

Senate Bill 512

Sponsored by Senator BOQUIST (at the request of Mark Pauletto) (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**.

Provides for automatic termination of spousal support upon death, remarriage or cohabitation of supported party.

A BILL FOR AN ACT

1 Relating to spousal support; creating new provisions; and amending ORS 107.105 and 107.136.

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

3 **SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS 107.093 to**
4 **107.425.**

5 **SECTION 2. (1) Except as otherwise agreed by the parties in writing, the obligation of a**
6 **party under an order for spousal support of the other party terminates upon the death of**
7 **either party, or upon the remarriage or cohabitation of the other party.**

8 **(2) For purposes of this section, "cohabitation" means a domestic arrangement between**
9 **parties who are not married to each other but who live as husband and wife or as domestic**
10 **partners for more than a brief period of time and who share a common domicile and living**
11 **expenses.**

12 **SECTION 3. ORS 107.105 is amended to read:**

13 107.105. (1) Whenever the court renders a judgment of marital annulment, dissolution or sepa-
14 ration, the court may provide in the judgment:

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

21 (b) For parenting time rights of the parent not having custody of such children and for visitation
22 rights pursuant to a petition filed under ORS 109.119. When a parenting plan has been developed
23 as required by ORS 107.102, the court shall review the parenting plan and, if approved, incorporate
24 the parenting plan into the court's final order. When incorporated into a final order, the parenting
25 plan is determinative of parenting time rights. If the parents have been unable to develop a par-
26 enting plan or if either of the parents requests the court to develop a detailed parenting plan, the
27 court shall develop the parenting plan in the best interest of the child, ensuring the noncustodial
28 parent sufficient access to the child to provide for appropriate quality parenting time and ensuring
29 the safety of the parties, if implicated. The court may deny parenting time to the noncustodial par-
30 ent under this subsection only if the court finds that parenting time would endanger the health or
31

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 safety of the child. The court shall recognize the value of close contact with both parents and en-
2 courage, when practicable, joint responsibility for the welfare of such children and extensive contact
3 between the minor children of the divided marriage and the parties. If the court awards parenting
4 time to a noncustodial parent who has committed abuse, the court shall make adequate provision for
5 the safety of the child and the other parent in accordance with the provisions of ORS 107.718 (6).

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

11 (d) For spousal support, an amount of money for a period of time as may be just and equitable
12 for one party to contribute to the other, in gross or in installments or both, **subject to section 2**
13 **of this 2011 Act**. The court may approve an agreement for the entry of an order for the support
14 of a party. In making the spousal support order, the court shall designate one or more categories
15 of spousal support and shall make findings of the relevant factors in the decision. The court may
16 order:

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

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

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

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

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

- 42 (i) The duration of the marriage;
- 43 (ii) The age of the parties;
- 44 (iii) The health of the parties, including their physical, mental and emotional condition;
- 45 (iv) The standard of living established during the marriage;

1 (v) The relative income and earning capacity of the parties, recognizing that the wage earner's
2 continuing income may be a basis for support distinct from the income that the supported spouse
3 may receive from the distribution of marital property;

4 (vi) A party's training and employment skills;

5 (vii) A party's work experience;

6 (viii) The financial needs and resources of each party;

7 (ix) The tax consequences to each party;

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

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

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

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

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

43 (A) For the appointment of one or more trustees to hold, control and manage for the benefit of
44 the children of the parties, of the marriage or otherwise such of the real or personal property of
45 either or both of the parties, as the court may order to be allocated or appropriated to their support

1 and welfare, and to collect, receive, expend, manage or invest any sum of money awarded for the
2 support and welfare of minor children of the parties.

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

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

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

13 (i) For a money award for any sums of money found to be then remaining unpaid upon any order
14 or limited judgment entered under ORS 107.095. If a limited judgment was entered under ORS
15 107.095, the limited judgment shall continue to be enforceable for any amounts not paid under the
16 limited judgment unless those amounts are included in the money award made by the general judg-
17 ment.

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

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

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

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

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

41 (6) If, as a result of a suit for the annulment or dissolution of a marriage or for separation, the
42 parties to such suit become owners of an undivided interest in any real or personal property, or
43 both, either party may maintain supplemental proceedings by filing a petition in such suit for the
44 partition of such real or personal property, or both, within two years from the entry of the judgment,
45 showing among other things that the original parties to the judgment and their joint or several

1 creditors having a lien upon any such real or personal property, if any there be, constitute the sole
 2 and only necessary parties to such supplemental proceedings. The procedure in the supplemental
 3 proceedings, so far as applicable, shall be the procedure provided in ORS 105.405 for the partition
 4 of real property, and the court granting the judgment shall have in the first instance and retain
 5 jurisdiction in equity therefor.

6 **SECTION 4.** ORS 107.136 is amended to read:

7 107.136. (1) When a court has terminated the duty of spousal support under ORS 107.135, the
 8 court may reinstate the remaining duration and remaining amount of the support award if the
 9 moving party alleges and proves that:

10 (a) The basis for the termination has ceased to exist; and

11 (b) The reinstatement is just and equitable under all the circumstances.

12 (2) For the purposes of this section:

13 (a) The remaining duration of a support award is the term of the award remaining as if the
 14 award had not been terminated and support had been paid from the date of termination to the date
 15 of reinstatement. For example, if the applicable judgment required payment of spousal support for
 16 10 years, the award was terminated in year three and reinstatement of the award was sought at the
 17 end of year seven, the maximum remaining duration of the support award that could be reinstated
 18 would be three years.

19 (b) The remaining amount of a support award is the amount of support owed as if the award had
 20 not been terminated and support had been paid from the date of termination to the date of rein-
 21 statement. For example, if the applicable judgment required support payments of \$1,000 per month
 22 for five years and \$500 per month for the next five years, the award was terminated in year three
 23 and reinstatement of the award was sought at the end of year seven, the maximum remaining
 24 amount of the support award that could be reinstated would be \$500 per month.

25 (3) A motion for reinstatement of a spousal support award under this section must be brought
 26 within the remaining duration of the award or within 10 years after the entry of the judgment ter-
 27 minating the award, whichever is sooner.

28 (4) In exercising the discretion granted under subsection (1) of this section, the court shall
 29 consider the basis for the spousal support award, the basis for the termination of the award and the
 30 totality of the circumstances of each party existing since the termination of the award.

31 (5) Either party may file a motion to modify spousal support under ORS 107.135 in a proceeding
 32 to reinstate the spousal support award. In addition to considering the factors under ORS 107.135 (3)
 33 and (4), the court shall consider the factors described in subsection (4) of this section.

34 (6) At any time, the parties may waive their rights under this section in writing, signed by both
 35 parties and referencing this section.

36 (7) Any reinstatement of a spousal support award may be ordered effective retroactive to the
 37 date the motion was served or to any date thereafter.

38 **(8) This section does not apply where support has been terminated under section 2 of this**
 39 **2011 Act, unless the parties have otherwise agreed in writing for the continuation or rein-**
 40 **statement of support in the event of death, remarriage or cohabitation.**

41 **SECTION 5. Section 2 of this 2011 Act and the amendments to ORS 107.105 and 107.136**
 42 **by sections 3 and 4 of this 2011 Act apply to domestic relations proceedings pending or com-**
 43 **menced on or after the effective date of this 2011 Act.**