

Enrolled
Senate Bill 514

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary)

CHAPTER

AN ACT

Relating to notices to obligees in support proceedings; amending ORS 25.399, 25.610, 25.650 and 25.670.

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

SECTION 1. ORS 25.399 is amended to read:

25.399. (1) When an order to withhold is issued under ORS 25.378, the party or entity initiating the action shall send notice of the order to withhold to the obligor [*and the obligee*] by regular mail to the last-known addresses of the obligor [*and obligee*]. The notice must state:

- (a) That withholding has commenced;
- (b) The amount to be withheld and the amount of arrears, if any;
- (c) That the order to withhold applies to any current or subsequent withholder or period of employment;
- (d) The procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact, which means an error in the amount of current support or arrearages, or an error in the identity of the obligor;
- (e) The availability of and requirements for exceptions to withholding;
- (f) That the obligor has 30 days from the date that the income is first withheld pursuant to the order to withhold to contest the withholding; and
- (g) The actions that will be taken if the obligor contests the withholding.

(2) The notice requirement of subsection (1) of this section may be met by mailing a copy of the order to withhold, by regular mail, to the obligor [*and to the obligee*].

SECTION 2. ORS 25.610 is amended to read:

25.610. (1) Whenever support enforcement services are being provided, the administrator may request the Department of Revenue, through the Department of Justice or its designee, to collect past due child and spousal support from income tax refunds due to the obligor. The request shall be based upon the payment record maintained under ORS 25.020.

(2) If support payment records have not been maintained as provided in ORS 25.020, then a support payment record may be established under ORS 25.164, 25.167 and 416.429.

(3) The Department of Justice shall adopt rules:

- (a) Setting out additional criteria for requests under subsection (1) of this section; and
- (b) Directing how any support obligation collected by the Department of Revenue shall be distributed, consistent with federal regulations.

(4) Before a request is made to the Department of Revenue under subsection (1) of this section, the Department of Justice shall provide advance written notice to the obligor, and **may send advance written notice to** the obligee, of its intent to refer the case to the Department of Revenue. The notice shall inform the parties:

(a) Of the proposed action;

(b) Of the obligor's right to request an administrative review of the proposed action;

(c) That an administrative review, if desired, must be requested by the obligor within 30 days after the date of the notice; and

(d) That the only issues that may be considered in the administrative review are:

(A) Whether the obligor is the person who owes the support obligation; and

(B) Whether the amount shown as the past due support is correct.

(5) An administrative review must be requested within 30 days after the date of the notice described in subsection (4) of this section. At the administrative review, an issue may not be considered if it was previously litigated or if the obligor failed to exercise rights to appear and be heard or to appeal a decision that resulted in the accrual of the arrearage being used as a basis for a request under subsection (1) of this section. A party may appeal a decision from the administrative review under ORS 183.484.

(6) When the Department of Revenue has been requested to collect past due child and spousal support from income tax refunds due to the obligor, the Department of Revenue may not allow the obligor to apply any income tax refund to future taxes of the obligor.

(7) Notwithstanding any other provision of this section, an obligor who is not delinquent in payment of child or spousal support may authorize the Department of Revenue, through the Department of Justice or its designee, to withhold any income tax refund owing to that obligor for the purpose of applying the moneys as a credit to the support account maintained by the Department of Justice.

SECTION 3. ORS 25.650 is amended to read:

25.650. (1) As used in this section, "consumer reporting agency" means any person that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and that uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(2)(a) Notwithstanding any other law, and subject to rules established by the Department of Justice, for cases in which there is past due support, the department shall:

(A) Report periodically to consumer reporting agencies the name of any obligor who is delinquent in the payment of support and the amount owed by the obligor; and

(B) Otherwise make available to a consumer reporting agency upon its request information regarding the amount of past due support owed by an obligor.

(b) The department shall provide advance notice to *[both]* the obligor *[and the obligee]* concerning the proposed reporting of information to the consumer reporting agencies. The notice must inform *[both parties]* **the obligor**:

(A) Of the amount of the past due support the department will report to the consumer reporting agencies;

(B) That the department will continue to report the past due support amount owed without sending additional notice to the *[parties]* **obligor**;

(C) Of the obligor's right to request an administrative review within 30 days after the date of the notice; and

(D) Of the issues that may be considered on review.

(c) If an obligor requests an administrative review, the department may not report the past due support amount until the review is complete.

(d) A party may appeal a decision from the administrative review under ORS 183.484. An appeal of the decision does not stay the department from making reports to consumer reporting agencies.

(3)(a) If paternity has been established and a consumer report is needed for the purpose of establishing or modifying a child support order, the administrator may request that a consumer reporting agency provide a report.

(b) At least 10 days prior to making a request under paragraph (a) of this subsection, the administrator shall notify the obligor or obligee whose report is requested, by certified or registered mail, that the report will be requested.

(4) The department shall report information under subsection (2) of this section only to a person that has furnished evidence satisfactory to the department that the person is a consumer reporting agency.

(5) When the department has made a report to a consumer reporting agency under subsection (2) of this section, the department shall promptly notify the consumer reporting agency when the department's records show that the obligor no longer owes past due support.

SECTION 4. ORS 25.670 is amended to read:

25.670. (1) Whenever there is a judgment for unpaid child or spousal support, a lien arises by operation of law on any personal property owned by the obligor, and the lien continues until the liability for the unpaid support is satisfied or the judgment or renewal thereof has expired. For purposes of this section and ORS 25.680 and 25.690, liability for the unpaid support includes the amount of unpaid support, with interest, and any costs that may be associated with lawful execution on the lien including, but not limited to, attorney fees, costs of notice and sale, storage and handling.

(2)(a) A lien arising under subsection (1) of this section may be recorded by filing a written notice of claim of lien with the county clerk of the county in which the obligor resides or the property is located. The notice of claim of lien required under this subsection shall be a written statement and must include:

(A) A statement of the total amount due, as of the date of the filing of the notice of claim of lien;

(B) The name and address of the obligor and obligee;

(C) The name and address of the office of the district attorney, Division of Child Support or other person or entity filing the notice;

(D) A statement identifying the county where the underlying support order was entered and its case number;

(E) A description of the personal property to be charged with the lien sufficient for identification; and

(F) A statement of the date the lien expires under the laws of the issuing state. If no expiration date is provided, the lien expires in Oregon five years from the date of recording.

(b) The county clerk shall record the notice of claim of lien filed under paragraph (a) of this subsection in the County Clerk Lien Record.

(3)[(a)] When a notice of claim of lien is recorded pursuant to subsection (2) of this section, the person or entity filing the notice of claim of lien shall send forthwith a copy of the notice to the owner of the personal property to be charged with the lien by registered or certified mail, or by any other mail service with delivery confirmation, sent to the owner's last-known address.

[(b) A copy of the notice must also be sent to the obligee by regular mail.]

(4) Liens described in subsection (1) of this section that arise by operation of law in another state must be accorded full faith and credit if the state agency, party or other entity seeking to enforce the lien follows the applicable procedures for recording and service of notice of claim of lien set forth in this section. A state agency, party or other entity may not file an action to enforce a lien described in this section until the underlying judgment has been filed in Oregon as provided in ORS chapter 110.

Passed by Senate March 6, 2017

.....
Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House June 12, 2017

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2017

Approved:

.....M,....., 2017

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2017

.....
Dennis Richardson, Secretary of State