

D R A F T

SUMMARY

Changes circumstances under which enforcement of child support order may be suspended.

A BILL FOR AN ACT

Relating to enforcement of child support orders; amending ORS 25.125.

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

SECTION 1. ORS 25.125 is amended to read:

25.125. (1) The Department of Justice may return moneys to an obligor when the department determines that the obligor has paid more moneys than are due under a support obligation. However, when the obligor has an ongoing support obligation, the department may give the obligor credit for the excess amount paid and apply the credit to the future support obligation until the credit is fully used. When the department applies a credit to offset a future support obligation, the department shall so notify the obligee. The notice must inform the obligee that, if the obligee requests, the department will conduct an administrative review to determine if the record keeping and accounting related to the calculation of the credit balance is correct. The department shall conduct the administrative review within 30 days after receiving the request.

(2) An overpayment in favor of the state is created when the Department of Justice, under ORS 25.020, has transmitted moneys received from an obligor to an obligee or a collection agency, a child support agency of another state or an agency of this state and:

1 (a) The amount transmitted is more than the support obligation requires
2 and the Department of Justice has returned the excess to the obligor under
3 subsection (1) of this section;

4 (b) The Department of Justice has misapplied moneys received; or

5 (c) The amount transmitted is attributable in whole or in part to a tax
6 refund offset collection all or part of which has been taken back by the
7 Internal Revenue Service or the Department of Revenue.

8 (3)(a) The obligee or the agency to whom the moneys were transmitted
9 owes the amount of the overpayment to the state. The Department of Justice
10 shall:

11 (A) Attempt to recover the overpayment if it is cost-effective to do so;

12 (B) Notify the obligee or the agency to whom the overpayment was made
13 that the obligee or agency owes money to the state and specify the amount
14 of the overpayment to be returned to the department; and

15 (C) Give the obligee opportunity to object.

16 (b) If the obligee does not file a timely written objection, the overpayment
17 amount determined by the department is final and the provisions of sub-
18 section (4) of this section apply. If the department does not resolve an ob-
19 jection to an obligee's satisfaction, an administrative law judge assigned
20 from the Office of Administrative Hearings shall hear the objection. An or-
21 der by the administrative law judge is final. An obligee may appeal the de-
22 cision of an administrative law judge to the circuit court for a hearing de
23 novo.

24 (c) Notwithstanding paragraph (a) of this subsection, if an agency of this
25 or another state owes the overpayment, the agency shall return the amount
26 of the overpayment to the department without notice and opportunity to
27 object.

28 (4) The amount of the overpayment specified in subsection (3)(a) of this
29 section is a liquidated debt and a delinquent amount owed to the state. The
30 Department of Justice may recover the debt by obtaining from the obligee a
31 voluntary assignment of a portion of future support payments to be applied

1 to the debt or in any other way permitted by law.

2 (5)(a) In addition to the debt created under subsection (2) of this section,
3 a debt in favor of the state is created when:

4 (A) The Department of Justice receives a check for support amounts due
5 from an obligor or withholder subject to an order to withhold under this
6 chapter;

7 (B) The Department of Justice transmits the amount to the obligee, a
8 child support agency of another state or an agency of this state; and

9 (C) The check is dishonored.

10 (b) When a debt is created under paragraph (a) of this subsection, the
11 obligor or withholder who presented the check owes the amount of money
12 specified on the check to the state.

13 (c) The Department of Justice shall:

14 (A) Attempt to recover the debt if it is cost-effective to do so;

15 (B) Notify the obligor or withholder who presented the check that the
16 obligor or withholder owes the money to the state; and

17 (C) Specify the amount of the debt to be paid to the department.

18 (d) The amount of the debt specified in paragraph (c) of this subsection
19 is a liquidated debt and a delinquent amount owed to the state. The De-
20 partment of Justice may recover the debt in any way permitted under law.

21 (6)(a) When [*a motion has been filed*] **an action is pending** to terminate,
22 vacate or set aside a support order or to modify a support order because [*of*
23 *a change in*] **all of the children are in the** physical custody of the [*child*]
24 **obligor**, the administrator may suspend enforcement of the support order.
25 [*if:*]

26 [*(A) Collection of support would result in a credit balance if the motion*
27 *were granted; and*]

28 [*(B) The obligee does not object to suspending enforcement of the support*
29 *order.*]

30 (b) The obligee may object, within 14 days after the date of the notice of
31 intent to suspend enforcement of the support order, only on the grounds that:

1 (A) The [*child is*] **children are** not in the physical custody of the obligor;
2 **or**

3 (B) The [*child is*] **children are** in the physical custody of the obligor
4 without the consent of the obligee.[; *or*]

5 [*(C) A credit balance would not result if the motion were granted.*]

6 (c) A party may appeal the administrator's decision to suspend or not to
7 suspend enforcement of the support order under ORS 183.484.

8 [*(d) As used in this subsection, "credit balance" means that payments have*
9 *been made in excess of all amounts owed by an obligor for ongoing and past*
10 *due child support.*]

11 (7) The Department of Justice shall adopt rules to carry out the pro-
12 visions of this section.

13
