

A-Engrossed
House Bill 2210

Ordered by the House June 3
Including House Amendments dated June 3

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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.

Redefines "obligee" and "obligor." Identifies parties in administrative child support proceedings. Establishes time limits for objections to administrative decisions or proposed actions. Allows parties to appeal child support administrative decisions. Specifies contents of advance notice to parties when Department of Justice intends to report past due support information to consumer credit reporting agencies. **Modifies provisions relating to contesting suspension of license, certificate, permit or registration for nonpayment of child support.** Modifies service of notice requirements. Repeals obsolete law regarding redeterminations of future support payments.

A BILL FOR AN ACT

1
2 Relating to consistency in child support proceedings; creating new provisions; amending ORS 25.010,
3 25.080, 25.125, 25.287, 25.610, 25.650, 25.765, 33.135, 108.110, 416.407, 416.415, 416.417, 416.419,
4 416.425 and 416.427; and repealing ORS 416.470.

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

6 **SECTION 1.** ORS 25.010 is amended to read:

7 25.010. As used in ORS chapters 25, 107, 109 and 416 and any other statutes providing for sup-
8 port payments or support enforcement procedures, unless the context requires otherwise:

9 (1) "Administrator" means either the Administrator of the Division of Child Support of the De-
10 partment of Justice or a district attorney, or the administrator's or a district attorney's authorized
11 representative.

12 (2) "Child support rights" means the right to establish or enforce an obligation imposed or
13 impossible by law to provide support, including but not limited to medical support and an unsatisfied
14 obligation to provide support.

15 (3) "Department" means the Department of Justice.

16 (4) "Disposable income" means that part of the income of an individual remaining after the de-
17 duction from the income of any amounts required to be withheld by law except laws enforcing
18 spousal or child support and any amounts withheld to pay medical or dental insurance premiums.

19 (5) "Employer" means any entity or individual who engages an individual to perform work or
20 services for which compensation is given in periodic payments or otherwise.

21 (6) "Income" is any monetary obligation in excess of \$4.99 after the fee described in ORS 25.414
22 (6) has been deducted that is in the possession of a third party owed to an obligor and includes but
23 is not limited to:

24 (a) Compensation paid or payable for personal services whether denominated as wages, salary,
25 commission, bonus or otherwise;

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 (b) Periodic payments pursuant to a pension or retirement program;

2 (c) Cash dividends arising from stocks, bonds or mutual funds;

3 (d) Interest payments;

4 (e) Periodic payments from a trust account;

5 (f) Any program or contract to provide substitute wages during times of unemployment or disa-
6 bility;

7 (g) Any payment pursuant to ORS chapter 657; or

8 (h) Amounts payable to independent contractors.

9 (7) "Obligee" *[means a child or caretaker parent or custodian, spouse, former spouse or other de-*
10 *pendent person for whose benefit a court or the administrator has ordered a payment of support]* **has**
11 **the meaning given that term in ORS 110.303.**

12 (8) "Obligor" *[means any person who has been ordered by a court or the administrator to make*
13 *payments for the support of a child or a caretaker parent or custodian, spouse, former spouse or other*
14 *dependent person]* **has the meaning given that term in ORS 110.303.**

15 (9) "Order to withhold" means an order or other legal process that requires a withholder to
16 withhold support from the income of an obligor.

17 (10) "Public assistance" has the meaning given that term in ORS 416.400.

18 (11) "Withholder" means any person who disburses income and includes but is not limited to an
19 employer, conservator, trustee or insurer of the obligor.

20 **SECTION 2.** ORS 25.080 is amended to read:

21 25.080. (1) This subsection describes the entity primarily responsible for providing support
22 enforcement services described in subsection (4) of this section for any order or judgment that is
23 or could be entered under ORS chapter 107, 108, 109, 110 or 416 or ORS 419B.400 or 419C.590. The
24 entity shall provide the support enforcement services described in subsection (4) of this section on
25 behalf of the State of Oregon and no other party or either parent. The following entity is primarily
26 responsible:

27 (a) The Division of Child Support of the Department of Justice:

28 (A) If support rights are, or were within the past five months, assigned to this or another state;
29 or

30 (B) In any case where arrearage under a support order is assigned or owed to or the right to
31 recover back support or state debt is held by this state or another state.

32 (b) Except as provided in subsection [(5)] (6) of this section, the district attorney in cases other
33 than those described in paragraph (a) of this subsection if the obligee, obligor, beneficiary or person
34 having physical custody of a minor child regarding any support order that has been imposed or
35 could be imposed requests support enforcement services.

