

House Bill 3189

Sponsored by Representative THATCHER (at the request of Christopher Bryant)

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**.

Establishes maximum withholding limit of 25 percent of obligor's disposable monthly income when obligor's disposable monthly income falls below federal poverty level.

A BILL FOR AN ACT

1 Relating to income withholding for support; creating new provisions; and amending ORS 25.414.

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

3 **SECTION 1.** ORS 25.414 is amended to read:

4 25.414. (1) The withholder shall withhold from the obligor's disposable monthly income, other
5 than workers' compensation under ORS chapter 656 or unemployment compensation under ORS
6 chapter 657, the amount stated in the order to withhold. The entity issuing the order to withhold
7 shall compute this amount subject to the following:
8

9 (a) If withholding is for current support only, the amount to be withheld is the amount specified
10 as current support in the support order.

11 (b) If withholding is for current support and there is an arrearage, the amount to be withheld
12 is 120 percent of the amount specified as current support in the support order.

13 (c) If withholding is only for arrearage, the amount to be withheld is one of the following:

14 (A) The amount of the last ordered monthly support.

15 (B) If there is no last ordered monthly support amount, the monthly support amount used to
16 calculate the arrearage amount specified in the order or judgment for arrearage.

17 (C) If there is no last ordered monthly support amount and if there was no monthly support
18 amount, an amount calculated under the formula established under ORS 25.275. For purposes of this
19 subparagraph, this calculation shall be based on the obligor's current monthly gross income or, if
20 the obligor's current monthly gross income is not known, the Oregon hourly minimum wage con-
21 verted to a monthly amount based upon a 40-hour workweek, zero income for the obligee, and one
22 joint child, regardless of how many children the parties may actually have. No rebuttals to this
23 calculation may be allowed.

24 (d) Notwithstanding the amount determined to be withheld under paragraph (c) of this sub-
25 section, the obligor must retain disposable monthly income of at least 160 times the applicable fed-
26 eral minimum hourly wage prescribed by section 6 (a)(1) of the Fair Labor Standards Act of 1938 (29
27 U.S.C. 206) or any future minimum hourly wages prescribed in that section.

28 (2) The amount to be withheld from unemployment compensation under ORS chapter 657 is cal-
29 culated as follows:

30 (a) If withholding is for a current support order, regardless of the existence of arrearage, the
31 amount to be withheld is the lesser of:

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 (A) Twenty-five percent of the benefits paid; or

2 (B) The current monthly support obligation. The entity issuing the order to withhold may con-
 3 vert the monthly support obligation amount to a percentage to be withheld from each benefits pay-
 4 ment. However, the total amount withheld in one month may not exceed 25 percent of the benefits
 5 paid in that month or the current monthly support obligation, whichever is less.

6 (b) If withholding is for arrearage only, the amount to be withheld is the lesser of:

7 (A) Fifteen percent of the benefits paid; or

8 (B) The amount of the last ordered monthly support obligation. The entity issuing the order to
 9 withhold may convert the last ordered monthly support obligation amount to a percentage to be
 10 withheld from each benefits payment. However, the total amount withheld in one month may not
 11 exceed 15 percent of the benefits paid in that month or the amount of the last ordered monthly
 12 support obligation, whichever is less.

13 (c) The withholder may not charge or collect a processing fee when withholding from unem-
 14 ployment compensation.

15 (3) The amount to be withheld from workers' compensation under ORS chapter 656 is set forth
 16 in ORS 656.234.

17 (4) Notwithstanding any other provision of this section, when withholding is from a lump sum
 18 payment or benefit, including but not limited to retroactive workers' compensation benefits, lump
 19 sum retirement plan disbursements or withdrawals, insurance payments or settlements, severance
 20 pay, bonus payments or any other similar payments or benefits that are not periodic recurring in-
 21 come, the amount subject to withholding for payment of a support obligation may not exceed one-
 22 fourth of the amount of the lump sum payment or benefit.

