

Senate Bill 363

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 for Division of Child Support of the Department of Justice)

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**.

Permits Department of Justice to suspend support enforcement or hold back moneys received under support order from distribution if motion to modify support order may result in overpayment. Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to support enforcement; creating new provisions; amending ORS 25.125; and prescribing an
3 effective date.

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

5 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS chapter 25.**

6 **SECTION 2. (1) Subject to subsection (2) of this section, when an action is pending to
7 modify, terminate, satisfy, vacate or set aside a support order, the administrator may:**

8 (a) **Suspend enforcement of the support order; or**

9 (b) **Hold some or all moneys collected from an obligor under a support order for possible
10 refund, reallocation or redistribution upon resolution of the pending action.**

11 (2) **The Department of Justice may suspend enforcement of a support order or hold
12 moneys collected from an obligor under a support order as described in subsection (1) of this
13 section if:**

14 (a) **Collection of child support will impair the ability of the obligor with physical custody
15 of all of the parties' children to provide direct support to the children; or**

16 (b) **The administrator determines that resolution of the pending action will result in:**

17 (A) **A payee receiving more moneys than are due to the payee; or**

18 (B) **An adjustment that may cause an overpayment in favor of the state under ORS 25.125
19 (2).**

20 (3) **The administrator shall notify the parties when it suspends enforcement of a support
21 order or holds moneys collected under a support order under subsection (1) of this section.**

22 (4) **Any party may request an administrative review of the administrator's actions under
23 subsections (1) and (2) of this section by submitting a written request for administrative re-
24 view to the department. No later than 30 days following the receipt of a written request for
25 administrative review, the department shall conduct an administrative review to determine
26 if the department will resume enforcement of the support order or release moneys collected
27 under the support order to a party. A party may appeal the administrator's decision under
28 ORS 183.484.**

29 (5) **The department shall adopt rules to carry out the provisions of this section.**

30 **SECTION 3. ORS 25.125 is amended to read:**

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 25.125. (1) The Department of Justice may return moneys to an obligor when the department
 2 determines that the obligor has paid more moneys than are due under a support obligation. How-
 3 ever, when the obligor has an ongoing support obligation, the department may give the obligor
 4 credit for the excess amount paid and apply the credit to the future support obligation until the
 5 credit is fully used. When the department applies a credit to offset a future support obligation, the
 6 department shall so notify the obligee. The notice must inform the obligee that, if the obligee re-
 7 quests, the department will conduct an administrative review to determine if the record keeping and
 8 accounting related to the calculation of the credit balance is correct. The department shall conduct
 9 the administrative review within 30 days after receiving the request.

10 (2) An overpayment in favor of the state is created when the Department of Justice, under ORS
 11 25.020, has transmitted moneys [*received from, or on behalf of,*] **to** any person or entity, including
 12 but not limited to an obligor, an obligee or a collection agency, a child support agency of another
 13 state or an agency of this state, and:

14 [(a) *The amount transmitted is more than the support obligation requires and the Department of*
 15 *Justice has returned the excess to the obligor under subsection (1) of this section;*]

16 [(b) *The Department of Justice has misapplied moneys received; or*]

17 [(c)] **(a)** The amount transmitted is attributable in whole or in part to a tax refund offset col-
 18 lection all or part of which has been taken back by the Internal Revenue Service or the Department
 19 of Revenue[.]; **or**

20 **(b) The Department of Justice performed an accounting adjustment that resulted in the**
 21 **refund, reallocation or redistribution of the amount transmitted to the state or any other**
 22 **person or entity.**

23 (3)(a) The person or entity to which the moneys were transmitted owes the amount of the
 24 overpayment to the state. The Department of Justice shall:

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

26 (B) Notify the person or entity to whom the overpayment was made that the person or entity
 27 owes money to the state and specify the amount of the overpayment to be returned to the depart-
 28 ment; and

29 (C) Give the person or entity opportunity to object.

