

House Bill 2559

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim 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**.

Modifies law regarding establishment and modification of spousal support in domestic relations proceedings. Limits duration and amount of spousal support that may be ordered by court. Automatically terminates obligation to pay spousal support upon death of either party, upon remarriage or cohabitation of obligee or upon obligor reaching retirement age. Prescribes circumstances under which reinstatement of terminated spousal support may be ordered.

A BILL FOR AN ACT

1
2 Relating to spousal support in domestic relations proceedings; creating new provisions; amending
3 ORS 19.275, 107.104, 107.105, 107.135, 107.136, 107.407, 107.412, 107.434, 107.449 and 107.475; and
4 repealing ORS 107.406.

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

6 **SECTION 1. Sections 2 and 3 of this 2013 Act are added to and made a part of ORS 107.093**
7 **to 107.449.**

8 **SECTION 2. (1) The court may order the payment of spousal support in a judgment of**
9 **marital annulment, dissolution or separation, subject to the provisions of this section.**

10 **(2) The court may not order the payment of any category of spousal support for a period**
11 **of time greater than one-half the length of the parties' marriage or 10 years, whichever is**
12 **less.**

13 **(3) In establishing the amount of any category of spousal support that a court may order,**
14 **the following apply:**

15 **(a) The amount of spousal support ordered to be paid:**

16 **(A) May not exceed 25 percent of the difference between the parties' gross incomes es-**
17 **tablished at the time the order is entered;**

18 **(B) Must take into account the obligor's prospective ability to pay, in addition to past**
19 **earnings and other income; and**

20 **(C) May not include or take into account the income and assets of a party's new spouse**
21 **or partner in cohabitation as defined in subsection (6) of this section.**

22 **(b) The amount of spousal support ordered to be paid must be reduced by the amount**
23 **of retirement or pension benefits, Social Security benefits or other entitlement payments**
24 **that the obligee currently receives or is reasonably anticipated to receive.**

25 **(4) In ordering the payment of spousal support, the court shall designate one or more**
26 **categories of spousal support described in subsection (5) of this section and shall make**
27 **findings of the relevant factors in the decision.**

28 **(5) The categories of spousal support that the court may order are:**

29 **(a) Transitional spousal support as needed for a party to attain education and training**

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 necessary to allow the party to prepare for reentry into the job market or for advancement
 2 therein. The factors to be considered by the court in awarding transitional spousal support
 3 include, but are not limited to:

- 4 (A) The duration of the marriage;
- 5 (B) A party's training and employment skills;
- 6 (C) A party's work experience;
- 7 (D) The financial needs and resources of each party;
- 8 (E) The tax consequences to each party;
- 9 (F) A party's custodial and child support responsibilities; and
- 10 (G) Any other factors the court deems just and equitable.

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

- 16 (A) The amount, duration and nature of the contribution;
- 17 (B) The duration of the marriage;
- 18 (C) The relative earning capacity of the parties;
- 19 (D) The extent to which the marital estate has already benefited from the contribution;
- 20 (E) The tax consequences to each party; and
- 21 (F) Any other factors the court deems just and equitable.

22 (c) Spousal maintenance as a contribution by one spouse to the support of the other. The
 23 factors to be considered by the court in awarding spousal maintenance include, but are not
 24 limited to:

- 25 (A) The duration of the marriage;
- 26 (B) The age of the parties;
- 27 (C) The health of the parties, including their physical, mental and emotional condition;
- 28 (D) The standard of living established during the marriage;
- 29 (E) The relative income and earning capacity of the parties, recognizing that the wage
 30 earner's continuing income may be a basis for support distinct from the income that the
 31 supported spouse may receive from the distribution of marital property;
- 32 (F) A party's training and employment skills;
- 33 (G) A party's work experience;
- 34 (H) The financial needs and resources of each party;
- 35 (I) The tax consequences to each party;
- 36 (J) A party's custodial and child support responsibilities; and
- 37 (K) Any other factors the court deems just and equitable.

38 (6)(a) Except as otherwise agreed by the parties in writing, the obligation of a party un-
 39 der an order to pay any category of spousal support terminates without further notice to the
 40 obligee and without further order of the court:

- 41 (A) Upon the death of either party;
- 42 (B) Upon the remarriage or cohabitation of the obligee; or
- 43 (C) Upon the good faith retirement of the obligor.

44 (b) For purposes of this subsection:

- 45 (A) "Cohabitation" means a domestic arrangement between parties who are not married

1 to each other but who live as husband and wife or as domestic partners for more than three
 2 months and who share a common domicile and living expenses.

3 (B) “Good faith retirement” means the retirement of the obligor at an age when the
 4 obligor could first make application for retirement in accordance with the terms of the re-
 5 tirement plan under which the obligor is eligible, regardless of the obligor’s ability to work
 6 beyond that age.

7 (7) Notwithstanding subsection (6) of this section, the court may require life insurance
 8 as provided in ORS 107.820 and 107.830 to provide for the continued support of the obligee in
 9 the event of the obligor’s death.

10 (8) If the court orders the payment of spousal support under this section, the judgment
 11 shall include a provision requiring the parties to comply with section 3 (4) of this 2013 Act.

12 (9) The court may approve an agreement between the parties for the entry of an order
 13 for spousal support.

14 (10) A general judgment entered under ORS 107.105 may include an amount for support
 15 as requested in a petition filed under ORS 107.085 for which a limited judgment was not en-
 16 tered, payment of which commences no earlier than the date the petition was served on the
 17 nonrequesting party, and the amount shall be considered a request for relief that has been
 18 decided by the general judgment for purposes of ORS 18.082 (3).

