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January 22, 2013

VIA E-MAIL & U.S. MAIL
rep.jeffbarker@state.or.us

Representative Jeff Barker
Chair, House Judiciary Committee
900 Court Street, N.E., H-491
Salem, Oregon 97301

Subject: Alimony Reform HB 2559

Dear Chairman Barker:

I am writing to urge you to support much-needed alimony reform in the form of Proposed HB 2559. Oregon's alimony laws need to be updated for today's social and economic conditions to be more fair and predictable so that divorces are less contentious and less costly to resolve. This reform will reduce the cost, stress, and strife of divorce, especially in the lives of our children, and allow divorced parties to move on with their lives.

Perhaps most disturbing about the current Oregon law is the fact that alimony awards can be "indefinite" in nature, forcing the payer back to court in protracted and expensive litigation proceedings when they need to modify their support obligation. In my own situation, I face lifetime alimony—I will "be paying in perpetuity" as my former wife's lawyer has told me—even though she received half of our assets in the divorce, she has a college degree, her own professional career, and she received a sizeable inheritance from her mother.

When established in the divorce, my obligation to pay began at about 38 percent of my net disposable income. But with the economic decline in recent years, I now pay closer to 60 percent of my net pay in alimony. At 60 years of age, I am borrowing money and drawing down retirement funds to pay alimony to a person who does not need it. I have no realistic hope of retiring and, in fact, face the very real possibility of being completely out of money in a few short years. Now, I am locked in an expensive and emotionally-wrenching litigation battle to seek some relief, but the



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time from my request for modification (summer 2012) to trial date (May 2013) will entail nine months of delay, extensive discovery burdens, and significant litigation cost with no guarantee of a meaningful reduction.

The ability of recipients to receive an award with no clear ending date has two very clear outcomes:

1. It makes it impossible for a payer to plan for their future, including their retirement, when they have no way of predicting what their economic situation will be; and
2. It discourages alimony recipients from taking the necessary steps to become independent, self-sufficient, and productive members of society.

In addition, the lack of any guidelines in the area of alimony (as contrasted with child support) makes this a very heavily litigated issue. It is thus a prime revenue generator for family law practitioners and in turn, a major source of asset drain for couples going through the divorce or modification proceedings. Implementing guidelines (similar to child support and income tax) will allow for predictability, retention of family assets, and reduced litigation. The proposed bill would still allow for the exercise of judicial discretion in unusual circumstances.

HB 2559 provides alimony laws with the right mixture of guidelines, time limits, and judicial discretion. I believe it is pro-family, pro-marriage, that it fairly protects alimony payers and alimony recipients, and that it will reduce the emotional and financial costs of divorce. It will also significantly reduce the devastating impact on the second families of a payer that is subject to an unfair and never-ending obligation and who often bear the burden of sacrificing to support a previous spouse.

Like the new Massachusetts law on which it was based and similar legislation currently being considered in Florida and New Jersey, HB 2559 provides generous alimony when necessary to make the transition to independence, limits alimony when the recipient is cohabiting or remarried, allows payers a meaningful right to retire, and it excludes the income and assets of new spouses in alimony modifications.



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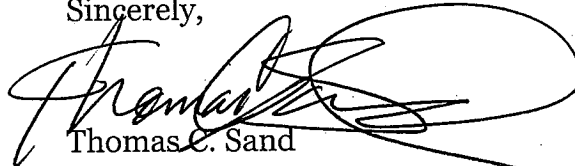
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I welcome the opportunity to talk with you personally about my situation and the need for reform in Oregon, and will contact your office to set up an appointment. Thank you.

Sincerely,



Thomas C. Sand

cc: Senator Elizabeth Steiner Hayward
Representative Mitch Greenlick

Alimony Reform in Oregon

Changing the law to reflect gender equality, fairness and predictability in divorce proceedings

Original Purposes of Alimony

- To compensate non-working or lower-income earning spouses (almost always women) for their contribution to the marriage
- To recognize that spouses who stay home to raise children were less competitive in the marketplace than those who work outside the home
- To avoid divorced women with little to no resources becoming a burden on the state's social services

Alimony not consistent with today's economic realities

- 42% of households have two income earners
- In 2010, women comprised 47 percent of the total U.S. labor force (source: US DOL)
- Women are projected to account for 51 percent of the increase in total labor force growth between 2008 and 2018
- In 2010, women accounted for 51.5 percent of all workers in the high-paying management, professional, and related occupations

What is Oregon Alimony Reform NOT Proposing?

