

# D R A F T

## SUMMARY

Permits Department of Justice to suspend support enforcement or hold back moneys received under support order from distribution if motion to modify support order may result in overpayment.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

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

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

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

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

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

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

14 (2) **The Department of Justice may suspend enforcement of a sup-**  
15 **port order or hold moneys collected from an obligor under a support**  
16 **order as described in subsection (1) of this section if:**

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

20 (b) **The administrator determines that resolution of the pending**

1 **action will result in:**

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

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

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

8 (4) **Any party may request an administrative review of the**  
9 **administrator's actions under subsections (1) and (2) of this section**  
10 **by submitting a written request for administrative review to the de-**  
11 **partment. No later than 30 days following the receipt of a written re-**  
12 **quest for administrative review, the department shall conduct an**  
13 **administrative review to determine if the department will resume**  
14 **enforcement of the support order or release moneys collected under**  
15 **the support order to a party. A party may appeal the administrator's**  
16 **decision under ORS 183.484.**

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

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

20 25.125. (1) The Department of Justice may return moneys to an obligor  
21 when the department determines that the obligor has paid more moneys than  
22 are due under a support obligation. However, when the obligor has an on-  
23 going support obligation, the department may give the obligor credit for the  
24 excess amount paid and apply the credit to the future support obligation  
25 until the credit is fully used. When the department applies a credit to offset  
26 a future support obligation, the department shall so notify the obligee. The  
27 notice must inform the obligee that, if the obligee requests, the department  
28 will conduct an administrative review to determine if the record keeping and  
29 accounting related to the calculation of the credit balance is correct. The  
30 department shall conduct the administrative review within 30 days after re-  
31 ceiving the request.

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

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

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

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

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

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

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

19 (B) Notify the person or entity to whom the overpayment was made that  
20 the person or entity owes money to the state and specify the amount of the  
21 overpayment to be returned to the department; and

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

23 (b) If the person or entity does not file a timely written objection, the  
24 overpayment amount determined by the department becomes a liquidated  
25 debt and creates an account receivable owed to the department, and the  
26 provisions of subsection (4) of this section apply. If the department does not  
27 resolve an objection to the person's or entity's satisfaction, an administrative  
28 law judge assigned from the Office of Administrative Hearings shall hear the  
29 objection. An order by the administrative law judge becomes a liquidated  
30 debt and creates an account receivable owed to the department. The person  
31 or entity may appeal the decision of an administrative law judge to the cir-

1 cuit court for a hearing de novo.

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

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

12 (b) Accounts receivable are considered delinquent for purposes of this  
13 subsection and are subject to the provisions of ORS chapter 293 if:

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

16 (B) A period of 90 days elapses without a payment as required by a pay-  
17 ment agreement between the department and the obligated person or entity.

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

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

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

26 (C) The payment is dishonored or reversed.

27 (b) When a debt is created under paragraph (a) of this subsection, the  
28 amount of money specified in the payment is owed to the state, and the de-  
29 partment may collect the debt from one of the following:

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

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

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

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

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

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

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

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

9 (d) The amount of the debt specified in paragraph (c) of this subsection  
10 is a liquidated debt owed to the state and an account receivable. The [*De-*  
11 *partment of Justice*] **department** may recover the debt and collect on the  
12 account receivable in any way permitted under law.

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

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

17 (B) A period of 90 days elapses without a payment as required by a pay-  
18 ment agreement between the department and the obligated person or entity.

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

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

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

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

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

31 [(B) *The child is in the physical custody of the obligor without the consent*

1 *of the obligee; or]*

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

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

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

8 *[(7)] (6) The Department of Justice shall adopt rules to carry out the*  
9 *provisions of this section.*

10 **SECTION 4. Section 2 of this 2019 Act and the amendments to ORS**  
11 **25.125 by section 3 of this 2019 Act become operative on January 1, 2020.**

12 **SECTION 5. The Department of Justice may take any action before**  
13 **the operative date specified in section 4 of this 2019 Act that is neces-**  
14 **sary for the department to exercise, on and after the operative date**  
15 **specified in section 4 of this 2019 Act, all of the duties, functions and**  
16 **powers conferred on the department by section 2 of this 2019 Act and**  
17 **the amendments to ORS 25.125 by section 3 of this 2019 Act.**

18 **SECTION 6. This 2019 Act takes effect on the 91st day after the date**  
19 **on which the 2019 regular session of the Eightieth Legislative Assem-**  
20 **bly adjourns sine die.**

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