19 **SECTION 3.** (1) As used in this section, “substantial change in economic
 20 circumstances” includes, but is not limited to:

21 (a) A substantial change in the cost of reasonable and necessary expenses to either party;

22 (b) A substantial change in income, benefits or income opportunities to either party; or

23 (c) The provisions of a spousal support order in a judgment entered prior to the effective
 24 date of this 2013 Act that exceed the limits on duration or amount of spousal support that
 25 may be ordered under section 2 of this 2013 Act.

26 (2) The court may, at any time after a judgment of marital annulment, dissolution or
 27 separation has been entered, upon the motion of either party and after service of notice on
 28 the other party in the manner provided by ORCP 7, set aside or modify any portion of the
 29 judgment that provides for the payment of spousal support or for life insurance under sec-
 30 tion 2 of this 2013 Act, in accordance with this section.

31 (3)(a) A substantial change in economic circumstances of a party must exist and be
 32 proved by the party seeking the set-aside or modification.

33 (b) An order setting aside or modifying a provision of a spousal support order is subject
 34 to the provisions of section 2 of this 2013 Act.

35 (4)(a) Upon written request received from the other party, a party shall provide copies
 36 of the following documents to the requesting party for the purpose of determining whether
 37 there has been a substantial change in economic circumstances or for the purpose of enter-
 38 ing into a stipulated modification under subsection (5) of this section:

39 (A) Federal and state income tax returns filed by the party for the last calendar year;
 40 or

41 (B) If the party has not filed income tax returns for the last calendar year, all W-2
 42 statements, year-end payroll statements, interest and dividend statements and all other re-
 43 cords of income earned or received by the party during the last calendar year;

44 (b) A request under this subsection may be made once each year.

45 (5) The parties may stipulate to, and the court shall enter, an order setting aside or

1 **modifying a provision for the payment of spousal support or for life insurance under section**
 2 **2 of this 2013 Act, based upon a current affidavit of the parties without further hearing or**
 3 **notice. The provisions of the stipulation do not need to comply with this section or section**
 4 **2 of this 2013 Act.**

5 **(6) Except as otherwise agreed to in writing by the parties, nothing in this section may**
 6 **be construed to permit the reinstatement of spousal support after the support obligation has**
 7 **been terminated as provided in section 2 (6) of this 2013 Act unless the termination occurred**
 8 **as a result of the cohabitation of the obligee, in which case the obligee may seek rein-**
 9 **statement of spousal support as provided in ORS 107.136.**

10 **(7)(a) In a proceeding under this section or section 2 of this 2013 Act, the court may en-**
 11 **force the terms set forth in an agreement or stipulation signed by the parties, an order or**
 12 **judgment resulting from a settlement on the record or an order or judgment incorporating**
 13 **an agreement or stipulation of the parties:**

14 **(A) As contract terms using contract remedies;**

15 **(B) By imposing any remedy available to enforce an order or judgment, including, but**
 16 **not limited to, contempt; or**

17 **(C) By any combination of the provisions of subparagraphs (A) and (B) of this paragraph.**

18 **(b) A party may seek to enforce an agreement or stipulation and obtain remedies de-**
 19 **scribed in paragraph (a) of this subsection by filing a motion, serving notice on the other**
 20 **party in the manner provided by ORCP 7 and, if a remedy under paragraph (a)(B) of this**
 21 **subsection is sought, complying with the statutory requirements for that remedy. All claims**
 22 **for relief arising out of the same acts or omissions must be joined in the same proceeding.**

23 **SECTION 4.** ORS 107.105 is amended to read:

24 **107.105. (1) Whenever the court renders a judgment of marital annulment, dissolution or sepa-**
 25 **ration, the court may provide in the judgment:**

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

32 **(b) For parenting time rights of the parent not having custody of such children and for visitation**
 33 **rights pursuant to a petition filed under ORS 109.119. When a parenting plan has been developed**
 34 **as required by ORS 107.102, the court shall review the parenting plan and, if approved, incorporate**
 35 **the parenting plan into the court's final order. When incorporated into a final order, the parenting**
 36 **plan is determinative of parenting time rights. If the parents have been unable to develop a par-**
 37 **enting plan or if either of the parents requests the court to develop a detailed parenting plan, the**
 38 **court shall develop the parenting plan in the best interest of the child, ensuring the noncustodial**
 39 **parent sufficient access to the child to provide for appropriate quality parenting time and ensuring**
 40 **the safety of the parties, if implicated. The court shall deny parenting time to a parent under this**
 41 **paragraph if the court finds that the parent has been convicted of rape under ORS 163.365 or 163.375**
 42 **or other comparable law of another jurisdiction and the rape resulted in the conception of the child.**
 43 **Otherwise, the court may deny parenting time to the noncustodial parent under this subsection only**
 44 **if the court finds that parenting time would endanger the health or safety of the child. The court**
 45 **shall recognize the value of close contact with both parents and encourage, when practicable, joint**

1 responsibility for the welfare of such children and extensive contact between the minor children of
 2 the divided marriage and the parties. If the court awards parenting time to a noncustodial parent
 3 who has committed abuse, other than being convicted for rape as described in this paragraph, the
 4 court shall make adequate provision for the safety of the child and the other parent in accordance
 5 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 for any child who has ceased to attend school after becoming 18 years
 11 of age. A general judgment entered under this section may include an amount for support as re-
 12 quested in a petition filed under ORS 107.085 or under a motion for relief made pursuant to ORS
 13 107.095 (1)(b) for which a limited judgment was not entered, payment of which commences no earlier
 14 than the date the petition or motion was served on the nonrequesting party, and the amount shall
 15 be considered a request for relief that has been decided by the general judgment for purposes of
 16 ORS 18.082 (3).

