Chapter 25

2007 EDITION

Support Enforcement

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GENERAL PROVISIONS

25.010 Definitions for support enforcement laws. 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.

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

(4) "Department" means the Department of Justice.

(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.

(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.

(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.

(8) "Obligee" has the meaning given that term in ORS 110.303.

(9) "Obligor" has the meaning given that term in ORS 110.303.

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

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

(12) "Withholder" means any person who disburses income and includes but is not limited to an employer, conservator, trustee or insurer of the obligor. [Formerly 23.760; 1991 c.362 §1; 1993 c.798 §4; 1995 c.608 §1; 1997 c.704 §13; 1999 c.80 §1; 2001 c.334 §2; 2001 c.455 §1; 2003 c.572 §2; 2005 c.560 §1]

25.011 "Address" defined. As used in ORS chapters 25, 106, 107, 108, 109, 110 and 416, when a person is required to provide an address, "address" means a residence, mailing or contact address in the same state as the person's home. [1993 c.448 §1; 1995 c.608 §25]

Note: 25.011 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 25 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

25.015 When payment on support order begins; determining; notification of date. (1) The Department of Justice shall notify the parties to a support order that payment is to commence on the first due date following the date of the notice when:

(a) The department receives a copy of a support order of a court that requires payments to be made through the department or for which there is an application for support enforcement services;

(b) The department commences accounting services; and

(c) The order has been entered within the previous 180 days.

(2) The department shall include in the notice under subsection (1) of this section a statement that no later than 60 days after the date of the notice the department shall adjust the account to reflect an accrued arrearage for the period of time between the effective date of the order and the date of the notice unless a party requests that the department establish the arrearage on the account as provided in ORS 25.167 or 416.429.

(3) If, within 60 days after the date of the notice under subsection (1) of this section, a party requests the department to establish the arrearage as provided in ORS 25.167 or 416.429, the department may not reflect an accrued arrearage on the account until the arrearage has been established.

(4) If a party does not request the department to establish the arrearage as provided in subsection (3) of this section, the department shall adjust the account to re-

flect the arrearage for the period of time between the effective date of the order and the date of the notice. [1997 c.500 §2; 1999 c.18 §4]

25.020 When support payment to be made to Department of Justice; collection agency services; duties of department; credit for payments not made to department; rules. (1) Support payments for or on behalf of any person that are ordered, registered or filed under this chapter or ORS chapter 107, 108, 109, 110, 416, 419B or 419C, unless otherwise authorized by ORS 25.030, shall be made to the Department of Justice as the state disbursement unit:

(a) During periods for which support is assigned under ORS 412.024, 418.032, 419B.406 or 419C.597;

(b) As provided by rules adopted under ORS 180.345, when public assistance is provided to a person who receives or has a right to receive support payments on the person's own behalf or on behalf of another person;

(c) After the assignment of support terminates for as long as amounts assigned remain owing;

(d) For any period during which support enforcement services are provided under ORS 25.080;

(e) When ordered by the court under ORS 419B.400;

(f) When a support order that is entered or modified on or after January 1, 1994, includes a provision requiring the obligor to pay support by income withholding; or

(g) When ordered by the court under any other applicable provision of law.

(2) The Department of Justice shall disburse payments, after lawful deduction of fees and in accordance with applicable statutes and rules, to those persons and entities that are lawfully entitled to receive such payments.

(3)(a) When the administrator is providing support enforcement services under ORS 25.080, the obligee may enter into an agreement with a collection agency, as defined in ORS 697.005, for assistance in collecting child support payments.

(b) The Department of Justice:

(A) Shall disburse support payments, to which the obligee is legally entitled, to the collection agency if the obligee submits the completed form referred to in paragraph (c)(A) of this subsection to the department;

(B) May reinstate disbursements to the obligee if:

(i) The obligee requests that disbursements be made directly to the obligee;

(ii) The collection agency violates any provision of this subsection; or

(iii) The Department of Consumer and Business Services notifies the Department of Justice that the collection agency is in violation of the rules adopted under ORS 697.086;

(C) Shall credit the obligor's account for the full amount of each support payment received by the department and disbursed to the collection agency; and

(D) Shall develop the form referred to in paragraph (c)(A) of this subsection, which shall include a notice to the obligee printed in type size equal to at least 12-point type that the obligee may be eligible for support enforcement services from the department or the district attorney without paying the interest or fee that is typically charged by a collection agency.

(c) The obligee shall:

(A) Provide to the department, on a form approved by the department, information about the agreement with the collection agency; and

(B) Promptly notify the department when the agreement is terminated.

