

# House Bill 3188

Sponsored by Representative THATCHER; Senator WHITSETT (at the request of Don Blair)

## 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**.

Allows court to consider fault in awarding spousal support in dissolution of marriage.

## A BILL FOR AN ACT

1  
2 Relating to domestic relations; creating new provisions; and amending ORS 107.036, 107.105 and  
3 107.485.

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

5 **SECTION 1.** ORS 107.036 is amended to read:

6 107.036. (1) **Except as provided in this section**, the doctrines of fault and of in pari delicto are  
7 abolished in suits for the annulment or dissolution of a marriage or for separation.

8 *[(2) The court shall not receive evidence of specific acts of misconduct, excepting where child cus-*  
9 *tody is an issue and such evidence is relevant to that issue, or excepting at a hearing when the court*  
10 *finds such evidence necessary to prove irreconcilable differences.]*

11 **(2) The court may receive evidence of specific acts of misconduct by a party only if:**

12 **(a) Child custody is an issue and the evidence is relevant to that issue;**

13 **(b) The court finds at a hearing that the evidence is necessary to prove irreconcilable**  
14 **differences; or**

15 **(c) The court finds at a hearing that the evidence is necessary to a just and equitable**  
16 **judgment fixing the amount and duration of the contribution one party is to make to support**  
17 **the other.**

18 (3) In dividing, awarding and distributing the real and personal property (or both) of the parties  
19 (or either of them) between the parties, or in making such property or any of it subject to a trust,  
20 *[and in fixing the amount and duration of the contribution one party is to make to the support of the*  
21 *other,]* the court shall not consider the fault, if any, of either of the parties in causing grounds for  
22 the annulment or dissolution of the marriage or for separation.

23 (4) Where satisfactory proof of grounds for the annulment or dissolution of a marriage or for  
24 separation has been made, the court shall render a judgment for the annulment or dissolution of the  
25 marriage or for separation. A judgment of separation shall state the duration of the separation.

26 **SECTION 2.** ORS 107.105 is amended to read:

27 107.105. (1) Whenever the court renders a judgment of marital annulment, dissolution or sepa-  
28 ration, the court may provide in the judgment:

29 (a) For the future care and custody, by one party or jointly, of all minor children of the parties  
30 born, adopted or conceived during the marriage and for minor children born to the parties prior to  
31 the marriage, as the court may deem just and proper under ORS 107.137. The court may hold a  
32 hearing to decide the custody issue prior to any other issues. When appropriate, the court shall

**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 recognize the value of close contact with both parents and encourage joint parental custody and  
 2 joint responsibility for the welfare of the children.

3 (b) For parenting time rights of the parent not having custody of such children and for visitation  
 4 rights pursuant to a petition filed under ORS 109.119. When a parenting plan has been developed  
 5 as required by ORS 107.102, the court shall review the parenting plan and, if approved, incorporate  
 6 the parenting plan into the court's final order. When incorporated into a final order, the parenting  
 7 plan is determinative of parenting time rights. If the parents have been unable to develop a par-  
 8 enting plan or if either of the parents requests the court to develop a detailed parenting plan, the  
 9 court shall develop the parenting plan in the best interest of the child, ensuring the noncustodial  
 10 parent sufficient access to the child to provide for appropriate quality parenting time and ensuring  
 11 the safety of the parties, if implicated. The court may deny parenting time to the noncustodial par-  
 12 ent under this subsection only if the court finds that parenting time would endanger the health or  
 13 safety of the child. The court shall recognize the value of close contact with both parents and en-  
 14 courage, when practicable, joint responsibility for the welfare of such children and extensive contact  
 15 between the minor children of the divided marriage and the parties. If the court awards parenting  
 16 time to a noncustodial parent who has committed abuse, the court shall make adequate provision for  
 17 the safety of the child and the other parent in accordance with the provisions of ORS 107.718 (6).

