

# House Bill 2124

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Attorney General Hardy Myers for Department of Justice)

## 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**.

Permits Department of Justice to enter into agreement with financial institution for periodic payment of garnishee search fees. Adjusts method of reconciling amount of child support due under multiple judgments. Corrects citations. Modifies time when withholder must begin withholding income from obligor's pay. Requires Department of Justice to cooperate with and provide records to Department of Human Services for use in location of parents of children who are applying for public assistance.

## A BILL FOR AN ACT

1  
2 Relating to administration of child support program; amending ORS 18.790, 25.280, 25.411 and 418.135  
3 and section 1, chapter 83, Oregon Laws 2005.

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

5 **SECTION 1.** ORS 18.790 is amended to read:

6 18.790. (1) Except as provided in subsection (2) of this section, the garnishor must pay a \$10  
7 search fee at the time of delivery of any writ of garnishment on a financial institution, or at the time  
8 a notice of garnishment is delivered to the financial institution under ORS 18.854. A separate search  
9 fee must be delivered to the financial institution for each debtor if the writ is issued for more than  
10 one debtor under ORS 18.607 (5). If the search fee required by this section is not paid:

11 (a) The garnishment is not effective to garnish any property of the debtor; and

12 (b) The financial institution need not file a garnishee response.

13 (2) The search fee provided for in this section need not be paid to a financial institution if the  
14 debtor is an employee of the financial institution.

15 (3) Notwithstanding subsection (1) of this section, a financial institution may enter into an  
16 agreement with any state agency authorized to garnish pursuant to ORS **18.645** or 18.854 for peri-  
17 odic billing and payment of garnishee search fees required under this section.

18 (4) The right of a financial institution to receive the search fee provided for in this section does  
19 not in any way restrict or impair the right of the financial institution to charge and collect an ad-  
20 ditional garnishment processing fee from any debtor whose property the financial institution holds,  
21 or to whom the financial institution owes money. However, a financial institution may not charge  
22 or collect a garnishment processing fee in violation of ORS 652.610. If a financial institution charges  
23 a garnishment processing fee, the financial institution may collect the fee by deducting the amount  
24 of the fee from any amount that the financial institution owes to the debtor.

25 **SECTION 2.** Section 1, chapter 83, Oregon Laws 2005, is amended to read:

26 **Sec. 1.** (1) As used in this section:

27 (a) "Administrator" has the meaning given that term in ORS 25.010.

28 (b) "Child support judgment" has the meaning given that term in ORS 25.089.

**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 (2) Notwithstanding the provisions of ORS 25.089, 25.091 and 416.448 to the contrary, the mon-  
 2 etary support terms of a child support judgment originating under ORS 416.440 are terminated by  
 3 the monetary support terms of a later-issued child support judgment of a court if:

4 (a) The two child support judgments involve the same obligor and child and the same period;

5 (b) The administrator was providing services under ORS 25.080;

6 (c) The later-issued child support judgment was entered before January 1, 2004;

7 (d) The administrator or a court gave the later-issued child support judgment precedence over  
 8 the earlier-issued child support judgment originating under ORS 416.440; and

9 (e) All parties had an opportunity to challenge the amount of child support ordered in the  
 10 later-issued child support judgment.

11 (3) Notwithstanding the provisions of ORS 25.091 (11) and 416.448 (7), for purposes of reconciling  
 12 any monetary support arrears or credits under the two child support judgments described in sub-  
 13 section (2) of this section:

14 (a) The monetary support terms of the child support judgment originating under ORS 416.440  
 15 are deemed terminated on the **effective** date of the later-issued child support judgment [*was entered*  
 16 *as described in ORS 18.075*]; and

17 (b) Entry of the later-issued child support judgment does not affect any support payment  
 18 arrearage or credit that has accrued under the earlier-issued child support judgment originating  
 19 under ORS 416.440.

