

Enrolled
Senate Bill 590

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

CHAPTER

AN ACT

Relating to child support program administration; amending ORS 25.378, 25.759, 25.790 and 416.425.

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.

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

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

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

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

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

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

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

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

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

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

(11) The obligee is a party to all proceedings under this section.

(12) An order entered under this section that modifies a support order because of the incarceration of the obligor is effective only during the period of the obligor's incarceration and for 60 days after the obligor's release from incarceration. The previous support order is reinstated by operation of law on the 61st day after the obligor's release from incarceration. An order that modifies a support order because of the obligor's incarceration must contain a notice that the previous order will be reinstated on the 61st day after the obligor's release from incarceration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The administrator may issue a notice of reinstatement at any time during which an order of suspension and temporary modification is in effect under this subsection when a party obtains employment and receives income that is sufficient to reinstate support in an amount substantially similar to the amount in the preexisting support order or judgment. The notice shall be served as provided in paragraph (f) of this subsection and must state that, unless a request for hearing is received within 14 days of service of the notice, the administrator will enter an order terminating the order of suspension and temporary modification and reinstating the amount of the preexisting support order or judgment effective on a date to be specified in the notice. If a hearing is requested, the provisions of ORS 416.427 apply. When there is no request for hearing, the administrator may enter an order terminating the order of suspension and temporary modification and reinstating the preexisting support order or judgment effective upon the date specified in the notice.

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

SECTION 2. ORS 25.378 is amended to read:

25.378. (1) Except as otherwise provided in ORS 25.396, when a support order is entered or modified by the Division of Child Support, a district attorney, an administrative law judge or a circuit court, including a juvenile court, the order shall include a provision requiring the obligor to pay support by income withholding regardless of whether support enforcement services are being

provided under ORS 25.080. In addition to the income withholding provided for in this subsection, income withholding may be initiated in accordance with subsections (2) to (6) of this section.

(2) When an obligor is subject to a support order issued or registered in this state and fails to make payments at least equal to the amount of support payable for one month, a court or the administrator, whichever is appropriate, shall initiate income withholding without the need for a judicial or administrative hearing and without the need for advance notice to the obligor of the withholding.

(3) When an arrearage exists and notice of the delinquent amount has been given to the obligor, a court, upon application, shall issue a withholding order upon the ex parte request of a person holding support rights or the administrator.

(4) If an obligor is not otherwise subject to income withholding a court or the administrator may issue an order to withhold upon the ex parte motion of the obligor.

(5)[(a)] Upon the request of the holder of support rights, a court or the administrator, as appropriate, may issue a withholding order at any time if:

[(A)] (a) The obligor is not otherwise subject to withholding; and

[(B)] (b) After notice and an opportunity to object has been given to the obligor, a finding is made that it would be in the best interests of the child to issue a withholding order.

[(b) If the obligor has been granted an exception to withholding under ORS 25.396 by a court, the holder of support rights must apply for withholding under this subsection by motion to the court.]

(6) A court or the administrator shall issue an order to withhold when a support order or an arrearage from another jurisdiction is entered in Oregon in accordance with interstate income withholding under ORS chapter 110.

SECTION 3. ORS 25.759 is amended to read:

25.759. Upon identification of a person subject to suspension under ORS 25.750 to 25.783, the administrator may issue a notice, sent by regular mail to both the address of record as shown in the records of the issuing entity and the address of record as shown on the administrator's child support file. Such notice shall contain the following information:

(1) That certain licenses, certificates, permits and registrations, which shall be specified in the notice, are subject to suspension as provided for by ORS 25.750 to 25.783.

(2) The name, final four digits of the Social Security number, if available, [date] year of birth, if known, and child support case number or numbers of the person subject to the action.

(3) The amount of arrears and the amount of the monthly child support obligation, if any, or, if suspension is based on ORS 25.750 (1)(b), a description of the subpoena or other procedural order with which the person subject to the action has failed to comply.

(4) The procedures available for contesting the suspension of a license, certificate, permit or registration.

(5) That the only bases for contesting the suspension are:

(a) That the arrears are not greater than three months of support or \$2,500;

(b) That there is a mistake in the identity of the obligor;

(c) That the person subject to the suspension has complied with the subpoena or other procedural order identified in subsection (3) of this section; or

(d) That the person subject to the suspension is in compliance with a previous agreement as provided for by ORS 25.750 to 25.783.

(6) That the obligor may enter into an agreement, prescribed by rule by the Department of Justice, compliance with which shall preclude the suspension under ORS 25.750 to 25.783.

(7) That the obligor has 30 days from the date of the notice to contact the administrator in order to:

(a) Contest the action in writing on a form prescribed by the administrator;

(b) Comply with the subpoena or procedural order identified in subsection (3) of this section; or

(c) Enter into an agreement authorized by ORS 25.750 and 25.762. The notice shall state that any agreement must be in writing and must be entered into within 30 days of making contact with the administrator.

(8) That failure to contact the administrator within 30 days of the date of the notice shall result in notification to the issuing entity to suspend the license, certificate, permit or registration.

SECTION 4. ORS 25.790 is amended to read:

25.790. (1)(a) An employer shall report to the Division of Child Support of the Department of Justice the hiring or rehiring of an individual who resides or works in the state and to whom the employer anticipates paying earnings if the employer:

(A) Has employees working only in this state; or

(B) Is a multistate employer and has designated to the United States Secretary of Health and Human Services that Oregon is the employer's reporting state.

(b) The employer shall submit the report by mail or other means in accordance with rules adopted by the Department of Justice.

(2)(a) An employer shall make the report required by subsection (1) of this section with respect to an employee:

(A) Not later than 20 days after the date the employer hires or rehires the employee; or

(B) In the case of an employer transmitting reports magnetically or electronically, by transmissions each month not less than 12 days nor more than 16 days apart.

(b) An employer may submit a cumulative report for all individuals hired or rehired during the previous reporting period.

(3) The report required under subsection (1) of this section may be made on a W-4 form or, at the option of the employer, an equivalent form approved by the Division of Child Support of the Department of Justice, but must contain the employer's name, address and federal tax identification number and the employee's name, address and Social Security number.

(4) As used in this section:

(a) "Employee" means an individual who must file a federal withholding form W-4 under the Internal Revenue Code.

(b) "Rehire" means to re-employ any individual who was laid off, separated, furloughed, granted a leave without pay or terminated from employment for more than [45] 60 days.

Passed by Senate March 12, 2013

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 6, 2013

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Tina Kotek, Speaker of House

Received by Governor:

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Approved:

.....M.,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2013

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Kate Brown, Secretary of State