

Enrolled
House Bill 2210

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CHAPTER

AN ACT

Relating to consistency in child support proceedings; creating new provisions; amending ORS 25.010, 25.080, 25.125, 25.287, 25.610, 25.650, 25.765, 33.135, 108.110, 110.303, 416.407, 416.415, 416.417, 416.419, 416.425 and 416.427; and repealing ORS 416.470.

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

SECTION 1. ORS 25.010 is amended to read:

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

(1) "Administrator" means either the Administrator of the Division of Child Support of the Department of Justice or a district attorney, or the administrator's or a district attorney's authorized representative.

(2) "Child" has the meaning given that term in ORS 110.303.

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

[(3)] (4) "Department" means the Department of Justice.

[(4)] (5) "Disposable income" means that part of the income of an individual remaining after the deduction from the income of any amounts required to be withheld by law except laws enforcing spousal or child support and any amounts withheld to pay medical or dental insurance premiums.

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

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

- (a) Compensation paid or payable for personal services whether denominated as wages, salary, commission, bonus or otherwise;
- (b) Periodic payments pursuant to a pension or retirement program;
- (c) Cash dividends arising from stocks, bonds or mutual funds;
- (d) Interest payments;
- (e) Periodic payments from a trust account;
- (f) Any program or contract to provide substitute wages during times of unemployment or disability;
- (g) Any payment pursuant to ORS chapter 657; or
- (h) Amounts payable to independent contractors.

[(7)] **(8)** “Obligee” [means a child or caretaker parent or custodian, spouse, former spouse or other dependent person for whose benefit a court or the administrator has ordered a payment of support] **has the meaning given that term in ORS 110.303.**

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

[(9)] **(10)** “Order to withhold” means an order or other legal process that requires a withholder to withhold support from the income of an obligor.

[(10)] **(11)** “Public assistance” has the meaning given that term in ORS 416.400.

[(11)] **(12)** “Withholder” means any person who disburses income and includes but is not limited to an employer, conservator, trustee or insurer of the obligor.

SECTION 2. ORS 25.080 is amended to read:

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

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

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

or

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

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

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

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

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

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

(b) Shall establish paternity;

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

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

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

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

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

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

(i) Shall carry out the policy of the State of Oregon regarding child support obligations as expressed in ORS 416.405; and

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

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

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

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

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

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

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

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

(b) Increase the effectiveness of child support enforcement services provided by the district attorneys.

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

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

SECTION 3. ORS 25.125 is amended to read:

25.125. (1) The Department of Justice may return moneys to an obligor when the department determines that the obligor has paid more moneys than are due under a support obligation. However, when the obligor has an ongoing support obligation, the department may give the obligor credit for the excess amount paid and apply the credit to the future support obligation until the credit is fully used. When the department applies a credit to offset a future support obligation, the department shall so notify the obligee. The notice must inform the obligee that, if the obligee requests, the department will conduct an administrative review to determine if the record keeping and

accounting related to the calculation of the credit balance is correct. The department shall conduct the administrative review within 30 days after receiving the request.

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

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

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

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

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

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

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

(C) Give the obligee opportunity to object.

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

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

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

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

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

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

(C) The check is dishonored.

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

(c) The Department of Justice shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 4. ORS 25.287 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 5. ORS 25.610 is amended to read:

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

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

(3) The Department of Justice shall adopt rules:

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

(b) Directing how any support obligation collected by the Department of Revenue shall be distributed, consistent with federal regulations.

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

(a) Of the proposed action;

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

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

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

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

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

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

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

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

SECTION 6. ORS 25.650 is amended to read:

25.650. (1) **As used in this section, "consumer reporting agency" means any person that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in whole**

or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and that uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

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

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

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

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

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

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

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

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

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

(d) A party may appeal a decision from the administrative review under ORS 183.484. An appeal of the decision does not stay the department from making reports to consumer reporting agencies.

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

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

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

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

[(5) The department shall include in rules adopted under this section a provision that, prior to issuing a periodic report, the department shall provide the obligor with advance notice and an opportunity to object to the claimed delinquency or to bring the past due support current before the department issues the periodic report.]

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

SECTION 7. ORS 25.765 is amended to read:

25.765. (1) If the obligor makes the contact within 30 days of the date of the notice as provided for in ORS 25.759, the administrator shall provide the obligor with the opportunity to contest the suspension on the bases set forth in ORS 25.759 (5). The administrator shall determine whether

suspension should occur. If the administrator determines that suspension should occur, the administrator shall make a written determination of such finding.

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

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

SECTION 8. ORS 110.303 is amended to read:

110.303. As used in this chapter:

(1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse or former spouse, including an unsatisfied obligation to provide support.

(4) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with a parent or a person acting as a parent. A period of temporary absence is counted as part of the six-month or other period.

(5) "Income" includes earnings or other periodic entitlements to moneys from any source and any other property subject to withholding for support under the laws of this state.

(6) "Income-withholding order" means an order or other legal process directed to an obligor's employer or other third party in possession of a monetary obligation owed to an obligor, as defined by the income-withholding law of this state, to withhold support from the income of the obligor.

(7) "Initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this chapter or a law or procedure substantially similar to this chapter, or under a law or procedure substantially similar to the Uniform Reciprocal Enforcement of Support Act or the Revised Uniform Reciprocal Enforcement of Support Act.

(8) "Initiating tribunal" means the authorized tribunal in an initiating state.

(9) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(10) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

(11) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(12) "Obligee" means:

(a) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

(b) A state or political subdivision:

(A) To which the rights under a duty of support or support order have been assigned *[or]*;

(B) That has independent claims based on financial assistance provided to an individual obligee;

or

(C) **That has independent claims based on the care or custody of a child; or**

(c) An individual seeking a judgment determining parentage of the individual's child.