36 (2) The Department of Justice shall *[establish]* **adopt** rules addressing the provision of support
37 enforcement services when the purposes of the state in providing those services may be contradic-
38 tory in individual cases.

39 (3) Notwithstanding the division of responsibility for providing support enforcement services
40 between the Division of Child Support and the district attorney as described in subsection (1) of this
41 section, provision of support enforcement services may not be challenged on the basis that the entity
42 providing the services in a particular case is not the entity responsible for the case under subsection
43 (1) of this section.

44 (4) When responsible for providing support enforcement services and there is sufficient evidence
45 available to support the action to be taken, the entity described in subsection (1) of this section:

1 (a) Shall establish and enforce any child support obligation;

2 (b) Shall establish paternity;

3 (c) Shall enforce spousal support when the obligee is living with the obligor's child for whom
4 support enforcement services are being provided and those services are funded in part by federal
5 moneys;

6 (d) May enforce any other order or judgment for spousal support;

7 (e) Shall, on behalf of the state, initiate and respond to child support modification proceedings
8 based upon a substantial change of circumstances;

9 (f) Shall, on behalf of the state, initiate and respond to child support modification proceedings
10 based upon a modification conducted under ORS 25.287 concerning existing child support orders;

11 (g) Shall establish and enforce obligations to provide medical insurance coverage for dependent
12 children;

13 (h) Shall ensure compliance with the provisions of 42 U.S.C. 651 to 669 and 45 C.F.R. Chapter
14 III as authorized by state law;

15 (i) Shall carry out the policy of the State of Oregon regarding child support obligations as ex-
16 pressed in ORS 416.405; and

17 (j) Shall ensure that child support orders are in compliance with the formula established by this
18 chapter.

19 **(5) In any proceeding under subsection (4) of this section, the parties are those described**
20 **in ORS 416.407.**

21 [(5)] (6) The district attorney of any county and the department may provide by agreement for
22 assumption by the Division of Child Support of the functions of the district attorney under sub-
23 section (1) of this section or for redistribution between the district attorney and the Division of
24 Child Support of all or any portion of the duties, responsibilities and functions set forth in sub-
25 sections (1) and (4) of this section.

26 [(6)] (7) All county governing bodies and all district attorneys shall enter into child support
27 cooperative agreements with the department. The following apply to this subsection:

28 (a) The agreements shall contain appropriate terms and conditions sufficient for the state to
29 comply with all child support enforcement service requirements under federal law; and

30 (b) If this state loses any federal funds due to the failure of a county governing body or district
31 attorney to either enter into an agreement under this subsection or to provide sufficient support
32 enforcement service, the county shall be liable to the department for, and the liability shall be lim-
33 ited to, the amount of money the state determines it lost because of the failure. The state shall offset
34 the loss from any moneys the state is holding for or owes the county or from any moneys the state
35 would pay to the county for any purpose.

36 [(7)] (8) The Department of Justice shall enter into an agreement with the Oregon District At-
37 torneys Association to establish a position or positions to act as a liaison between the Division of
38 Child Support and those district attorneys who provide support enforcement services under this
39 section. The department shall fund the position or positions. The Oregon District Attorneys Associ-
40 ation shall administer the liaison position or positions under the agreement. The liaison shall work
41 to:

42 (a) Enhance the participation and interaction of the district attorneys in the development and
43 implementation of Child Support Program policies and services; and

44 (b) Increase the effectiveness of child support enforcement services provided by the district at-
45 torneys.

1 [(8)] (9) The district attorney or the Division of Child Support, whichever is appropriate, shall
 2 provide the services specified in subsections (1) and (4) of this section to any person requesting
 3 them, but may in their discretion, upon a determination and notice to the person requesting the
 4 service that the prospect of successful recovery from the obligor of a portion of the delinquency or
 5 future payments is remote, require payment to the district attorney or the Division of Child Support
 6 of an application fee, in accordance with an application fee schedule established by rule by the de-
 7 partment. If service performed results in the district attorney or the Division of Child Support re-
 8 covering any support enforcement fees, the fees shall be paid to the applicant in an amount equal
 9 to the amount of the application fee.

10 [(9)] (10) An obligee may request the Division of Child Support or a district attorney to cease
 11 all collection efforts if it is anticipated that physical or emotional harm will be caused to the parent
 12 or caretaker relative or the child for whom support was to have been paid. The department, by rule,
 13 shall set out the circumstances under which such requests shall be honored.

