

# D R A F T

## SUMMARY

Removes requirement that court review and approve administrative order for child support that modifies court order for child support.

### A BILL FOR AN ACT

Relating to court approval of administrative child support orders; amending ORS 18.031, 416.425, 416.440 and 416.448.

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

**SECTION 1.** ORS 416.425 is amended to read:

416.425. (1) Any time support enforcement services are being provided under ORS 25.080, the obligor, the obligee, the party holding the support rights or the administrator may move for the existing order to be modified under this section. The motion shall be in writing in a form prescribed by the administrator, shall set out the reasons for modification and shall state the telephone number and address of the party requesting modification.

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

(a) Whether there is pending in this state or any other jurisdiction any type of support proceeding involving the dependent child, including a proceeding brought under ORS 25.287, 107.085, 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 125.025, 416.415, 419B.400 or 419C.590 or ORS chapter 110; and

(b) Whether there exists in this state or any other jurisdiction a support order, as defined in ORS 110.303, involving the dependent child, other than the order the party is moving to modify.

1 (3) The moving party shall include with the motion a certificate regarding  
2 any pending support proceeding and any existing support order other than  
3 the order the party is moving to modify. The party shall use a certificate that  
4 is in a form prescribed by the administrator and include information required  
5 by the administrator and subsection (2) of this section.

6 (4) The moving party shall serve the motion upon the obligor, the obligee,  
7 the party holding the support rights and the administrator, as appropriate.  
8 The nonrequesting parties must be served in the same manner as provided  
9 for service of the notice and finding of financial responsibility under ORS  
10 416.415 (1)(a). Notwithstanding ORS 25.085, the requesting party must be  
11 served by first class mail to the requesting party's last known address. The  
12 nonrequesting parties have 30 days to resolve the matter by stipulated  
13 agreement or to serve the moving party by regular mail with a written re-  
14 sponse setting forth any objections to the motion and a request for hearing.  
15 The hearing shall be conducted under ORS 416.427.

16 (5) When the moving party is other than the administrator and no ob-  
17 jections and request for hearing have been served within 30 days, the moving  
18 party may submit a true copy of the motion to the administrative law judge  
19 as provided in ORS 416.427, except the default may not be construed to be  
20 a contested case as defined in ORS chapter 183. Upon proof of service, the  
21 administrative law judge shall issue an order granting the relief sought.

22 (6) When the moving party is the administrator and no objections and  
23 request for hearing have been served within 30 days, the administrator may  
24 enter an order granting the relief sought.

25 (7) A motion for modification made under this section does not stay the  
26 administrator from enforcing and collecting upon the existing order unless  
27 so ordered by the court in which the order is entered.

28 (8) An administrative order filed in accordance with ORS 416.440 is a final  
29 judgment as to any installment or payment of money that has accrued up to  
30 the time the nonrequesting party is served with a motion to set aside, alter  
31 or modify the judgment. The administrator may not set aside, alter or

1 modify any portion of the judgment that provides for any payment of money  
2 for minor children that has accrued before the motion is served. However:

3 (a) The administrator may allow a credit against child support arrearages  
4 for periods of time, excluding reasonable parenting time unless otherwise  
5 provided by order or judgment, during which the obligor, with the knowledge  
6 and consent of the obligee or pursuant to court order, has physical custody  
7 of the child; and

8 (b) The administrator may allow a credit against child support arrearages  
9 for any Social Security or veterans' benefits paid retroactively to the child,  
10 or to a representative payee administering the funds for the child's use and  
11 benefit, as a result of a parent's disability or retirement.

12 (9) The party requesting modification has the burden of showing a sub-  
13 stantial change of circumstances or that a modification is appropriate under  
14 the provisions of ORS 25.287.

