

Enrolled House Bill 2277

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)

CHAPTER

AN ACT

Relating to changes in support award when physical custody changes; creating new provisions; and amending ORS 416.427.

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

SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS 416.400 to 416.465.

SECTION 2. (1) An order for support of a child entered under ORS 416.400 to 416.465 may provide for a change to the support award based on a change in the child’s physical custody. The order may provide for a change in the support award during periods of time when one parent, with the knowledge and consent of the other parent or pursuant to court order, has physical custody of the child. The provision may not provide for a change to the support award during periods of parenting time or visitation.

(2) A sworn affidavit of the parent having physical custody of a child is sufficient to establish a change in physical custody of the child, and of the time during which the parent has physical custody of the child, for the purposes of a change to a support award under a provision described in subsection (1) of this section. The other parent may contest the affidavit by requesting a hearing as provided by ORS 416.427.

(3) The legal custody of a child is not affected by a change to a support order under a provision described in subsection (1) of this section.

SECTION 3. ORS 416.427 is amended to read:

416.427. (1) When a party requests a hearing pursuant to **section 2 of this 2009 Act** or ORS 416.415, 416.417, 416.425 (1) or 416.429, the contested case provisions of ORS chapter 183 apply except as provided in subsection (6) of this section.

(2) Except as provided in ORS 416.430, hearings shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings.

(3) The administrative law judge may issue subpoenas for witnesses necessary to develop a full record. The attorney of record for the office of the Division of Child Support or the office of the district attorney may issue subpoenas. Witnesses appearing pursuant to subpoena, other than parties or officers or employees of the administrator, shall receive fees and mileage as prescribed by law for witnesses in ORS 44.415 (2). Obedience to the subpoena may be compelled in the same manner as set out in ORS 183.440 (2).

(4) Upon issuance of an order, action by the administrator to enforce and collect upon the order, including arrearages, may be taken. Action by the administrator may not be stayed or partially

stayed pending appeal or by any court unless there is substantial evidence showing that the obligor would be irreparably harmed and that the obligee would not be irreparably harmed.

(5) An order issued by the administrative law judge or the administrator is final. The order shall be in full force and effect while any appeal is pending unless the order is stayed by a court. A court may not grant a stay unless there is substantial evidence showing the obligor would be irreparably harmed and that the obligee would not be irreparably harmed.

(6) Appeal of the order of the administrative law judge or any default or consent order entered by the administrator pursuant to ORS 416.400 to 416.465 may be taken to the circuit court of the county in which the order has been entered pursuant to ORS 416.440 for a hearing de novo. The appeal shall be by petition for review filed within 60 days after the order has been entered pursuant to ORS 416.440. Unless otherwise specifically provided by law, the appeal shall be conducted pursuant to the Oregon Rules of Civil Procedure.

(7) The obligor, the obligee and the state are parties to any proceedings, including appeals, under this section.

Passed by House February 19, 2009

.....
Chief Clerk of House

.....
Speaker of House

Passed by Senate May 21, 2009

.....
President of Senate

Received by Governor:

.....M.,....., 2009

Approved:

.....M.,....., 2009

.....
Governor

Filed in Office of Secretary of State:

.....M.,....., 2009

.....
Secretary of State