

House Bill 3338

Sponsored by Representative BENTZ; Representatives BERGER, ESQUIVEL, GARRARD, GILLIAM, JENSON, KRIEGER, OLSON, ROBLAN, THOMPSON, WEIDNER, Senators BOQUIST, FERRIOLI, JOHNSON, MORRISETTE (at the request of Steve Kantor, Jeff Cheyne, Mary Olean, Eric Vetterlein, Philip Jones, Merritt Yoelin, Helen Pruitt)

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**.

Provides exception to rebuttable presumption that both spouses contribute equally to acquisition of property for certain property that is separately titled and held continuously by one spouse.

Provides that inheritance proceeds received during marriage are not marital property subject to division or disposition of court in dissolution proceeding.

A BILL FOR AN ACT

1
2 Relating to division of marital property; creating new provisions; and amending ORS 107.105.

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

4 **SECTION 1.** ORS 107.105 is amended to read:

5 107.105. (1) Whenever the court renders a judgment of marital annulment, dissolution or sepa-
6 ration, the court may provide in the judgment:

7 (a) For the future care and custody, by one party or jointly, of all minor children of the parties
8 born, adopted or conceived during the marriage and for minor children born to the parties prior to
9 the marriage, as the court may deem just and proper under ORS 107.137. The court may hold a
10 hearing to decide the custody issue prior to any other issues. When appropriate, the court shall
11 recognize the value of close contact with both parents and encourage joint parental custody and
12 joint responsibility for the welfare of the children.

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

28 (c) For the support of the children of the marriage by the parties. In ordering child support, the

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 formula established under ORS 25.275 shall apply. The court may at any time require an accounting
2 from the custodial parent with reference to the use of the money received as child support. The
3 court is not required to order support for any minor child who has become self-supporting,
4 emancipated or married or who has ceased to attend school after becoming 18 years of age.

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

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

- 14 (i) The duration of the marriage;
- 15 (ii) A party's training and employment skills;
- 16 (iii) A party's work experience;
- 17 (iv) The financial needs and resources of each party;
- 18 (v) The tax consequences to each party;
- 19 (vi) A party's custodial and child support responsibilities; and
- 20 (vii) Any other factors the court deems just and equitable.

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

- 26 (i) The amount, duration and nature of the contribution;
- 27 (ii) The duration of the marriage;
- 28 (iii) The relative earning capacity of the parties;
- 29 (iv) The extent to which the marital estate has already benefited from the contribution;
- 30 (v) The tax consequences to each party; and
- 31 (vi) Any other factors the court deems just and equitable.

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

- 35 (i) The duration of the marriage;
- 36 (ii) The age of the parties;
- 37 (iii) The health of the parties, including their physical, mental and emotional condition;
- 38 (iv) The standard of living established during the marriage;
- 39 (v) The relative income and earning capacity of the parties, recognizing that the wage earner's
40 continuing income may be a basis for support distinct from the income that the supported spouse
41 may receive from the distribution of marital property;
- 42 (vi) A party's training and employment skills;
- 43 (vii) A party's work experience;
- 44 (viii) The financial needs and resources of each party;
- 45 (ix) The tax consequences to each party;

1 (x) A party's custodial and child support responsibilities; and

2 (xi) Any other factors the court deems just and equitable.

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

5 (f) For the division or other disposition between the parties of the real or personal property, or
6 both, of either or both of the parties as may be just and proper in all the circumstances. A retire-
7 ment plan or pension or an interest therein shall be considered as property. The court shall consider
8 the contribution of a spouse as a homemaker as a contribution to the acquisition of marital assets.

9 **Except with respect to property that is received by a party by way of gift, devise, bequest
10 or inheritance and that is separately titled and held in the party's name on a continuous**

11 **basis**, there is a rebuttable presumption that both spouses have contributed equally to the acqui-
12 sition of property during the marriage, whether such property is jointly or separately held.