(13) "Obligor" means an individual or the estate of a decedent:

- (a) Who owes or is alleged to owe a duty of support;
- (b) Who is alleged but has not been adjudicated to be a parent of a child; or
- (c) Who is liable under a support order.

(14) "Register" means to record or file a support order or judgment determining parentage in the appropriate location for the recording or filing of foreign judgments generally or foreign support orders specifically.

(15) "Registering tribunal" means a tribunal in which a support order is registered. The registering tribunal of this state is the circuit court.

(16) "Responding state" means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this chapter or a law substantially similar to this chapter, or under a law or procedure substantially similar to the Uniform Reciprocal Enforcement of Support Act or the Revised Uniform Reciprocal Enforcement of Support Act.

(17) "Responding tribunal" means the authorized tribunal in a responding state.

(18) "Spousal support order" means a support order for a spouse or former spouse of the obligor.

(19) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. The term "state" includes:

(a) An Indian tribe; and

(b) A foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under this chapter, the Uniform Reciprocal Enforcement of Support Act or the Revised Uniform Reciprocal Enforcement of Support Act.

(20) "Support enforcement agency" means the Administrator of the Division of Child Support of the Department of Justice or a district attorney authorized to:

- (a) Seek enforcement of support orders or laws relating to the duty of support;
- (b) Seek establishment or modification of child support;
- (c) Seek determination of parentage; or
- (d) Locate obligors or their assets.

(21) "Support order" means a judgment, decree or order, whether temporary, final or subject to modification, for the benefit of a child, a spouse or a former spouse, which provides for monetary support, health care, arrearages or reimbursement, and may include related costs and fees, interest, income withholding, attorney fees and other relief.

(22) "Tribunal" means a court, administrative agency or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage.

SECTION 9. ORS 416.407 is amended to read:

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

(a) The State of Oregon.

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

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

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

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

SECTION 10. ORS 416.415 is amended to read:

416.415. (1)(a) At any time after the state is assigned support rights, a public assistance payment is made, an application for enforcement services under ORS 25.080 is made by an individual who is not a recipient of public assistance or a written request for enforcement of a support obligation is received from the state agency of another state responsible for administering the federal child sup-

port enforcement program, the administrator may, if there is no court order, issue a notice and finding of financial responsibility. The notice shall be served upon the parent in the manner prescribed for service of summons in a civil action, or by certified mail, return receipt requested. Notices that involve the establishment of paternity must be served by personal service. All notices may be personally served by the administrator on the premises of the offices of the administrator.

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

(2) The administrator shall include in the notice:

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

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

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

(d) A statement that the parent may be required to provide health care coverage for the dependent child whenever the coverage is available to the parent at a reasonable cost;

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

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

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

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

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

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

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

(j) A reference to ORS 416.400 to 416.470;

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

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

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

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

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

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

(c) The child's date of birth;

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

(e) A statement that if the alleged parent or the obligee does not timely send to the office issuing the notice a written response that denies paternity and requests a hearing, then the administrator, without further notice to the alleged parent, or to the obligee, may enter an order that declares and establishes the alleged parent as the legal parent of the child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 11. ORS 416.417 is amended to read:

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

SECTION 12. ORS 416.419 is amended to read:

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

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

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

SECTION 13. ORS 416.425 is amended to read:

416.425. (1) Any time support enforcement services are being provided under ORS 25.080, the obligor, the obligee, the party holding the support rights or the administrator may move for the existing order to be modified under this section. The motion shall be in writing in a form prescribed

by the administrator, shall set out the reasons for modification and shall state the telephone number and address of the party requesting modification.

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

(a) Whether there is pending in this state or any other jurisdiction any type of support proceeding involving the dependent child, including a proceeding brought under ORS 25.287, 107.085, 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 125.025, 416.415, [416.470,] 419B.400 or 419C.590 or ORS chapter 110; and

(b) Whether there exists in this state or any other jurisdiction a support order, as defined in ORS 110.303, involving the dependent child, other than the order the party is moving to modify.

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

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

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

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

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

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

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

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

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

(10) An administrative order modifying a court order is not effective until the administrative order is reviewed and approved by the court that entered the court order. The court shall make a written finding on the record that the administrative order complies with the formula established by ORS chapter 25. The court may approve the administrative order at any time after the order is issued. If upon review the court finds that the administrative order should not be approved, the court shall set the matter for hearing de novo.

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

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

SECTION 14. ORS 416.427 is amended to read:

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

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

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

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

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

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

(7) The obligor, the obligee and the state are parties to any proceedings, including appeals, under this section.

SECTION 15. ORS 33.135 is amended to read:

33.135. (1) Except as provided in subsection (5) of this section, proceedings under ORS 33.055 to impose remedial sanctions for contempt and under ORS 33.065 to impose punitive sanctions for contempt shall be commenced within two years of the act or omission constituting the contempt.

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

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

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

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

SECTION 16. ORS 108.110 is amended to read:

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

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

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

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

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

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

(5) The provisions of this section apply equally to cases where it is the husband making application for a support order.

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

SECTION 17. ORS 416.470 is repealed.

SECTION 18. (1) The amendments to ORS 25.125 by section 3 of this 2005 Act apply only to motions described in ORS 25.125 (6) filed on or after the effective date of this 2005 Act.

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

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

Passed by House June 8, 2005

Repassed by House June 30, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate June 28, 2005

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President of Senate

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M,....., 2005

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Secretary of State