15 *[(10) An administrative order modifying a court order is not effective until*  
16 *the administrative order is reviewed and approved by the court that entered*  
17 *the court order. The court shall make a written finding on the record that the*  
18 *administrative order complies with the formula established by ORS chapter*  
19 *25. The court may approve the administrative order at any time after the order*  
20 *is issued. If upon review the court finds that the administrative order should*  
21 *not be approved, the court shall set the matter for hearing de novo.]*

22 [(11)] (10) The obligee is a party to all proceedings under this section.

23 [(12)] (11) An order entered under this section that modifies a support  
24 order because of the incarceration of the obligor is effective only during the  
25 period of the obligor's incarceration and for 60 days after the obligor's re-  
26 lease from incarceration. The previous support order is reinstated by oper-  
27 ation of law on the 61st day after the obligor's release from incarceration.  
28 An order that modifies a support order because of the obligor's incarceration  
29 must contain a notice that the previous order will be reinstated on the 61st  
30 day after the obligor's release from incarceration.

31 [(13)(a)] (12)(a) Notwithstanding subsections (1) to [(12)] (11) of this sec-

1 tion, any time support enforcement services are being provided under ORS  
2 25.080, upon request of a party to a support order or judgment or on the  
3 administrator's own motion, the administrator may move to suspend the or-  
4 der or judgment and issue a temporary modification order under this sub-  
5 section when:

6 (A) There is a period of significant unemployment as that term is de-  
7 scribed in paragraph (b) of this subsection; and

8 (B) A party to the support order or judgment experiences an  
9 employment-related change of income as defined by rule in ORS 416.455.

10 (b) Proceedings under this subsection may be initiated only when there  
11 is a period of significant unemployment in Oregon. The Attorney General  
12 shall determine when a "period of significant unemployment" exists in  
13 Oregon and designate the beginning and ending dates thereof. In making the  
14 determination of when a period of significant unemployment exists in  
15 Oregon, the Attorney General may consider whether there is in effect an  
16 "extended benefit period" as that term is defined in ORS 657.321.

17 (c) Except as otherwise provided in this subsection, the provisions of  
18 subsections (1) to [(12)] (11) of this section apply to a motion for an order  
19 of suspension and temporary modification under this subsection.

20 (d) A party's employment-related change of income during a period of  
21 significant unemployment is considered a substantial change of circum-  
22 stances for purposes of proceedings brought under this section.

23 (e) The motion for an order of suspension and temporary modification  
24 must be in writing and must include, but need not be limited to:

25 (A) The amount of the existing support order or judgment;

26 (B) The amount of the obligor's and obligee's income immediately pre-  
27 ceding the party's employment-related change of income, if known;

28 (C) The reason for the party's employment-related change of income;

29 (D) How the party's employment-related change of income affects the  
30 party's employment status, income and, if applicable, ability to pay support;

31 (E) The obligor's and the obligee's current sources of income, if known;

1 (F) The proposed amount of the temporary modification order;

2 (G) A statement that if a party objects to the motion for an order of  
3 suspension and temporary modification, then the party may request a hearing  
4 within 14 days of service of the motion as provided in paragraph (g) of this  
5 subsection;

6 (H) A statement that the preexisting support order or judgment will be  
7 reinstated as provided in paragraph (h) of this subsection; and

8 (I) A statement that a party may request a renewal of the order of sus-  
9 pension and temporary modification prior to its expiration as provided in  
10 paragraph (j) of this subsection.

11 (f) The administrator shall serve the motion filed under this subsection  
12 upon the parties by regular first class mail, facsimile or electronic mail un-  
13 less a party signs a form agreeing to accept service of the motion.

14 (g) A party may request a hearing within 14 days of service of the motion.  
15 If a hearing is requested, the provisions of ORS 416.427 apply. When there  
16 has been no request for hearing, the administrator may enter an order of  
17 suspension and temporary modification under this subsection. The order must  
18 be consistent with the provisions of the motion filed under this subsection  
19 and be in substantial compliance with the formula established under ORS  
20 25.275.

