

# House Bill 3159

Sponsored by COMMITTEE ON JUDICIARY

## 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**.

Creates debt in favor of state for dishonored checks for support that are presented by third party on behalf of obligor or withholder.

## A BILL FOR AN ACT

1  
2 Relating to dishonored checks for support paid to the Department of Justice; amending ORS 25.125.

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

4 **SECTION 1.** ORS 25.125 is amended to read:

5 25.125. (1) The Department of Justice may return moneys to an obligor when the department  
6 determines that the obligor has paid more moneys than are due under a support obligation. How-  
7 ever, when the obligor has an ongoing support obligation, the department may give the obligor  
8 credit for the excess amount paid and apply the credit to the future support obligation until the  
9 credit is fully used. When the department applies a credit to offset a future support obligation, the  
10 department shall so notify the obligee. The notice must inform the obligee that, if the obligee re-  
11 quests, the department will conduct an administrative review to determine if the record keeping and  
12 accounting related to the calculation of the credit balance is correct. The department shall conduct  
13 the administrative review within 30 days after receiving the request.

14 (2) An overpayment in favor of the state is created when the Department of Justice, under ORS  
15 25.020, has transmitted moneys received from an obligor to an obligee or a collection agency, a child  
16 support agency of another state or an agency of this state and:

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

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

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

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

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

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

29 (C) Give the obligee opportunity to object.

30 (b) If the obligee does not file a timely written objection, the overpayment amount determined  
31 by the department is final and the provisions of subsection (4) of this section apply. If the depart-

**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 does not resolve an objection to an obligee’s satisfaction, an administrative law judge assigned  
 2 from the Office of Administrative Hearings shall hear the objection. An order by the administrative  
 3 law judge is final. An obligee may appeal the decision of an administrative law judge to the circuit  
 4 court for a hearing de novo.

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

8 (4) The amount of the overpayment specified in subsection (3)(a) of this section is a liquidated  
 9 debt and a delinquent amount owed to the state. The Department of Justice may recover the debt  
 10 by obtaining from the obligee a voluntary assignment of a portion of future support payments to be  
 11 applied to the debt or in any other way permitted by law.

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

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

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

18 (C) The check is dishonored.

19 (b) When a debt is created under paragraph (a) of this subsection, the obligor, [or] withholder  
 20 **or third party** who presented the check owes the amount of money specified on the check to the  
 21 state.

22 (c) The Department of Justice shall:

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

24 (B) Notify the obligor, [or] withholder **or third party** who presented the check that the  
 25 obligor, [or] withholder **or third party** owes the money to the state; and

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

27 (d) The amount of the debt specified in paragraph (c) of this subsection is a liquidated debt and  
 28 a delinquent amount owed to the state. The Department of Justice may recover the debt in any way  
 29 permitted under law.

30 (6)(a) When a motion has been filed to terminate, vacate or set aside a support order or to  
 31 modify a support order because of a change in physical custody of the child, the administrator may  
 32 suspend enforcement of the support order if:

33 (A) Collection of support would result in a credit balance if the motion were granted; and

34 (B) The obligee does not object to suspending enforcement of the support order.

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

37 (A) The child is not in the physical custody of the obligor;

38 (B) The child is in the physical custody of the obligor without the consent of the obligee; or

39 (C) A credit balance would not result if the motion were granted.

40 (c) A party may appeal the administrator’s decision to suspend or not to suspend enforcement  
 41 of the support order under ORS 183.484.

42 (d) As used in this subsection, “credit balance” means that payments have been made in excess  
 43 of all amounts owed by an obligor for ongoing and past due child support.

44 (7) The Department of Justice shall adopt rules to carry out the provisions of this section.