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

15 25.125. (1) The Department of Justice may return moneys to an obligor when the department
 16 determines that the obligor has paid more moneys than are due under a support obligation. How-
 17 ever, when the obligor has an ongoing support obligation, the department may give the obligor
 18 credit for the excess amount paid and apply the credit to the future support obligation until the
 19 credit is fully used. When the department applies a credit to offset a future support obligation, the
 20 department shall so notify the obligee. The notice must inform the obligee that, if the obligee re-
 21 quests, the department will conduct an administrative review to determine if the record keeping and
 22 accounting related to the calculation of the credit balance is correct. The department shall conduct
 23 the administrative review within 30 days after receiving the request.

24 (2) An overpayment in favor of the state is created when the Department of Justice, under ORS
 25 25.020, has transmitted moneys received from an obligor to an obligee or a collection agency, a child
 26 support agency of another state or an agency of this state and:

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

29 (b) The Department of Justice has misapplied moneys received; or

30 (c) The amount transmitted is attributable in whole or in part to a tax refund offset collection
 31 all or part of which has been taken back by the Internal Revenue Service or the Department of
 32 Revenue.

33 (3)(a) The obligee or the agency to whom the moneys were transmitted owes the amount of the
 34 overpayment to the state. The Department of Justice shall:

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

36 (B) Notify the obligee or the agency to whom the overpayment was made that the obligee or
 37 agency owes money to the state and specify the amount of the overpayment to be returned to the
 38 department; and

39 (C) Give the obligee opportunity to object.

40 (b) If the obligee does not file a timely written objection, the overpayment amount determined
 41 by the department is final and the provisions of subsection (4) of this section apply. If the depart-
 42 ment does not resolve an objection to an obligee's satisfaction, an administrative law judge assigned
 43 from the Office of Administrative Hearings [*established under ORS 183.605*] shall hear the objection.
 44 An order by the administrative law judge is final. An obligee may appeal the decision of an admin-
 45 istrative law judge to the circuit court for a hearing de novo.

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

4 (4) The amount of the overpayment specified in subsection (3)(a) of this section is a liquidated
5 debt and a delinquent amount owed to the state. The Department of Justice may recover the debt
6 by obtaining from the obligee a voluntary assignment of a portion of future support payments to be
7 applied to the debt or in any other way permitted by law.

8 (5)(a) In addition to the debt created under subsection (2) of this section, a debt in favor of the
9 state is created when:

10 (A) The Department of Justice receives a check for support amounts due from an obligor or
11 withholder subject to an order to withhold under this chapter;

12 (B) The Department of Justice transmits the amount to the obligee, a child support agency of
13 another state or an agency of this state; and

14 (C) The check is dishonored.

15 (b) When a debt is created under paragraph (a) of this subsection, the obligor or withholder who
16 presented the check owes the amount of money specified on the check to the state.

17 (c) The Department of Justice shall:

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

19 (B) Notify the obligor or withholder who presented the check that the obligor or withholder
20 owes the money to the state; and

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

22 (d) The amount of the debt specified in paragraph (c) of this subsection is a liquidated debt and
23 a delinquent amount owed to the state. The Department of Justice may recover the debt in any way
24 permitted under law.

25 (6)(a) When a motion has been filed to terminate, vacate or set aside a support order or to
26 modify a support order because of a change in physical custody of the child, the administrator may
27 suspend enforcement of the support order if:

28 (A) Collection of support would result in a credit balance if the motion were granted; and

29 (B) The obligee does not object to suspending enforcement of the support order.

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

32 (A) The child is not in the physical custody of the obligor;

33 (B) The child is in the physical custody of the obligor without the consent of the obligee; or

34 (C) A credit balance would not result if the motion were granted.

35 (c) **A party may appeal the administrator's decision to suspend or not to suspend**
36 **enforcement of the support order under ORS 183.484.**

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

39 (7) The Department of Justice shall adopt rules to carry out the provisions of this section.

40 **SECTION 4.** ORS 25.287 is amended to read:

41 25.287. (1)(a) The entity providing support enforcement services under ORS 25.080 may initiate
42 proceedings to modify a support obligation to ensure that the support obligation is in accordance
43 with the formula established under ORS 25.270 to 25.287.

44 (b) Proceedings under this subsection may occur only after two years have elapsed from the
45 later of the following:

1 (A) The date the original support obligation took effect;

2 (B) The date any previous modification of the support obligation took effect; or

3 (C) The date of any previous review and determination under this subsection that resulted in
4 no modification of the support obligation.

5 (c) For purposes of paragraph (b) of this subsection, a support obligation or modification takes
6 effect on the first date on which the obligor is to pay the established or modified support amount.

