

House Bill 2687

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon State Bar Family Law Section)

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 for payment of temporary spousal support to other party instead of Department of Justice, court clerk or court administrator.

Permits court to include amount for temporary child or spousal support requested after commencement of suit in general judgment.

A BILL FOR AN ACT

1
2 Relating to temporary support in family law proceedings; creating new provisions; and amending
3 ORS 107.095 and 107.105.

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

5 **SECTION 1.** ORS 107.095 is amended to read:

6 107.095. (1) After the commencement of a suit for marital annulment, dissolution or separation
7 and until a general judgment therein, the court may provide as follows:

8 (a) That a party pay to the [*clerk of the court*] **other party** such amount of money as may be
9 necessary to enable the other party to prosecute or defend the suit, including costs of expert wit-
10 nesses, and also such amount of money to the [*Department of Justice, court clerk or court adminis-*
11 *trator, whichever is appropriate,*] **other party** as may be necessary to support and maintain the other
12 party.

13 (b) For the care, custody, support and maintenance, by one party or jointly, of the minor chil-
14 dren as described in ORS 107.105 (1)(a) and for the parenting time rights as described in ORS 107.105
15 (1)(b) of the parent not having custody of such children.

16 (c) For the restraint of a party from molesting or interfering in any manner with the other party
17 or the minor children.

18 (d) That if minor children reside in the family home and the court considers it necessary for
19 their best interest to do so, the court may require either party to move out of the home for such
20 period of time and under such conditions as the court may determine, whether the home is rented,
21 owned or being purchased by one party or both parties.

22 (e) Restraining and enjoining either party or both from encumbering or disposing of any of the
23 real or personal property of either or both of the parties, except as ordered by the court.

24 (f) For the temporary use, possession and control of the real or personal property of the parties
25 or either of them and the payment of installment liens and encumbrances thereon.

26 (g) That even if no minor children reside in the family home, the court may require one party
27 to move out of the home for such period of time and under such conditions as the court determines,
28 whether the home is rented, owned or being purchased by one party or both parties if that party
29 assaults or threatens to assault the other.

30 (2) A limited judgment under ORS chapter 18 may be entered in an action for dissolution or

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 annulment of a marriage providing for a support award, as defined by ORS 18.005, or other money
 2 award, as defined by ORS 18.005. Notwithstanding ORS 19.255, a limited judgment entered under this
 3 subsection may not be appealed. Any decision of the court in a limited judgment subject to this
 4 subsection may be appealed as otherwise provided by law upon entry of a general judgment.

5 (3) The court shall not require an undertaking in case of the issuance of an order under sub-
 6 section (1)(c), (d), (e), (f) or (g) of this section.

7 (4) In a suit for annulment or dissolution of marriage or for separation, wherein the parties are
 8 copetitioners or the respondent is found by the court to be in default or the respondent having ap-
 9 peared has waived further appearance or the parties stipulate to the entry of a judgment, the court
 10 may, when the cause is otherwise ready for hearing on the merits, in lieu of such hearing, enter a
 11 judgment of annulment or dissolution or for separation based upon a current affidavit of the
 12 petitioner or copetitioners, setting forth a prima facie case, and covering such additional matters
 13 as the court may require. If child support or custody of minor children is involved, then the affidavit
 14 also shall include:

15 (a) The gross monthly income of each party, to the best of the affiant's knowledge; and

16 (b) The name of the party with whom the children currently reside and the length of time they
 17 have so resided.

18 (5) When a court orders relief under subsection (1)(c) or (d) of this section, the court may in-
 19 clude in its order an expiration date for the order to allow entry of the order into the Law
 20 Enforcement Data System and the databases of the National Crime Information Center of the United
 21 States Department of Justice as provided in ORS 107.720. If the person being restrained was pro-
 22 vided notice and an opportunity to be heard, the court shall also include in the order, when appro-
 23 priate, terms and findings sufficient under 18 U.S.C. 922 (d)(8) or (g)(8) to affect the person's ability
 24 to possess firearms and ammunition or engage in activities involving firearms.