17 (d) For spousal support **pursuant to section 2 of this 2013 Act.***[, an amount of money for a*
 18 *period of time as may be just and equitable for one party to contribute to the other, in gross or in in-*
 19 *installments or both. The court may approve an agreement for the entry of an order for the support of*
 20 *a party. A general judgment entered under this section may include an amount for support as requested*
 21 *in a petition filed under ORS 107.085 or under a motion for relief made pursuant to ORS 107.095 (1)(b)*
 22 *for which a limited judgment was not entered, payment of which commences no earlier than the date*
 23 *the petition or motion was served on the nonrequesting party, and the amount shall be considered a*
 24 *request for relief that has been decided by the general judgment for purposes of ORS 18.082 (3). In*
 25 *making the spousal support order, the court shall designate one or more categories of spousal support*
 26 *and shall make findings of the relevant factors in the decision. The court may order:]*

27 [(A) *Transitional spousal support as needed for a party to attain education and training necessary*
 28 *to allow the party to prepare for reentry into the job market or for advancement therein. The factors*
 29 *to be considered by the court in awarding transitional spousal support include but are not limited to:]*

- 30 [(i) *The duration of the marriage;*]
- 31 [(ii) *A party's training and employment skills;*]
- 32 [(iii) *A party's work experience;*]
- 33 [(iv) *The financial needs and resources of each party;*]
- 34 [(v) *The tax consequences to each party;*]
- 35 [(vi) *A party's custodial and child support responsibilities; and*]
- 36 [(vii) *Any other factors the court deems just and equitable.*]

37 [(B) *Compensatory spousal support when there has been a significant financial or other contribu-*
 38 *tion by one party to the education, training, vocational skills, career or earning capacity of the other*
 39 *party and when an order for compensatory spousal support is otherwise just and equitable in all of the*
 40 *circumstances. The factors to be considered by the court in awarding compensatory spousal support*
 41 *include but are not limited to:]*

- 42 [(i) *The amount, duration and nature of the contribution;*]
- 43 [(ii) *The duration of the marriage;*]
- 44 [(iii) *The relative earning capacity of the parties;*]
- 45 [(iv) *The extent to which the marital estate has already benefited from the contribution;*]

- 1 *[(v) The tax consequences to each party; and]*
- 2 *[(vi) Any other factors the court deems just and equitable.]*
- 3 *[(C) Spousal maintenance as a contribution by one spouse to the support of the other for either a*
- 4 *specified or an indefinite period. The factors to be considered by the court in awarding spousal main-*
- 5 *tenance include but are not limited to:]*
- 6 *[(i) The duration of the marriage;]*
- 7 *[(ii) The age of the parties;]*
- 8 *[(iii) The health of the parties, including their physical, mental and emotional condition;]*
- 9 *[(iv) The standard of living established during the marriage;]*
- 10 *[(v) The relative income and earning capacity of the parties, recognizing that the wage earner's*
- 11 *continuing income may be a basis for support distinct from the income that the supported spouse may*
- 12 *receive from the distribution of marital property;]*
- 13 *[(vi) A party's training and employment skills;]*
- 14 *[(vii) A party's work experience;]*
- 15 *[(viii) The financial needs and resources of each party;]*
- 16 *[(ix) The tax consequences to each party;]*
- 17 *[(x) A party's custodial and child support responsibilities; and]*
- 18 *[(xi) Any other factors the court deems just and equitable.]*
- 19 (e) For the delivery to one party of such party's personal property in the possession or control
- 20 of the other at the time of the giving of the judgment.
- 21 (f) For the division or other disposition between the parties of the real or personal property, or
- 22 both, of either or both of the parties as may be just and proper in all the circumstances. In deter-
- 23 mining the division of property under this paragraph, the following apply:
- 24 (A) A retirement plan or pension or an interest therein shall be considered as property.
- 25 (B) The court shall consider the contribution of a party as a homemaker as a contribution to
- 26 the acquisition of marital assets.
- 27 (C) Except as provided in subparagraph (D) of this paragraph, there is a rebuttable presumption
- 28 that both parties have contributed equally to the acquisition of property during the marriage,
- 29 whether such property is jointly or separately held.
- 30 (D)(i) Property acquired by gift to one party during the marriage and separately held by that
- 31 party on a continuing basis from the time of receipt is not subject to a presumption of equal con-
- 32 tribution under subparagraph (C) of this paragraph.
- 33 (ii) For purposes of this subparagraph, "property acquired by gift" means property acquired by
- 34 one party through gift, devise, bequest, operation of law, beneficiary designation or inheritance.
- 35 (E) Subsequent to the filing of a petition for annulment or dissolution of marriage or separation,
- 36 the rights of the parties in the marital assets shall be considered a species of co-ownership, and a
- 37 transfer of marital assets under a judgment of annulment or dissolution of marriage or of separation
- 38 entered on or after October 4, 1977, shall be considered a partitioning of jointly owned property.
- 39 (F) The court shall require full disclosure of all assets by the parties in arriving at a just
- 40 property division.
- 41 (G) In arriving at a just and proper division of property, the court shall consider reasonable
- 42 costs of sale of assets, taxes and any other costs reasonably anticipated by the parties.
- 43 (H)(i) If a party has been awarded spousal support in lieu of a share of property, the court shall
- 44 so state on the record and shall order the obligor to provide for and maintain life insurance in an
- 45 amount commensurate with the obligation and designating the obligee as beneficiary for the dura-

1 tion of the obligation.

