

# Senate Bill 589

Sponsored by COMMITTEE ON JUDICIARY (at the request of Attorney General Ellen F. Rosenblum)

## 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**.

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

## A BILL FOR AN ACT

1  
2 Relating to court approval of administrative child support orders; amending ORS 18.031, 416.425,  
3 416.440 and 416.448.

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

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

6 416.425. (1) Any time support enforcement services are being provided under ORS 25.080, the  
7 obligor, the obligee, the party holding the support rights or the administrator may move for the  
8 existing order to be modified under this section. The motion shall be in writing in a form prescribed  
9 by the administrator, shall set out the reasons for modification and shall state the telephone number  
10 and address of the party requesting modification.

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

12 (a) Whether there is pending in this state or any other jurisdiction any type of support pro-  
13 ceeding involving the dependent child, including a proceeding brought under ORS 25.287, 107.085,  
14 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 125.025, 416.415, 419B.400 or 419C.590 or ORS  
15 chapter 110; and

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

18 (3) The moving party shall include with the motion a certificate regarding any pending support  
19 proceeding and any existing support order other than the order the party is moving to modify. The  
20 party shall use a certificate that is in a form prescribed by the administrator and include informa-  
21 tion required by the administrator and subsection (2) of this section.

22 (4) The moving party shall serve the motion upon the obligor, the obligee, the party holding the  
23 support rights and the administrator, as appropriate. The nonrequesting parties must be served in  
24 the same manner as provided for service of the notice and finding of financial responsibility under  
25 ORS 416.415 (1)(a). Notwithstanding ORS 25.085, the requesting party must be served by first class  
26 mail to the requesting party's last known address. The nonrequesting parties have 30 days to resolve  
27 the matter by stipulated agreement or to serve the moving party by regular mail with a written  
28 response setting forth any objections to the motion and a request for hearing. The hearing shall be  
29 conducted under ORS 416.427.

30 (5) When the moving party is other than the administrator and no objections and request for  
31 hearing have been served within 30 days, the moving party may submit a true copy of the motion

**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 to the administrative law judge as provided in ORS 416.427, except the default may not be construed  
 2 to be a contested case as defined in ORS chapter 183. Upon proof of service, the administrative law  
 3 judge shall issue an order granting the relief sought.

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

6 (7) A motion for modification made under this section does not stay the administrator from en-  
 7 forcing and collecting upon the existing order unless so ordered by the court in which the order is  
 8 entered.

9 (8) An administrative order filed in accordance with ORS 416.440 is a final judgment as to any  
 10 installment or payment of money that has accrued up to the time the nonrequesting party is served  
 11 with a motion to set aside, alter or modify the judgment. The administrator may not set aside, alter  
 12 or modify any portion of the judgment that provides for any payment of money for minor children  
 13 that has accrued before the motion is served. However:

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

18 (b) The administrator may allow a credit against child support arrearages for any Social Secu-  
 19 rity or veterans' benefits paid retroactively to the child, or to a representative payee administering  
 20 the funds for the child's use and benefit, as a result of a parent's disability or retirement.

21 (9) The party requesting modification has the burden of showing a substantial change of cir-  
 22 cumstances or that a modification is appropriate under the provisions of ORS 25.287.

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

29 *[(11)] (10)* The obligee is a party to all proceedings under this section.

30 *[(12)] (11)* An order entered under this section that modifies a support order because of the  
 31 incarceration of the obligor is effective only during the period of the obligor's incarceration and for  
 32 60 days after the obligor's release from incarceration. The previous support order is reinstated by  
 33 operation of law on the 61st day after the obligor's release from incarceration. An order that mod-  
 34 ifies a support order because of the obligor's incarceration must contain a notice that the previous  
 35 order will be reinstated on the 61st day after the obligor's release from incarceration.

36 *[(13)(a)] (12)(a)* Notwithstanding subsections (1) to *[(12)] (11)* of this section, any time support  
 37 enforcement services are being provided under ORS 25.080, upon request of a party to a support  
 38 order or judgment or on the administrator's own motion, the administrator may move to suspend the  
 39 order or judgment and issue a temporary modification order under this subsection when:

40 (A) There is a period of significant unemployment as that term is described in paragraph (b) of  
 41 this subsection; and

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

44 (b) Proceedings under this subsection may be initiated only when there is a period of significant  
 45 unemployment in Oregon. The Attorney General shall determine when a "period of significant un-

1 employment” exists in Oregon and designate the beginning and ending dates thereof. In making the  
2 determination of when a period of significant unemployment exists in Oregon, the Attorney General  
3 may consider whether there is in effect an “extended benefit period” as that term is defined in ORS  
4 657.321.

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

8 (d) A party’s employment-related change of income during a period of significant unemployment  
9 is considered a substantial change of circumstances for purposes of proceedings brought under this  
10 section.

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

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

14 (B) The amount of the obligor’s and obligee’s income immediately preceding the party’s  
15 employment-related change of income, if known;

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

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

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

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

21 (G) A statement that if a party objects to the motion for an order of suspension and temporary  
22 modification, then the party may request a hearing within 14 days of service of the motion as pro-  
23 vided in paragraph (g) of this subsection;

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

26 (I) A statement that a party may request a renewal of the order of suspension and temporary  
27 modification prior to its expiration as provided in paragraph (j) of this subsection.

28 (f) The administrator shall serve the motion filed under this subsection upon the parties by  
29 regular first class mail, facsimile or electronic mail unless a party signs a form agreeing to accept  
30 service of the motion.

