

Senate Bill 445

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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**.

Authorizes court to allow credit against child support arrearages when parties have made oral or written agreement to reduce child support or when child for whom child support was ordered has died.

A BILL FOR AN ACT

1
2 Relating to child support arrearages; creating new provisions; and amending ORS 25.167 and 107.135.

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

4 **SECTION 1.** ORS 107.135 is amended to read:

5 107.135. (1) The court may at any time after a judgment of annulment or dissolution of marriage
6 or of separation is granted, upon the motion of either party and after service of notice on the other
7 party in the manner provided by ORCP 7, and after notice to the Division of Child Support when
8 required under subsection (9) of this section:

9 (a) Set aside, alter or modify any portion of the judgment that provides for the appointment and
10 duties of trustees, for the custody, parenting time, visitation, support and welfare of the minor
11 children and the children attending school, as defined in ORS 107.108, including any health or life
12 insurance provisions, for the support of a party or for life insurance under ORS 107.820 or 107.830;

13 (b) Make an order, after service of notice to the other party, providing for the future custody,
14 support and welfare of minor children residing in the state, who, at the time the judgment was given,
15 were not residents of the state, or were unknown to the court or were erroneously omitted from the
16 judgment;

17 (c) Terminate a duty of support toward any minor child who has become self-supporting,
18 emancipated or married;

19 (d) After service of notice on the child in the manner provided by law for service of a summons,
20 suspend future support for any child who has ceased to be a child attending school as defined in
21 ORS 107.108; and

22 (e) Set aside, alter or modify any portion of the judgment that provides for a property award
23 based on the enhanced earning capacity of a party that was awarded before October 23, 1999. A
24 property award may be set aside, altered or modified under this paragraph:

25 (A) When the person with the enhanced earning capacity makes a good faith career change that
26 results in less income;

27 (B) When the income of the person with the enhanced earning capacity decreases due to cir-
28 cumstances beyond the person's control; or

29 (C) Under such other circumstances as the court deems just and proper.

30 (2) When a party moves to set aside, alter or modify the child support provisions of the judg-

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 ment:

2 (a) The party shall state in the motion, to the extent known:

3 (A) Whether there is pending in this state or any other jurisdiction any type of support pro-
4 ceeding involving children of the marriage, including one brought under ORS 25.287, 107.431,
5 109.100, 125.025, 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter 110; and

6 (B) Whether there exists in this state or any other jurisdiction a support order, as defined in
7 ORS 110.303, involving children of the marriage, other than the judgment the party is moving to set
8 aside, alter or modify.

9 (b) The party shall include with the motion a certificate regarding any pending support pro-
10 ceeding and any existing support order other than the judgment the party is moving to set aside,
11 alter or modify. The party shall use a certificate that is in a form established by court rule and in-
12 clude information required by court rule and paragraph (a) of this subsection.

13 (3) In a proceeding under this section to reconsider the spousal or child support provisions of
14 the judgment, the following provisions apply:

15 (a) A substantial change in economic circumstances of a party, which may include, but is not
16 limited to, a substantial change in the cost of reasonable and necessary expenses to either party, is
17 sufficient for the court to reconsider its order of support, except that an order of compensatory
18 spousal support may only be modified upon a showing of an involuntary, extraordinary and unan-
19 ticipated change in circumstances that reduces the earning capacity of the paying spouse.

20 (b) If the judgment provided for a termination or reduction of spousal support at a designated
21 age in anticipation of the commencement of pension, Social Security or other entitlement payments,
22 and if the obligee is unable to obtain the anticipated entitlement payments, that inability is suffi-
23 cient change in circumstances for the court to reconsider its order of support.

24 (c) If Social Security is considered in lieu of spousal support or partial spousal support, the
25 court shall determine the amount of Social Security the party is eligible to collect. The court shall
26 take into consideration any pension, retirement or other funds available to either party to effect an
27 equitable distribution between the parties and shall also take into consideration any reduction of
28 entitlement caused by taking early retirement.

