MEMORANDUM

FILE w/ HB 233

TO: Representative Norris

FROM: Legislative Service Commission, Jim Gorry

DATE: May 20, 1974

SUBJECT: House Bill 233

The following are some considerations relating to H. B. 233.

1. Line 325, by using the words "MINOR FEMALE" instead of "FEMALE" would seem to create a situation where a 17 year old male cannot be granted permission to marry an 18 year old female, even though the female is pregnant. But a 17 year old male can marry a pregnant 17 year old female (i.e., a "minor" female).

This is based upon section 3101.01 which says that only 18 year old males can be joined in marriage, with the two exceptions provided in section 3101.04, which are (1) an illegitimate child has been born, and (2) the "minor female" is pregnant.

2. Lines 342 and 343 are alright, except that the male applicant cannot be under 18, except where a child has been born or is on the way. In certain instances where the male is under 18 and the female is pregnant, delay caused by marriage counciling could be awkward.

3. There is the same problem, more or less, in line 432, where the bill refers to a "minor female" instaed of "female".

4. In lines 456 and 457, there is the problem of the retroactive 2-year period.

5. In lines 459 and 460, the words "or of recrimination" might be stricken through, as this is taken care of at lines 505 and 506, where recrimination is abolished.

6. The stricken language in line 462 creates a problem. The intent probably was to require the alimony alone action to meet the 6-month residency requirement.

An equally reasonable construction is that the "exception" language was

redundant because "alimony alone" is not the same as "divorce" or "annulment". When a residency requirement is set leaving out "alimony alone" that action is not included in the residency requirement for "divorce or annulment."

7. In lines 480 and 481, the court can require the parties in a dissolution of marriage action to undergo conciliation for a period of 90 days. Yet, in lines 496 through 499, dissolution is not referred to.

But, if dissolution is inserted in lines 496-499, there might be a conflict with lines 616-617, where a dissolution hearing must be held not later than 90 days after the petition is filed.

8. Reference to dissolution is found in section 3105.18, alimony, (lines 539-540) and in section 3109.05, child support, (lines 717-718), and this read in conjunction with the word "approves" in line 634, and words at lines 642-645, gives the court the power to change any provision in a property settlement in dissolution dealing with alimony and child support, despite what the parties themselves agree to. Presumably, if one party disagrees to what the court sets as alimony and child support, that party may torpedo the dissolution by disagreeing and requesting the dissolution petition be dismissed pursuant to lines 625-630.

Does the court have the power to modify the property agreement in a dissolution with respect to child custody? Child custody appears to be regulated by section 3109.04, but dissolution is not mentioned as it is in the other two sections. Of course, nothing is referred to in section 3109.04 specifically.

Should words similar to those in line 717 be inserted in line 646 to equalize the two sections?

Other Minor Changes

1. The words "separate and apart" are used in lines 456-457, yet to express (perhaps) a similar concept, the word "separately" is used in lines 527-528.

2. The property settlement is "attached and incorporated" on to the petition for dissolution in line 604, and it is "appended" to the petition in lines 621-622.

3. A dissolution petition is "filed" in line 610, and line 612 reads "upon receipt" which might mean "upon filing".

4. If I am right in stating that a court always (and without reserving continuing jurisdiction in a court order) retains jurisdiction to modify an alimony only award today under case law, we have three possible interpretations of line 576, where the word "continuing" is used.

A "continuing order" could be an order in which "continuing jurisdiction" of the court is invoked under Rule 75 (J).

Rule 75 (J) requires a party to move for the order and serve summons. Today, continuing jurisdiction over alimony only is had without court order or motion.

Second, "continuing" could modify "periodic payments" and not refer to Rule 75 (J), thus the whole section codifies the current case law.

Third, Rule 75 (J) may supersede the alimony only case law I refer to, and thus, the only way to reserve jurisdiction is under Rule 75 (J), which means maybe the Rule should be referred to in division (B).

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Fred,

Re the attached memo and the status of Sec. 3109.04---

At the time H740 was scheduled for a floor vote it was brought to Mr. Norris' attention that the same section was in H233 which at that time was in conference. At that time he said he thought the special endorsement could handle the situation. However, later he requested the attached amendment to be drafted which was contained in the conference report and conformed a segment of his bill to the H740 version. However, he didn't want to conform the entire section in the conference report.

A special endorsement was sent to the law publishers on <u>both acts</u> which said the versions were "not irreconcilable", etc.

H740 - last action 6/3/74 - becomes effective September 30, 1974 (57, p 2655)

H233 - last action 6/5/74 - " " September 23, 1974 (p. 2680)

Pat