

SENATE AMENDMENTS TO A-ENGROSSED HOUSE BILL 2190

By COMMITTEE ON JUDICIARY

June 4

- 1 On page 1 of the printed A-engrossed bill, line 2, after “ORS” insert “107.135.”
- 2 On page 10, after line 39, insert:
- 3 “**SECTION 11.** ORS 107.135 is amended to read:
- 4 “107.135. (1) The court may at any time after a judgment of annulment or dissolution of marriage
- 5 or of separation is granted, upon the motion of either party and after service of notice on the other
- 6 party in the manner provided by ORCP 7, and after notice to the Division of Child Support when
- 7 required under subsection (9) of this section:
- 8 “(a) Set aside, alter or modify any portion of the judgment that provides for the appointment and
- 9 duties of trustees, for the custody, parenting time, visitation, support and welfare of the minor
- 10 children and the children attending school, as defined in ORS 107.108, including any health or life
- 11 insurance provisions, for the support of a party or for life insurance under ORS 107.820 or 107.830;
- 12 “(b) Make an order, after service of notice to the other party, providing for the future custody,
- 13 support and welfare of minor children residing in the state, who, at the time the judgment was given,
- 14 were not residents of the state, or were unknown to the court or were erroneously omitted from the
- 15 judgment;
- 16 “(c) Terminate a duty of support toward any minor child who has become self-supporting,
- 17 emancipated or married;
- 18 “(d) After service of notice on the child in the manner provided by law for service of a summons,
- 19 suspend future support for any child who has ceased to be a child attending school as defined in
- 20 ORS 107.108; and
- 21 “(e) Set aside, alter or modify any portion of the judgment that provides for a property award
- 22 based on the enhanced earning capacity of a party that was awarded before October 23, 1999. A
- 23 property award may be set aside, altered or modified under this paragraph:
- 24 “(A) When the person with the enhanced earning capacity makes a good faith career change
- 25 that results in less income;
- 26 “(B) When the income of the person with the enhanced earning capacity decreases due to cir-
- 27 cumstances beyond the person’s control; or
- 28 “(C) Under such other circumstances as the court deems just and proper.
- 29 “(2) When a party moves to set aside, alter or modify the child support provisions of the judg-
- 30 ment:
- 31 “(a) The party shall state in the motion, to the extent known:
- 32 “(A) Whether there is pending in this state or any other jurisdiction any type of support pro-
- 33 ceeding involving children of the marriage, including one brought under ORS 25.287, 107.431,
- 34 109.100, 125.025, 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter 110; and
- 35 “(B) Whether there exists in this state or any other jurisdiction a support order, as defined in

1 ORS 110.303, involving children of the marriage, other than the judgment the party is moving to set
2 aside, alter or modify.

3 “(b) The party shall include with the motion a certificate regarding any pending support pro-
4 ceeding and any existing support order other than the judgment the party is moving to set aside,
5 alter or modify. The party shall use a certificate that is in a form established by court rule and in-
6 clude information required by court rule and paragraph (a) of this subsection.

7 “(3) In a proceeding under this section to reconsider the spousal or child support provisions of
8 the judgment, the following provisions apply:

9 “(a) A substantial change in economic circumstances of a party, which may include, but is not
10 limited to, a substantial change in the cost of reasonable and necessary expenses to either party, is
11 sufficient for the court to reconsider its order of support, except that an order of compensatory
12 spousal support may only be modified upon a showing of an involuntary, extraordinary and unan-
13 ticipated change in circumstances that reduces the earning capacity of the paying spouse.

14 “(b) If the judgment provided for a termination or reduction of spousal support at a designated
15 age in anticipation of the commencement of pension, Social Security or other entitlement payments,
16 and if the obligee is unable to obtain the anticipated entitlement payments, that inability is suffi-
17 cient change in circumstances for the court to reconsider its order of support.

18 “(c) If Social Security is considered in lieu of spousal support or partial spousal support, the
19 court shall determine the amount of Social Security the party is eligible to collect. The court shall
20 take into consideration any pension, retirement or other funds available to either party to effect an
21 equitable distribution between the parties and shall also take into consideration any reduction of
22 entitlement caused by taking early retirement.