2 *[(ii) If the obligor dies prior to the termination of spousal support and life insurance is not in force*
 3 *as provided in sub-subparagraph (i) of this subparagraph, the court may modify the method of payment*
 4 *of spousal support under the judgment or order of support from installments to a lump sum payment*
 5 *to the obligee from the estate of the obligor in an amount commensurate with the present value of the*
 6 *spousal support at the time of death.]*

7 *[(iii)]* (ii) The obligee or attorney of the obligee shall cause a certified copy of the judgment to
 8 be delivered to the life insurance company or companies.

9 *[(iv)]* (iii) If the obligee or the attorney of the obligee delivers a true copy of the judgment to
 10 the life insurance company or companies, identifying the policies involved and requesting such no-
 11 tification under this section, the company or companies shall notify the obligee, as beneficiary of the
 12 insurance policy, whenever the policyholder takes any action that will change the beneficiary or
 13 reduce the benefits of the policy. Either party may request notification by the insurer when premium
 14 payments have not been made. If the obligor is ordered to provide for and maintain life insurance,
 15 the obligor shall provide to the obligee a true copy of the policy. The obligor shall also provide to
 16 the obligee written notice of any action that will reduce the benefits or change the designation of
 17 the beneficiaries under the policy.

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

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

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

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

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

34 (i) For a money award for any sums of money found to be then remaining unpaid upon any order
 35 or limited judgment entered under ORS 107.095. If a limited judgment was entered under ORS
 36 107.095, the limited judgment shall continue to be enforceable for any amounts not paid under the
 37 limited judgment unless those amounts are included in the money award made by the general judg-
 38 ment.

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

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

44 (3) Upon the filing of the judgment, the property division ordered shall be deemed effective for
 45 all purposes. This transfer by judgment, which shall affect solely owned property transferred to the

1 other spouse as well as commonly owned property in the same manner as would a declaration of a
 2 resulting trust in favor of the spouse to whom the property is awarded, is not a taxable sale or ex-
 3 change.

4 (4) If an appeal is taken from a judgment of annulment or dissolution of marriage or of sepa-
 5 ration or from any part of a judgment rendered in pursuance of the provisions of ORS 107.005 to
 6 107.086, 107.095, 107.105, 107.115 to 107.174, 107.405, 107.425, 107.445 to 107.520, 107.540 and 107.610,
 7 the court rendering the judgment may provide in a supplemental judgment for any relief provided
 8 for in ORS 107.095 and shall provide that the relief granted in the judgment is to be in effect only
 9 during the pendency of the appeal. A supplemental judgment under this subsection may be enforced
 10 as provided in ORS 33.015 to 33.155 and ORS chapter 18. A supplemental judgment under this sub-
 11 section may be appealed in the same manner as provided for supplemental judgments modifying a
 12 domestic relations judgment under ORS 19.275.

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

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

27 **SECTION 5.** ORS 107.135 is amended to read:

28 107.135. (1) The court may at any time after a judgment of annulment or dissolution of marriage
 29 or of separation is granted, upon the motion of either party and after service of notice on the other
 30 party in the manner provided by ORCP 7, and after notice to the Division of Child Support when
 31 required under subsection [(9)] (8) of this section:

32 (a) Set aside, alter or modify any portion of the judgment that provides for the appointment and
 33 duties of trustees, for the custody, parenting time, visitation, support and welfare of the minor
 34 children and the children attending school, as defined in ORS 107.108, including any health or life
 35 insurance provisions[, *for the support of a party*] or for life insurance under ORS 107.820 or 107.830;

36 (b) Make an order, after service of notice to the other party, providing for the future custody,
 37 support and welfare of minor children residing in the state, who, at the time the judgment was given,
 38 were not residents of the state, or were unknown to the court or were erroneously omitted from the
 39 judgment;

40 (c) Terminate a duty of support toward any minor child who has become self-supporting,
 41 emancipated or married;

42 (d) After service of notice on the child in the manner provided by law for service of a summons,
 43 suspend future support for any child who has ceased to be a child attending school as defined in
 44 ORS 107.108; and

45 (e) Set aside, alter or modify any portion of the judgment that provides for a property award

1 based on the enhanced earning capacity of a party that was awarded before October 23, 1999. A
 2 property award may be set aside, altered or modified under this paragraph:

3 (A) When the person with the enhanced earning capacity makes a good faith career change that
 4 results in less income;

5 (B) When the income of the person with the enhanced earning capacity decreases due to cir-
 6 cumstances beyond the person's control; or

7 (C) Under such other circumstances as the court deems just and proper.

8 (2) When a party moves to set aside, alter or modify the child support provisions of the judg-
 9 ment:

10 (a) The party shall state in the motion, to the extent known:

11 (A) Whether there is pending in this state or any other jurisdiction any type of support pro-
 12 ceeding involving children of the marriage, including one brought under ORS 25.287, 107.431,
 13 109.100, 125.025, 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter 110; and

14 (B) Whether there exists in this state or any other jurisdiction a support order, as defined in
 15 ORS 110.303, involving children of the marriage, other than the judgment the party is moving to set
 16 aside, alter or modify.

