

Senate Bill 467

Sponsored by Senator JOHNSON (at the request of Jeff Kemp) (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Clarifies that court must consider costs of sale of assets, taxes and costs in determination of fair market value of property in just and proper division of property in marital dissolution, separation or annulment proceeding.

A BILL FOR AN ACT

1
2 Relating to property division in family law proceeding; amending ORS 107.105.

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

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

5 107.105. (1) Whenever the court renders a judgment of marital annulment, dissolution or separa-
6 tion, 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. In the case
26 of a noncustodial parent who has a disability as defined by the Americans with Disabilities Act of
27 1990 (42 U.S.C. 12101 et seq.), the court may consider the noncustodial parent's disability in deter-
28 mining parenting time only if the court finds that behaviors or limitations related to the noncusto-
29 dial parent's disability are endangering or will likely endanger the health, safety or welfare of the
30 child. The court shall recognize the value of close contact with both parents and encourage, when
31 practicable, joint responsibility for the welfare of such children and extensive contact between 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 minor children of the divided marriage and the parties. If the court awards parenting time to a
2 noncustodial parent who has committed abuse, other than being convicted for rape as described in
3 this paragraph, the court shall make adequate provision for the safety of the child and the other
4 parent in accordance with the provisions of ORS 107.718 (6).

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

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

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

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

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

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

1 **termination of the fair market value of property**, the court shall consider reasonable costs of
2 sale of assets, taxes and any other costs reasonably anticipated by the parties.

3 (H)(i) If a party has been awarded spousal support in lieu of a share of property, the court shall
4 so state on the record and shall order the obligor to provide for and maintain life insurance in an
5 amount commensurate with the obligation and designating the obligee as beneficiary for the dura-
6 tion of the obligation.

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

9 (iii) If the obligee or the attorney of the obligee delivers a true copy of the judgment to the life
10 insurance company or companies, identifying the policies involved and requesting such notification
11 under this section, the company or companies shall notify the obligee, as beneficiary of the insur-
12 ance policy, whenever the policyholder takes any action that will change the beneficiary or reduce
13 the benefits of the policy. Either party may request notification by the insurer when premium pay-
14 ments have not been made. If the obligor is ordered to provide for and maintain life insurance, the
15 obligor shall provide to the obligee a true copy of the policy. The obligor shall also provide to the
16 obligee written notice of any action that will reduce the benefits or change the designation of the
17 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.

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