

Senate Bill 511

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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 to state and account receivable for overpayment of support obligation that is transmitted by Department of Justice to obligor, collection agency, child support agency of another state, agency of this state or any other person or entity.

Creates debt in favor of state and account receivable when check received by department is dishonored and department has transmitted amounts paid by check to obligee, child support agency of another state, agency of this state or any other person or entity.

A BILL FOR AN ACT

1
2 Relating to support obligation overpayments; 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, **or on behalf of**, an obligor to **any person or entity**,
16 **including but not limited to** an obligee, [*or*] a collection agency, a child support agency of another
17 state or an agency of this state and:

18 (a) The amount transmitted is more than the support obligation requires and the Department
19 of Justice has returned the excess to the obligor under subsection (1) of this section **or to any other**
20 **person or entity**;

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

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

25 (3)(a) The obligee, [*or*] the agency **or the person or entity** to [*whom*] **which** the moneys were
26 transmitted owes the amount of the overpayment to the state. The Department of Justice shall:

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

28 (B) Notify the obligee, [*or*] the agency **or the person or entity** to whom the overpayment was

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 made that the obligee, [or] **the agency or the person or entity** owes money to the state and specify
2 the amount of the overpayment to be returned to the department; and

3 (C) Give the obligee, **the agency or the person or entity** opportunity to object.

4 (b) If the obligee, **the agency or the person or entity** does not file a timely written objection,
5 the overpayment amount determined by the department is final and the provisions of subsection (4)
6 of this section apply. If the department does not resolve an objection to an obligee's, **agency's or**
7 **person's or entity's** satisfaction, an administrative law judge assigned from the Office of Adminis-
8 trative Hearings shall hear the objection. An order by the administrative law judge is final. An
9 obligee, **agency or person or entity** may appeal the decision of an administrative law judge to the
10 circuit court for a hearing de novo.

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

14 (4) The amount of the overpayment specified in subsection (3)(a) of this section is a [*liquidated*
15 *debt and a*] delinquent amount owed to the state **and an account receivable**. The Department of
16 Justice may recover the debt **and collect on the account receivable** by obtaining from the obligee
17 a voluntary assignment of a portion of future support payments to be applied to the debt **or account**
18 **receivable** or in any other way permitted by law.

19 (5)(a) In addition to the debt **and account receivable** created under subsection (2) of this sec-
20 tion, a debt in favor of the state **and an account receivable** is created when:

21 (A) The Department of Justice receives a check for support amounts due from an obligor, a
22 withholder subject to an order to withhold under this chapter or another issuer on behalf of an
23 obligor;

24 (B) The Department of Justice transmits the amount to the obligee, a child support agency of
25 another state, [or] an agency of this state **or any other person or entity**; and

26 (C) The check is dishonored.

27 (b) When a debt is created under paragraph (a) of this subsection, the amount of money specified
28 on the check is owed to the state by all, and the state may collect the debt from one, of the fol-
29 lowing:

30 (A) The obligor, regardless of who presented the check.

31 (B) The withholder, if the withholder presented the check.

32 (C) The other issuer, if another issuer presented the check.

33 **(D) The person or entity to which the amount was transmitted by the department.**

34 (c) The Department of Justice shall:

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

36 (B) Notify the obligor, withholder, [or] other issuer who presented the check **or the person or**
37 **entity** that the obligor, withholder, [or] other issuer **or person or entity** owes the money to the
38 state; and

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

40 (d) The amount of the debt specified in paragraph (c) of this subsection is a [*liquidated debt and*
41 *a*] delinquent amount owed to the state **and an account receivable**. The Department of Justice may
42 recover the debt **and collect on the account receivable** in any way permitted under law.

43 (6)(a) When an action is pending to terminate, vacate or set aside a support order or to modify
44 a support order because of a change in physical custody of the child, the administrator may suspend
45 enforcement of the support order if:

1 (A) Collection of support would result in a credit balance if the motion were granted; or
2 (B) Collection of child support would impair the ability of the obligor with physical custody of
3 all of the parties' children to provide direct support to the children.

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

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

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

8 (C) The basis for the suspension of enforcement is factually incorrect.

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

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

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

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