17 (b) The party shall include with the motion a certificate regarding any pending support pro-
 18 ceeding and any existing support order other than the judgment the party is moving to set aside,
 19 alter or modify. The party shall use a certificate that is in a form established by court rule and in-
 20 clude information required by court rule and paragraph (a) of this subsection.

21 (3) In a proceeding under this section to reconsider the [spousal or] child support provisions of
 22 the judgment, [*the following provisions apply:*]

23 [(a)] a substantial change in economic circumstances of a party, which may include, but is not
 24 limited to, a substantial change in the cost of reasonable and necessary expenses to either party, is
 25 sufficient for the court to reconsider its order of support.[, *except that an order of compensatory*
 26 *spousal support may only be modified upon a showing of an involuntary, extraordinary and unantic-*
 27 *ipated change in circumstances that reduces the earning capacity of the paying spouse.]*

28 [(b) *If the judgment provided for a termination or reduction of spousal support at a designated age*
 29 *in anticipation of the commencement of pension, Social Security or other entitlement payments, and if*
 30 *the obligee is unable to obtain the anticipated entitlement payments, that inability is sufficient change*
 31 *in circumstances for the court to reconsider its order of support.]*

32 [(c) *If Social Security is considered in lieu of spousal support or partial spousal support, the court*
 33 *shall determine the amount of Social Security the party is eligible to collect. The court shall take into*
 34 *consideration any pension, retirement or other funds available to either party to effect an equitable*
 35 *distribution between the parties and shall also take into consideration any reduction of entitlement*
 36 *caused by taking early retirement.]*

37 (4) In considering under this section whether a change in circumstances exists sufficient for the
 38 court to reconsider [spousal or] **the** child support provisions of a judgment, the following provisions
 39 apply:

40 (a) The court or administrator, as defined in ORS 25.010, shall consider income opportunities and
 41 benefits of the respective parties from all sources, including but not limited to:

42 (A) The reasonable opportunity of each party, the obligor and obligee respectively, to acquire
 43 future income and assets.

44 (B) Retirement benefits available to the obligor and to the obligee.

45 (C) Other benefits to which the obligor is entitled, such as travel benefits, recreational benefits

1 and medical benefits, contrasted with benefits to which the obligee is similarly entitled.

2 (D) Social Security benefits paid to a child, or to a representative payee administering the funds
3 for the child’s use and benefit, as a result of the obligor’s disability or retirement if the benefits:

- 4 (i) Were not previously considered in the child support order; or
- 5 (ii) Were considered in an action initiated before May 12, 2003.

6 (E) Apportioned Veterans’ benefits or Survivors’ and Dependents’ Educational Assistance under
7 38 U.S.C. chapter 35 paid to a child, or to a representative payee administering the funds for the
8 child’s use and benefit, as a result of the obligor’s disability or retirement if the benefits:

- 9 (i) Were not previously considered in the child support order; or
- 10 (ii) Were considered in an action initiated before May 12, 2003.

11 (b) If the motion for modification is one made by the obligor to reduce or terminate support, and
12 if the obligee opposes the motion, the court shall not find a change in circumstances sufficient for
13 reconsideration of support provisions, if the motion is based upon a reduction of the obligor’s fi-
14 nancial status resulting from the obligor’s taking voluntary retirement, partial voluntary retirement
15 or any other voluntary reduction of income or self-imposed curtailment of earning capacity, if it is
16 shown that such action of the obligor was not taken in good faith but was for the primary purpose
17 of avoiding the support obligation. In any subsequent motion for modification, the court shall deny
18 the motion if the sole basis of the motion for modification is the termination of voluntarily taken
19 retirement benefits and the obligor previously has been found not to have acted in good faith.

20 (c) The court shall consider the following factors in deciding whether the actions of the obligor
21 were not in “good faith”:

22 (A) Timing of the voluntary retirement or other reduction in financial status to coincide with
23 court action in which the obligee seeks or is granted an increase in *[spousal]* support.

24 (B) *[Whether all or most of the income producing assets and property were awarded to the obligor,*
25 *and spousal support in lieu of such property was awarded to the obligee]* **The availability of income**
26 **producing assets and property awarded to the obligor and obligee respectively.**

27 (C) Extent of the obligor’s dissipation of funds and assets prior to the voluntary retirement or
28 soon after filing for the change of circumstances based on retirement.

29 (D) If earned income is reduced and absent dissipation of funds or large gifts, whether the
30 obligor has funds and assets from which the *[spousal]* support could have been paid.

31 *[(E) Whether the obligor has given gifts of substantial value to others, including a current spouse,*
32 *to the detriment of the obligor’s ability to meet the preexisting obligation of spousal support.]*

33 *[(5) Upon terminating a duty of spousal support, a court shall make specific findings of the basis*
34 *for the termination and shall include the findings in the judgment.]*

35 *[(6)]* (5) Any modification of child *[or spousal]* support granted because of a change of circum-
36 stances may be ordered effective retroactive to the date the motion for modification was served or
37 to any date thereafter.

38 *[(7)]* (6) The judgment is final as to any installment or payment of money that has accrued up
39 to the time the nonmoving party, other than the state, is served with a motion to set aside, alter
40 or modify the judgment. The court may not set aside, alter or modify any portion of the judgment
41 that provides for any payment of money*[, either]* for minor children *[or for the support of a party,]*
42 that has accrued before the motion is served. However:

43 (a) The court may allow a credit against child support arrearages for periods of time, excluding
44 reasonable parenting time unless otherwise provided by order or judgment, during which the obligor,
45 with the knowledge and consent of the obligee or pursuant to court order, has physical custody of

1 the child; and

2 (b) The court may allow, as provided in the rules of the Child Support Program, a dollar-for-
 3 dollar credit against child support arrearages for any Social Security or Veterans' benefits paid
 4 retroactively to the child, or to a representative payee administering the funds for the child's use
 5 and benefit, as a result of an obligor's disability or retirement.

