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TESTIMONY ON SENATE BILL 363A For the House Committee on Judiciary April 15, 2019

Presented by:

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This testimony is submitted in support of Senate Bill 363A.

How This Bill Changes Current Law

Senate Bill 363A creates new provisions in ORS Chapter 25 specifying conditions under which the Oregon Child Support Program may suspend enforcement or hold collections during the pendency of an action to prevent someone from receiving more money than they will be owed once the action is complete. This new provision is in addition to the authority provided by current law to suspend enforcement when continued collection of support would impair the ability of an obligor who has physical custody of all of the children to provide for them. The new provisions also provide the Oregon Department of Justice with rulemaking authority to support this process.

Senate Bill 363A also amends ORS 25.125(2) by clarifying circumstances in which an overpayment and receivable in favor of the state are created. Under current statute, the basis for creating the overpayment and receivable relies upon monies “received from” any person or entity. This is problematic because the underlying purpose of this subsection is to address overpayments “sent to” any person or entity, rather than “received from” them. As such, subsection (2) is amended to replace “transmitted moneys *received from, or on behalf of* any person or entity” with “transmitted moneys *to* any person or entity.”

Additionally, Senate Bill 363A amends ORS 25.125 to remove limited overpayment provisions regarding misapplied payments and to include a broader provision that provides for an overpayment and receivable in favor of the state whenever the Department has disbursed money and is later required to make an accounting adjustment that results in refund, reallocation, or redistribution of the amount transmitted. Current statute limits overpayments to specified circumstances that do not encompass all the situations in which an overpayment can occur.

Senate Bill 363A also provides that the administrator may recover an overpayment by retaining a portion of future disbursements to the obligee by obtaining an agreement from the obligee to do so. Under federal guidance (OCSE PIQ-02-01), such consent may be obtained by default, through a series of three notices.

Current law allows recovery in this manner if the owing party has made a voluntary assignment. The change will support consent by default as permitted by federal law.

This bill will allow the Oregon Child Support Program to recover overpayments in more cases, particularly those that are under the minimum threshold for referral to the Oregon Department of Revenue for collection or are owed by non-residents for which the Department of Revenue will not accept a referral.

Key Points of Legislation

- Allows the Oregon Department of Justice to provide by rule the circumstances in which it will suspend enforcement or hold collections for the purpose of avoiding an overpayment or a credit balance.
- Provides for an overpayment and receivable whenever a person or entity receives a payment that they were not entitled to receive when that payment has been redistributed to another person or entity, including the state.
- Provides statutory support for the full range of overpayment recovery methods, including recoupment from future disbursements based on default consent.

Fiscal Impact

None.

Fiscal Benefits

Will increase recoveries of overpayments that occur in child support cases.

Recommended Action

The Oregon Department of Justice recommends committee approval of Senate Bill 363A because it will allow the Oregon Child Support Program to avoid overpayments in more situations and to recover overpayments that cannot be avoided.