

# House Bill 2571

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon State Bar Family Law Section)

## 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**.

Clarifies that spousal support payments terminate on death of either party in domestic relations proceeding.

Provides for imposition of restraining order prohibiting parties in unmarried parents proceeding from making changes relating to health or life insurance policies.

Provides that venue for filiation proceedings is county where either party or child resides.

## A BILL FOR AN ACT

1 Relating to domestic relations proceedings; amending ORS 107.105, 109.103 and 109.135.

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

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

4 107.105. (1) Whenever the court renders a judgment of marital annulment, dissolution or separation,  
5 107.105. (1) Whenever the court renders a judgment of marital annulment, dissolution or separation,  
6 the court may provide in the judgment:

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

13 (b) For parenting time rights of the parent not having custody of such children and for visitation  
14 rights pursuant to a petition filed under ORS 109.119. When a parenting plan has been developed  
15 as required by ORS 107.102, the court shall review the parenting plan and, if approved, incorporate  
16 the parenting plan into the court's final order. When incorporated into a final order, the parenting  
17 plan is determinative of parenting time rights. If the parents have been unable to develop a par-  
18 enting plan or if either of the parents requests the court to develop a detailed parenting plan, the  
19 court shall develop the parenting plan in the best interest of the child, ensuring the noncustodial  
20 parent sufficient access to the child to provide for appropriate quality parenting time and ensuring  
21 the safety of the parties, if implicated. The court shall deny parenting time to a parent under this  
22 paragraph if the court finds that the parent has been convicted of rape under ORS 163.365 or 163.375  
23 or other comparable law of another jurisdiction and the rape resulted in the conception of the child.  
24 Otherwise, the court may deny parenting time to the noncustodial parent under this subsection only  
25 if the court finds that parenting time would endanger the health or safety of the child. The court  
26 shall recognize the value of close contact with both parents and encourage, when practicable, joint  
27 responsibility for the welfare of such children and extensive contact between the minor children of  
28 the divided marriage and the parties. If the court awards parenting time to a noncustodial parent  
29 who has committed abuse, other than being convicted for rape as described in this paragraph, the

**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 court shall make adequate provision for the safety of the child and the other parent in accordance  
 2 with the provisions of ORS 107.718 (6).

3 (c) For the support of the children of the marriage by the parties. In ordering child support, the  
 4 formula established under ORS 25.275 shall apply. The court may at any time require an accounting  
 5 from the custodial parent with reference to the use of the money received as child support. The  
 6 court is not required to order support for any minor child who has become self-supporting,  
 7 emancipated or married or for any child who has ceased to attend school after becoming 18 years  
 8 of age. A general judgment entered under this section may include an amount for support as re-  
 9 quested in a petition filed under ORS 107.085 or under a motion for relief made pursuant to ORS  
 10 107.095 (1)(b) for which a limited judgment was not entered, payment of which commences no earlier  
 11 than the date the petition or motion was served on the nonrequesting party, and the amount shall  
 12 be considered a request for relief that has been decided by the general judgment for purposes of  
 13 ORS 18.082 (3).

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

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

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

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

- 44 (i) The amount, duration and nature of the contribution;
- 45 (ii) The duration of the marriage;

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

1 so state on the record and shall order the obligor to provide for and maintain life insurance in an  
 2 amount commensurate with the obligation and designating the obligee as beneficiary for the dura-  
 3 tion of the obligation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 **SECTION 2.** ORS 109.103 is amended to read:

30 109.103. (1) If a child is born to an unmarried woman and paternity has been established under  
 31 ORS 109.070, or if a child is born to a married woman by a man other than her husband and the  
 32 man's paternity has been established under ORS 109.070, either parent may initiate a civil proceed-  
 33 ing to determine the custody or support of, or parenting time with, the child. The proceeding shall  
 34 be brought in the circuit court of the county in which the child resides or is found or in the circuit  
 35 court of the county in which either parent resides. The parents have the same rights and responsi-  
 36 bilities regarding the custody and support of, and parenting time with, their child that married or  
 37 divorced parents would have, and the provisions of ORS [107.093] **107.094** to 107.449 that relate to  
 38 custody, support and parenting time, and the provisions of ORS 107.755 to 107.795 that relate to  
 39 mediation procedures, apply to the proceeding.

40 (2) A parent may initiate the proceeding by filing with the court a petition setting forth the facts  
 41 and circumstances upon which the parent relies. The parent shall state in the petition, to the extent  
 42 known:

43 (a) Whether there is pending in this state or any other jurisdiction any type of support pro-  
 44 ceeding involving the child, including one brought under ORS 109.100, 109.165, 125.025, 416.400 to  
 45 416.465, 419B.400 or 419C.590 or ORS chapter 110; and

1 (b) Whether there exists in this state or any other jurisdiction a support order, as defined in  
 2 ORS 110.303, involving the child.

3 (3) The parent shall include with the petition a certificate regarding any pending support pro-  
 4 ceeding and any existing support order. The parent shall use a certificate that is in a form estab-  
 5 lished by court rule and include information required by court rule and subsection (2) of this section.

6 (4) When a parent initiates a proceeding under this section and the child support rights of one  
 7 of the parents or of the child have been assigned to the state, the parent initiating the proceeding  
 8 shall serve, by mail or personal delivery, a copy of the petition on the Administrator of the Division  
 9 of Child Support or on the branch office providing support services to the county in which the suit  
 10 is filed.

11 **(5)(a) After a petition is filed under this section and upon service of summons and peti-**  
 12 **tion upon the respondent as provided in ORCP 7, a restraining order is issued and in effect**  
 13 **against the petitioner and the respondent until a final judgment is issued, until the petition**  
 14 **is dismissed or until further order of the court, restraining the petitioner and the respondent**  
 15 **from:**

16 **(A) Canceling, modifying, terminating or allowing to lapse for nonpayment of premiums**  
 17 **any policy of health insurance that one party maintains to provide coverage for the other**  
 18 **party or a minor child of the parties, or any life insurance policy that names either of the**  
 19 **parties or a minor child of the parties as a beneficiary; and**

20 **(B) Changing beneficiaries or covered parties under any policy of health insurance that**  
 21 **one party maintains to provide coverage for a minor child of the parties, or any life insur-**  
 22 **ance policy.**

23 **(b) Either party restrained under this subsection may apply to the court for further**  
 24 **temporary orders, including modification or revocation of the restraining order issued under**  
 25 **this subsection.**

26 **(c) The restraining order issued under this subsection shall include a notice that either**  
 27 **party may request a hearing on the restraining order by filing a request for hearing with the**  
 28 **court.**

29 **(d) A copy of the restraining order issued under this subsection must be attached to the**  
 30 **summons.**

31 **(e) A party who violates a term of a restraining order issued under this subsection is**  
 32 **subject to imposition of remedial sanctions under ORS 33.055 based on the violation, but is**  
 33 **not subject to:**

34 **(A) Criminal prosecution based on the violation; or**

35 **(B) Imposition of punitive sanctions under ORS 33.065 based on the violation.**

36 **SECTION 3.** ORS 109.135 is amended to read:

37 109.135. (1) All filiation proceedings shall be commenced in the circuit court and shall for all  
 38 purposes be deemed *[suits]* **actions** in equity. Unless otherwise specifically provided by statute, the  
 39 proceedings shall be conducted pursuant to the Oregon Rules of Civil Procedure.

40 (2) All filiation proceedings shall be commenced and tried in the county where either *[the initi-*  
 41 *ating]* party or the child resides.