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BILL ANALYSIS

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House Bill 5467 (Substitute H-1 as passed by the House)
House Bill 5468 (Substitute H-2 as passed by the House)
House Bill 5469 (Substitute H-1 as passed by the House)
House Bill 5470 (Substitute H-2 as passed by the House)
House Bill 5471 (Substitute H-3 as passed by the House)
House Bill 5472 (Substitute H-3 as passed by the House)
House Bill 5473 (Substitute H-1 as passed by the House)
House Bill 5474 (Substitute H-2 as passed by the House)

Sponsor: Representative Joanne Voorhees (H.B. 5467)
Representative John Stahl (H.B. 5468)
Representative Lauren Hager (H.B. 5469)
Representative Barb Vander Veen (H.B. 5470)
Representative John Moolenaar (H.B. 5471)
Representative Ken Bradstreet (H.B. 5472)
Representative Lisa Wojno (H.B. 5473)
Representative John Gleason (H.B. 5474)

House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 9-14-04

CONTENT

House Bills 5467 (H-1) through 5474 (H-2) would amend various statutes to do all of the following:

- Require premarital education or a delay of at least 28 days between application for and issuance of a marriage license.
- Establish criteria for a premarital education program and a program provider.
- Establish an income tax credit for the cost of a premarital education program.
- Require a divorcing couple to complete a divorce effects program and questionnaire, if they had a minor child or one of them had physical custody of a minor child, or if the wife were pregnant and the husband would be the child's presumed father.
- Require the court, if parents established a parenting plan, to declare the plan as the child's inherent rights.

- Require the State Court Administrative Office (SCAO) to develop a form for parents' use in creating a parenting plan.
- Allow (rather than require) the prosecuting attorney's or Friend of the Court's (FOC's) involvement in certain divorce cases, and delete a county payment to the prosecuting attorney for his or her involvement.
- Require the person officiating at a wedding to indicate on the marriage certificate whether the parties to the marriage received premarital education.
- Under certain circumstances, exempt an ordained cleric or other religious practitioner from regulations regarding marriage and family therapy.

House Bills 5467 (H-1), 5469 (H-1), and 5473 (H-1) would amend Public Act 128 of 1887, which provides for the civil licensing and registration of marriage; House Bill 5468 (H-2) would amend the Income Tax Act; House Bills 5470 (H-2) and 5472 (H-3)

would amend the divorce Act; House Bill 5471 (H-3) would amend the Child Custody Act; and House Bill 5474 (H-2) would amend the Public Health Code.

House Bills 5468 (H-2) and 5469 (H-1) are tie-barred.

House Bills 5467 (H-1), 5470 (H-2), and 5473 (H-1) would take effect on October 1, 2004.

House Bill 5467 (H-1)

Premarital Education Requirement

Under the bill, a man and a woman who intended to apply for a marriage license together would have to complete a program in premarital education. They would have to verify completion of a program by a statement to that effect in the marriage license application's sworn statement and by filing with the application a certificate of completion from the program administrator.

If an individual who intended to apply for a marriage license were under 18 years old, both parties applying for the license and at least one parent or guardian of each party who was a minor would have to complete and verify a program of premarital education. The parent's or guardian's attendance would not be required if the minor were emancipated under the emancipation of minors Act.

Extended Waiting Period

If either party to a marriage license application chose not to comply with the premarital education program requirement, a longer waiting period would apply. Under the Act, a marriage license generally may not be delivered within a three-day period, including the date of application, and is void unless a marriage is solemnized under the license within 33 days after application. The bill specifies that if a party to a marriage license did not comply with the premarital education requirement, the clerk could not deliver the license until at least 28 days after the application date and the license would be void unless a marriage was solemnized under it within 58 days after application. The longer waiting period would not apply, however, if both parties to the marriage license application were 50 years old or older.

