

Senate Bill 682

Sponsored by Senators DEMBROW, WINTERS

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**.

Provides that obligor's incarceration and release from incarceration are substantial changes of circumstances to modify or suspend orders for support of child.

Permits modifications or suspensions of support orders involving incarcerated obligors to be ordered retroactive to date of initial incarceration, to another date during incarceration when obligor is unable to pay ordered support or to date that is 61 days following release from incarceration.

A BILL FOR AN ACT

1
2 Relating to support orders involving incarcerated obligors; amending ORS 416.425.

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

4 **SECTION 1.** ORS 416.425 is amended to read:

5 416.425. (1) Any time support enforcement services are being provided under ORS 25.080, the
6 obligor, the obligee, the party holding the support rights or the administrator may move for the
7 existing order to be modified under this section. The motion shall be in writing in a form prescribed
8 by the administrator, shall set out the reasons for modification and shall state the address of the
9 party requesting modification.

10 (2) The moving party shall state in the motion, to the extent known:

11 (a) Whether there is pending in this state or any other jurisdiction any type of support pro-
12 ceeding involving the dependent child, including a proceeding brought under ORS 25.287, 107.085,
13 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 125.025, 416.415, 419B.400 or 419C.590 or ORS
14 chapter 110; and

15 (b) Whether there exists in this state or any other jurisdiction a support order, as defined in
16 ORS 110.503, involving the dependent child, other than the order the party is moving to modify.

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

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

29 (5) When the moving party is other than the administrator and no objections and request for

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 hearing have been served within 30 days, the moving party may submit a true copy of the motion
 2 to the administrative law judge as provided in ORS 416.427, except the default may not be construed
 3 to be a contested case as defined in ORS chapter 183. Upon proof of service, the administrative law
 4 judge shall issue an order granting the relief sought.

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

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

10 (8) **Except as provided in this subsection and subsection (11) of this section**, an adminis-
 11 trative order filed in accordance with ORS 416.440 is a final judgment as to any installment or
 12 payment of money that has accrued up to the time the nonrequesting party is served with a motion
 13 to set aside, alter or modify the judgment. The administrator may not set aside, alter or modify any
 14 portion of the judgment that provides for any payment of money for minor children that has accrued
 15 before the motion is served. However:

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

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

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

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

26 (11)(a) **An obligor, obligee, the party holding the support rights or the administrator may**
 27 **move to modify or suspend an order for support of a child entered under ORS 416.400 to**
 28 **416.465 when the obligor is incarcerated and following the 60-day period described in para-**
 29 **graph (c) of this subsection. An obligor's incarceration and release from incarceration are**
 30 **considered substantial changes of circumstances for purposes of proceedings brought under**
 31 **this section.**

32 (b) **Notwithstanding subsection (8) of this section, a modification of a support order under**
 33 **this subsection may be ordered effective retroactively to the initial date of the obligor's**
 34 **incarceration, provided that the obligor is unable to pay the ordered support on that date.**
 35 **If the obligor is able to pay the ordered support on the initial date of incarceration but later**
 36 **during incarceration becomes unable to pay the ordered support, the modification may be**
 37 **ordered effective retroactively to the date during incarceration that the obligor became un-**
 38 **able to pay support.**

39 [(11)] (c) An order entered under this section that modifies **or suspends** a support order because
 40 of the incarceration of the obligor is effective only during the period of the obligor's incarceration
 41 and for 60 days after the obligor's release from incarceration. The previous support order is rein-
 42 stated by operation of law on the 61st day after the obligor's release from incarceration. An order
 43 that modifies a support order because of the obligor's incarceration must contain a notice that the
 44 previous order will be reinstated on the 61st day after the obligor's release from incarceration.

45 (d) **Notwithstanding subsection (8) of this section, a modification or suspension of an**

1 **order for support that is requested after the 60-day period described in paragraph (c) of this**
2 **subsection may be ordered effective retroactively to the 61st day after the obligor's release**
3 **from incarceration.**

4 (12)(a) Notwithstanding subsections (1) to (11) of this section, any time support enforcement
5 services are being provided under ORS 25.080, upon request of a party to a support order or judg-
6 ment or on the administrator's own motion, the administrator may move to suspend the order or
7 judgment and issue a temporary modification order under this subsection when:

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

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

12 (b) Proceedings under this subsection may be initiated only when there is a period of significant
13 unemployment in Oregon. The Attorney General shall determine when a "period of significant un-
14 employment" exists in Oregon and designate the beginning and ending dates thereof. In making the
15 determination of when a period of significant unemployment exists in Oregon, the Attorney General
16 may consider whether there is in effect an "extended benefit period" as that term is defined in ORS
17 657.321.

18 (c) Except as otherwise provided in this subsection, the provisions of subsections (1) to (11) of
19 this section apply to a motion for an order of suspension and temporary modification under this
20 subsection.

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

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

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

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

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

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

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

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

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

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

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

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

44 (g) A party may request a hearing within 14 days of service of the motion. If a hearing is re-
45 quested, the provisions of ORS 416.427 apply. When there has been no request for hearing, the ad-

1 administrator may enter an order of suspension and temporary modification under this subsection. The
2 order must be consistent with the provisions of the motion filed under this subsection and be in
3 substantial compliance with the formula established under ORS 25.275.

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

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

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

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