
determining whether to make and the amount of any distributive 244
award under this section, the court shall consider all of the 245

following factors:	246
(1) The duration of the marriage;	247
(2) The assets and liabilities of the spouses;	248
(3) The desirability of awarding the family home, or the right to reside in the family home for reasonable periods of time, to the spouse with custody of the children of the marriage;	249 250 251 252
(4) The liquidity of the property to be distributed;	253
(5) The economic desirability of retaining intact an asset or an interest in an asset;	254 255
(6) The tax consequences of the property division upon the respective awards to be made to each spouse;	256 257
(7) The costs of sale, if it is necessary that an asset be sold to effectuate an equitable distribution of property;	258 259
(8) Any division or disbursement of property made in a separation agreement that was voluntarily entered into by the spouses;	260 261 262
(9) Any retirement benefits of the spouses, excluding the social security benefits of a spouse except as may be relevant for purposes of dividing a public pension;	263 264 265
(10) Any other factor that the court expressly finds to be relevant and equitable.	266 267
(G) In any order for the division or disbursement of property or a distributive award made pursuant to this section, the court shall make written findings of fact that support the determination that the marital property has been equitably divided and shall specify the dates it used in determining the	268 269 270 271 272

meaning of "during the marriage."	273
(H) Except as otherwise provided in this section, the holding of title to property by one spouse individually or by both spouses in a form of co-ownership does not determine whether the property is marital property or separate property.	274 275 276 277
(I) A division or disbursement of property or a distributive award made under this section is not subject to future modification by the court except upon the express written consent or agreement to the modification by both spouses.	278 279 280 281
(J) The court may issue any orders under this section that it determines equitable, including, but not limited to, either of the following types of orders:	282 283 284
(1) An order granting a spouse the right to use the marital dwelling or any other marital property or separate property for any reasonable period of time;	285 286 287
(2) An order requiring the sale or encumbering of any real or personal property, with the proceeds from the sale and the funds from any loan secured by the encumbrance to be applied as determined by the court.	288 289 290 291
Section 2. That existing sections 2106.22, 3103.05, 3103.06, 3105.17, and 3105.171 of the Revised Code are hereby repealed.	292 293 294