

Senate Bill 334

Sponsored by Senator HASS; Representative READ (Pre-session filed.)

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 order joint custody upon finding by court that joint custody is in best interests of child.

Provides that enactment of legislation constitutes substantial change of circumstances for purposes of modification of custody order or judgment.

A BILL FOR AN ACT

1
2 Relating to joint custody orders; creating new provisions; and amending ORS 107.169 and 107.179.

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

4 **SECTION 1.** ORS 107.169 is amended to read:

5 107.169. (1) As used in this chapter, "joint custody" means an arrangement by which parents
6 share rights and responsibilities for major decisions concerning the child, including, but not limited
7 to, the child's residence, education, health care and religious training. An order providing for joint
8 custody may specify one home as the primary residence of the child and designate one parent to
9 have sole power to make decisions about specific matters while both parents retain equal rights and
10 responsibilities for other decisions.

11 (2) The existence of an order of joint custody [*shall*] **may** not, by itself, determine the respon-
12 sibility of each parent to provide for the support of the child.

13 (3) The court [*shall not*] **may** order joint custody **taking into consideration the factors in**
14 **ORS 107.137, [*unless*] even if both parents do not agree to the terms and conditions of the order,**
15 **if the court finds that joint custody is in the best interests of the child.**

16 (4) [*When*] **If** parents have agreed to joint custody in an order or a judgment, the court may not
17 overrule that agreement by ordering sole custody to one parent.

18 (5) Modification of a joint custody order shall require showing of changed circumstances and a
19 showing that the modification is in the best interests of the child such as would support modification
20 of a sole custody order. Inability or unwillingness to continue to cooperate shall constitute a change
21 of circumstances sufficient to modify a joint custody order.

22 (6)(a) The inability of a parent to comply with the terms and conditions of a joint custody order
23 due to the parent's temporary absence does not constitute a change of circumstances if the parent's
24 temporary absence is caused by the parent being:

25 (A) Called into active state duty as defined in ORS 398.002; or

26 (B) Called into active federal service under Title 10 of the United States Code as a member of
27 the Oregon National Guard.

28 (b) As used in this subsection, "temporary absence" means a period not exceeding 30 consec-
29 utive months.

30 **SECTION 2.** ORS 107.179 is amended to read:

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.

1 107.179. (1) When either party to a child custody issue, other than one involving temporary
 2 custody, whether the issue arises from a case of marital annulment, dissolution or separation, or
 3 from a determination of paternity, requests the court to grant joint custody of the minor children
 4 of the parties under ORS 107.105, the court, if the other party objects to the request for joint cus-
 5 tody, shall proceed under this section. The request under this subsection must be made, in the pe-
 6 tition or the response, or otherwise not less than 30 days before the date of trial in the case, except
 7 for good cause shown. The court in such circumstances, except as provided in subsection (3) of this
 8 section, shall direct the parties to participate in mediation in an effort to resolve their differences
 9 concerning custody. The court may order such participation in mediation within a mediation pro-
 10 gram established by the court or as conducted by any mediator approved by the court. Unless the
 11 court or the county provides a mediation service available to the parties, the court may order that
 12 the costs of the mediation be paid by one or both of the parties, as the court finds equitable upon
 13 consideration of the relative ability of the parties to pay those costs. If, after 90 days, the parties
 14 do not arrive at a resolution of their differences, the court shall proceed to determine custody.

15 (2) At its discretion, the court may:

16 (a) Order mediation under this section prior to trial and postpone trial of the case pending the
 17 outcome of the mediation, in which case the issue of custody shall be tried only upon failure to re-
 18 solve the issue of custody by mediation;

19 (b) Order mediation under this section prior to trial and proceed to try the case as to issues
 20 other than custody while the parties are at the same time engaged in the mediation, in which case
 21 the issue of custody shall be tried separately upon failure to resolve the issue of custody by medi-
 22 ation; or

23 (c) Complete the trial of the case on all issues and order mediation under this section upon the
 24 conclusion of the trial, postponing entry of the judgment pending outcome of the mediation, in which
 25 case the court may enter a limited judgment as to issues other than custody upon completion of the
 26 trial or may postpone entry of any judgment until the expiration of the mediation period or agree-
 27 ment of the parties as to custody.

28 (3) If either party objects to mediation on the grounds that to participate in mediation would
 29 subject the party to severe emotional distress and moves the court to waive mediation, the court
 30 shall hold a hearing on the motion. If the court finds it likely that participation in mediation will
 31 subject the party to severe emotional distress, the court may waive the requirement of mediation.

32 (4) Communications made by or to a mediator or between parties as a part of mediation ordered
 33 under this section are privileged and are not admissible as evidence in any civil or criminal pro-
 34 ceeding.

35 **(5) If the parties are unable to resolve their differences concerning custody after partic-**
 36 **ipating in mediation under this section, the court may order joint custody if the court finds**
 37 **that joint custody is in the best interests of the child.**

38 **SECTION 3. For a custody order or judgment that was entered or modified before the**
 39 **effective date of this 2011 Act, the amendments to ORS 107.169 and 107.179 by sections 1 and**
 40 **2 of this 2011 Act constitute a substantial change of circumstances that was not contem-**
 41 **plated at the time the order or judgment was entered or modified.**

42 **SECTION 4. The amendments to ORS 107.169 and 107.179 by sections 1 and 2 of this 2011**
 43 **Act apply to custody proceedings commenced on or after the effective date of this 2011 Act.**