Program & Provider Criteria

A premarital education program required under the bill would have to emphasize skill-building strategies and include, at least, conflict management, communication skills, financial matters, and, if the couple had or intended to have children, child and parenting responsibilities. The program would have to be at least four hours long and be conducted by one or more of the following:

- A licensed professional counselor, licensed marriage and family therapist, licensed or limited licensed psychologist, or certified social worker or social worker licensed or registered as required under Article 15 of the Public Health Code.
- A psychiatrist, as defined in the Mental Health Code.
- An official representative of a religious institution.

An individual who provided a premarital education program could offer a fee schedule for the program that accommodated families of various financial means, including allowing participation by indigent individuals for no fee. Payment for a premarital education program would have to be made directly to the program provider.

House Bill 5468 (H-2)

For tax years beginning after December 31, 2003, a "qualified taxpayer" could claim a credit against the income tax equal to the cost paid during the tax year for a "premarital education program" or \$50, whichever was less. If the credit exceeded the taxpayer's tax liability for that year, the excess portion of the credit could not be refunded.

"Qualified taxpayer" would mean a taxpayer or taxpayers who attended a premarital education program during the tax year in which a credit was claimed under the bill. If the individuals who participated together in the program filed separate returns for the tax year, only one of the taxpayers could claim the credit. If they filed a joint return, the maximum credit would be \$50 for that joint return. "Premarital education program" would mean a qualifying premarital education program provided for and meeting the criteria set forth in House Bill 5469 (H-1).

House Bill 5469 (H-1)

Under the bill, if the parties to a marriage attended and completed a premarital education program, they could claim the income tax credit proposed by House Bill 5468 (H-2).

A premarital education program would have to have as its primary focus skill-building strategies for strengthening or preserving marriage. A program would have to include at least conflict management, communication skills, financial matters, and, if a couple had or intended to have children, child and parenting responsibilities. A program would have to be at least four hours long and be conducted by one or more of the following:

- A professional counselor, a marriage and family therapist, or a fully or limited licensed psychologist, licensed under Article 15 of the Public Health Code.
- A social worker or certified social worker who was granted a registration under the Public Health Code.
- A psychiatrist, as defined in the Mental Health Code.
- An official representative of a religious institution.

House Bill 5470 (H-2)

The bill would require the parties to a divorce to complete, either together or separately, a divorce effects program and a questionnaire before entry of the judgment of divorce, if one of the following were true:

- The parties were a minor child's parents.
- Either party was a minor child's physical custodian at the time of filing the complaint for divorce.
- The wife was pregnant and, after the child was born, the husband would be child's presumed father. If the pregnancy were discovered after the complaint was filed, but before the judgment of divorce was entered, the court could not enter the judgment until the parties completed a divorce effects program and questionnaire.

Parties subject to this requirement would have to complete a divorce effects program covering at least all of the following subjects related to issues about the following:

- A child involved in the action: developmental stages; responses to divorce; symptoms of maladjustment to divorce and responses to maladjustment; and education or counseling options for the child.
- Parties to the action: communication skills; conflict resolution skills; emotional adjustment, family adjustment, financial adjustment, and work adjustment techniques; stress reduction; parallel and cooperative parenting techniques; reconciliation and counseling options and remarriage issues; and substance abuse information and referral.
- Court procedure and process, as described in information available from the FOC.

The parties also would have to complete a questionnaire before completing a divorce effects program, answering questions as to whether the divorce would improve, maintain, or diminish the following:

- The love, affection, and other emotional ties existing between the parties involved and the child.
- The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.
- The capacity and disposition of the parties involved to provide the child with food, clothing, medical care, or other remedial care recognized and permitted under Michigan law in place of medical and other material needs.
- The mental and physical health of the parties involved.
- The child's school and community record.
- The willingness and ability of each parent to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent.

The questionnaire also would have to ask whether the divorce would:

- Upset a stable, satisfactory environment.
- Result in a suitable living arrangement for the child involved.
- Reduce domestic violence or mental anguish of any of the parties involved.

The provider of a divorce effects program would have to issue a certificate indicating

completion, to each individual who completed the program. If the individual conducting a program were an official representative of a religious institution, the program could omit a subject otherwise required, if training or education on that subject would violate a tenet of the religious institution.