(d) The collection agency:

(A) May provide investigative and location services to the obligee and disclose relevant information from those services to the administrator for purposes of providing support enforcement services under ORS 25.080;

(B) May not charge interest or a fee for its services exceeding 29 percent of each support payment received unless the collection agency, if allowed by the terms of the agreement between the collection agency and the obligee, hires an attorney to perform legal services on behalf of the obligee;

(C) May not initiate, without written authorization from the administrator, any enforcement action relating to support payments on which support enforcement services are provided by the administrator under ORS 25.080; and

(D) Shall include in the agreement with the obligee a notice printed in type size equal to at least 12-point type that provides information on the fees, penalties, termination and duration of the agreement.

(e) The administrator may use information disclosed by the collection agency to provide support enforcement services under ORS 25.080.

(4) The Department of Justice may immediately transmit to the obligee payments received from any obligor without waiting for payment or clearance of the check or instrument received if the obligor has not previously tendered any payment by a check or

instrument that was not paid or was dishonored.

(5) The Department of Justice shall notify each obligor and obligee by mail when support payments shall be made to the department and when the obligation to make payments in this manner shall cease.

(6)(a) The administrator shall provide information about a child support account directly to a party to the support order regardless of whether the party is represented by an attorney. As used in this subsection, "information about a child support account" means the:

(A) Date of issuance of the support order.

(B) Amount of the support order.

(C) Dates and amounts of payments.

(D) Dates and amounts of disbursements.

(E) Payee of any disbursements.

(F) Amount of any arrearage.

(G) Source of any collection.

(b) Nothing in this subsection limits the information the administrator may provide by law to a party who is not represented by an attorney.

(7) Any pleading for the entry or modification of a support order must contain a statement that payment of support under a new or modified order will be by income withholding unless an exception to payment by income withholding is granted under ORS 25.396.

(8)(a) Except as provided in paragraphs (d) and (e) of this subsection, a judgment or order establishing paternity or including a provision concerning support must contain:

(A) The residence, mailing or contact address, Social Security number, telephone number and driver license number of each party;

(B) The name, address and telephone number of all employers of each party;

(C) The names and dates of birth of the joint children of the parties; and

(D) Any other information required by rule adopted by the Chief Justice of the Supreme Court under ORS 1.002.

(b) The judgment or order shall also include notice that the obligor and obligee:

(A) Must inform the court and the administrator in writing of any change in the information required by this subsection within 10 days after the change; and

(B) May request that the administrator review the amount of support ordered after three years, or such shorter cycle as determined by rule of the Department of Justice, or at any time upon a substantial change of circumstances.

(c) The administrator may require of the parties any additional information that is necessary for the provision of support enforcement services under ORS 25.080.

(d)(A) Upon a finding, which may be made ex parte, that the health, safety or liberty of a party or child would unreasonably be put at risk by the disclosure of information specified in this subsection or by the disclosure of other information concerning a child or party to a paternity or support proceeding or if an existing order so requires, a court or administrator or administrative law judge, when the proceeding is administrative, shall order that the information not be contained in any document provided to another party or otherwise disclosed to a party other than the state.

(B) The Department of Justice shall adopt rules providing for similar confidentiality for information described in subparagraph (A) of this paragraph that is maintained by an entity providing support enforcement services under ORS 25.080.

(e) The Chief Justice of the Supreme Court may, in consultation with the Department of Justice, adopt rules under ORS 1.002 to designate information specified in this subsection as confidential and require that the information be submitted through an alternate procedure to ensure that the information is exempt from public disclosure under ORS 192.502.

(9)(a) Except as otherwise provided in paragraph (b) of this subsection, in any subsequent child support enforcement action, the court or administrator, upon a showing of diligent effort made to locate the obligor or obligee, may deem due process requirements to be met by mailing notice to the last-known residential, mailing or employer address or contact address as provided in ORS 25.085.

(b) Service of an order directing an obligor to appear in a contempt proceeding is subject to ORS 33.015 to 33.155.

(10) Subject to ORS 25.030, this section, to the extent it imposes any duty or function upon the Department of Justice, shall be deemed to supersede any provisions of ORS chapters 107, 108, 109, 110, 416, 419A, 419B and 419C that would otherwise impose the same duties or functions upon the county clerk or the Department of Human Services.

(11) Except as provided for in subsections (12), (13) and (14) of this section, credit may not be given for payments not made to the Department of Justice as required under subsection (1) of this section.