29 (4) In considering under this section whether a change in circumstances exists sufficient for the
30 court to reconsider spousal or child support provisions of a judgment, the following provisions apply:

31 (a) The court or administrator, as defined in ORS 25.010, shall consider income opportunities and
32 benefits of the respective parties from all sources, including but not limited to:

33 (A) The reasonable opportunity of each party, the obligor and obligee respectively, to acquire
34 future income and assets.

35 (B) Retirement benefits available to the obligor and to the obligee.

36 (C) Other benefits to which the obligor is entitled, such as travel benefits, recreational benefits
37 and medical benefits, contrasted with benefits to which the obligee is similarly entitled.

38 (D) Social Security benefits paid to a child, or to a representative payee administering the funds
39 for the child's use and benefit, as a result of the obligor's disability or retirement if the benefits:

40 (i) Were not previously considered in the child support order; or

41 (ii) Were considered in an action initiated before May 12, 2003.

42 (E) Apportioned Veterans' benefits or Survivors' and Dependents' Educational Assistance under
43 38 U.S.C. chapter 35 paid to a child, or to a representative payee administering the funds for the
44 child's use and benefit, as a result of the obligor's disability or retirement if the benefits:

45 (i) Were not previously considered in the child support order; or

1 (ii) Were considered in an action initiated before May 12, 2003.

2 (b) If the motion for modification is one made by the obligor to reduce or terminate support, and
 3 if the obligee opposes the motion, the court shall not find a change in circumstances sufficient for
 4 reconsideration of support provisions, if the motion is based upon a reduction of the obligor's fi-
 5 nancial status resulting from the obligor's taking voluntary retirement, partial voluntary retirement
 6 or any other voluntary reduction of income or self-imposed curtailment of earning capacity, if it is
 7 shown that such action of the obligor was not taken in good faith but was for the primary purpose
 8 of avoiding the support obligation. In any subsequent motion for modification, the court shall deny
 9 the motion if the sole basis of the motion for modification is the termination of voluntarily taken
 10 retirement benefits and the obligor previously has been found not to have acted in good faith.

11 (c) The court shall consider the following factors in deciding whether the actions of the obligor
 12 were not in "good faith":

13 (A) Timing of the voluntary retirement or other reduction in financial status to coincide with
 14 court action in which the obligee seeks or is granted an increase in spousal support.

15 (B) Whether all or most of the income producing assets and property were awarded to the
 16 obligor, and spousal support in lieu of such property was awarded to the obligee.

17 (C) Extent of the obligor's dissipation of funds and assets prior to the voluntary retirement or
 18 soon after filing for the change of circumstances based on retirement.

19 (D) If earned income is reduced and absent dissipation of funds or large gifts, whether the
 20 obligor has funds and assets from which the spousal support could have been paid.

21 (E) Whether the obligor has given gifts of substantial value to others, including a current
 22 spouse, to the detriment of the obligor's ability to meet the preexisting obligation of spousal support.

23 (5) Upon terminating a duty of spousal support, a court shall make specific findings of the basis
 24 for the termination and shall include the findings in the judgment.

25 (6) Any modification of child or spousal support granted because of a change of circumstances
 26 may be ordered effective retroactive to the date the motion for modification was served or to any
 27 date thereafter.

28 (7) The judgment is final as to any installment or payment of money that has accrued up to the
 29 time the nonmoving party, other than the state, is served with a motion to set aside, alter or modify
 30 the judgment. The court may not set aside, alter or modify any portion of the judgment that provides
 31 for any payment of money, either for minor children or for the support of a party, that has accrued
 32 before the motion is served. However:

33 (a) The court may allow a credit against child support arrearages for periods of time, excluding
 34 reasonable parenting time unless otherwise provided by order or judgment, during which:

35 (A) The obligor, with the knowledge and consent of the obligee or pursuant to court order, has
 36 physical custody of the child; *[and]*

37 (B) **The obligee and the obligor have agreed, orally or in writing, to payment of an**
 38 **amount of child support that is less than the amount ordered in a child support provision**
 39 **of an order or judgment and the reduced amount is reasonable considering:**

40 (i) **The formula for determining child support awards under ORS 25.275; and**

41 (ii) **The circumstances of the parties and the child at the time of the parties' agreement;**

42 **or**

43 (C) **A child for whom child support has been ordered paid was deceased.**

44 (b) The court may allow, as provided in the rules of the Child Support Program, a dollar-for-
 45 dollar credit against child support arrearages for any Social Security or Veterans' benefits paid

1 retroactively to the child, or to a representative payee administering the funds for the child's use
2 and benefit, as a result of an obligor's disability or retirement.