The court could not order a divorce effects program if a party to the marriage filed a sworn statement that he or she was a victim of domestic violence by the other party. The sworn statement could be reviewed only by the court and would not be part of the public record of that divorce action. ("Domestic violence" would mean an act inflicting bodily injury, causing serious emotional injury or serious psychological trauma, or placing in fear of imminent physical harm by threat or force a person who is a spouse or former spouse or has or has had a dating relationship with, lives or has lived with, or has a child in common with the person committing the violence.)

The court otherwise could excuse a party to a divorce action from attending a divorce effects program for good cause, including availability of the program or the party's ability to pay. If a party were not exempt or excused from a divorce effects program and he or she failed to complete a program, the court could hold him or her in contempt, impose another sanction reasonable in the circumstance, and enter a judgment of divorce despite the party's failure to complete a divorce effects program.

Only one or more of the following could conduct a divorce effects program required under the bill:

- A licensed professional counselor, licensed marriage and family therapist, licensed or limited licensed psychologist, or certified social worker or social worker licensed or registered as required by Article 15 of the Public Health Code.
- A psychiatrist as that term is defined in the Mental Health Code.
- An official representative of a religious institution.
- Court or FOC personnel.

Payment for a divorce effects program would have to be made directly to the program provider. A program provider could use a fee schedule that accommodated families of

various financial means, including allowing indigent individuals to participate for no fee.

House Bill 5471 (H-3)

The bill would require the SCAO, with the approval and at the direction of the Supreme Court, to develop and make available a form for a parent's use in completing a parenting plan. The court would have to make the form available to the parents of a minor child. The form would have to indicate the subject matter to be addressed in a parenting plan and contain a sworn a statement signed by each parent that the parenting plan was proposed in good faith. The form would have to include notice that either party could obtain legal counsel. If the parents created a parenting plan, it would have to be filed with the court before a hearing on, or determination of, issues regarding a child.

The Child Custody Act requires that, in an action involving dispute of a minor child's custody, the court declare the child's inherent rights and establish the rights and duties as to the child's custody, support, and parenting time. Under the bill, this would have to be done under court order or a court-approved parenting plan. The bill also would require that, when parents established a parenting plan under the bill, the court declare the plan as the child's inherent rights.

House Bill 5472 (H-3)

Under the divorce Act, if there are children under 17 years old, a copy of the summons issued in a divorce complaint must be served upon the prosecuting attorney of the county where the suit is commenced or upon the FOC in counties having a population of 500,000 or more that have an FOC. The Act requires the prosecuting attorney or FOC to enter his or her appearance in the cause, and if the interest of the children or the public good require it, to introduce evidence and appear at the hearing and oppose the granting of a divorce decree. The bill would allow, rather than require, the prosecuting attorney or FOC to appear and present evidence.

The bill would delete a provision under which the prosecuting attorney must receive \$5 from the county treasurer, upon the certification of the circuit judge, for each

case in which the prosecuting attorney investigates and appears by and with the consent of the court.

House Bill 5473 (H-1)

Under the bill, based on information provided by the parties to a marriage, the cleric or magistrate officiating at the marriage would have to fill in the appropriate space of the marriage certificate indicating whether the parties did or did not receive premarital education. Parties who did receive premarital education would have to verify completion of the education by a sworn statement to that effect in the marriage license or certificate.

“Premarital education” would mean a program that emphasized skill-building strategies and included, at least, conflict management, communication skills, financial matters, and, if the couple had or intended to have children, child and parenting responsibilities. The program would have to be at least four hours long and be conducted by one or more of the following:

- A licensed professional counselor, licensed marriage and family therapist, licensed or limited licensed psychologist, or certified social worker or social worker licensed or registered as required in Article 15 of the Public Health Code.
- A psychiatrist as that term is defined in the Mental Health Code.
- An official representative of a religious institution.

