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**BILL ANALYSIS**

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House Bill 5698 (Substitute H-1 as passed by the House)  
House Bill 5699 (Substitute H-2 as passed by the House)  
House Bill 5701 (Substitute H-4 as passed by the House)  
House Bill 5702 (Substitute H-3 as passed by the House)  
House Bill 5703 (Substitute H-2 as passed by the House)  
Sponsor: Representative Barb Vander Veen (H.B. 5698)  
Representative Jerry O. Kooiman (H.B. 5699)  
Representative John Moolenaar (H.B. 5701)  
Representative John Gleason (H.B. 5702)  
Representative Lisa Wojno (H.B. 5703)

House Committee: Family and Children Services  
Senate Committee: Judiciary

Date Completed: 12-12-06

## **CONTENT**

**The bills would amend various statutes to do all of the following:**

- **Require the parties to a divorce to complete a divorce effects program, in a divorce in which either party was the parent or custodian of a minor child, unless one party was a victim of domestic violence by the other.**
- **Require a couple intending to apply for a marriage license either to complete a premarital education program or undergo a longer waiting period before receiving a license.**
- **Establish program and provider criteria for a premarital education program.**
- **Allow parties who completed a premarital education program to claim an income tax credit.**
- **Require the parents in an action involving a minor child's custody to attempt to establish a parenting plan, unless one parent was a victim of domestic violence by the other.**
- **Establish requirements for a parenting plan and require the State Court Administrative Office to develop a form for completing a parenting plan.**
- **Require the court to approve or disapprove a parenting plan or take**

**other appropriate action if the parents did not submit a plan.**

- **Exempt a member of the clergy or other religious practitioner from licensure as a marriage and family therapist.**

House Bill 5698 (H-1) would amend the divorce Act; House Bills 5699 (H-2) and 5703 (H-2) would amend Public Act 128 of 1887, which provides for the civil licensing and registration of marriage; House Bill 5701 (H-4) would amend the Child Custody Act; and House Bill 5702 (H-3) would amend the Public Health Code.

### **House Bill 5698 (H-1)**

The bill would require the parties to a divorce to complete a divorce effects program and allow them to complete a questionnaire before the judgment of divorce was entered, if one or more 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 the complaint for divorce was filed.
- The wife was pregnant and, after the child was born, the husband would be the 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 the 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 Friend of the Court.

The parties also could 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 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 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.
- 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.

The questionnaire would be confidential; could be reviewed only by the program provider and the court or court staff or, during a criminal investigation, by law enforcement or a prosecutor; would not be a part of the public record of the divorce action; and would be exempt from the Freedom of Information Act (FOIA).

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 would be confidential; could be reviewed only by the court or, during a criminal investigation, by law enforcement or a prosecutor; would not be part of the public record of the divorce action; and would be exempt from FOIA.

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 circumstances, and enter a judgment of divorce despite the party's failure to complete a divorce effects program.

Beginning on the bill's effective date, if a court had instituted a program similar to a divorce effects program described in the bill, the court would be in compliance with the bill and would not be required to institute or order another program.

"Domestic violence" would mean that term as defined in the domestic violence prevention and treatment Act (MCL 400.1501). Under that Act, "domestic violence" means the occurrence of any of the following acts by a person that is not an act of self-defense:

- Causing or attempting to cause physical or mental harm to a family or household member.
- Placing a family or household member in fear of physical or mental harm.
- Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.
- Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

### **House Bill 5699 (H-2)**

#### 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 completion of a premarital education program. The parent's or guardian's attendance would not be required if the minor were emancipated under the emancipation of minors Act.

A county clerk could not issue a marriage license to an individual who failed to sign and file with the clerk an application for a marriage license that included a statement with a check-off box indicating that both parties to the intended marriage had or had not received premarital education.

The premarital education requirement would not apply if both parties to a marriage license education were 50 years old or older.

#### Extended Waiting Period

An individual applying for a marriage license could choose not to comply with the premarital education program requirement. If either party to a marriage license application made that choice, a longer waiting period would apply.

Under Public Act 128 of 1887, 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. Under the bill, if a party to a marriage license application complied with the premarital education program requirement, the county clerk could deliver a marriage license immediately following the application. If a party to a marriage license application did not comply with the premarital education requirement, the clerk could not deliver the license until at least three days after the application date and the license would be void unless a marriage was solemnized under it within 30 days after application. The waiting period would not apply, however, if both parties to the marriage license application were 50 years old or older.

For good and sufficient reason shown, a county clerk could deliver a marriage license immediately following the application. The marriage license would be void unless a marriage was solemnized within 33 days after the application.

#### Program & Provider Criteria

A premarital education program 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, social worker, licensed master's social worker, licensed bachelor's social worker, or social service technician.
- A psychiatrist.
- An official representative of a religious institution.

-- A certified family life educator.

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.

#### Income Tax Credit

The bill specifies that, for tax years beginning after December 31, 2005, if the parties to a marriage attended and completed a premarital education program, they could claim an income tax credit under Section 263 of the Income Tax Act. (That section is proposed by House Bill 5700, which would allow a taxpayer who had attended a premarital education program during the tax year to claim a credit against his or her income tax equal to the cost paid for the program or \$50, whichever was less.)