23 (5) Notwithstanding any other provision of this section, the administrator may set a lesser
 24 amount to be withheld if the obligor demonstrates the withholding is prejudicial to the obligor's
 25 ability to provide for a child the obligor has a duty to support. The Department of Justice shall
 26 adopt rules consistent with federal regulations to implement this subsection.

27 (6) Except as provided in subsection (2) of this section, the withholder may deduct from the
 28 obligor's disposable income a monthly processing fee not to exceed \$5. The processing fee is in ad-
 29 dition to the amount calculated to be withheld for support, unless the amount to be withheld for
 30 support is the maximum allowed under subsection (8) of this section, in which case the fee is de-
 31 ducted from the amount withheld as support.

32 (7) If there are multiple withholding orders against the same obligor, the amount to be withheld
 33 is the sum of each support order calculated independently.

34 (8)(a) **Except as provided in paragraph (b) of this subsection, [No] withholding as calculated**
 35 **under this section, including the processing fee permitted in subsection (6) of this section, [shall]**
 36 **may not exceed 50 percent of the obligor's net disposable income. The limit established in this**
 37 **subsection applies whenever withholding is implemented under this section, whether by a single or-**
 38 **der or by multiple orders against the same obligor.**

39 **(b) When the obligor's net disposable income falls below the federal poverty level estab-**
 40 **lished by the federal poverty guidelines published annually in the Federal Register by the**
 41 **United States Department of Health and Human Services for one month or more, withholding**
 42 **as calculated under this section, including the processing fee permitted in subsection (6) of**
 43 **this section, may not exceed 25 percent of the obligor's net disposable income.**

44 (9) When the obligor's income is not sufficient for the withholder to fully comply with each
 45 withholding order, the withholder shall withhold the maximum amount allowed under this section.

1 If all withholding orders for a particular obligor are payable to or through the department, the
 2 withholder shall pay to the department the income withheld and the department shall determine
 3 priorities for allocating income withheld to multiple child support cases relative to that obligor. If
 4 one or more of the withholding orders for a particular obligor require payment other than to or
 5 through the department, the withholder shall use the following to determine priorities for with-
 6 holding and allocating income withheld to multiple child support cases:

7 (a) If the amount withheld from the obligor's income is sufficient to pay the current support due
 8 to each case but is not enough to fully comply with the withholding order for each case where past
 9 due support is owed, the withholder shall:

10 (A) Pay to each case the amount of support due for the current month; and

11 (B) Pay the remainder of the amount withheld in equal amounts to each case where past due
 12 support is owed. However, no case shall receive more than the total amount of current support and
 13 past due support owed to that case at the time the payment is made.

14 (b) If the amount withheld is not sufficient to pay the current support due to each case, each
 15 case shall be paid a proportionate share of the amount withheld. The withholder shall determine this
 16 for each case by dividing the monthly amount ordered as current support for that case by the com-
 17 bined monthly amount ordered as current support for all cases relative to the same obligor, and
 18 multiplying this percentage by the total amount withheld.

19 (10) An order to withhold income is not subject to the limitations of ORS 18.385.

20 (11) A withholder shall withhold funds as directed in the order to withhold, except that when
 21 a withholder receives an income-withholding order issued by another state, the withholder shall
 22 apply the income-withholding law of the state of the obligor's principal place of employment in de-
 23 termining:

24 (a) The withholder's fee for processing an income-withholding order;

25 (b) The maximum amount permitted to be withheld from the obligor's income;

26 (c) The time periods within which the withholder must implement the income-withholding order
 27 and forward the child support payment;

28 (d) The priorities for withholding and allocating income withheld for multiple child support
 29 obligees; and

30 (e) Any withholding terms or conditions not specified in the order.

31 **SECTION 2. The amendments to ORS 25.414 by section 1 of this 2009 Act apply to income**
 32 **withholdings taken on or after the effective date of this 2009 Act.**