30 (b) If the person or entity does not file a timely written objection, the overpayment amount de-
 31 termined by the department becomes a liquidated debt and creates an account receivable owed to
 32 the department, and the provisions of subsection (4) of this section apply. If the department does not
 33 resolve an objection to the person's or entity's satisfaction, an administrative law judge assigned
 34 from the Office of Administrative Hearings shall hear the objection. An order by the administrative
 35 law judge becomes a liquidated debt and creates an account receivable owed to the department. The
 36 person or entity may appeal the decision of an administrative law judge to the circuit court for a
 37 hearing de novo.

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

41 (4)(a) The amount of the overpayment specified in subsection (3)(a) of this section is a liquidated
 42 debt owed to the state and an associated account receivable. The Department of Justice may recover
 43 the debt by obtaining from the obligee [*a voluntary assignment of*] **an agreement to apply all or a**
 44 **portion of future support payments** [*to be applied*] to the account receivable or in any other way
 45 permitted by law.

1 (b) Accounts receivable are considered delinquent for purposes of this subsection and are sub-
 2 ject to the provisions of ORS chapter 293 if:

3 (A) The person or entity fails to make full payment within 90 days of liquidation; or

4 (B) A period of 90 days elapses without a payment as required by a payment agreement between
 5 the department and the obligated person or entity.

6 (5)(a) In addition to the account receivable created under subsection (2) of this section, a debt
 7 in favor of the state and an associated account receivable are created when:

8 (A) The Department of Justice receives payment for support amounts due from an obligor, a
 9 withholder subject to an order to withhold under this chapter or another issuer on behalf of an
 10 obligor;

11 (B) The *[Department of Justice]* **department** transmits the amount to any other person or entity;
 12 and

13 (C) The payment is dishonored or reversed.

14 (b) When a debt is created under paragraph (a) of this subsection, the amount of money specified
 15 in the payment is owed to the state, and the department may collect the debt from one of the fol-
 16 lowing:

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

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

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

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

21 (c) The *[Department of Justice]* **department** shall:

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

23 (B) Notify the obligor, withholder or other issuer who made the payment that the person or
 24 entity owes the money to the state; and

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

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

29 (e) Accounts receivable are considered delinquent for purposes of this subsection and are subject
 30 to the provisions of ORS chapter 293 when:

31 (A) The person or entity fails to make full payment within 90 days of liquidation; or

32 (B) A period of 90 days elapses without a payment as required by a payment agreement between
 33 the department and the obligated person or entity.

34 *[(6)(a) When an action is pending to terminate, vacate or set aside a support order or to modify a
 35 support order because of a change in physical custody of the child, the administrator may suspend
 36 enforcement of the support order if:]*

37 *[(A) Collection of support would result in a credit balance if the motion were granted; or]*

38 *[(B) Collection of child support would impair the ability of the obligor with physical custody of all
 39 of the parties' children to provide direct support to the children.]*

40 *[(b) The obligee may object, within 14 days after the date of the notice of intent to suspend
 41 enforcement of the support order, only on the grounds that:]*

42 *[(A) The child is not in the physical custody of the obligor;]*

43 *[(B) The child is in the physical custody of the obligor without the consent of the obligee; or]*

44 *[(C) The basis for the suspension of enforcement is factually incorrect.]*

45 *[(c) A party may appeal the administrator's decision to suspend or not to suspend enforcement of*

1 *the support order under ORS 183.484.]*

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

4 *[(7)] (6) The Department of Justice shall adopt rules to carry out the provisions of this section.*

5 **SECTION 4. Section 2 of this 2019 Act and the amendments to ORS 25.125 by section 3**
6 **of this 2019 Act become operative on January 1, 2020.**

7 **SECTION 5. The Department of Justice may take any action before the operative date**
8 **specified in section 4 of this 2019 Act that is necessary for the department to exercise, on**
9 **and after the operative date specified in section 4 of this 2019 Act, all of the duties, functions**
10 **and powers conferred on the department by section 2 of this 2019 Act and the amendments**
11 **to ORS 25.125 by section 3 of this 2019 Act.**

12 **SECTION 6. This 2019 Act takes effect on the 91st day after the date on which the 2019**
13 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

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