

Senate Bill 428

Sponsored by Senator BROWN (at the request of Mark Kramer)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Permits modification of dissolution judgments to provide for payment of debts incurred before dissolution. Allows contempt for failure to pay debts incurred before dissolution as ordered by court.

A BILL FOR AN ACT

1
2 Relating to dissolution; amending ORS 107.135 and ORCP 78 C.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 107.135 is amended to read:

5 107.135. (1) The court may at any time after a judgment of annulment or dissolution of marriage
6 or of separation is granted, upon the motion of either party and after service of notice on the other
7 party in the manner provided by ORCP 7, and after notice to the Division of Child Support when
8 required under subsection (9) of this section:

9 (a) Set aside, alter or modify any portion of the judgment that provides for the appointment and
10 duties of trustees, for the custody, parenting time, visitation, support and welfare of the minor
11 children and the children attending school, as defined in ORS 107.108, including any health or life
12 insurance provisions, for the support of a party or for life insurance under ORS 107.820 or 107.830;

13 (b) Make an order[*after service of notice to the other party,*] providing for the future custody,
14 support and welfare of minor children residing in the state, who, at the time the judgment was given,
15 were not residents of the state, or were unknown to the court or were erroneously omitted from the
16 judgment;

17 (c) Terminate a duty of support toward any minor child who has become self-supporting,
18 emancipated or married;

19 (d) After service of notice on the child in the manner provided by law for service of a summons,
20 suspend future support for any child who has ceased to be a child attending school as defined in
21 ORS 107.108; [*and*]

22 (e) Set aside, alter or modify any portion of the judgment that provides for a property award
23 based on the enhanced earning capacity of a party that was awarded before October 23, 1999. A
24 property award may be set aside, altered or modified under this paragraph:

25 (A) When the person with the enhanced earning capacity makes a good faith career change that
26 results in less income;

27 (B) When the income of the person with the enhanced earning capacity decreases due to cir-
28 cumstances beyond the person's control; or

29 (C) Under such other circumstances as the court deems just and proper[.]; **and**

30 **(f) Make an order providing for the payment of debts incurred before the judgment.**

31 (2) When a party moves to set aside, alter or modify the child support provisions of the judg-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 ment:

2 (a) The party shall state in the motion, to the extent known:

3 (A) Whether there is pending in this state or any other jurisdiction any type of support pro-
 4 ceeding involving children of the marriage, including one brought under ORS 25.287, 107.431,
 5 109.100, 125.025, 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter 110; and

6 (B) Whether there exists in this state or any other jurisdiction a support order, as defined in
 7 ORS 110.303, involving children of the marriage, other than the judgment the party is moving to set
 8 aside, alter or modify.

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

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

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

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

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

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

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

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

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

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

38 (D) Social Security benefits paid to a child, or to a representative payee administering the funds
 39 for the 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 (E) Apportioned Veterans' benefits or Survivors' and Dependents' Educational Assistance under
 43 38 U.S.C. chapter 35 paid to a child, or to a representative payee administering the funds for the
 44 child's use and benefit, as a result of the obligor's disability or retirement if the benefits:

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

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

2 (b) If the motion for modification is one made by the obligor to reduce or terminate support, and
3 if the obligee opposes the motion, the court shall not find a change in circumstances sufficient for
4 reconsideration of support provisions, if the motion is based upon a reduction of the obligor's fi-
5 nancial status resulting from the obligor's taking voluntary retirement, partial voluntary retirement
6 or any other voluntary reduction of income or self-imposed curtailment of earning capacity, if it is
7 shown that such action of the obligor was not taken in good faith but was for the primary purpose
8 of avoiding the support obligation. In any subsequent motion for modification, the court shall deny
9 the motion if the sole basis of the motion for modification is the termination of voluntarily taken
10 retirement benefits and the obligor previously has been found not to have acted in good faith.

11 (c) The court shall consider the following factors in deciding whether the actions of the obligor
12 were not in "good faith":

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

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

17 (C) Extent of the obligor's dissipation of funds and assets prior to the voluntary retirement or
18 soon after filing for the change of circumstances based on retirement.

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

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

23 (5) Upon terminating a duty of spousal support, a court shall make specific findings of the basis
24 for the termination and shall include the findings in the judgment [*order*].

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

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

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

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

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

45 (9) Whenever a motion to establish, modify or terminate child support or satisfy or alter support

1 arrearages is filed and the child support rights of one of the parties or of a child of both of the
 2 parties have been assigned to the state, a true copy of the motion shall be served by mail or per-
 3 sonal delivery on the Administrator of the Division of Child Support of the Department of Justice
 4 or on the branch office providing support services to the county in which the motion is filed.

5 (10)(a) Except as provided in ORS 109.701 to 109.834, the courts of Oregon, having once acquired
 6 personal and subject matter jurisdiction in a domestic relations action, retain such jurisdiction re-
 7 gardless of any change of domicile.

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

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

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

22 (13) Within 30 days after service of notice under subsection (1) of this section, the party served
 23 shall file a written response with the court.

24 (14)(a) It is the policy of this state:

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

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

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

32 (A) As contract terms using contract remedies;

33 (B) By imposing any remedy available to enforce an order or judgment, including but not limited
 34 to contempt; or

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

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

41 (d) Nothing in paragraph (b) or (c) of this subsection limits a party’s ability, in a separate pro-
 42 ceeding, to file a motion to modify an order or judgment under subsection (1) of this section or to
 43 seek enforcement of an ancillary agreement to the order or judgment.

44 **SECTION 2.** ORCP 78 C is amended to read:

45 C Application. Section B of this rule does not apply to an order or judgment for the payment

1 of money, except orders and judgments for the payment of sums ordered pursuant to ORS 107.095
2 and 107.105 (1)(i), **the payment of debts incurred before the judgment of marital annulment,**
3 **dissolution or separation** and **the payment of** money for support, maintenance, nurture,
4 education[,] or attorney fees, in:

5 C(1) Actions for dissolution or annulment of marriage or separation from bed and board.

6 C(2) Proceedings upon support orders entered under ORS chapter 108, 109 or 110[,] or under
7 ORS 416.400 to 416.470, 419B.400 or 419C.590.

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