6 [(8)] (7) In a proceeding under subsection (1) of this section, the court may assess against either
 7 party a reasonable attorney fee and costs for the benefit of the other party. If a party is found to
 8 have acted in bad faith, the court shall order that party to pay a reasonable attorney fee and costs
 9 of the defending party.

10 [(9)] (8) Whenever a motion to establish, modify or terminate child support or satisfy or alter
 11 support arrearages is filed and the child support rights of one of the parties or of a child of both
 12 of the parties have been assigned to the state, a true copy of the motion shall be served by mail or
 13 personal delivery on the Administrator of the Division of Child Support of the Department of Justice
 14 or on the branch office providing support services to the county in which the motion is filed.

15 [(10)(a)] (9)(a) Except as provided in ORS 109.701 to 109.834, the courts of Oregon, having once
 16 acquired personal and subject matter jurisdiction in a domestic relations action, retain such juris-
 17 diction regardless of any change of domicile.

18 (b) The courts of Oregon, in a proceeding to establish, enforce or modify a child support order,
 19 shall recognize the provisions of the federal Full Faith and Credit for Child Support Orders Act (28
 20 U.S.C. 1738B).

21 [(11)] (10) In a proceeding under this section to reconsider provisions in a judgment relating to
 22 custody or parenting time, the court may consider repeated and unreasonable denial of, or interfer-
 23 ence with, parenting time to be a substantial change of circumstances.

24 [(12)] (11) In a proceeding under this section to reconsider provisions in a judgment relating to
 25 parenting time, the court may suspend or terminate a parent's parenting time with a child if the
 26 court finds that the parent has abused a controlled substance and that the parenting time is not in
 27 the best interests of the child. If a court has suspended or terminated a parent's parenting time
 28 with a child for reasons described in this subsection, the court may not grant the parent future
 29 parenting time until the parent has shown that the reasons for the suspension or termination are
 30 resolved and that reinstated parenting time is in the best interests of the child. Nothing in this
 31 subsection limits the court's authority under subsection (1)(a) of this section.

32 [(13)] (12) In a proceeding under this section to reconsider provisions in a judgment relating to
 33 custody, temporary placement of the child by the custodial parent pursuant to ORS 109.056 (3) with
 34 the noncustodial parent as a result of military deployment of the custodial parent is not, by itself,
 35 a change of circumstances. Any fact relating to the child and the parties occurring subsequent to
 36 the last custody judgment, other than the custodial parent's temporary placement of the child pur-
 37 suant to ORS 109.056 (3) with the noncustodial parent, may be considered by the court when making
 38 a change of circumstances determination.

39 [(14)] (13) Within 30 days after service of notice under subsection (1) of this section, the party
 40 served shall file a written response with the court.

41 [(15)(a)] (14)(a) It is the policy of this state:

42 (A) To encourage the settlement of cases brought under this section; and

43 (B) For courts to enforce the terms of settlements described in paragraph (b) of this subsection
 44 to the fullest extent possible, except when to do so would violate the law or would clearly
 45 contravene public policy.

1 (b) In a proceeding under subsection (1) of this section, the court may enforce the terms set
 2 forth in a stipulated order or judgment signed by the parties, an order or judgment resulting from
 3 a settlement on the record or an order or judgment incorporating a settlement agreement:

4 (A) As contract terms using contract remedies;

5 (B) By imposing any remedy available to enforce an order or judgment, including but not limited
 6 to contempt; or

7 (C) By any combination of the provisions of subparagraphs (A) and (B) of this paragraph.

8 (c) A party may seek to enforce an agreement and obtain remedies described in paragraph (b)
 9 of this subsection by filing a motion, serving notice on the other party in the manner provided by
 10 ORCP 7 and, if a remedy under paragraph (b)(B) of this subsection is sought, complying with the
 11 statutory requirements for that remedy. All claims for relief arising out of the same acts or omis-
 12 sions must be joined in the same proceeding.

13 (d) Nothing in paragraph (b) or (c) of this subsection limits a party's ability, in a separate pro-
 14 ceeding, to file a motion to modify an order or judgment under subsection (1) of this section or to
 15 seek enforcement of an ancillary agreement to the order or judgment.

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

17 107.136. (1) When [*a court has terminated*] the duty of spousal support **has been terminated or**
 18 **set aside** under [*ORS 107.135*] **section 2 or 3 of this 2013 Act**, the court may reinstate the re-
 19 maining duration and remaining amount of the support award if the moving party alleges and proves
 20 that:

21 (a) The basis for the termination **or set-aside** has ceased to exist; [*and*]

22 (b) **The basis for the termination or set-aside was not the death or good faith retirement**
 23 **of the obligor or the remarriage of the obligee; and**

24 [*(b)*] (c) The reinstatement is just and equitable under all the circumstances.

25 (2) For the purposes of this section:

26 (a) The remaining duration of a support award is the term of the award remaining as if the
 27 award had not been terminated **or set aside** and support had been paid from the date of termination
 28 **or set-aside** to the date of reinstatement. For example, if the applicable judgment required payment
 29 of spousal support for 10 years, the award was terminated **or set aside** in year three and rein-
 30 statement of the award was sought at the end of year seven, the maximum remaining duration of the
 31 support award that could be reinstated would be three years.