23 “(4) In considering under this section whether a change in circumstances exists sufficient for the
24 court to reconsider spousal or child support provisions of a judgment, the following provisions apply:

25 “(a) The court or administrator, as defined in ORS 25.010, shall consider income opportunities
26 and benefits of the respective parties from all sources, including but not limited to:

27 “(A) The reasonable opportunity of each party, the obligor and obligee respectively, to acquire
28 future income and assets.

29 “(B) Retirement benefits available to the obligor and to the obligee.

30 “(C) Other benefits to which the obligor is entitled, such as travel benefits, recreational benefits
31 and medical benefits, contrasted with benefits to which the obligee is similarly entitled.

32 “(D) Social Security benefits paid to a child, or to a representative payee administering the
33 funds for the child’s use and benefit, as a result of the obligor’s disability or retirement if the ben-
34 efits:

35 “(i) Were not previously considered in the child support order; or

36 “(ii) Were considered in an action initiated before May 12, 2003.

37 “(E) Apportioned Veterans’ benefits or Survivors’ and Dependents’ Educational Assistance under
38 38 U.S.C. chapter 35 paid to a child, or to a representative payee administering the funds for the
39 child’s use and benefit, as a result of the obligor’s disability or retirement if the benefits:

40 “(i) Were not previously considered in the child support order; or

41 “(ii) Were considered in an action initiated before May 12, 2003.

42 “(b) If the motion for modification is one made by the obligor to reduce or terminate support,
43 and if the obligee opposes the motion, the court shall not find a change in circumstances sufficient
44 for reconsideration of support provisions, if the motion is based upon a reduction of the obligor’s
45 financial status resulting from the obligor’s taking voluntary retirement, partial voluntary retire-

1 ment or any other voluntary reduction of income or self-imposed curtailment of earning capacity, if
2 it is shown that such action of the obligor was not taken in good faith but was for the primary
3 purpose of avoiding the support obligation. In any subsequent motion for modification, the court
4 shall deny the motion if the sole basis of the motion for modification is the termination of volun-
5 tarily taken retirement benefits and the obligor previously has been found not to have acted in good
6 faith.

7 “(c) The court shall consider the following factors in deciding whether the actions of the obligor
8 were not in ‘good faith’:

9 “(A) Timing of the voluntary retirement or other reduction in financial status to coincide with
10 court action in which the obligee seeks or is granted an increase in spousal support.

11 “(B) Whether all or most of the income producing assets and property were awarded to the
12 obligor, and spousal support in lieu of such property was awarded to the obligee.

13 “(C) Extent of the obligor’s dissipation of funds and assets prior to the voluntary retirement or
14 soon after filing for the change of circumstances based on retirement.

15 “(D) If earned income is reduced and absent dissipation of funds or large gifts, whether the
16 obligor has funds and assets from which the spousal support could have been paid.

17 “(E) Whether the obligor has given gifts of substantial value to others, including a current
18 spouse, to the detriment of the obligor’s ability to meet the preexisting obligation of spousal support.

19 “(5) Upon terminating a duty of spousal support, a court shall make specific findings of the basis
20 for the termination and shall include the findings in the judgment order.

21 “(6) Any modification of child or spousal support granted because of a change of circumstances
22 may be ordered effective retroactive to the date the motion for modification was served or to any
23 date thereafter.

24 “(7) The judgment is final as to any installment or payment of money that has accrued up to the
25 time the nonmoving party, other than the state, is served with a motion to set aside, alter or modify
26 the judgment. The court may not set aside, alter or modify any portion of the judgment that provides
27 for any payment of money, either for minor children or for the support of a party, that has accrued
28 before the motion is served. However:

29 “(a) The court may allow a credit against child support arrearages for periods of time, excluding
30 reasonable parenting time unless otherwise provided by order or judgment, during which the obligor,
31 with the knowledge and consent of the obligee or pursuant to court order, has physical custody of
32 the child; and

33 “(b) The court may allow, as provided in the rules of the Child Support Program, a dollar-for-
34 dollar credit against child support arrearages for any lump sum Social Security or Veterans’ benefits
35 paid retroactively to the child, or to a representative payee administering the funds for the child’s
36 use and benefit, as a result of an obligor’s disability or retirement.

