

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)

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**.

Provides that certain administrative orders for support may include provision for change to support award when child's physical custody changes. Prescribes procedures for establishing when change of custody occurs.

A BILL FOR AN ACT

1
2 Relating to changes in support award when physical custody changes; creating new provisions; and
3 amending ORS 416.427.

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

5 **SECTION 1. (1) Section 2 of this 2009 Act is added to and made a part of ORS 416.400 to**
6 **416.465.**

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

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

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

20 **SECTION 3. ORS 416.427 is amended to read:**

21 416.427. (1) When a party requests a hearing pursuant to **section 2 of this 2009 Act** or ORS
22 416.415, 416.417, 416.425 (1) or 416.429, the contested case provisions of ORS chapter 183 apply ex-
23 cept as provided in subsection (6) of this section.

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

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

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 as set out in ORS 183.440 (2).

2 (4) Upon issuance of an order, action by the administrator to enforce and collect upon the order,
3 including arrearages, may be taken. Action by the administrator may not be stayed or partially
4 stayed pending appeal or by any court unless there is substantial evidence showing that the obligor
5 would be irreparably harmed and that the obligee would not be irreparably harmed.

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

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

16 (7) The obligor, the obligee and the state are parties to any proceedings, including appeals, un-
17 der this section.

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