32 (b) The remaining amount of a support award is the amount of support owed as if the award had
 33 not been terminated **or set aside** and support had been paid from the date of termination **or set-**
 34 **aside** to the date of reinstatement. For example, if the applicable judgment required support pay-
 35 ments of \$1,000 per month for five years and \$500 per month for the next five years, the award was
 36 terminated **or set aside** in year three and reinstatement of the award was sought at the end of year
 37 seven, the maximum remaining amount of the support award that could be reinstated would be \$500
 38 per month.

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

42 (4) In exercising the discretion granted under subsection (1) of this section, the court shall
 43 consider the basis for the spousal support award, the basis for the termination **or set-aside** of the
 44 award and the totality of the circumstances of each party existing since the termination **or set-**
 45 **aside** of the award.

1 (5) Either party may file a motion to modify spousal support under [ORS 107.135] **section 3 of**
 2 **this 2013 Act** in a proceeding to reinstate the spousal support award. In addition to considering the
 3 factors [under ORS 107.135 (3) and (4)] **in sections 2 and 3 of this 2013 Act**, the court shall con-
 4 sider the factors described in subsection (4) of this section.

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

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

9 **SECTION 7.** ORS 107.407 is amended to read:

10 107.407. If an individual has paid an amount of money in installments [*for more than 10 years*]
 11 for the support of a former spouse under a judgment of annulment or dissolution of marriage that
 12 ordered such payment, and when the former spouse has not made a reasonable effort during that
 13 period of time to become financially self-supporting and independent of the support provided under
 14 the judgment, the individual paying the support may petition the court that issued the judgment to
 15 set aside so much of the judgment as may provide for the support of the former spouse. The petition
 16 shall not be granted if spousal support was granted in the judgment in lieu of a share of property
 17 in order to provide the other spouse with a tax benefit.

18 **SECTION 8.** ORS 107.412 is amended to read:

19 107.412. (1) Upon petition of an individual **under ORS 107.407** and after service of notice on the
 20 other party in the manner provided by law for service of a summons, the court shall conduct a
 21 proceeding to determine whether so much of its judgment as provides for the support of a party shall
 22 be set aside.

23 (2) Except as provided in subsections (3) and (4) of this section, if the court finds that the party
 24 receiving support has not made a reasonable effort [*during the previous 10 years*] to become finan-
 25 cially self-supporting and independent of the support provided under the judgment, the court shall
 26 order that support terminated. In making its finding under this subsection, the court shall consider
 27 the following matters:

28 (a) The age of the party receiving support;

29 (b) The health, work experience and earning capacity of the party;

30 (c) The ages, health and dependency conditions of the minor children of the party; and

31 (d) Efforts made by the party [*during the previous 10 years*] to improve opportunities for gainful
 32 or improved employment including, but not limited to, attendance at any school, community college
 33 or university or attendance at courses of professional or technical training.

34 (3) A court does not have power under ORS 107.407 and this section to set aside any payment
 35 of money for the support of a party that has accrued prior to the filing of the petition under sub-
 36 section (1) of this section.

37 (4) ORS 107.407 and this section do not affect a judgment, or any portion of it, that provides for
 38 the payment of money for the support of minor children or for the support of a party who is 60 years
 39 of age or older when the proceeding under subsection (1) of this section is held.

40 (5) In a proceeding held under subsection (1) of this section, the court may assess against either
 41 party a reasonable attorney fee for the benefit of the other party.

42 **SECTION 9.** ORS 107.104 is amended to read:

43 107.104. (1) It is the policy of this state:

44 (a) To encourage the settlement of suits for marital annulment, dissolution or separation; and

45 (b) For courts to enforce the terms of settlements described in subsection (2) of this section to

1 the fullest extent possible, except when to do so would violate the law or would clearly contravene
 2 public policy.

3 (2) In a suit for marital annulment, dissolution or separation, the court may enforce the terms
 4 set forth in a stipulated judgment signed by the parties, a judgment resulting from a settlement on
 5 the record or a judgment incorporating a marital settlement agreement:

6 (a) As contract terms using contract remedies;

7 (b) By imposing any remedy available to enforce a judgment, including but not limited to con-
 8 tempt; or

9 (c) By any combination of the provisions of paragraphs (a) and (b) of this subsection.

10 (3) A party may seek to enforce an agreement and obtain remedies described in subsection (2)
 11 of this section by filing a motion, serving notice on the other party in the manner provided by ORCP
 12 7 and, if a remedy under subsection (2)(b) of this section is sought, complying with the statutory
 13 requirements for that remedy. All claims for relief arising out of the same acts or omissions must
 14 be joined in the same proceeding.

15 (4) Nothing in subsection (2) or (3) of this section limits a party's ability, in a separate pro-
 16 ceeding, to file a motion to set aside, alter or modify a judgment under ORS 107.135 **or section 2**
 17 **or 3 of this 2013 Act** or to seek enforcement of an ancillary agreement to the judgment.

18 **SECTION 10.** ORS 107.434 is amended to read:

19 107.434. (1) The presiding judge of each judicial district shall establish an expedited parenting
 20 time enforcement procedure that may or may not include a requirement for mediation. The proce-
 21 dure must be easy to understand and initiate. Unless the parties otherwise agree, the court shall
 22 conduct a hearing no later than 45 days after the filing of a motion seeking enforcement of a par-
 23 enting time order. The court shall provide forms for:

24 (a) A motion filed by either party alleging a violation of parenting time or substantial violations
 25 of the parenting plan. When a person files this form, the person must include a copy of the order
 26 establishing the parenting time.