21 (h) An order of suspension and temporary modification issued under this  
22 subsection is temporary and remains in effect for six months from the date  
23 the order is filed under ORS 416.440 or until the date specified in the notice  
24 provided under paragraph (i) of this subsection informing of the party's re-  
25 employment, whichever is earlier, at which time the preexisting support or-  
26 der or judgment becomes immediately effective and payable on the first day  
27 of the following month unless an order of renewal is issued under paragraph  
28 (j) of this subsection.

29 (i) The administrator may issue a notice of reinstatement at any time  
30 during which an order of suspension and temporary modification is in effect  
31 under this subsection when a party obtains employment and receives income

1 that is sufficient to reinstate support in an amount substantially similar to  
2 the amount in the preexisting support order or judgment. The notice shall  
3 be served as provided in paragraph (f) of this subsection and must state that,  
4 unless a request for hearing is received within 14 days of service of the no-  
5 tice, the administrator will enter an order terminating the order of suspen-  
6 sion and temporary modification and reinstating the amount of the  
7 preexisting support order or judgment effective on a date to be specified in  
8 the notice. If a hearing is requested, the provisions of ORS 416.427 apply.  
9 When there is no request for hearing, the administrator may enter an order  
10 terminating the order of suspension and temporary modification and rein-  
11 stating the preexisting support order or judgment effective upon the date  
12 specified in the notice.

13 (j) Prior to expiration of an order of suspension and temporary modifica-  
14 tion under this subsection and upon request of a party, the administrator  
15 may renew the order of suspension and temporary modification for additional  
16 six-month periods or until the party obtains employment as described in  
17 paragraph (i) of this subsection, whichever occurs first, if the circumstances  
18 under which the order was originally issued continue to exist unchanged.

19 **SECTION 2.** ORS 416.440 is amended to read:

20 416.440. (1) The documents required to be filed for purposes of subsection  
21 (2) of this section include all the following:

22 (a) A true copy of any order entered, filed or registered by the adminis-  
23 trator or administrative law judge pursuant to ORS 416.400 to 416.465 or ORS  
24 chapter 110.

25 (b) A true copy of the return of service, if applicable.

26 (c) A separate statement containing the information required to be con-  
27 tained in a judgment under ORS 18.042 (2).

28 (2) The documents described under subsection (1) of this section shall be  
29 filed in the office of the clerk of the circuit court in the county in which  
30 either the parent or the dependent child resides or in the county where the  
31 court order was entered if the administrative order is an order modifying a

1 court order. Upon receipt of the documents, the clerk shall enter the order  
2 in the register of the circuit court, shall note in the register that the order  
3 creates a lien and shall make the notations required by ORS 18.075 in the  
4 judgment lien record maintained under ORS 18.075.

5 (3) Upon entry in the register under subsection (2) of this section, the  
6 order shall have all the force, effect and attributes of a judgment of the  
7 circuit court, including but not limited to:

8 (a) Creation of a judgment lien under ORS chapter 18; and

9 (b) Ability to be enforced by contempt proceedings and pursuant to ORS  
10 18.252 to 18.993.

11 *[(4) Notwithstanding subsection (3) of this section, an administrative order*  
12 *modifying a court order shall not become effective until reviewed and approved*  
13 *by the court under ORS 416.425 (10).]*

14 [(5)] (4) Notwithstanding subsections (2) and (3) of this section, the entry  
15 in the register of an order of the administrator or administrative law judge  
16 does not preclude any subsequent proceeding or remedy available under ORS  
17 416.400 to 416.465.

18 [(6)] (5) An order filed under this section that modifies a previously filed  
19 order or a previously entered judgment may contain provisions that were  
20 included in the order or judgment.

21 [(7)] (6) A court or administrative order of another state may be filed, or  
22 if appropriate, registered, pursuant to this section for the purposes of ORS  
23 chapter 110. Notwithstanding any other provision of this chapter, an order  
24 of another state registered pursuant to ORS 110.405, 110.408 and 110.411 may  
25 not be modified unless the requirements of ORS 110.432 are met.

