

SENATE AMENDMENTS TO SENATE BILL 682

By COMMITTEE ON JUDICIARY

April 12

1 On page 1 of the printed bill, line 2, after the semicolon insert “creating new provisions; and”.

2 Delete lines 4 through 29 and delete pages 2 through 4 and insert:

3 “**SECTION 1. Section 2 of this 2017 Act is added to and made a part of ORS chapter 25.**

4 “**SECTION 2. (1) An obligor who is incarcerated for a period of 180 or more consecutive**
5 **days shall be rebuttably presumed unable to pay child support and a child support obligation**
6 **does not accrue for the duration of the incarceration unless the presumption is rebutted as**
7 **provided in this section.**

8 “**(2) The Department of Justice and the Department of Corrections shall enter into an**
9 **agreement to conduct data matches to identify the obligors described in subsection (1) of this**
10 **section or as determined by the court.**

11 “**(3) Within 30 days following identification of an obligor described in subsection (1) of this**
12 **section whose child support obligation has not already been modified due to incarceration,**
13 **the entity responsible for support enforcement services under ORS 25.080 shall provide notice**
14 **of the presumption to the obligee and obligor and shall inform all parties to the support order**
15 **that, unless a party objects as provided in subsection (4) of this section, child support shall**
16 **cease accruing beginning with the first day of the first month that follows the obligor be-**
17 **coming incarcerated for a period of at least 180 consecutive days and continuing through the**
18 **support payment due in the last month prior to the reinstatement of the support order as**
19 **provided in subsection (6) of this section. The entity shall serve the notice on the obligee in**
20 **the manner provided for the service of summons in a civil action, by certified mail, return**
21 **receipt requested, or by any other mail service with delivery confirmation and shall serve the**
22 **notice on the obligor by first class mail to the obligor’s last-known address. The notice shall**
23 **specify the month in which the obligor became incarcerated and shall contain a statement**
24 **that the administrator represents the state and that low-cost legal counsel may be available.**

25 “**(4) A party may object to the presumption by sending an objection to the entity that**
26 **served the notice under subsection (3) of this section within 30 days after the date of service**
27 **of the notice. The objection must describe the resources of the obligor or other evidence that**
28 **rebutts the presumption of inability to pay child support. The entity receiving the objection**
29 **shall cause the case to be set for a hearing before a court or an administrative law judge.**
30 **The court or administrative law judge may consider only whether the presumption has been**
31 **rebutted.**

32 “**(5) If no objection is made, or if the court or administrative law judge finds that the**
33 **presumption has not been rebutted, the Department of Justice shall discontinue billing the**
34 **obligor for the period of time described in subsection (3) of this section and no arrearage**
35 **shall accrue for the period during which the obligor is not billed. In addition, the entity**

1 providing support enforcement services shall file with the circuit court in which the support
2 order or judgment has been entered a copy of the notice described in subsection (3) of this
3 section or, if an objection is made and the presumption is not rebutted, a copy of the court's
4 or administrative law judge's order.

5 “(6) An order that has been suspended as provided in this section will automatically be
6 reinstated at 50 percent of the previously ordered support amount on the first day of the
7 first month that follows the 120th day after the obligor's release from incarceration.

8 “(7)(a) Within 30 days following reinstatement of the order pursuant to subsection (6) of
9 this section, the Department of Justice shall provide notice to all parties to the support or-
10 der:

11 “(A) Specifying the last date on which the obligor was incarcerated;

12 “(B) Stating that by operation of law, billing and accrual of support resumed on the first
13 day of the first month that follows the 120th day after the obligor's release from
14 incarceration; and

15 “(C) Informing the parties that the administrator will review the support order for pur-
16 poses of modification of the support order as provided in subsection (8) of this section within
17 60 days following reinstatement of the order.

18 “(b) The notice shall include a statement that the administrator represents the state and
19 that low-cost legal counsel may be available.

20 “(c) The entity providing support enforcement services shall file a copy of the notice re-
21 quired by paragraph (a) of this subsection with the circuit court in which the support order
22 or judgment has been entered.

23 “(8) Within 60 days of the reinstatement under subsection (6) of this section, the ad-
24 ministrator shall review the support order for purposes of modifying the support order.

25 “(9) An obligor's incarceration for at least 180 consecutive days or an obligor's release
26 from incarceration is considered a substantial change of circumstances for purposes of child
27 support modification proceedings.

28 “(10) Proof of incarceration for at least 180 consecutive days is sufficient cause for the
29 administrator, court or administrative law judge to allow a credit and satisfaction against
30 child support arrearages for each month that the obligor was incarcerated or that is within
31 120 days following the obligor's release from incarceration unless the presumption of inability
32 to pay has been rebutted.

33 “(11) Orders modified to zero prior to the effective date of this 2017 Act remain in force
34 with reinstatement at the full amount ordered by the court occurring 61 days after release.
35 Such orders are not subject to suspension and reinstatement as provided in this section.

36 “(12) The provisions of subsections (1), (9) and (10) of this section apply regardless of
37 whether child support enforcement services are being provided under Title IV-D of the Social
38 Security Act.

39 “(13) The Department of Justice shall adopt rules to implement this section.