House Bill 5474 (H-2)

Part 169 of the Public Health Code regulates marriage and family therapists, but does not apply to certain professionals. Among those exempt is an ordained cleric or other religious practitioner who is employed by or working under the authority of an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, if the advice or counsel given by the cleric or other religious practitioner is incidental to his or her duties as a cleric or other religious practitioner and if the cleric or religious practitioner does not hold himself or herself out to the public as a licensed marriage and family therapist or use one or more of the titles restricted for licensed marriage and family therapists under the Public Health Code, and if no fee

or donation is exacted for the service. The bill specifies instead that Part 169 would not apply to a service provider who was an ordained cleric or other religious practitioner who provided advice, guidance, or teaching based on his or her religious beliefs, creeds, or doctrines, if he or she did not hold himself or herself out to the public as a licensed marriage and family therapist or use one or more of the titles restricted for licensed marriage and family therapists under the Code, and if no fee or donation were exacted for the service. The bill also specifies that Part 169 would not prohibit a service provider from accepting a voluntary contribution.

Under the bill, Part 169 also would not apply to an ordained cleric or other religious practitioner who was authorized by law to officiate at a marriage, if he or she provided a written affidavit clearly stating that he or she was a member of the clergy or a religious practitioner, was not a licensed marriage and family therapist, and did not use one or more of the titles restricted for licensed marriage and family therapists under the Code, and that the advice, guidance, or teaching was based on the provider’s religious beliefs, creeds, or doctrines.

Unless exempted under Part 169, only an individual licensed under that part may “advertise” that he or she offers marriage and family therapy, marriage or family counseling service or advice, marriage or family guidance service or advice, marriage or family relations service or advice, marriage or family problems service or advice, marriage or family relations advice or assistance, service in the alleviation of a marital or family problem, or similar service that is included in the practice of marriage and family therapy. The bill specifies that Part 169 would not prohibit an exempt individual from issuing unpaid public awareness campaigns or educational or promotional materials.

Under the Code, “advertise” means issuing or ordering the printing or distribution of a card, sign, or device or causing, permitting, or allowing a sign or marking on or in a building or structure, or placing material in a newspaper, magazine, or directory, or on radio or television. The bill specifies that “advertise” would not include unpaid public awareness campaigns or educational or

promotional materials by individuals exempted from Part 169.

MCL 551.102 et al. (H.B. 5467)
Proposed MCL 206.269 (H.B. 5468)
Proposed MCL 551.112 (H.B. 5469)
Proposed MCL 552.5 & 552.5a (H.B. 5470)
MCL 722.24 & 722.27a (H.B. 5471)
MCL 552.45 (H.B. 5472)
MCL 551.104 (H.B. 5473)
MCL 333.16901 et al. (H.B. 5474)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

House Bill 5467 (H-1)

Fiscal information is not available at this time.

House Bills 5468 (H-2) & 5469 (H-1)

These bills would reduce income tax revenue by a preliminary estimate of \$1 million to \$2 million on a full-year basis. All of this loss in revenue would have an impact on General Fund/General Purpose revenue. These bills would not have any direct fiscal impact on local governments.

House Bill 5470 (H-2)

The bill would require private parties to pay divorce effects program providers directly; therefore, it would have no direct fiscal impact on State or local government. By allowing courts to hold in contempt parties who failed to complete a required program, however, the bill could increase court revenue through the use of fines or increase local corrections costs if incarceration were used as a sanction.

House Bill 5471 (H-3)

To the extent that the proposed changes would affect judicial efficiency and administrative costs, the bill could have an indeterminate fiscal impact on local court funding units. The bill would have no fiscal impact on the State.

House Bill 5472 (H-3)

The bill would result in savings to counties. No Statewide data are available regarding the amount that is currently paid to county prosecutors under the divorce Act. The

Prosecuting Attorneys Coordinating Council reports that several counties have negotiated the elimination of the payment to the prosecutor's office.

House Bill 5473 (H-1)

Fiscal information is not available at this time.

House Bill 5474 (H-2)

The bill would have no fiscal impact on State or local government.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.