26 **SECTION 3.** ORS 416.448 is amended to read:

27 416.448. (1) As used in this section:

28 (a) “Child support judgment” has the meaning given that term in ORS  
29 25.089.

30 (b) “Governing child support judgment” has the meaning given that term  
31 in ORS 25.091.

1 (2) Notwithstanding any other provision of this section or ORS 25.089,  
2 when two or more child support judgments exist involving the same obligor  
3 and child, and when one or more of the judgments was issued by a tribunal  
4 of another state, the administrator shall apply the provisions of ORS chapter  
5 110 before enforcing or modifying a child support judgment under this sec-  
6 tion or ORS 25.089.

7 (3) When the administrator finds that two or more child support judg-  
8 ments exist involving the same obligor and child and the same period, and  
9 each child support judgment was issued in this state:

10 (a) The administrator may petition the court for the county where a child  
11 who is subject to the judgments resides for a governing child support judg-  
12 ment under ORS 25.091; or

13 (b) The administrator may apply the presumption described in ORS 25.091,  
14 determine the controlling terms of the child support judgments and issue a  
15 proposed governing child support order and notice to the parties in the  
16 manner prescribed by rules adopted by the Department of Justice under ORS  
17 416.455. The proposed governing child support order must include all of the  
18 information described in ORS 25.091 (8). The administrator shall serve the  
19 proposed governing child support order and notice in the manner provided  
20 in ORS 416.425. The notice must include a statement that the proposed gov-  
21 erning child support order shall become final unless a written objection is  
22 made to the administrator within 30 days after service of the proposed gov-  
23 erning child support order and notice.

24 (4) If the administrator receives a timely written objection to a proposed  
25 governing child support order issued under subsection (3)(b) of this section,  
26 the administrator shall certify the matter to the court for the county where  
27 a child who is subject to the judgments resides for a governing child support  
28 judgment under ORS 25.091.

29 (5) If the administrator does not receive a timely written objection to a  
30 proposed governing child support order issued under subsection (3)(b) of this  
31 section, the governing child support order is final. The administrator shall



1 certify the governing child support order to a court for review and approval  
 2 [*under ORS 416.425 (10)*]. The governing child support order is not effective  
 3 until reviewed and approved by the court. If the court approves the govern-  
 4 ing child support order, the governing child support order becomes the gov-  
 5 erning child support judgment upon filing as provided in ORS 416.440.

6 (6) When a governing child support judgment is entered as described in  
 7 ORS 416.440, the noncontrolling terms of each earlier child support judgment  
 8 are terminated. However, subject to subsection (7) of this section, the entry  
 9 of a governing child support judgment does not affect any support payment  
 10 arrearage or any liability related to medical support, as defined in ORS  
 11 25.321, that has accrued under a child support judgment before the governing  
 12 child support judgment is entered.

13 (7) For purposes of reconciling any child support arrears or credits under  
 14 all of the child support judgments, amounts collected and credited for a  
 15 particular period under one child support judgment must be credited against  
 16 the amounts accruing or accrued for the same period under any other child  
 17 support judgment.

18 (8) Not sooner than 30 days and not later than 60 days after entry of the  
 19 governing child support judgment, the administrator shall file a certified  
 20 copy of the governing child support judgment with each court that issued  
 21 an earlier child support judgment. A failure to file does not affect the va-  
 22 lidity or enforceability of the governing child support judgment.

23 (9) When an administrative law judge finds that two or more child sup-  
 24 port judgments exist involving the same obligor and child and the same pe-  
 25 riod, and each child support judgment was issued in this state, the  
 26 administrative law judge shall remand the matter to the administrator to  
 27 follow the provisions of subsection (3) of this section.

28 **SECTION 4.** ORS 18.031 is amended to read:

29 18.031. Except as provided in ORS 416.440 [~~(6)~~] **(5)**, a supplemental judg-  
 30 ment may only contain provisions that were not included in the general  
 31 judgment.

