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BILL ANALYSIS

Senate Fiscal Agency

• Lansing, Michigan 48909

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Senate Bills 729 and 730
Sponsor: Senator Vern Ehlers
Committee: Judiciary

Mich. State Law Library

Date Completed: 9-12-90

SUMMARY OF SENATE BILLS 729 and 730 as introduced 12-13-89:

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.

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)

Legislative Analyst: P. Affholter

FISCAL IMPACT

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

Fiscal Analyst: F. Sanchez

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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.