31 (g) A party may request a hearing within 14 days of service of the motion. If a hearing is re-  
32 quested, the provisions of ORS 416.427 apply. When there has been no request for hearing, the ad-  
33 ministrator may enter an order of suspension and temporary modification under this subsection. The  
34 order must be consistent with the provisions of the motion filed under this subsection and be in  
35 substantial compliance with the formula established under ORS 25.275.

36 (h) An order of suspension and temporary modification issued under this subsection is temporary  
37 and remains in effect for six months from the date the order is filed under ORS 416.440 or until the  
38 date specified in the notice provided under paragraph (i) of this subsection informing of the party’s  
39 reemployment, whichever is earlier, at which time the preexisting support order or judgment be-  
40 comes immediately effective and payable on the first day of the following month unless an order of  
41 renewal is issued under paragraph (j) of this subsection.

42 (i) The administrator may issue a notice of reinstatement at any time during which an order of  
43 suspension and temporary modification is in effect under this subsection when a party obtains em-  
44 ployment and receives income that is sufficient to reinstate support in an amount substantially  
45 similar to the amount in the preexisting support order or judgment. The notice shall be served as

1 provided in paragraph (f) of this subsection and must state that, unless a request for hearing is re-  
 2 ceived within 14 days of service of the notice, the administrator will enter an order terminating the  
 3 order of suspension and temporary modification and reinstating the amount of the preexisting sup-  
 4 port order or judgment effective on a date to be specified in the notice. If a hearing is requested,  
 5 the provisions of ORS 416.427 apply. When there is no request for hearing, the administrator may  
 6 enter an order terminating the order of suspension and temporary modification and reinstating the  
 7 preexisting support order or judgment effective upon the date specified in the notice.

8 (j) Prior to expiration of an order of suspension and temporary modification under this sub-  
 9 section and upon request of a party, the administrator may renew the order of suspension and tem-  
 10 porary modification for additional six-month periods or until the party obtains employment as  
 11 described in paragraph (i) of this subsection, whichever occurs first, if the circumstances under  
 12 which the order was originally issued continue to exist unchanged.

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

14 416.440. (1) The documents required to be filed for purposes of subsection (2) of this section in-  
 15 clude all the following:

16 (a) A true copy of any order entered, filed or registered by the administrator or administrative  
 17 law judge pursuant to ORS 416.400 to 416.465 or ORS chapter 110.

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

19 (c) A separate statement containing the information required to be contained in a judgment  
 20 under ORS 18.042 (2).

21 (2) The documents described under subsection (1) of this section shall be filed in the office of  
 22 the clerk of the circuit court in the county in which either the parent or the dependent child resides  
 23 or in the county where the court order was entered if the administrative order is an order modifying  
 24 a court order. Upon receipt of the documents, the clerk shall enter the order in the register of the  
 25 circuit court, shall note in the register that the order creates a lien and shall make the notations  
 26 required by ORS 18.075 in the judgment lien record maintained under ORS 18.075.

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

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

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

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

33 *[(5)]* (4) Notwithstanding subsections (2) and (3) of this section, the entry in the register of an  
 34 order of the administrator or administrative law judge does not preclude any subsequent proceeding  
 35 or remedy available under ORS 416.400 to 416.465.

36 *[(6)]* (5) An order filed under this section that modifies a previously filed order or a previously  
 37 entered judgment may contain provisions that were included in the order or judgment.

38 *[(7)]* (6) A court or administrative order of another state may be filed, or if appropriate, regis-  
 39 tered, pursuant to this section for the purposes of ORS chapter 110. Notwithstanding any other  
 40 provision of this chapter, an order of another state registered pursuant to ORS 110.405, 110.408 and  
 41 110.411 may not be modified unless the requirements of ORS 110.432 are met.

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

43 416.448. (1) As used in this section:

44 (a) "Child support judgment" has the meaning given that term in ORS 25.089.

45 (b) "Governing child support judgment" has the meaning given that term in ORS 25.091.

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

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

9 (a) The administrator may petition the court for the county where a child who is subject to the  
10 judgments resides for a governing child support judgment under ORS 25.091; or

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

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

23 (5) If the administrator does not receive a timely written objection to a proposed governing child  
24 support order issued under subsection (3)(b) of this section, the governing child support order is  
25 final. The administrator shall certify the governing child support order to a court for review and  
26 approval [*under ORS 416.425 (10)*]. The governing child support order is not effective until reviewed  
27 and approved by the court. If the court approves the governing child support order, the governing  
28 child support order becomes the governing child support judgment upon filing as provided in ORS  
29 416.440.

30 (6) When a governing child support judgment is entered as described in ORS 416.440, the non-  
31 controlling terms of each earlier child support judgment are terminated. However, subject to sub-  
32 section (7) of this section, the entry of a governing child support judgment does not affect any  
33 support payment arrearage or any liability related to medical support, as defined in ORS 25.321, that  
34 has accrued under a child support judgment before the governing child support judgment is entered.

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

39 (8) Not sooner than 30 days and not later than 60 days after entry of the governing child support  
40 judgment, the administrator shall file a certified copy of the governing child support judgment with  
41 each court that issued an earlier child support judgment. A failure to file does not affect the validity  
42 or enforceability of the governing child support judgment.

43 (9) When an administrative law judge finds that two or more child support judgments exist in-  
44 volving the same obligor and child and the same period, and each child support judgment was issued  
45 in this state, the administrative law judge shall remand the matter to the administrator to follow the

1 provisions of subsection (3) of this section.

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

3 18.031. Except as provided in ORS 416.440 [(6)] (5), a supplemental judgment may only contain  
4 provisions that were not included in the general judgment.

5 \_\_\_\_\_