7 (d) The only issues at proceedings under this subsection are whether two years have elapsed,
8 as described in paragraph (b) of this subsection, and whether the support obligation is in substantial
9 compliance with the formula established under ORS 25.270 to 25.287.

10 (e) Upon review, if the administrator determines that a support obligation does not qualify for
11 modification under this section, a party may [*appeal*] **object to** the determination **within 30 days**
12 **after the date of the determination**. A hearing on the [*appeal*] **objection** shall be conducted by
13 an administrative law judge assigned from the Office of Administrative Hearings [*established under*
14 *ORS 183.605*]. Appeal of the order of the administrative law judge may be taken to the circuit court
15 of the county in which the support obligation has been entered or registered for a hearing de novo.
16 The appeal to the court shall be by petition for review filed within 60 days after entry of the order
17 of the administrative law judge.

18 (f) If the court, the administrator or the administrative law judge finds that more than two years
19 have elapsed, as described in paragraph (b) of this subsection, the court, the administrator or the
20 administrative law judge shall modify the support order to bring the support obligation into sub-
21 stantial compliance with the formula established under ORS 25.270 to 25.287, regardless of whether
22 there has been a substantial change in circumstances since the support obligation was last estab-
23 lished, modified or reviewed. Proceedings by the administrator or administrative law judge under
24 this subsection shall be conducted according to the provisions of ORS 416.425 and 416.427.

25 (g) The provisions of this subsection apply to any support obligation established by a support
26 order under ORS chapter 24, 107, 108, 109, 110 or 416 or ORS 419B.400 or 419C.590.

27 (2) The entity providing support enforcement services shall state in the document initiating the
28 proceeding, to the extent known:

29 (a) Whether there is pending in this state or any other jurisdiction any type of support pro-
30 ceeding involving the child, including a proceeding brought under ORS 107.085, 107.135, 107.431,
31 108.110, 109.100, 109.103, 109.165, 125.025, 416.400 to 416.470, 419B.400 or 419C.590 or ORS chapter
32 110; and

33 (b) Whether there exists in this state or any other jurisdiction a support order, as defined in
34 ORS 110.303, involving the child, other than the support obligation the entity seeks to modify.

35 (3) The entity providing support enforcement services shall include with the document initiating
36 the proceeding a certificate regarding any pending support proceeding and any existing support or-
37 der other than the support obligation the entity seeks to modify. The entity providing support
38 enforcement services shall use a certificate that is in a form prescribed by the administrator and
39 shall include information required by the administrator and subsection (2) of this section.

40 (4) The administrator, court or administrative law judge may use the provisions of subsection
41 (1) of this section when a support order was entered in another state and registered in Oregon, the
42 provisions of ORS chapter 110 apply and more than two years have elapsed as provided in sub-
43 section (1)(b) of this section.

44 (5) Notwithstanding the provisions of this section, proceedings may be initiated at any time to
45 modify a support obligation based upon a substantial change of circumstances under any other pro-

1 vision of law.

2 (6) The obligee is a party to any action to modify a support obligation under this section.

3 **SECTION 5.** ORS 25.610 is amended to read:

4 25.610. (1) Whenever support enforcement services are being provided and those services are
5 funded in part through Title IV-D of the Social Security Act (42 U.S.C. 651, et seq.), the adminis-
6 trator may request the Department of Revenue, through the Department of Justice or its designee,
7 to collect past due child and spousal support from income tax refunds due to the obligor. The re-
8 quest shall be based upon the payment record maintained under ORS 25.020.

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

11 (3) The Department of Justice shall adopt rules:

12 (a) Setting out additional criteria for requests under subsection (1) of this section; and

13 (b) Directing how any support obligation collected by the Department of Revenue shall be dis-
14 tributed, consistent with federal regulations.

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

18 (a) Of the proposed action;

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

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

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

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

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

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

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

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

39 **SECTION 6.** ORS 25.650 is amended to read:

40 25.650. (1) **As used in this section, "consumer reporting agency" means any person that,**
41 **for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in whole**
42 **or in part in the practice of assembling or evaluating consumer credit information or other**
43 **information on consumers for the purpose of furnishing consumer reports to third parties,**
44 **and that uses any means or facility of interstate commerce for the purpose of preparing or**
45 **furnishing consumer reports.**

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

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

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

7 (b) The department shall provide advance notice to both the obligor and the obligee concerning
8 the proposed *[release]* **reporting** of information to the consumer reporting *[agency]* **agencies**. The
9 notice must inform both parties *[of the methods available for contesting the accuracy of the informa-*
10 *tion.]*:

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

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

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

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

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

20 (d) **A party may appeal a decision from the administrative review under ORS 183.484. An**
21 **appeal of the decision does not stay the department from making reports to consumer re-**
22 **porting agencies.**

23 [(2)(a)] **(3)(a)** If paternity has been established and a consumer report is needed for the purpose
24 of establishing or modifying a child support order, the *[entity providing support enforcement*
25 *services]* **administrator** may request that a consumer reporting agency provide a report.

