

Senate Bill 869

Sponsored by COMMITTEE ON JUDICIARY

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 medical debt of spouse or ex-spouse incurred during marriage or after separation or dissolution of marriage is debt of spouse receiving medical health care and services if spouses have separated or dissolved their marriage. Prohibits legal action against spouse that did not receive medical health care and services to collect medical debt.

Prohibits court from dividing medical debt between spouses in domestic relations proceedings.

A BILL FOR AN ACT

Relating to medical debt of spouses; creating new provisions; and amending ORS 107.105 and 108.040.

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

SECTION 1. ORS 108.040 is amended to read:

108.040. (1)(a) **Except as provided in subsection (3) of this section**, the expenses of the family and the education of the minor children are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately.

(b) As used in this subsection:

(A) "Expenses of the family" includes only expenses incurred for the benefit of a member of the family.

(B) "Family" means the husband, wife and minor children of the husband and wife.

(2) Notwithstanding subsection (1) of this section, after the separation of one spouse from the other spouse, a spouse is not responsible for debts contracted by the other spouse after the separation except for debts incurred for maintenance, support and education of the minor children of the spouses.

(3)(a) If the spouses are separated or their marriage has been dissolved under ORS chapter 107, the medical debt of one spouse, whether incurred during marriage, after separation as described in subsection (4) of this section or following dissolution of marriage, is chargeable only upon the property of the spouse or ex-spouse who received the medical health care and services for which the medical debt was incurred, and only the spouse or ex-spouse that received the medical health care and services may be sued to recover payment for the resulting medical debt.

(b) As used in this subsection:

(A) "Medical debt" means debt incurred for the provision of medical health care and services.

(B) "Medical health care and services" means medical screening, examination, diagnosis, prognosis, treatment, hospitalization, drug administration and mental health counseling.

[(3)] (4) For the purposes of *[subsection (2)]* **subsections (2) and (3)** of this section, spouses shall be considered separated if they are living in separate residences without intention of reconciliation at the time the debt is incurred. The court may consider the following factors in determining

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 whether the spouses are separated in addition to such other factors as may be relevant:

- 2 (a) Whether the spouses subsequently reconciled.
- 3 (b) The number of separations and reconciliations of the spouses.
- 4 (c) The length of time the spouses lived apart.
- 5 (d) Whether the spouses intend to reconcile.
- 6 (e) Whether the spouses have filed a petition for separation or dissolution.

7 [(4)] (5) An action under this section shall be commenced within the period otherwise provided
8 by law.

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

10 107.105. (1) Whenever the court renders a judgment of marital annulment, dissolution or sepa-
11 ration, the court may provide in the judgment:

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

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

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

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

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

1 limited to:

- 2 (i) The duration of the marriage;
- 3 (ii) A party's training and employment skills;
- 4 (iii) A party's work experience;
- 5 (iv) The financial needs and resources of each party;
- 6 (v) The tax consequences to each party;
- 7 (vi) A party's custodial and child support responsibilities; and
- 8 (vii) Any other factors the court deems just and equitable.

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

- 14 (i) The amount, duration and nature of the contribution;
- 15 (ii) The duration of the marriage;
- 16 (iii) The relative earning capacity of the parties;
- 17 (iv) The extent to which the marital estate has already benefited from the contribution;
- 18 (v) The tax consequences to each party; and
- 19 (vi) Any other factors the court deems just and equitable.

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

- 23 (i) The duration of the marriage;
- 24 (ii) The age of the parties;
- 25 (iii) The health of the parties, including their physical, mental and emotional condition;
- 26 (iv) The standard of living established during the marriage;
- 27 (v) The relative income and earning capacity of the parties, recognizing that the wage earner's
 28 continuing income may be a basis for support distinct from the income that the supported spouse
 29 may receive from the distribution of marital property;
- 30 (vi) A party's training and employment skills;
- 31 (vii) A party's work experience;
- 32 (viii) The financial needs and resources of each party;
- 33 (ix) The tax consequences to each party;
- 34 (x) A party's custodial and child support responsibilities; and
- 35 (xi) Any other factors the court deems just and equitable.