18 (c) For the support of the children of the marriage by the parties. In ordering child support, the  
 19 formula established under ORS 25.275 shall apply. The court may at any time require an accounting  
 20 from the custodial parent with reference to the use of the money received as child support. The  
 21 court is not required to order support for any minor child who has become self-supporting,  
 22 emancipated or married or who has ceased to attend school after becoming 18 years of age.

23 (d) For spousal support, an amount of money for a period of time as may be just and equitable  
 24 for one party to contribute to the other, in gross or in installments or both. The court may approve  
 25 an agreement for the entry of an order for the support of a party. In making the spousal support  
 26 order, the court shall designate one or more categories of spousal support and shall make findings  
 27 of the relevant factors in the decision. The court may order:

28 (A) Transitional spousal support as needed for a party to attain education and training neces-  
 29 sary to allow the party to prepare for reentry into the job market or for advancement therein. The  
 30 factors to be considered by the court in awarding transitional spousal support include but are not  
 31 limited to:

- 32 (i) The duration of the marriage;
- 33 (ii) A party's training and employment skills;
- 34 (iii) A party's work experience;
- 35 (iv) The financial needs and resources of each party;
- 36 (v) The tax consequences to each party;
- 37 (vi) A party's custodial and child support responsibilities; and
- 38 (vii) Any other factors the court deems just and equitable.

39 (B) Compensatory spousal support when there has been a significant financial or other contri-  
 40 bution by one party to the education, training, vocational skills, career or earning capacity of the  
 41 other party and when an order for compensatory spousal support is otherwise just and equitable in  
 42 all of the circumstances. The factors to be considered by the court in awarding compensatory  
 43 spousal support include but are not limited to:

- 44 (i) The amount, duration and nature of the contribution;
- 45 (ii) The duration of the marriage;

- 1 (iii) The relative earning capacity of the parties;
- 2 (iv) The extent to which the marital estate has already benefited from the contribution;
- 3 (v) The tax consequences to each party; and
- 4 (vi) Any other factors the court deems just and equitable.

5 (C) Spousal maintenance as a contribution by one spouse to the support of the other for either  
 6 a specified or an indefinite period. The factors to be considered by the court in awarding spousal  
 7 maintenance include but are not limited to:

- 8 (i) The duration of the marriage;
- 9 (ii) The age of the parties;
- 10 (iii) The health of the parties, including their physical, mental and emotional condition;
- 11 (iv) The standard of living established during the marriage;
- 12 (v) The relative income and earning capacity of the parties, recognizing that the wage earner's  
 13 continuing income may be a basis for support distinct from the income that the supported spouse  
 14 may receive from the distribution of marital property;
- 15 (vi) A party's training and employment skills;
- 16 (vii) A party's work experience;
- 17 (viii) The financial needs and resources of each party;
- 18 (ix) The tax consequences to each party;
- 19 (x) A party's custodial and child support responsibilities; and
- 20 (xi) Any other factors the court deems just and equitable.

21 (e) For the delivery to one party of such party's personal property in the possession or control  
 22 of the other at the time of the giving of the judgment.