(12) The Department of Justice shall give credit for payments not made to the department:

(a) When payments are not assigned to this or another state and the obligee and obligor agree in writing that specific payments were made and should be credited;

(b) When payments are assigned to the State of Oregon, the obligor and obligee make sworn written statements that specific payments were made, canceled checks or other substantial evidence is presented to corroborate their statements and the obligee has been given prior written notice of any potential criminal or civil liability that may attach to an admission of the receipt of assigned support;

(c) When payments are assigned to another state and that state verifies that payments not paid to the department were received by the other state; or

(d) As provided by rule adopted under ORS 180.345.

(13) An obligor may apply to the Department of Justice for credit for payments made other than to the Department of Justice. If the obligee or other state does not provide the agreement, sworn statement or verification required by subsection (12) of this section, credit may be given pursuant to order of an administrative law judge assigned from the Office of Administrative Hearings after notice and opportunity to object and be heard are given to both obligor and obligee. Notice shall be served upon the obligee as provided by ORS 25.085. Notice to the obligor may be by regular mail at the address provided in the application for credit. A hearing conducted under this subsection is a contested case hearing and ORS 183.413 to 183.470 apply. Any party may seek a hearing de novo in the circuit court.

(14) Nothing in this section precludes the Department of Justice from giving credit for payments not made to the department when there has been a judicially determined credit or satisfaction or when there has been a satisfaction of support executed by the person to whom support is owed.

(15) The Department of Justice shall adopt rules that:

(a) Direct how support payments that are made through the department are to be applied and distributed; and

(b) Are consistent with federal regulations. [Formerly 23.765; 1991 c.724 §19; 1993 c.33 §366; 1993 c.448 §2; 1993 c.596 §1; 1995 c.608 §2; 1997 c.704 §14; 1999 c.18 §1; 1999 c.80 §42; 1999 c.798 §1; 2001 c.322 §1; 2001 c.455 §§2,3; 2001 c.961 §1; 2003 c.73 §17a; 2003 c.75 §23; 2003 c.380 §§6,7; 2003 c.421 §§1,2; 2003 c.572 §3; 2003 c.576 §§292,293a; 2005 c.561 §2; 2007 c.878 §1]

Note: The amendments to 25.020 by section 10, chapter 861, Oregon Laws 2007, become operative October 1, 2008. See section 25, chapter 861, Oregon Laws 2007. The text that is operative on and after October 1, 2008, is set forth for the user's convenience.

25.020. (1) Support payments for or on behalf of any person that are ordered, registered or filed under this chapter or ORS chapter 107, 108, 109, 110, 416, 419B or 419C, unless otherwise authorized by ORS 25.030, shall be made to the Department of Justice as the state disbursement unit:

(a) During periods for which support is assigned under ORS 412.024, 418.032, 419B.406 or 419C.597;

(b) As provided by rules adopted under ORS 180.345, when public assistance is provided to a person who receives or has a right to receive support payments on the person's own behalf or on behalf of another person;

(c) After the assignment of support terminates for as long as amounts assigned remain owing;

(d) For any period during which support enforcement services are provided under ORS 25.080;

(e) When ordered by the court under ORS 419B.400;

(f) When a support order that is entered or modified on or after January 1, 1994, includes a provision requiring the obligor to pay support by income withholding; or

(g) When ordered by the court under any other applicable provision of law.

(2)(a) The Department of Justice shall disburse payments, after lawful deduction of fees and in accordance with applicable statutes and rules, to those persons and entities that are lawfully entitled to receive such payments.

(b) During a period for which support is assigned under ORS 412.024, for an obligee described in subsection (1)(b) of this section, the department shall distribute to the obligee, from child support collected each month, $50 for each child up to a maximum of $200 per family.

(3)(a) When the administrator is providing support enforcement services under ORS 25.080, the obligee may enter into an agreement with a collection agency, as defined in ORS 697.005, for assistance in collecting child support payments.

(b) The Department of Justice:

(A) Shall disburse support payments, to which the obligee is legally entitled, to the collection agency if the obligee submits the completed form referred to in paragraph (c)(A) of this subsection to the department;

(B) May reinstate disbursements to the obligee if:

(i) The obligee requests that disbursements be made directly to the obligee;

(ii) The collection agency violates any provision of this subsection; or

(iii) The Department of Consumer and Business Services notifies the Department of Justice that the collection agency is in violation of the rules adopted under ORS 697.086;

(C) Shall credit the obligor's account for the full amount of each support payment received by the department and disbursed to the collection agency; and

(D) Shall develop the form referred to in paragraph (c)(A) of this subsection, which shall include a notice to the obligee printed in type size equal to at least 12-point type that the obligee may be eligible for support enforcement services from the department or the district attorney without paying the interest or fee that is typically charged by a collection agency.