13 **Inheritance proceeds received by one party during the marriage are not a marital asset and
14 are not subject to division or other disposition by the court.** Subsequent to the filing of a peti-
15 tion for annulment or dissolution of marriage or separation, the rights of the parties in the marital
16 assets shall be considered a species of coownership, and a transfer of marital assets under a judg-
17 ment of annulment or dissolution of marriage or of separation entered on or after October 4, 1977,
18 shall be considered a partitioning of jointly owned property. The court shall require full disclosure
19 of all assets by the parties in arriving at a just property division. In arriving at a just and proper
20 division of property, the court shall consider reasonable costs of sale of assets, taxes and any other
21 costs reasonably anticipated by the parties. If a spouse has been awarded spousal support in lieu
22 of a share of property, the court shall so state on the record and shall order the obligor to provide
23 for and maintain life insurance in an amount commensurate with the obligation and designating the
24 obligee as beneficiary for the duration of the obligation. If the obligor dies prior to the termination
25 of such support and such insurance is not in force, the court may modify the method of payment of
26 spousal support under the judgment or order of support from installments to a lump sum payment
27 to the obligee from the estate of the obligor in an amount commensurate with the present value of
28 the spousal support at the time of death. The obligee or attorney of the obligee shall cause a certi-
29 fied copy of the judgment to be delivered to the life insurance company or companies. If the obligee
30 or the attorney of the obligee delivers a true copy of the judgment to the life insurance company
31 or companies, identifying the policies involved and requesting such notification under this section,
32 the company or companies shall notify the obligee, as beneficiary of the insurance policy, whenever
33 the policyholder takes any action that will change the beneficiary or reduce the benefits of the
34 policy. Either party may request notification by the insurer when premium payments have not been
35 made. If the obligor is ordered to provide for and maintain life insurance, the obligor shall provide
36 to the obligee a true copy of the policy. The obligor shall also provide to the obligee written notice
37 of any action that will reduce the benefits or change the designation of the beneficiaries under the
38 policy.

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

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

45 (B) For the appointment of one or more trustees to hold, manage and control such amount of

1 money or such real or personal property of either or both of the parties, as may be set aside, allo-
 2 cated or appropriated for the support of a party.

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

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

10 (i) For a money award for any sums of money found to be then remaining unpaid upon any order
 11 or limited judgment entered under ORS 107.095. If a limited judgment was entered under ORS
 12 107.095, the limited judgment shall continue to be enforceable for any amounts not paid under the
 13 limited judgment unless those amounts are included in the money award made by the general judg-
 14 ment.

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

17 (2) In determining the proper amount of support and the proper division of property under sub-
 18 section (1)(c), (d) and (f) of this section, the court may consider evidence of the tax consequences
 19 on the parties of its proposed judgment.

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

25 (4) If an appeal is taken from a judgment of annulment or dissolution of marriage or of sepa-
 26 ration or from any part of a judgment rendered in pursuance of the provisions of ORS 107.005 to
 27 107.086, 107.095, 107.105, 107.115 to 107.174, 107.405, 107.425, 107.445 to 107.520, 107.540 and 107.610,
 28 the court rendering the judgment may provide in a supplemental judgment for any relief provided
 29 for in ORS 107.095 and shall provide that the relief granted in the judgment is to be in effect only
 30 during the pendency of the appeal. A supplemental judgment under this subsection may be enforced
 31 as provided in ORS 33.015 to 33.155 and ORS chapter 18. A supplemental judgment under this sub-
 32 section may be appealed in the same manner as provided for supplemental judgments modifying a
 33 domestic relations judgment under ORS 19.275.

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

38 (6) If, as a result of a suit for the annulment or dissolution of a marriage or for separation, the
 39 parties to such suit become owners of an undivided interest in any real or personal property, or
 40 both, either party may maintain supplemental proceedings by filing a petition in such suit for the
 41 partition of such real or personal property, or both, within two years from the entry of the judgment,
 42 showing among other things that the original parties to the judgment and their joint or several
 43 creditors having a lien upon any such real or personal property, if any there be, constitute the sole
 44 and only necessary parties to such supplemental proceedings. The procedure in the supplemental
 45 proceedings, so far as applicable, shall be the procedure provided in ORS 105.405 for the partition

1 of real property, and the court granting the judgment shall have in the first instance and retain
2 jurisdiction in equity therefor.

3 **SECTION 2. The amendments to ORS 107.105 by section 1 of this 2009 Act apply to judg-**
4 **ments entered on or after the effective date of this 2009 Act.**

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