23 (f) For the division or other disposition between the parties of the real or personal property, or  
 24 both, of either or both of the parties as may be just and proper in all the circumstances. A retire-  
 25 ment plan or pension or an interest therein shall be considered as property. The court shall consider  
 26 the contribution of a spouse as a homemaker as a contribution to the acquisition of marital assets.  
 27 There is a rebuttable presumption that both spouses have contributed equally to the acquisition of  
 28 property during the marriage, whether such property is jointly or separately held. Subsequent to the  
 29 filing of a petition for annulment or dissolution of marriage or separation, the rights of the parties  
 30 in the marital assets shall be considered a species of coownership, and a transfer of marital assets  
 31 under a judgment of annulment or dissolution of marriage or of separation entered on or after Oc-  
 32 tober 4, 1977, shall be considered a partitioning of jointly owned property. The court shall require  
 33 full disclosure of all assets by the parties in arriving at a just property division. In arriving at a  
 34 just and proper division of property, the court shall consider reasonable costs of sale of assets, taxes  
 35 and any other costs reasonably anticipated by the parties. If a spouse has been awarded spousal  
 36 support in lieu of a share of property, the court shall so state on the record and shall order the  
 37 obligor to provide for and maintain life insurance in an amount commensurate with the obligation  
 38 and designating the obligee as beneficiary for the duration of the obligation. If the obligor dies prior  
 39 to the termination of such support and such insurance is not in force, the court may modify the  
 40 method of payment of spousal support under the judgment or order of support from installments to  
 41 a lump sum payment to the obligee from the estate of the obligor in an amount commensurate with  
 42 the present value of the spousal support at the time of death. The obligee or attorney of the obligee  
 43 shall cause a certified copy of the judgment to be delivered to the life insurance company or com-  
 44 panies. If the obligee or the attorney of the obligee delivers a true copy of the judgment to the life  
 45 insurance company or companies, identifying the policies involved and requesting such notification

1 under this section, the company or companies shall notify the obligee, as beneficiary of the insur-  
2 ance policy, whenever the policyholder takes any action that will change the beneficiary or reduce  
3 the benefits of the policy. Either party may request notification by the insurer when premium  
4 payments have not been made. If the obligor is ordered to provide for and maintain life insurance,  
5 the obligor shall provide to the obligee a true copy of the policy. The obligor shall also provide to  
6 the obligee written notice of any action that will reduce the benefits or change the designation of  
7 the beneficiaries under the policy.

8 (g) For the creation of trusts as follows:

9 (A) For the appointment of one or more trustees to hold, control and manage for the benefit of  
10 the children of the parties, of the marriage or otherwise such of the real or personal property of  
11 either or both of the parties, as the court may order to be allocated or appropriated to their support  
12 and welfare, and to collect, receive, expend, manage or invest any sum of money awarded for the  
13 support and welfare of minor children of the parties.

14 (B) For the appointment of one or more trustees to hold, manage and control such amount of  
15 money or such real or personal property of either or both of the parties, as may be set aside, allo-  
16 cated or appropriated for the support of a party.

17 (C) For the establishment of the terms of the trust and provisions for the disposition or distrib-  
18 ution of such money or property to or between the parties, their successors, heirs and assigns after  
19 the purpose of the trust has been accomplished. Upon petition of a party or a person having an in-  
20 terest in the trust showing a change of circumstances warranting a change in the terms of the trust,  
21 the court may make and direct reasonable modifications in its terms.

22 (h) To change the name of either spouse to a name the spouse held before the marriage. The  
23 court shall order a change if it is requested by the affected party.

24 (i) For a money award for any sums of money found to be then remaining unpaid upon any order  
25 or limited judgment entered under ORS 107.095. If a limited judgment was entered under ORS  
26 107.095, the limited judgment shall continue to be enforceable for any amounts not paid under the  
27 limited judgment unless those amounts are included in the money award made by the general judg-  
28 ment.

29 (j) For an award of reasonable attorney fees and costs and expenses reasonably incurred in the  
30 action in favor of a party or in favor of a party's attorney.

31 (2)(a) In determining the proper amount of support and the proper division of property under  
32 subsection (1)(c), (d) and (f) of this section, the court may consider evidence of the tax consequences  
33 on the parties of its proposed judgment.

34 **(b) In determining the proper amount of spousal support under subsection (1)(d) of this**  
35 **section, the court may consider evidence of the specific acts of misconduct of either of the**  
36 **parties if the evidence is necessary for a just and equitable judgment.**

37 (3) Upon the filing of the judgment, the property division ordered shall be deemed effective for  
38 all purposes. This transfer by judgment, which shall affect solely owned property transferred to the  
39 other spouse as well as commonly owned property in the same manner as would a declaration of a  
40 resulting trust in favor of the spouse to whom the property is awarded, is not a taxable sale or ex-  
41 change.

