

Senate Bill 386

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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 that property acquired by gift and separately held by one party is not subject to presumption of equal contribution in domestic relations proceeding.

A BILL FOR AN ACT

1
2 Relating to division of property in domestic relations proceedings; creating new provisions; and
3 amending ORS 107.105.

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

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

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

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

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

29 (c) For the support of the children of the marriage by the parties. In ordering child support, the
30 formula established under ORS 25.275 shall apply. The court may at any time require an accounting

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 from the custodial parent with reference to the use of the money received as child support. The
2 court is not required to order support for any minor child who has become self-supporting,
3 emancipated or married or who has ceased to attend school after becoming 18 years of age.

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

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

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

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

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

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

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

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

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

4 (f) For the division or other disposition between the parties of the real or personal property, or
5 both, of either or both of the parties as may be just and proper in all the circumstances. **In deter-**
6 **mining the division of property under this paragraph, the following apply:**

7 (A) A retirement plan or pension or an interest therein shall be considered as property.

8 (B) The court shall consider the contribution of a *[spouse]* **party** as a homemaker as a contri-
9 bution to the acquisition of marital assets.

10 (C) **Except as provided in subparagraph (D) of this paragraph**, there is a rebuttable
11 presumption that both *[spouses]* **parties** have contributed equally to the acquisition of property
12 during the marriage, whether such property is jointly or separately held.

13 (D)(i) **Property acquired by gift to one party during the marriage and separately held by**
14 **that party on a continuing basis from the time of receipt is not subject to a presumption of**
15 **equal contribution under subparagraph (C) of this paragraph.**

16 (ii) **For purposes of this subparagraph, "property acquired by gift" means property ac-**
17 **quired by one party through gift, devise, bequest, operation of law, beneficiary designation**
18 **or inheritance.**

19 (E) Subsequent to the filing of a petition for annulment or dissolution of marriage or separation,
20 the rights of the parties in the marital assets shall be considered a species of co-ownership, and a
21 transfer of marital assets under a judgment of annulment or dissolution of marriage or of separation
22 entered on or after October 4, 1977, shall be considered a partitioning of jointly owned property.

23 (F) The court shall require full disclosure of all assets by the parties in arriving at a just
24 property division.

25 (G) In arriving at a just and proper division of property, the court shall consider reasonable
26 costs of sale of assets, taxes and any other costs reasonably anticipated by the parties.

27 (H)(i) If a *[spouse]* **party** has been awarded spousal support in lieu of a share of property, the
28 court shall so state on the record and shall order the obligor to provide for and maintain life in-
29 surance in an amount commensurate with the obligation and designating the obligee as beneficiary
30 for the duration of the obligation.

31 (ii) If the obligor dies prior to the termination of *[such]* **spousal** support and *[such]* **life** insur-
32 ance is not in force **as provided in sub-subparagraph (i) of this subparagraph**, the court may
33 modify the method of payment of spousal support under the judgment or order of support from in-
34 stallments to a lump sum payment to the obligee from the estate of the obligor in an amount
35 commensurate with the present value of the spousal support at the time of death.

36 (iii) The obligee or attorney of the obligee shall cause a certified copy of the judgment to be
37 delivered to the life insurance company or companies.

38 (iv) 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 pay-
43 ments have not been made. If the obligor is ordered to provide for and maintain life insurance, the
44 obligor shall provide to the obligee a true copy of the policy. The obligor shall also provide to the
45 obligee written notice of any action that will reduce the benefits or change the designation of the

1 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 2. The amendments to ORS 107.105 by section 1 of this 2011 Act apply to do-**
12 **estic relations proceedings pending or commenced on or after the effective date of this 2011**
13 **Act.**

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