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

29 [(3) *As used in subsections (1), (2), (4) and (6) of this section, unless the context requires otherwise,*
30 *"consumer reporting agency" means any person that, for monetary fees, dues or on a cooperative*
31 *nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating con-*
32 *sumer credit information or other information on consumers for the purpose of furnishing consumer*
33 *reports to third parties, and that uses any means or facility of interstate commerce for the purpose of*
34 *preparing or furnishing consumer reports.]*

35 (4) The department shall *[disclose]* **report** information under subsection [(1)] **(2)** of this section
36 only to *[an entity]* **a person** that has furnished evidence satisfactory to the department that the
37 *[entity]* **person** is a consumer reporting agency.

38 [(5) *The department shall include in rules adopted under this section a provision that, prior to is-*
39 *ssuing a periodic report, the department shall provide the obligor with advance notice and an opportu-*
40 *nity to object to the claimed delinquency or to bring the past due support current before the department*
41 *issues the periodic report.]*

42 [(6)] **(5)** When the department has made a report to a consumer reporting agency under sub-
43 section [(1)] **(2)** of this section, the department shall promptly notify the consumer reporting agency
44 when the department's records show that the obligor no longer owes past due support.

45 **SECTION 7.** ORS 25.765 is amended to read:

1 25.765. (1) If the obligor makes the contact within 30 days of the date of the notice as provided
2 for in ORS 25.759, the administrator shall provide the obligor with the opportunity to contest the
3 suspension on the bases set forth in ORS 25.759 (5). The administrator shall determine whether
4 suspension should occur. If the administrator determines that suspension should occur, the admin-
5 istrator shall make a written determination of such finding.

6 (2) The obligor may [*appeal*] **object to** the determination described in subsection (1) of this
7 section **within 30 days after the date of the determination**. Any hearing on [*such appeal*] **the**
8 **objection** shall be conducted by an administrative law judge assigned from the Office of Adminis-
9 trative Hearings [*established under ORS 183.605. ORS chapter 183 shall apply and such appeal of the*
10 *administrator's determination shall be de novo to the administrative law judge*]. Any suspension is
11 stayed pending the decision of the administrative law judge. Any order of the administrative law
12 judge that supports a suspension shall result in the notification to the issuing entity by the admin-
13 istrator to suspend the license, **certificate, permit or registration** forthwith.

14 (3) After receipt of notice to suspend from the administrator, no further administrative review
15 or contested case proceeding within or by the issuing entity is required.

16 **SECTION 8.** ORS 416.407 is amended to read:

17 416.407. (1) In any proceeding under ORS 416.400 to 416.470, the following are parties and shall
18 be given notice of any such proceeding by the administrator:

19 (a) The State of Oregon.

20 (b) An obligee who has physical custody of a child for whose benefit a support order or an order
21 establishing paternity is sought, is being modified or is being enforced under this chapter. [*Notice*
22 *may be given the obligee by regular mail.*]

23 (c) A noncustodial parent or a male who is alleged to be the father of a child when an action
24 is initiated under this chapter to establish, modify or enforce a support or paternity order.

25 (d) A person joined as a party under subsection (2) of this section.

26 (2) Pursuant to administrative rule, a party may join a person who has physical custody of a
27 child to a proceeding under ORS 416.400 to 416.470.

28 **SECTION 9.** ORS 416.415 is amended to read:

29 416.415. (1)(a) At any time after the state is assigned support rights, a public assistance payment
30 is made, an application for enforcement services under ORS 25.080 is made by an individual who is
31 not a recipient of public assistance or a written request for enforcement of a support obligation is
32 received from the state agency of another state responsible for administering the federal child sup-
33 port enforcement program, the administrator may, if there is no court order, issue a notice and
34 finding of financial responsibility. The notice shall be served upon the parent in the manner pre-
35 scribed for service of summons in a civil action, or by certified mail, return receipt requested. No-
36 tices that involve the establishment of paternity must be served by personal service. All notices may
37 be personally served by the administrator on the premises of the offices of the administrator.

38 (b) The administrator shall serve the notice and finding issued under this section upon the
39 obligee. Service shall be by regular mail.