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

38 (f) For the division or other disposition between the parties of the real or personal property, or
 39 both, of either or both of the parties as may be just and proper in all the circumstances. A retire-
 40 ment plan or pension or an interest therein shall be considered as property. The court shall consider
 41 the contribution of a spouse as a homemaker as a contribution to the acquisition of marital assets.
 42 There is a rebuttable presumption that both spouses have contributed equally to the acquisition of
 43 property during the marriage, whether such property is jointly or separately held. Subsequent to the
 44 filing of a petition for annulment or dissolution of marriage or separation, the rights of the parties
 45 in the marital assets shall be considered a species of co-ownership, and a transfer of marital assets

1 under a judgment of annulment or dissolution of marriage or of separation entered on or after Oc-
2 tober 4, 1977, shall be considered a partitioning of jointly owned property. The court shall require
3 full disclosure of all assets by the parties in arriving at a just property division. In arriving at a
4 just and proper division of property, the court shall consider reasonable costs of sale of assets, taxes
5 and any other costs reasonably anticipated by the parties. If a spouse has been awarded spousal
6 support in lieu of a share of property, the court shall so state on the record and shall order the
7 obligor to provide for and maintain life insurance in an amount commensurate with the obligation
8 and designating the obligee as beneficiary for the duration of the obligation. If the obligor dies prior
9 to the termination of such support and such insurance is not in force, the court may modify the
10 method of payment of spousal support under the judgment or order of support from installments to
11 a lump sum payment to the obligee from the estate of the obligor in an amount commensurate with
12 the present value of the spousal support at the time of death. The obligee or attorney of the obligee
13 shall cause a certified copy of the judgment to be delivered to the life insurance company or com-
14 panies. If the obligee or the attorney of the obligee delivers a true copy of the judgment to the life
15 insurance company or companies, identifying the policies involved and requesting such notification
16 under this section, the company or companies shall notify the obligee, as beneficiary of the insur-
17 ance policy, whenever the policyholder takes any action that will change the beneficiary or reduce
18 the benefits of the policy. Either party may request notification by the insurer when premium
19 payments have not been made. If the obligor is ordered to provide for and maintain life insurance,
20 the obligor shall provide to the obligee a true copy of the policy. The obligor shall also provide to
21 the obligee written notice of any action that will reduce the benefits or change the designation of
22 the beneficiaries under the policy.

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

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

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

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

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

39 (i) For a money award for any sums of money found to be then remaining unpaid upon any order
40 or limited judgment entered under ORS 107.095. If a limited judgment was entered under ORS
41 107.095, the limited judgment shall continue to be enforceable for any amounts not paid under the
42 limited judgment unless those amounts are included in the money award made by the general judg-
43 ment.

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

1 **(k) For the division or other disposition between the parties of the debts of either or both**
2 **of the parties as may be just and proper in all the circumstances, except that the medical**
3 **debt as defined in ORS 108.040 of one party may not be considered marital debt subject to**
4 **the court's division or disposition in a proceeding under this chapter.**

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

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

13 (4) If an appeal is taken from a judgment of annulment or dissolution of marriage or of sepa-
14 ration or from any part of a judgment rendered in pursuance of the provisions of ORS 107.005 to
15 107.086, 107.095, 107.105, 107.115 to 107.174, 107.405, 107.425, 107.445 to 107.520, 107.540 and 107.610,
16 the court rendering the judgment may provide in a supplemental judgment for any relief provided
17 for in ORS 107.095 and shall provide that the relief granted in the judgment is to be in effect only
18 during the pendency of the appeal. A supplemental judgment under this subsection may be enforced
19 as provided in ORS 33.015 to 33.155 and ORS chapter 18. A supplemental judgment under this sub-
20 section may be appealed in the same manner as provided for supplemental judgments modifying a
21 domestic relations judgment under ORS 19.275.

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

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

36 **SECTION 3. The amendments to ORS 108.040 and 107.105 by sections 1 and 2 of this 2011**
37 **Act apply to medical debt incurred on or after the effective date of this 2011 Act.**

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