- OAR is NOT proposing any changes to child support laws; alimony and child support are separate and distinct issues and should not be confused with each other
- OAR is NOT proposing the elimination of alimony in its entirety

What OAR advocates

- Judicial discretion in unique and compelling circumstances
- Replace “indefinite” alimony with a defined term limit of half the length of the marriage, but not to exceed ten years
- Automatic termination of alimony upon good faith retirement of payer with no litigation required
- Marriage or co-habitation of recipient for longer than 3 months triggers automatic termination of alimony with no right of reinstatement

What OAR advocates

- Alimony amount should be driven by a percentage of the payer's income, not an arbitrary amount
- Alimony amount should be limited according to income differential between payer and recipient (for example 25% of differential)
- Each party has right to review the other's proof of income (W-2, 1099, K-1, Form 1040) each year and automatically make adjustments if necessary without litigation

What OAR advocates

- Assets and income from new spouse or cohabiter of payer should be excluded from alimony award proceedings
- Amounts received by recipient from retirement funds and social security are automatically deducted from alimony award
- A streamlined process for modification when payer suffers income decline of greater than 15% or when alimony recipient has income increase of greater than 15%
- Compensatory alimony modifiable

Alimony reform in other states

- Massachusetts passed in early 2011
- Florida
- Connecticut
- New Jersey
- Virginia
- California
- Pennsylvania
- Oklahoma
- Maine
- Georgia
- North Carolina
- Arizona

Alimony horror stories: Andrew

- Wife leaves when Andrew earning \$12,891/month
- Alimony judgment of \$ 2,050 ordered by court
- Wife begins cohabitating with boyfriend while earning a good living
- Andrew laid off from job, income reduced to \$1,800/month unemployment benefits
- Andrew asks wife for temporary modification while he looks for work; wife says “no” and litigation begins.

Andrew (cont.)

- Andrew spent large portion of his savings to fund litigation
- Litigation drags Andrew's romantic partner Jennifer into the proceeding and Andrew is only awarded a \$500/month reduction.
- Litigation cost: \$26,000 for Andrew, \$3,400 for Jennifer.
- When child support and court-ordered life insurance in favor of ex-wife is added together, 100% of Andrew's unemployment benefit is immediately absorbed each month, while his former wife is working and earning approximately \$4,000/month before alimony and she continues to cohabituate with her boyfriend.

Horror Stories:

Tom

- Tom supported wife while she finished college degree as she planned for a career
- Wife agreed she would return to work when youngest child began school
- Tom worked 50+ hour weeks to support family until children were grown
- After 27 years of marriage, and prior to the economic collapse of 2008, wife filed for divorce and was granted “indefinite” alimony of \$6,750

Tom (cont.)

- Today, Tom earns approximately 30% less than the year he divorced and has had to borrow money from relatives and use retirement savings to pay alimony
- In contrast, Tom's former wife had no need to liquidate her assets (all of which she was awarded in the divorce) and in fact she received a significant inheritance
- Tom's former wife obtained a professional license, has a career, and is capable of supporting herself in her chosen profession
- Tom sought modification based on reduction in his earnings; wife refused mediation and sought extensive discovery from both Tom and his new wife

Tom (cont.)

- Tom offered a high ranking public service job for the state of Oregon but former wife refused to discuss a temporary modification even with a pay back at end of appointment so he had to turn it down
- After over \$25,000 in legal fees, Tom could no longer afford to proceed with the modification effort and abandoned it
- Today, more than half of Tom's net take-home pay goes to pay alimony leaving him less than half of a much-smaller income to live on than he earned during the year of his divorce and causing his second wife to sell her home and move with her young son due to economic circumstances almost entirely related to Tom's alimony

Horror Stories: Nicole

- Wife quit work in 2001 and agreed to return when oldest child attended grade school (5 yrs)
- Husband worked 2 jobs to sustain family
- In 2008 and 2009, husband faces layoffs and pay cuts.
- Starts looking for another job in Eugene and Oregon. No luck. Financial situation worsens.
- Husband files for divorce after wife refuses to return to work for 3 years (8 years at home, 12 year marriage)

Nicole (cont.)

- Husband could not afford attorney so represented himself. Wife's family sponsored an attorney for her
- At time of separation, husband's salary: \$62,000
- During the month of finalizing Divorce Agreement, husband's income reduced to \$57,000 by employer

Nicole (cont.)