40 (2) The administrator shall include in the notice:

41 (a) A statement of the name of the caretaker relative or agency and the name of the dependent
42 child for whom support is to be paid;

43 (b) A statement of the monthly support for which the parent shall be responsible;

44 (c) A statement of the past support for which the parent shall be responsible;

45 (d) A statement that the parent may be required to provide health care coverage for the de-

1 pendent child whenever the coverage is available to the parent at a reasonable cost;

2 (e) To the extent known, a statement of:

3 (A) Whether there is pending in this state or any other jurisdiction any type of support pro-
4 ceeding involving the dependent child, including a proceeding brought under ORS 25.287, 107.085,
5 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 125.025, 416.425, [416.470,] 419B.400 or 419C.590
6 or ORS chapter 110; and

7 (B) Whether there exists in this state or any other jurisdiction a support order, as defined in
8 ORS 110.303, involving the dependent child;

9 (f) A statement that if the parent or the obligee desires to discuss the amount of support or
10 health care coverage that the parent is required to pay or provide, the parent or the obligee may
11 contact the office that sent the notice and request a negotiation conference. If no agreement is
12 reached on the monthly support to be paid, the administrator may issue a new notice and finding
13 of financial responsibility, which may be sent to the parent and to the obligee by regular mail ad-
14 dressed to the parent's and to the obligee's last-known address, or if applicable, the parent's or the
15 obligee's attorney's last-known address;

16 (g) A statement that if the parent or the obligee objects to all or any part of the notice and
17 finding of financial responsibility, then the parent or the obligee must send to the office issuing the
18 notice, within 20 days of the date of service, a written response that sets forth any objections and
19 requests a hearing. In those cases where the administrator is seeking to establish paternity, then
20 the alleged parent and the obligee will have 30 days to respond instead of 20 days;

21 (h) A statement that if such a timely response is received by the appropriate office, either the
22 parent or the obligee or both shall have the right to a hearing; and that if no timely written re-
23 sponse is received, the administrator may enter an order in accordance with the notice and finding
24 of financial responsibility;

25 (i) A statement that as soon as the order is entered, the property of the parent is subject to
26 collection action, including but not limited to wage withholding, garnishment and liens and exe-
27 cution thereon;

28 (j) A reference to ORS 416.400 to 416.470;

29 (k) A statement that both the parent and the obligee are responsible for notifying the office of
30 any change of address or employment;

31 (L) A statement that if the parent has any questions, the parent should telephone or visit the
32 appropriate office or consult an attorney; and

33 (m) Such other information as the administrator finds appropriate.

34 (3) If the paternity of the dependent child has not been legally established, the notice and finding
35 of financial responsibility shall also include:

36 (a) An allegation that the person is the parent of the dependent child;

37 (b) The name of the child's other parent;

38 (c) The child's date of birth;

39 (d) The probable time or period of time during which conception took place; and

40 (e) A statement that if the alleged parent or the obligee does not timely send to the office is-
41 suing the notice a written response that denies paternity and requests a hearing, then the adminis-
42 trator, without further notice to the alleged parent, or to the obligee, may enter an order that
43 declares and establishes the alleged parent as the legal parent of the child.

44 (4) The statement of monthly future support required under subsection (2)(b) and the statement
45 of past support required under subsection (2)(c) of this section are to be computed as follows:

1 (a) If there is sufficient information available concerning the parent's financial and living situ-
2 ation, the formula provided for in ORS 25.275 and 25.280 shall be used; or

3 (b) If there is insufficient information available to use the formula, an allegation of ability to
4 pay shall be the basis of the statement.

5 (5) The parent or alleged parent and the obligee shall have time to request a hearing as outlined
6 in subsection (2)(g) of this section. The time limits may be extended by the administrator and are
7 nonjurisdictional.

8 (6) If a timely written response setting forth objections and requesting a hearing is received by
9 the appropriate office, a hearing shall be held under ORS 416.427.

10 (7) If no timely written response and request for hearing is received by the appropriate office,
11 the administrator may enter an order in accordance with the notice, and shall include in that order:

12 (a) If the paternity of the dependent child is established by the order, a declaration of that fact;

13 (b) The amount of monthly support to be paid, with directions on the manner of payment;

14 (c) The amount of past support to be ordered against the parent;

15 (d) Whether health care coverage is to be provided for the dependent child;

16 (e) The name of the caretaker relative or agency and the name and birthdate of the dependent
17 child for whom support is to be paid; and

18 (f) A statement that the property of the parent is subject to collection action, including but not
19 limited to wage withholding, garnishment and liens and execution thereon.