42 (4) If an appeal is taken from a judgment of annulment or dissolution of marriage or of sepa-  
43 ration or from any part of a judgment rendered in pursuance of the provisions of ORS 107.005 to  
44 107.086, 107.095, 107.105, 107.115 to 107.174, 107.405, 107.425, 107.445 to 107.520, 107.540 and 107.610,  
45 the court rendering the judgment may provide in a supplemental judgment for any relief provided

1 for in ORS 107.095 and shall provide that the relief granted in the judgment is to be in effect only  
 2 during the pendency of the appeal. A supplemental judgment under this subsection may be enforced  
 3 as provided in ORS 33.015 to 33.155 and ORS chapter 18. A supplemental judgment under this sub-  
 4 section may be appealed in the same manner as provided for supplemental judgments modifying a  
 5 domestic relations judgment under ORS 19.275.

6 (5) If an appeal is taken from the judgment or other appealable order in a suit for annulment  
 7 or dissolution of a marriage or for separation and the appellate court awards costs and disburse-  
 8 ments to a party, the court may also award to that party, as part of the costs, such additional sum  
 9 of money as it may adjudge reasonable as an attorney fee on the appeal.

10 (6) If, as a result of a suit for the annulment or dissolution of a marriage or for separation, the  
 11 parties to such suit become owners of an undivided interest in any real or personal property, or  
 12 both, either party may maintain supplemental proceedings by filing a petition in such suit for the  
 13 partition of such real or personal property, or both, within two years from the entry of the judgment,  
 14 showing among other things that the original parties to the judgment and their joint or several  
 15 creditors having a lien upon any such real or personal property, if any there be, constitute the sole  
 16 and only necessary parties to such supplemental proceedings. The procedure in the supplemental  
 17 proceedings, so far as applicable, shall be the procedure provided in ORS 105.405 for the partition  
 18 of real property, and the court granting the judgment shall have in the first instance and retain  
 19 jurisdiction in equity therefor.

20 **SECTION 3.** ORS 107.485 is amended to read:

21 107.485. A marriage may be dissolved by the summary dissolution procedure specified in this  
 22 section and ORS 107.490 when all of the following conditions exist at the time the proceeding is  
 23 commenced:

24 (1) The jurisdictional requirements of ORS 107.025 and 107.075 are met.

25 (2)(a) There are no minor children born to the parties or adopted by the parties during the  
 26 marriage;

27 (b) There are no children over age 18 attending school, as described in ORS 107.108, either born  
 28 to the parties or adopted by the parties during the marriage;

29 (c) There are no minor children born to or adopted by the parties prior to the marriage; and

30 (d) The wife is not now pregnant.

31 (3) The marriage is not more than 10 years in duration.

32 (4) Neither party has any interest in real property wherever situated.

33 (5) There are no unpaid obligations in excess of \$15,000 incurred by either or both of the parties  
 34 from the date of the marriage.

35 (6) The total aggregate fair market value of personal property assets in which either of the  
 36 parties has any interest, excluding all encumbrances, is less than \$30,000.

37 (7) The petitioner waives any right to spousal support.

38 (8) The petitioner waives any rights to pendente lite orders except those pursuant to ORS  
 39 107.700 to 107.735 or 124.005 to 124.040.

40 **(9) The petitioner waives any rights to submit to the court evidence of specific acts of**  
 41 **misconduct of the respondent.**

42 [(9)] (10) The petitioner knows of no other pending domestic relations suits involving the mar-  
 43 riage in this or any other state.

44 **SECTION 4. The amendments to ORS 107.036 and 107.105 by sections 1 and 2 of this 2009**  
 45 **Act apply to spousal support orders entered on or after the effective date of this 2009 Act.**