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

26 107.105. (1) Whenever the court renders a judgment of marital annulment, dissolution or sepa-
 27 ration, the court may provide in the judgment:

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

34 (b) For parenting time rights of the parent not having custody of such children and for visitation
 35 rights pursuant to a petition filed under ORS 109.119. When a parenting plan has been developed
 36 as required by ORS 107.102, the court shall review the parenting plan and, if approved, incorporate
 37 the parenting plan into the court's final order. When incorporated into a final order, the parenting
 38 plan is determinative of parenting time rights. If the parents have been unable to develop a par-
 39 enting plan or if either of the parents requests the court to develop a detailed parenting plan, the
 40 court shall develop the parenting plan in the best interest of the child, ensuring the noncustodial
 41 parent sufficient access to the child to provide for appropriate quality parenting time and ensuring
 42 the safety of the parties, if implicated. The court may deny parenting time to the noncustodial par-
 43 ent under this subsection only if the court finds that parenting time would endanger the health or
 44 safety of the child. The court shall recognize the value of close contact with both parents and en-
 45 courage, when practicable, joint responsibility for the welfare of such children and extensive contact

1 between the minor children of the divided marriage and the parties. If the court awards parenting
 2 time to a noncustodial parent who has committed abuse, the court shall make adequate provision for
 3 the safety of the child and the other parent in accordance with the provisions of ORS 107.718 (6).

4 (c) For the support of the children of the marriage by the parties. In ordering child support, the
 5 formula established under ORS 25.275 shall apply. The court may at any time require an accounting
 6 from the custodial parent with reference to the use of the money received as child support. The
 7 court is not required to order support for any minor child who has become self-supporting,
 8 emancipated or married or **for a child** who has ceased to attend school after becoming 18 years of
 9 age. **The judgment may include an amount the court determines to be appropriate pursuant**
 10 **to a party's application for relief under ORS 107.095 (1)(b) for which a court order or limited**
 11 **judgment has not been previously entered, and the amount shall be considered a request for**
 12 **relief that has been decided by the general judgment for purposes of ORS 18.082 (3).**

13 (d) For spousal support, an amount of money for a period of time as may be just and equitable
 14 for one party to contribute to the other, in gross or in installments or both. The court may approve
 15 an agreement for the entry of an order for the support of a party. **The judgment may include an**
 16 **amount the court determines to be appropriate pursuant to a party's application for relief**
 17 **under ORS 107.095 (1)(a) for which a court order or limited judgment has not been previously**
 18 **entered, and the amount shall be considered a request for relief that has been decided by the**
 19 **general judgment for purposes of ORS 18.082 (3).** In making the spousal support order, the court
 20 shall designate one or more categories of spousal support and shall make findings of the relevant
 21 factors in the decision. The court may order:

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

- 26 (i) The duration of the marriage;
- 27 (ii) A party's training and employment skills;
- 28 (iii) A party's work experience;
- 29 (iv) The financial needs and resources of each party;
- 30 (v) The tax consequences to each party;
- 31 (vi) A party's custodial and child support responsibilities; and
- 32 (vii) Any other factors the court deems just and equitable.

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

- 38 (i) The amount, duration and nature of the contribution;
- 39 (ii) The duration of the marriage;
- 40 (iii) The relative earning capacity of the parties;
- 41 (iv) The extent to which the marital estate has already benefited from the contribution;
- 42 (v) The tax consequences to each party; and
- 43 (vi) Any other factors the court deems just and equitable.

44 (C) Spousal maintenance as a contribution by one spouse to the support of the other for either
 45 a specified or an indefinite period. The factors to be considered by the court in awarding spousal

1 maintenance include but are not limited to:

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

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

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

1 the beneficiaries under the policy.

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

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

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

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

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

18 (i) For a money award for any sums of money found to be then remaining unpaid upon any order
19 or limited judgment entered under ORS 107.095. If a limited judgment was entered under ORS
20 107.095, the limited judgment shall continue to be enforceable for any amounts not paid under the
21 limited judgment unless those amounts are included in the money award made by the general judg-
22 ment.

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

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

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

33 (4) If an appeal is taken from a judgment of annulment or dissolution of marriage or of sepa-
34 ration or from any part of a judgment rendered in pursuance of the provisions of ORS 107.005 to
35 107.086, 107.095, 107.105, 107.115 to 107.174, 107.405, 107.425, 107.445 to 107.520, 107.540 and 107.610,
36 the court rendering the judgment may provide in a supplemental judgment for any relief provided
37 for in ORS 107.095 and shall provide that the relief granted in the judgment is to be in effect only
38 during the pendency of the appeal. A supplemental judgment under this subsection may be enforced
39 as provided in ORS 33.015 to 33.155 and ORS chapter 18. A supplemental judgment under this sub-
40 section may be appealed in the same manner as provided for supplemental judgments modifying a
41 domestic relations judgment under ORS 19.275.

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

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

11 **SECTION 3. The amendments to ORS 107.095 and 107.105 by sections 1 and 2 of this 2011**
 12 **Act apply to proceedings commenced on or after the effective date of this 2011 Act.**

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