27 (b) An order requiring the parties to appear and show cause why parenting time should not be
 28 enforced in a specified manner. The party filing the motion shall serve a copy of the motion and
 29 the order on the other party. The order must include:

30 (A) A notice of the remedies imposable under subsection (2) of this section and the availability
 31 of a waiver of any mediation requirement; and

32 (B) A notice in substantially the following form:

33 _____
 34
 35 When pleaded and shown in a separate legal action, violation of court orders, including
 36 visitation and parenting time orders, may also result in a finding of contempt, which can lead to
 37 fines, imprisonment or other penalties, including compulsory community service.
 38 _____

39
 40 (c) A motion, affidavit and order that may be filed by either party and providing for waiver of
 41 any mediation requirement on a showing of good cause.

42 (2) In addition to any other remedy the court may impose to enforce the provisions of a judg-
 43 ment relating to the parenting plan, the court may:

44 (a) Modify the provisions relating to the parenting plan by:

45 (A) Specifying a detailed parenting time schedule;

1 (B) Imposing additional terms and conditions on the existing parenting time schedule; or

2 (C) Ordering additional parenting time, in the best interests of the child, to compensate for
3 wrongful deprivation of parenting time;

4 (b) Order the party who is violating the parenting plan provisions to post bond or security;

5 (c) Order either or both parties to attend counseling or educational sessions that focus on the
6 impact of violation of the parenting plan on children;

7 (d) Award the prevailing party expenses, including, but not limited to, attorney fees, filing fees
8 and court costs, incurred in enforcing the party's parenting plan;

9 (e) Terminate, suspend or modify spousal support;

10 (f) Terminate, suspend or modify child support as provided in ORS 107.431; or

11 (g) Schedule a hearing for modification of custody as provided in ORS 107.135 [(11)] (10).

12 **SECTION 11.** ORS 107.475 is amended to read:

13 107.475. The court shall determine and fix in its judgment the duration of the separation. At the
14 expiration of such time, the judgment shall have no further effect. However, no rights created or
15 granted in the judgment which have vested shall be affected by its termination. Upon motion of a
16 party and service upon the other party of notice in the manner provided by law for service of sum-
17 mons, the court may renew or extend the duration. When the judgment is for unlimited separation,
18 a party may by motion alleging that the cause for separation no longer exists and after due service
19 of notice upon the other party in the manner provided by law for service of summons, apply for an
20 order modifying or vacating the judgment, subject to the provisions of ORS 107.135 **and sections 2**
21 **and 3 of this 2013 Act.**

22 **SECTION 12.** ORS 19.275 is amended to read:

23 19.275. (1) Any motion that requires a showing of a change of circumstances before the court
24 may modify a judgment, including a motion to reconsider the spousal or child support provisions of
25 a judgment pursuant to ORS 107.135 **and sections 2 and 3 of this 2013 Act**, may be filed with the
26 trial court while an appeal from the judgment is pending before an appellate court. The filing of a
27 motion under this subsection does not affect the right of the appellant to pursue the appeal of the
28 judgment.

29 (2) The trial court in its discretion may proceed to hear and decide a motion under this section
30 or may hold the motion in abeyance pending disposition of the appeal.

31 (3) Pursuant to the provisions of ORS 19.205, the court's decision on a motion under this section
32 is a supplemental judgment. The appellate court in its discretion may consolidate an appeal from a
33 supplemental judgment under this section with the pending appeal of the general judgment in the
34 case, may direct that both appeals be heard at the same time or may allow the appeals to proceed
35 independently.

36 **SECTION 13.** ORS 107.449 is amended to read:

37 107.449. (1) Upon motion of a party to a proceeding under ORS 107.135 (1) **or section 3 of this**
38 **2013 Act** that is not otherwise covered under the provisions of ORS 25.100 (1), based upon conven-
39 ience of the parties, the court that has entered the original judgment may order that the matter be
40 transferred to an auxiliary circuit court where either party resides for the purpose of hearing the
41 matter.

42 (2) Upon entry of an order under this section and payment by the moving party of the copying
43 and certification costs, the clerk of the court that ordered the transfer shall transmit certified copies
44 of the files, records and prepared transcripts of testimony in the original proceeding to the clerk
45 of the court receiving the matter. Upon receipt of such certified copies, the circuit court of the

1 county to which such certified copies have been transmitted shall have jurisdiction the same as if
2 it were the court that made and entered the original order or judgment.

3 (3) The only court having jurisdiction to modify any provision of the original order or judgment
4 is the court having original jurisdiction of the cause in which such order or judgment was entered
5 or the circuit court of the county in which either party resides if that court has received the cer-
6 tified copies referred to in subsection (2) of this section. The provisions of ORS 25.100 (2) to (4) shall
7 apply to all records maintained and orders issued in the auxiliary proceeding.

8 **SECTION 14. ORS 107.406 is repealed.**

9 **SECTION 15. Sections 2 and 3 of this 2013 Act, the amendments to ORS 19.275, 107.104,
10 107.105, 107.135, 107.136, 107.407, 107.412, 107.434, 107.449 and 107.475 by sections 4 to 13 of this
11 2013 Act and the repeal of ORS 107.406 by section 14 of this 2013 Act apply to proceedings to
12 establish or modify spousal support orders or judgments pending or commenced on or after
13 the effective date of this 2013 Act.**

14