#### **House Bill 5701 (H-4)**

#### Parenting Plan

Under the bill, in all actions involving a minor child's custody, the parents' obligation to represent the child's best interests would include an attempt to establish a parenting plan. A parenting plan would have to be agreed to by both parents and contain at least all of the following:

- To have the child reared by both the child's father and the child's mother in a manner that closely approximated their rearing of the child before establishing separate domiciles or filing for divorce, unless it was not in the child's best interests.
- To provide for the child's care and set forth the authority and responsibilities of each parent with respect to the child.
- To encourage nonadversarial dispute resolution in the parenting plan, rather than relying on judicial intervention to resolve a dispute.

The court could not require a parent to submit a parenting plan, however, if the parent filed a sworn statement stating that he or she was a victim of domestic violence by the other parent. The sworn statement

would be confidential; could be reviewed only by the court or, during a criminal investigation, by law enforcement or a prosecutor; could not be a part of the public record of the divorce action; and would be exempt from FOIA.

The court could not approve a parenting plan that required mutual decision-making or designation of an alternative dispute resolution process if the court found that a parent had engaged in any of the following:

- Willful abandonment of the child that continued for an extended period or substantial refusal to perform parenting functions.
- Physical, sexual, or a pattern of emotional abuse of a child.
- A history of acts of domestic violence or an assault or sexual assault that caused grievous bodily harm or the fear of that harm.

The State Court Administrative Office, at the direction of the Supreme Court, would have to develop a form for use by a parent in completing a parenting plan. The form would have to be made available to both parties and individuals authorized to conduct a divorce education program.

If one or more parties obtained legal counsel in completing the parenting plan, the parties would have to disclose to the court that legal counsel was obtained.

If the court found that a parent refused to attend alternative dispute resolution as provided in the parenting plan, the court could assess costs and award attorney fees and costs to the other parent.

If a parent failed to comply with the parenting plan or a child support order, the other parent's obligations under the plan or order would not be affected. The court could hold a parent who failed to comply with a parenting plan in contempt of court.

A parent seeking modification of a parenting plan would have to seek the approval of the other parent and use the dispute resolution procedures in the parenting plan. If the parents could not agree to a modification of the plan, a parent could file a motion with the court. The court could assess costs against a parent who did not first seek the approval of the other parent or use the

dispute resolution procedures in the parties' parenting plan before filing a motion with the court.

The court could not modify a parenting plan to change the custodial environment of the child over the objection of a parent unless there was clear and convincing evidence that it was in the best interest of the child.

If the court found that a motion to modify an earlier parenting plan was brought in bad faith, or a refusal to agree to a modification was made in bad faith, the court could assess attorney fees and court costs against the party acting in bad faith.

A parenting plan would not be required to designate a parent as either the legal or physical custodian of the child. Solely for the purposes of other State or Federal statutes or other legal requirements that require a designation or determination of legal or physical custody for purposes such as tax exemptions or health care benefits, the court could designate in the parenting plan or by separate order a child's legal or physical custodian or custodians. This designation would not affect either parent's rights and responsibilities under the parenting plan or another provision of the Child Custody Act. In the absence of a designation allowed under this provision, the parent with whom the child was scheduled to reside the majority of the time would be considered the child's custodian for those purposes.

#### Court Approval or Other Action

The bill provides that, if a child's parents had submitted a parenting plan, the court would have to approve or disapprove the plan. If the court approved of the plan, it would have to adopt the plan and declare all other rights for the child and duties for the parents necessary to protect the child's best interests.

If the parents had not submitted a parenting plan, the court would have to take any action it considered appropriate, considering the resources of the parties and any other limiting factors, to assist the parties in developing a parenting plan or enter an order declaring the child's inherent rights and establishing the duties of the parents to implement those rights, including ordering evaluations, requiring the parties to engage

in counseling, requiring the parties to engage in alternative dispute resolution, and conducting hearings.

In all actions involving dispute of a minor child's custody or parenting time, neither the court nor the Friend of the Court could advocate on behalf of a party or a minor child, and the child's parents would have to represent the child's best interests.

#### Other Provisions

In several instances in which the Act refers to a court order governing custody of or parenting time with a child, the bill would refer to a court order or a parenting plan.

The bill would rename the Act the "Child Parenting Plan or Custody Dispute Act".

#### **House Bill 5702 (H-3)**

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 any 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 a member of the clergy or other religious practitioner who was employed by or working under the authority of a 501(c)(3) organization and 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 any of the titles restricted for licensed marriage and family therapists, 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.

The bill also would exempt from Part 169 a member of the clergy 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 any 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. In addition, the bill would exempt an individual who only provided prayer to address individual, marital, or family conflict or discord, if he or she did not hold himself or herself out to the public as a licensed marriage and family therapist and did not use any of the restricted titles.

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.

### **House Bill 5703 (H-2)**

Under the bill, based on information provided by the parties to a marriage, the individual 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.

Proposed MCL 552.5 (H.B. 5698)  
MCL 551.102 et al. (H.B. 5699)  
722.21 et al. (H.B. 5701)  
333.16901 et al. (H.B. 5702)  
551.104 (H.B. 5703)

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

#### **House Bill 5698 (H-1)**

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

#### **House Bill 5699 (H-2)**

The bill would likely have a negligible impact on local unit expenses.

#### **House Bill 5701 (H-4)**

The bill would have a minimal fiscal impact on the courts. Although there would be administrative costs associated with the bill, the judiciary has indicated that those costs would be absorbed into the existing budget.

#### **House Bills 5702 (H-3) & 5703 (H-2)**

The bills 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.