20 **SECTION 3.** ORS 25.280 is amended to read:

21 25.280. In any judicial or administrative proceeding for the establishment or modification of a  
 22 child support obligation under ORS chapters 107, 108, 109, **110 or 416** [*and 416, and ORS chapter*  
 23 *110*] or ORS 419B.400, 419B.923, 419C.590 or 419C.610, the amount of support determined by the  
 24 formula established [*pursuant to ORS 25.270 to 25.287, 107.105, 416.415, 416.435 and 419B.400 or*  
 25 *419C.590 shall be*] **under ORS 25.275 is** presumed to be the correct amount of the obligation. This  
 26 [*shall be*] **is** a rebuttable presumption and a written finding or a specific finding on the record that  
 27 the application of the formula would be unjust or inappropriate in a particular case [*shall be*] **is**  
 28 sufficient to rebut the presumption. The following criteria shall be considered in making the finding:

29 (1) Evidence of the other available resources of a parent;

30 (2) The reasonable necessities of a parent;

31 (3) The net income of a parent remaining after withholdings required by law or as a condition  
 32 of employment;

33 (4) A parent's ability to borrow;

34 (5) The number and needs of other dependents of a parent;

35 (6) The special hardships of a parent including, but not limited to, any medical circumstances  
 36 of a parent affecting the parent's ability to pay child support;

37 (7) The needs of the child;

38 (8) The desirability of the custodial parent remaining in the home as a full-time parent and  
 39 homemaker;

40 (9) The tax consequences, if any, to both parents resulting from spousal support awarded and  
 41 determination of which parent will name the child as a dependent; and

42 (10) The financial advantage afforded a parent's household by the income of a spouse or another  
 43 person with whom the parent lives in a relationship similar to husband and wife.

44 **SECTION 4.** ORS 25.411 is amended to read:

45 25.411. (1) The withholder shall start withholding not later than [*five days after*] the first payday

1 following receipt of the order to withhold. **However, if the withholder receives the order to**  
 2 **withhold less than five days before the first payday following receipt of the order, the**  
 3 **withholder shall start withholding not later than the second payday following receipt of the**  
 4 **order.**

5 (2) Within seven business days after the date the obligor receives income, the withholder shall  
 6 pay amounts withheld to the Department of Justice or to the obligee by deposit into the obligee's  
 7 bank account, whichever is specified in the order to withhold. The withholder shall include, with the  
 8 payment, the obligor's name and case number and the date upon which the income was withheld.

9 (3) When payments are made to the Department of Justice, the withholder may combine amounts  
 10 withheld from different obligors' incomes in a single payment as long as such payment is accompa-  
 11 nied by a list that separately identifies which portion of the payment is attributable to each obligor,  
 12 the obligor's name and case number, if any.

13 (4) As used in this section, [*the term*] "business day" means a day on which the Department of  
 14 Justice is open for regular business.

15 **SECTION 5.** ORS 418.135 is amended to read:

16 418.135. (1) All state, county and city agencies, officers and employees shall cooperate in the  
 17 location of parents who have abandoned or deserted, or are failing to support, children receiving  
 18 **or applying to receive** public assistance and shall on request supply the Department of Human  
 19 Services, the Division of Child Support of the Department of Justice or the district attorney of any  
 20 county in the state with all information on hand relative to the location, income and property of  
 21 such parents, **including information disclosed to the Division of Child Support under ORS**  
 22 **314.840 (2)(j).** The granting of aid to the applicant shall not be delayed or contingent upon receipt  
 23 of the answer to such requests by the Department of Human Services, the Division of Child Support  
 24 or the district attorney. The Department of Human Services shall use such information only for the  
 25 purposes of administration of public assistance to such children, and the district attorney and the  
 26 Division of Child Support shall use such information only for the purpose of enforcing the liability  
 27 of such parents to support such children, and neither shall use the information or disclose it for any  
 28 other purpose. Any person who violates this prohibition against disclosure, upon conviction, is  
 29 punishable as provided in ORS 314.991 (2).

30 (2) The Department of Human Services shall cooperate with the Division of Child Support or the  
 31 district attorney prosecuting or considering the prosecution of such parent for nonsupport and shall  
 32 report to the Division of Child Support or the district attorney all information contained in the case  
 33 record which concerns the question of nonsupport and the suitability of prosecution as a method of  
 34 obtaining support for the child in each case.