20 (8) The parent and the obligee shall be sent a copy of the order by regular mail addressed to
21 the last-known address of each of the parties or if applicable, to the last-known address of an at-
22 torney of record for a party. The order is final, and action by the administrator to enforce and col-
23 lect upon the order, including arrearages, may be taken from the date of issuance of the order.

24 (9) The provisions of ORS 107.108 apply to an order entered under this section for the support
25 of a child attending school.

26 **SECTION 10.** ORS 416.417 is amended to read:

27 416.417. An order for support entered pursuant to ORS 416.400 to 416.470 for a child in the care
28 and custody of the Department of Human Services, or a youth offender or other offender in the legal
29 or physical custody of the Oregon Youth Authority, may be made contingent upon the child, youth
30 offender or other offender residing in a state financed or supported residence, shelter or other fa-
31 cility or institution. A certificate signed by the Director of Human Services, the Administrator of
32 the Division of Child Support or the Director of the Oregon Youth Authority shall be sufficient to
33 establish *[such]* **the** periods of residence and to satisfy the order for periods of nonresidence. A
34 hearing to contest the period of nonresidency or failure to satisfy shall be held pursuant to ORS
35 *[416.435]* **416.427**.

36 **SECTION 11.** ORS 416.419 is amended to read:

37 416.419. (1) Except as otherwise provided in subsection (2) of this section, the administrator may
38 act as the tribunal described in ORS 110.304 in the establishment of paternity or of a child support
39 order, or in the modification or enforcement of a child support order.

40 (2)(a) When a hearing is requested pursuant to ORS 416.427, the tribunal is the *[Employment*
41 *Department]* **Office of Administrative Hearings**, except as provided in ORS 416.430.

42 (b) When an order is appealed pursuant to ORS 416.427 (6), the tribunal is a circuit court.

43 **SECTION 12.** 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 telephone number
3 and address of the 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, [416.470,] 419B.400 or 419C.590
8 or ORS chapter 110; and

9 (b) Whether there exists in this state or any other jurisdiction a support order, as defined in
10 ORS 110.303, 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). 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 en-
31 forcing and collecting upon the existing order unless so ordered by the court in which the order is
32 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 Secu-
43 rity or veterans' benefits paid retroactively to the child, or to a representative payee administering
44 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) An administrative order modifying a court order is not effective until the administrative
3 order is reviewed and approved by the court that entered the court order. The court shall make a
4 written finding on the record that the administrative order complies with the formula established
5 by ORS chapter 25. The court may approve the administrative order at any time after the order is
6 issued. If upon review the court finds that the administrative order should not be approved, the
7 court shall set the matter for hearing de novo.

8 (11) The obligee is a party to all proceedings under this section.

9 (12) An order entered under this section that modifies a support order because of the
10 incarceration of the obligor is effective only during the period of the obligor's incarceration and for
11 60 days after the obligor's release from incarceration. The previous support order is reinstated by
12 operation of law on the 61st day after the obligor's release from incarceration. An order that mod-
13 ifies a support order because of the obligor's incarceration must contain a notice that the previous
14 order will be reinstated on the 61st day after the obligor's release from incarceration.

15 **SECTION 13.** ORS 416.427 is amended to read:

16 416.427. (1) When a party requests a hearing pursuant to ORS 416.415, **416.417**, 416.425 (1) or
17 416.429, the contested case provisions of ORS chapter 183 apply except [*when the issue of paternity*
18 *is to be resolved pursuant to ORS 416.430*] **as provided in subsection (6) of this section.**

19 (2) Except as provided in ORS 416.430, hearings shall be conducted by an administrative law
20 judge assigned from the Office of Administrative Hearings [*established under ORS 183.605*].

21 (3) The administrative law judge [*has the power to*] **may** issue subpoenas for witnesses necessary
22 to develop a full record. The attorney of record for the office of the Division of Child Support or the
23 office of the district attorney may issue subpoenas. Witnesses appearing pursuant to subpoena,
24 other than parties or officers or employees of the administrator, shall receive fees and mileage as
25 prescribed by law for witnesses in ORS 44.415 (2). Obedience to the subpoena may be compelled in
26 the same manner as set out in ORS 183.440 (2).

27 (4) Upon issuance of an order, action by the administrator to enforce and collect upon the order,
28 including arrearages, may be taken. [*Such action shall*] **Action by the administrator may** not be
29 stayed or partially stayed pending appeal or by any court unless there is substantial evidence
30 showing that the obligor would be irreparably harmed and that the obligee would not be irreparably
31 harmed.

32 (5) An order issued by the administrative law judge or the administrator is final. The order shall
33 be in full force and effect while any appeal is pending unless the order is stayed by a court. [*No stay*
34 *shall be granted*] **A court may not grant a stay** unless there is substantial evidence showing the
35 obligor would be irreparably harmed and that the obligee would not be irreparably harmed.