- Net Income \$3,400 per month
- Agreement to pay \$2,500 per month (73% of husband's net income)
 - \$1,500 alimony (44%)
 - \$1,000 CS (29%)
 - OR LIMITS GARNISHMENTS TO A MAX OF 60% of net income
- Husband left with \$900 per month
- Wife retained all assets, husband retained all marital debt
 - Husband left with \$200 per month after debts
- Wife agreed husband would stay in marital home for rent of \$100/month indefinitely, until he could “get back on his feet”

Nicole, cont.

- As soon as agreement is filed, wife evicts husband in breach of agreement and begins to collect food stamps
- Husband locked out and left homeless with no notice (has to sleep in car)
- Husband ends up sleeping on friend's floor
- Husband uses up savings and hires attorney
 - Wife will not mediate, wife's lawyer delays
- Husband runs out of funds and abandons modification after spending \$1,200

Nicole, cont.

- Husband laid off
 - no work prospects in Eugene, Oregon and US
 - Wife's lawyer is threatening contempt of court and imprisonment
- Eventually moves to Dubai with friends look for work
 - Unemployed for 7 months.
- Husband remarries
 - New wife works and has 2 small children that she supports
- Husband finds work but cost of living is very high.
 - Net income less than ever before

Nicole, cont.

- Husband works many hours of overtime to support ***himself only*** and meet \$3,000 monthly garnishment
 - Additional \$500 because of arrears
- Overtime and budget cuts at husband's new job.
 - Unable to survive financially and therefore risk of Debtor's in Dubai
- New wife takes on second job to assist with alimony payments, despite severe health issues and risk of imprisonment in Dubai
 - In Dubai, immigrants may only legally work for visa sponsor
 - New wife subsidizes husband to with \$20,000 in 2010 alone
- Husband seeks alimony modification
 - Ex-wife refuses, lawyer repeatedly delays
 - Five months later husband and new wife travel to Eugene court for modification hearing

Nicole, cont.

- Modification application denied because husband 'earned more'
 - Did not take into account cost of living
 - Only looked at past overtime earnings and ignored impact of overtime cutbacks on future income
 - Ignored fact that ex-wife was now working

Nicole, cont.

- Husband filed for appeal
 - (later abandoned – legal costs top \$15,000 in efforts to get modification)
- Nicole and husband confirm pregnancy
- Husband faces Dubai debtor's prison due to husband's inability to pay debts.
 - New wife no longer earning an income and has to exit the country within 30 days of termination or face fines of \$100 per day for her and children
- No unemployment benefits, because husband's company did not report his employment.
- Husband cashes out 401k to survive. No resources left.

Nicole, cont.

- Husband finds work in Vermont. Family moves.
- New wife unable to find work because of pregnancy
- Family of five lives on ***\$400 a week*** for nearly a year because of \$3,000.00 garnishment
 - (\$2,000 a month) 20% below poverty line
- Family denied food stamps, denied WIC, denied heat assistance.
 - State and Federal law does ***not deduct alimony*** from gross income to determine eligibility

Nicole, cont.

- One year later:
- Ex wife:
 - bought double story 3 bedroom house in Springfield, Oregon December 2011
- Husband and second family
 - Went through Vermont winter with no heat
 - Wife would boil water on stove and carry in buckets while pregnant to wash children and family
 - Relied on church food banks for food and could not qualify for food stamps
 - Meal intake reduced for children
 - Wife lost 35 pounds while pregnant
 - 2 and 4 year old children also lost weight

Nicole, cont.

- Husband and new wife filed joint tax return
 - Wife's portion of return (\$2,248) paid to ex wife
- Unable to purchase necessities for newborn
- Car repossessed by bank
- Unable to pay rent, electricity (critical to boil water), internet (critical for job search),
- Fell behind in rent in February 2012, when baby is born

Nicole, cont.

- Husband is laid off on 27 March
- Served with eviction notice for 31 May.
- Nicole and husband will be separating
 - Inability to find work in the same states
 - 3 children will be deprived of the only father they have ever known

Next Steps

- Task force creation by Oregon Legislature which includes members of OAR
- Ask legislative counsel to assist with drafting proposed bill to be presented during 2013 session
- Set information hearings at which constituents on both sides of the issue will be able to tell their stories