3 (8) In a proceeding under subsection (1) of this section, the court may assess against either party
4 a reasonable attorney fee and costs for the benefit of the other party. If a party is found to have
5 acted in bad faith, the court shall order that party to pay a reasonable attorney fee and costs of the
6 defending party.

7 (9) Whenever a motion to establish, modify or terminate child support or satisfy or alter support
8 arrearages is filed and the child support rights of one of the parties or of a child of both of the
9 parties have been assigned to the state, a true copy of the motion shall be served by mail or per-
10 sonal delivery on the Administrator of the Division of Child Support of the Department of Justice
11 or on the branch office providing support services to the county in which the motion is filed.

12 (10)(a) Except as provided in ORS 109.701 to 109.834, the courts of Oregon, having once acquired
13 personal and subject matter jurisdiction in a domestic relations action, retain such jurisdiction re-
14 gardless of any change of domicile.

15 (b) The courts of Oregon, in a proceeding to establish, enforce or modify a child support order,
16 shall recognize the provisions of the federal Full Faith and Credit for Child Support Orders Act (28
17 U.S.C. 1738B).

18 (11) In a proceeding under this section to reconsider provisions in a judgment relating to cus-
19 tody or parenting time, the court may consider repeated and unreasonable denial of, or interference
20 with, parenting time to be a substantial change of circumstances.

21 (12) In a proceeding under this section to reconsider provisions in a judgment relating to par-
22 enting time, the court may suspend or terminate a parent's parenting time with a child if the court
23 finds that the parent has abused a controlled substance and that the parenting time is not in the
24 best interests of the child. If a court has suspended or terminated a parent's parenting time with
25 a child for reasons described in this subsection, the court may not grant the parent future parenting
26 time until the parent has shown that the reasons for the suspension or termination are resolved and
27 that reinstated parenting time is in the best interests of the child. Nothing in this subsection limits
28 the court's authority under subsection (1)(a) of this section.

29 (13) In a proceeding under this section to reconsider provisions in a judgment relating to cus-
30 tody, temporary placement of the child by the custodial parent pursuant to ORS 109.056 (3) with the
31 noncustodial parent as a result of military deployment of the custodial parent is not, by itself, a
32 change of circumstances. Any fact relating to the child and the parties occurring subsequent to the
33 last custody judgment, other than the custodial parent's temporary placement of the child pursuant
34 to ORS 109.056 (3) with the noncustodial parent, may be considered by the court when making a
35 change of circumstances determination.

36 (14) Within 30 days after service of notice under subsection (1) of this section, the party served
37 shall file a written response with the court.

38 (15)(a) It is the policy of this state:

39 (A) To encourage the settlement of cases brought under this section; and

40 (B) For courts to enforce the terms of settlements described in paragraph (b) of this subsection
41 to the fullest extent possible, except when to do so would violate the law or would clearly
42 contravene public policy.

43 (b) In a proceeding under subsection (1) of this section, the court may enforce the terms set
44 forth in a stipulated order or judgment signed by the parties, an order or judgment resulting from
45 a settlement on the record or an order or judgment incorporating a settlement agreement:

1 (A) As contract terms using contract remedies;

2 (B) By imposing any remedy available to enforce an order or judgment, including but not limited
3 to contempt; or

4 (C) By any combination of the provisions of subparagraphs (A) and (B) of this paragraph.

5 (c) A party may seek to enforce an agreement and obtain remedies described in paragraph (b)
6 of this subsection by filing a motion, serving notice on the other party in the manner provided by
7 ORCP 7 and, if a remedy under paragraph (b)(B) of this subsection is sought, complying with the
8 statutory requirements for that remedy. All claims for relief arising out of the same acts or omis-
9 sions must be joined in the same proceeding.

