

SFA

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

(517) 373-5383

MICHIGAN STATE LAW LIBRARY

Senate Bills 729 and 730 (as reported without amendment)

Sponsor: Senator Vern Ehlers

Committee: Judiciary

Date Completed: 9-21-90

RATIONALE

Michigan's laws regulating marriages and divorces date back to 1846 and contain some terms relative to mentally incapacitated persons that many would consider derogatory and offensive by today's standards. Some people believe that the laws should be updated to include terminology appropriate for modern usage.

CONTENT

The bills would amend the divorce Act and Chapter 83 of the Revised Statutes of 1846, which regulates marriages, to update terms referring to mentally incapacitated persons, and to specify the standard for sufficient mental capacity to consent to marriage.

Senate Bill 729 provides that a marriage solemnized when one of the parties "lacked the mental capacity to consent to the marriage" would be invalid and void as of the date of marriage, unless a court found "that the interests of justice would not be served by making the decree retroactive". Currently, the Act invalidates "all marriages solemnized when either of the parties was insane or an idiot". The bill would retain a provision of the Act that specifies that any children produced by the marriage are legitimate. The bill also specifies that the marriage of a "mentally incapacitated person" could be "annulled upon the filing of a petition...after the person was restored to a sound mind". That provision would replace one in the Act that allows the marriage of a "lunatic" to be "declared void, upon the application of the lunatic, after the restoration of reason".

In addition, the bill would require that a petition for annulment of a marriage because of either party's mental incapacity to consent to the marriage be commenced within 90 days after the petitioner obtained knowledge of the grounds for annulment. An annulment on the grounds of mental incapacity could not be granted after the death of either party to the marriage.

Senate Bill 730 provides that a person would have the "mental capacity" to consent to marriage if the person understood "the nature of the marriage relationship and the duties and responsibilities of that relationship". A person would be presumed to have sufficient mental capacity to enter into a marriage unless a guardian had been appointed for the person by the probate court pursuant to the Mental Health Code or the Revised Probate Code and the court found that the person lacked "the capacity to enter into a marriage contract".

The bill also would delete a section of Chapter 83 of the Revised Statutes of 1846 that prohibits the marriage of a person who is "insane", an "idiot", or "afflicted with syphilis or gonorrhea" and validates marriages "between white persons and those wholly or in part of African descent" (MCL 551.6).

MCL 552.1 et al. (Senate Bill 729)
551.2 (Senate Bill 730)

FISCAL IMPACT

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

S.B. 729 & 730 (9-21-90)

ARGUMENTS

Supporting Argument

The bills would remove from Michigan statutes antiquated, derogatory terms formerly used to describe those with mental illnesses or developmental disabilities, and would replace them with contemporary terminology.

Legislative Analyst: P. Affholter

Fiscal Analyst: F. Sanchez

A8990\S729A

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.

SENATE ANALYSIS SECTION

SENATE BILL 730

ANALYSIS Summary

SEE SB 729

SFA BILL ANALYSIS

Senate Bill 730

Analysis 1st (9-21-90)

See SB 729