36 (6) Appeal of the order of the administrative law judge or any default or consent order entered
37 by the administrator pursuant to ORS 416.400 to 416.470 may be taken to the circuit court of the
38 county in which the order has been entered pursuant to ORS 416.440 for a hearing de novo. The
39 appeal shall be by petition for review filed within 60 days after the order has been entered pursuant
40 to ORS 416.440. Unless otherwise specifically provided by law, the appeal shall be conducted pur-
41 suant to the Oregon Rules of Civil Procedure.

42 (7) The obligor, the obligee and the state are parties to any proceedings, including appeals, un-
43 der this section.

44 **SECTION 14.** ORS 33.135 is amended to read:

45 33.135. (1) Except as provided in subsection (5) of this section, proceedings under ORS 33.055 to

1 impose remedial sanctions for contempt and under ORS 33.065 to impose punitive sanctions for
2 contempt shall be commenced within two years of the act or omission constituting the contempt.

3 (2) For the purposes of this section, a proceeding to impose remedial sanctions shall be deemed
4 commenced as to each defendant when the motion provided for in ORS 33.055 is filed.

5 (3) Proceedings to impose punitive sanctions are subject to ORS 131.135, 131.145 and 131.155.

6 (4) The time limitations imposed by subsection (1) of this section shall not act to bar proceedings
7 to impose sanctions for an act or omission that constitutes a continuing contempt at the time con-
8 tempt proceedings are commenced. The willful failure of an obligor, as that term is defined in ORS
9 [25.010] **110.303**, to pay a support obligation after that obligation becomes a judgment is a contempt
10 without regard to when the obligation became a judgment.

11 (5) Proceedings to impose remedial or punitive sanctions for failure to pay a support obligation
12 by an obligor, as defined in ORS [25.010] **110.303**, shall be commenced within 10 years of the act or
13 omission constituting contempt.

14 **SECTION 15.** ORS 108.110 is amended to read:

15 108.110. (1) Any married person may apply to the circuit court of the county in which the mar-
16 ried person resides or in which the spouse may be found for an order upon the spouse to provide
17 for support of the married person or for the support of minor children and children attending school,
18 or both, and, if the married person initiating the action for support is a woman who is pregnant, her
19 unborn child, or both, if her spouse is the natural father of such children, children attending school
20 or unborn child or if her spouse is the adoptive father of such children or children attending school.
21 The married person initiating the action for support may apply for the order by filing in such county
22 a petition setting forth the facts and circumstances upon which the married person relies for such
23 order. If satisfied that a just cause exists, the court shall direct that the married person's spouse
24 appear at a time set by the court to show cause why an order of support should not be entered in
25 the matter. The provisions of ORS 107.108 apply to an order entered under this section for the
26 support of a child attending school.

27 (2) As used in this section, "child attending school" has the meaning given that term in ORS
28 107.108.

29 (3) The petitioner shall state in the petition, to the extent known:

30 (a) Whether there is pending in this state or any other jurisdiction any type of support pro-
31 ceeding involving children of the marriage, including a proceeding brought under ORS 107.085,
32 109.100, 125.025, 416.400 to 416.470, 419B.400 or 419C.590 or ORS chapter 110; and

33 (b) Whether there exists in this state or any other jurisdiction a support order, as defined in
34 ORS 110.303, involving children of the marriage.

35 (4) The petitioner shall include with the petition a certificate regarding any pending support
36 proceeding and any existing support order. The petitioner shall use a certificate that is in a form
37 established by court rule and include information required by court rule and subsection (3) of this
38 section.

39 (5) The provisions of this section apply equally to cases where it is the husband making appli-
40 cation for a support order.

41 (6) In any proceeding under this section, the obligee, as that person is defined in ORS [25.010]
42 **110.303**, is a party to the proceeding.

43 **SECTION 16.** ORS 416.470 is repealed.

44 **SECTION 17.** (1) **The amendments to ORS 25.125 by section 3 of this 2005 Act apply only**
45 **to motions described in ORS 25.125 (6) filed on or after the effective date of this 2005 Act.**

1 **(2) The amendments to ORS 25.287 by section 4 of this 2005 Act apply only to determi-**
2 **nations of the administrator made on or after the effective date of this 2005 Act.**

3 **(3) The amendments to ORS 25.650 by section 6 of this 2005 Act apply only to proposals**
4 **to report information under ORS 25.650 initiated on or after the effective date of this 2005**
5 **Act.**

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