10 (d) Nothing in paragraph (b) or (c) of this subsection limits a party's ability, in a separate pro-
11 ceeding, to file a motion to modify an order or judgment under subsection (1) of this section or to
12 seek enforcement of an ancillary agreement to the order or judgment.

13 **SECTION 2.** ORS 25.167 is amended to read:

14 25.167. This section establishes procedures for determining the amount of arrearage and for
15 making a record of arrearage of support payments. All of the following apply to this section:

16 (1) A record of support payment arrearage may be established by:

17 (a) Court order;

18 (b) A governing child support judgment issued under ORS 25.091 or 416.448;

19 (c) Administrative order issued under ORS 416.427 or 416.429;

20 (d) Stipulation of the parties; or

21 (e) The procedures under subsection (2) of this section whenever an existing child or spousal
22 support case enters the Department of Justice records system without a current payment record
23 maintained by any court clerk.

24 (2) When allowed under subsection (1) of this section, arrearage amounts may be established
25 under this subsection. All of the following apply to this subsection:

26 (a) The obligee or obligor may execute a certificate in a form acceptable to the Department of
27 Justice that states the total amount owed or the payment history in as much detail as is necessary
28 to demonstrate the periods and amounts of any arrearage.

29 (b) The person making the certificate shall file the original certificate with the court in which
30 the support judgment was entered. When a governing child support judgment has been issued, the
31 person making the certificate shall file the original certificate with the court that issued the gov-
32 erning child support judgment.

33 (c) The person making the certificate shall serve a true copy of the certificate upon the other
34 party together with a notice that the certificate will be the basis of a permanent record unless the
35 other party files objections.

36 (d) For objections to be valid under paragraph (c) of this subsection, the other party must file
37 the objection with the court within 14 days from the date of service of the certificate and must mail
38 or serve true copies of the objections on both the party who filed the certificate and either:

39 (A) The district attorney; or

40 (B) If support rights are or have been assigned to the State of Oregon at any time within the
41 last five months or if arrears under the support judgment are so assigned, the Division of Child
42 Support of the Department of Justice.

43 (e) If objections are filed within the time allowed, the party filing the certificate must file a
44 supplemental certificate that is in a form acceptable to the department and that provides any in-
45 formation concerning the payment history that the department determines necessary.

1 (f) If objections are filed within the time allowed, the district attorney or the Division of Child
2 Support shall cause the case to be set for a court hearing. At the hearing, the court shall consider
3 the correctness of the certificate [*but may not*] **and may** consider objections to the merits of the
4 support judgment **to the extent set forth in the objections**. The parties may settle the case by
5 written agreement anytime before the court hearing. Notice of the court hearing shall be served
6 upon the party filing the objections as authorized in ORCP 9 B.

7 (g) If no objections are filed under this subsection within the time allowed, the amount of
8 arrearage stated in the certificate is the amount owed for purposes of any subsequent action. The
9 district attorney or the Division of Child Support shall file with the court a certificate stating the
10 arrearage established under this paragraph.

11 (3) When an application for support enforcement services is made under ORS 25.164, an agency
12 or court may not take or allow any *ex parte* enforcement action on amounts owed as arrearage from
13 before the time that the Department of Justice commences support accounting and disbursement
14 until the amount is established under this section. This subsection does not prohibit or limit any
15 enforcement action on support payments that become due subsequent to the department's com-
16 mencement of support accounting and disbursement under ORS 25.164.

17 (4) In any determination under this section, a canceled check, payable to the obligee, indorsed
18 by the obligee or deposited to an account of the obligee, drawn on the account of the obligor and
19 marked as child support shall be prima facie evidence that child support was paid to the obligee in
20 the amount shown on the face of the check. It is immaterial that the check was signed by a person
21 other than the obligor, provided that the person who signed the check was an authorized signatory
22 of checks drawn on the account.

23 **SECTION 3. The amendments to ORS 25.167 and 107.135 by sections 1 and 2 of this 2011**
24 **Act apply to orders for child support arrearages made on or after the effective date of this**
25 **2011 Act.**

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