37 “(8) In a proceeding under subsection (1) of this section, the court may assess against either
38 party a reasonable attorney fee and costs for the benefit of the other party. If a party is found to
39 have acted in bad faith, the court shall order that party to pay a reasonable attorney fee and costs
40 of the defending party.

41 “(9) Whenever a motion to establish, modify or terminate child support or satisfy or alter sup-
42 port arrearages is filed and the child support rights of one of the parties or of a child of both of the
43 parties have been assigned to the state, a true copy of the motion shall be served by mail or per-
44 sonal delivery on the Administrator of the Division of Child Support of the Department of Justice
45 or on the branch office providing support services to the county in which the motion is filed.

1 “(10)(a) Except as provided in ORS 109.701 to 109.834, the courts of Oregon, having once ac-
2 quired personal and subject matter jurisdiction in a domestic relations action, retain such jurisdic-
3 tion regardless of any change of domicile.

4 “(b) The courts of Oregon, in a proceeding to establish, enforce or modify a child support order,
5 shall recognize the provisions of the federal Full Faith and Credit for Child Support Orders Act (28
6 U.S.C. 1738B).

7 “(11) In a proceeding under this section to reconsider provisions in a judgment relating to cus-
8 tody or parenting time, the court may consider repeated and unreasonable denial of, or interference
9 with, parenting time to be a substantial change of circumstances.

10 “(12) In a proceeding under this section to reconsider provisions in a judgment relating to par-
11 enting time, the court may suspend or terminate a parent’s parenting time with a child if the court
12 finds that the parent has abused a controlled substance and that the parenting time is not in the
13 best interests of the child. If a court has suspended or terminated a parent’s parenting time with
14 a child for reasons described in this subsection, the court may not grant the parent future parenting
15 time until the parent has shown that the reasons for the suspension or termination are resolved and
16 that reinstated parenting time is in the best interests of the child. Nothing in this subsection limits
17 the court’s authority under subsection (1)(a) of this section.

18 **“(13) In a proceeding under this section to reconsider provisions in a judgment relating**
19 **to custody, temporary placement of the child by the custodial parent pursuant to ORS 109.056**
20 **(3) with the noncustodial parent as a result of military deployment of the custodial parent**
21 **is not, by itself, a change of circumstances. Any fact relating to the child and the parties**
22 **occurring subsequent to the last custody judgment, other than the custodial parent’s tem-**
23 **porary placement of the child pursuant to ORS 109.056 (3) with the noncustodial parent, may**
24 **be considered by the court when making a change of circumstances determination.**

25 “[13] (14) Within 30 days after service of notice under subsection (1) of this section, the party
26 served shall file a written response with the court.

27 “[14)(a)] (15)(a) It is the policy of this state:

28 “(A) To encourage the settlement of cases brought under this section; and

29 “(B) For courts to enforce the terms of settlements described in paragraph (b) of this subsection
30 to the fullest extent possible, except when to do so would violate the law or would clearly
31 contravene public policy.

32 “(b) In a proceeding under subsection (1) of this section, the court may enforce the terms set
33 forth in a stipulated order or judgment signed by the parties, an order or judgment resulting from
34 a settlement on the record or an order or judgment incorporating a settlement agreement:

35 “(A) As contract terms using contract remedies;

36 “(B) By imposing any remedy available to enforce an order or judgment, including but not lim-
37 ited to contempt; or

38 “(C) By any combination of the provisions of subparagraphs (A) and (B) of this paragraph.

39 “(c) A party may seek to enforce an agreement and obtain remedies described in paragraph (b)
40 of this subsection by filing a motion, serving notice on the other party in the manner provided by
41 ORCP 7 and, if a remedy under paragraph (b)(B) of this subsection is sought, complying with the
42 statutory requirements for that remedy. All claims for relief arising out of the same acts or omis-
43 sions must be joined in the same proceeding.

44 “(d) Nothing in paragraph (b) or (c) of this subsection limits a party’s ability, in a separate
45 proceeding, to file a motion to modify an order or judgment under subsection (1) of this section or

1 to seek enforcement of an ancillary agreement to the order or judgment.

2 **SECTION 12. The amendments to ORS 107.135 by section 11 of this 2007 Act apply to**
3 **motions filed on or after the effective date of this 2007 Act.”.**

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