40 “(14) As used in this section, ‘support order’ means a judgment or administrative order
41 that creates child support rights and that is entered or issued under ORS 416.400 to 416.465,
42 419B.400 or 419C.590 or this chapter or ORS chapter 107, 108, 109 or 110.

43 “**SECTION 3.** ORS 416.425 is amended to read:

44 “416.425. (1) Any time support enforcement services are being provided under ORS 25.080, the
45 obligor, the obligee, the party holding the support rights or the administrator may move for the

1 existing order to be modified under this section. The motion shall be in writing in a form prescribed
2 by the administrator, shall set out the reasons for modification and shall state the address of the
3 party requesting modification.

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

5 “(a) Whether there is pending in this state or any other jurisdiction any type of support pro-
6 ceeding involving the dependent child, including a proceeding brought under ORS 25.287, 107.085,
7 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 125.025, 416.415, 419B.400 or 419C.590 or ORS
8 chapter 110; and

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

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

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

23 “(5) When the moving party is other than the administrator and no objections and request for
24 hearing have been served within 30 days, the moving party may submit a true copy of the motion
25 to the administrative law judge as provided in ORS 416.427, except the default may not be construed
26 to be a contested case as defined in ORS chapter 183. Upon proof of service, the administrative law
27 judge shall issue an order granting the relief sought.

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

30 “(7) A motion for modification made under this section does not stay the administrator from
31 enforcing and collecting upon the existing order unless so ordered by the court in which the order
32 is entered.

33 “(8) An administrative order filed in accordance with ORS 416.440 is a final judgment as to any
34 installment or payment of money that has accrued up to the time the nonrequesting party is served
35 with a motion to set aside, alter or modify the judgment. The administrator may not set aside, alter
36 or modify any portion of the judgment that provides for any payment of money for minor children
37 that has accrued before the motion is served. However:

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

42 “(b) The administrator may allow a credit against child support arrearages for any Social Se-
43 curity or veterans’ benefits paid retroactively to the child, or to a representative payee administer-
44 ing the funds for the child’s use and benefit, as a result of a parent’s disability or retirement.

45 “(9) The party requesting modification has the burden of showing a substantial change of cir-

1 cumstances or that a modification is appropriate under the provisions of ORS 25.287.

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

3 “[*(11) An order entered under this section that modifies a support order because of the*
4 *incarceration of the obligor is effective only during the period of the obligor’s incarceration and for 60*
5 *days after the obligor’s release from incarceration. The previous support order is reinstated by oper-*
6 *ation of law on the 61st day after the obligor’s release from incarceration. An order that modifies a*
7 *support order because of the obligor’s incarceration must contain a notice that the previous order will*
8 *be reinstated on the 61st day after the obligor’s release from incarceration.*.]

9 “**(11) An obligor’s incarceration for a period of at least 180 consecutive days or an**
10 **obligor’s release from incarceration is considered a substantial change of circumstances for**
11 **purposes of proceedings brought under this section.**

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

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

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

20 “(b) Proceedings under this subsection may be initiated only when there is a period of signif-
21 icant unemployment in Oregon. The Attorney General shall determine when a ‘period of significant
22 unemployment’ exists in Oregon and designate the beginning and ending dates thereof. In making
23 the determination of when a period of significant unemployment exists in Oregon, the Attorney
24 General may consider whether there is in effect an ‘extended benefit period’ as that term is defined
25 in ORS 657.321.

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

29 “(d) A party’s employment-related change of income during a period of significant unemployment
30 is considered a substantial change of circumstances for purposes of proceedings brought under this
31 section.

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

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

35 “(B) The amount of the obligor’s and obligee’s income immediately preceding the party’s
36 employment-related change of income, if known;

37 “(C) The reason for the party’s employment-related change of income;

38 “(D) How the party’s employment-related change of income affects the party’s employment sta-
39 tus, income and, if applicable, ability to pay support;

40 “(E) The obligor’s and the obligee’s current sources of income, if known;

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

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

45 “(H) A statement that the preexisting support order or judgment will be reinstated as provided

1 in paragraph (h) of this subsection; and

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

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

7 “(g) A party may request a hearing within 14 days of service of the motion. If a hearing is re-
8 quested, the provisions of ORS 416.427 apply. When there has been no request for hearing, the ad-
9 ministrator may enter an order of suspension and temporary modification under this subsection. The
10 order must be consistent with the provisions of the motion filed under this subsection and be in
11 substantial compliance with the formula established under ORS 25.275.

12 “(h) An order of suspension and temporary modification issued under this subsection is tempo-
13 rary and remains in effect for six months from the date the order is filed under ORS 416.440 or until
14 the date specified in the notice provided under paragraph (i) of this subsection informing of the
15 party’s reemployment, whichever is earlier, at which time the preexisting support order or judgment
16 becomes immediately effective and payable on the first day of the following month unless an order
17 of renewal is issued under paragraph (j) of this subsection.

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

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

34 “**SECTION 4. Sections 1 and 2 of this 2017 Act and the amendments to ORS 416.425 by**
35 **section 3 of this 2017 Act apply to child support obligations of incarcerated obligors that ac-**
36 **crue on or after the effective date of this 2017 Act.”.**

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