(c) The obligee shall:

(A) Provide to the department, on a form approved by the department, information about the agreement with the collection agency; and

(B) Promptly notify the department when the agreement is terminated.

(d) The collection agency:

(A) May provide investigative and location services to the obligee and disclose relevant information from those services to the administrator for purposes of providing support enforcement services under ORS 25.080;

(B) May not charge interest or a fee for its services exceeding 29 percent of each support payment received unless the collection agency, if allowed by the terms of the agreement between the collection agency and the obligee, hires an attorney to perform legal services on behalf of the obligee;

(C) May not initiate, without written authorization from the administrator, any enforcement action relating to support payments on which support enforcement services are provided by the administrator under ORS 25.080; and

(D) Shall include in the agreement with the obligee a notice printed in type size equal to at least 12-point type that provides information on the fees, penalties, termination and duration of the agreement.

(e) The administrator may use information disclosed by the collection agency to provide support enforcement services under ORS 25.080.

(4) The Department of Justice may immediately transmit to the obligee payments received from any obligor without waiting for payment or clearance of the check or instrument received if the obligor has not previously tendered any payment by a check or instrument that was not paid or was dishonored.

(5) The Department of Justice shall notify each obligor and obligee by mail when support payments shall be made to the department and when the obligation to make payments in this manner shall cease.

(6)(a) The administrator shall provide information about a child support account directly to a party to the support order regardless of whether the party is represented by an attorney. As used in this subsection, "information about a child support account" means the:

(A) Date of issuance of the support order.

(B) Amount of the support order.

(C) Dates and amounts of payments.

(D) Dates and amounts of disbursements.

(E) Payee of any disbursements.

(F) Amount of any arrearage.

(G) Source of any collection.

(b) Nothing in this subsection limits the information the administrator may provide by law to a party who is not represented by an attorney.

(7) Any pleading for the entry or modification of a support order must contain a statement that payment of support under a new or modified order will be by income withholding unless an exception to payment by income withholding is granted under ORS 25.396.

(8)(a) Except as provided in paragraphs (d) and (e) of this subsection, a judgment or order establishing paternity or including a provision concerning support must contain:

(A) The residence, mailing or contact address, Social Security number, telephone number and driver license number of each party;

(B) The name, address and telephone number of all employers of each party;

(C) The names and dates of birth of the joint children of the parties; and

(D) Any other information required by rule adopted by the Chief Justice of the Supreme Court under ORS 1.002.

(b) The judgment or order shall also include notice that the obligor and obligee:

(A) Must inform the court and the administrator in writing of any change in the information required by this subsection within 10 days after the change; and

(B) May request that the administrator review the amount of support ordered after three years, or such shorter cycle as determined by rule of the Department of Justice, or at any time upon a substantial change of circumstances.

(c) The administrator may require of the parties any additional information that is necessary for the provision of support enforcement services under ORS 25.080.

(d)(A) Upon a finding, which may be made ex parte, that the health, safety or liberty of a party or child would unreasonably be put at risk by the disclosure of information specified in this subsection or by the disclosure of other information concerning a child or party to a paternity or support proceeding or if an existing order so requires, a court or administrator or administrative law judge, when the proceeding is administrative, shall order that the information not be contained in any document provided to another party or otherwise disclosed to a party other than the state.

(B) The Department of Justice shall adopt rules providing for similar confidentiality for information described in subparagraph (A) of this paragraph that is maintained by an entity providing support enforcement services under ORS 25.080.

(e) The Chief Justice of the Supreme Court may, in consultation with the Department of Justice, adopt rules under ORS 1.002 to designate information specified in this subsection as confidential and require that the information be submitted through an alternate procedure to ensure that the information is exempt from public disclosure under ORS 192.502.

(9)(a) Except as otherwise provided in paragraph (b) of this subsection, in any subsequent child support enforcement action, the court or administrator, upon a showing of diligent effort made to locate the obligor or obligee, may deem due process requirements to be met by mailing notice to the last-known residential, mailing or employer address or contact address as provided in ORS 25.085.

(b) Service of an order directing an obligor to appear in a contempt proceeding is subject to ORS 33.015 to 33.155.

(10) Subject to ORS 25.030, this section, to the extent it imposes any duty or function upon the Department of Justice, shall be deemed to supersede any provisions of ORS chapters 107, 108, 109, 110, 416, 419A, 419B and 419C that would otherwise impose the same duties or functions upon the county clerk or the Department of Human Services.

(11) Except as provided for in subsections (12), (13) and (14) of this section, credit may not be given for payments not made to the Department of Justice as required under subsection (1) of this section.

(12) The Department of Justice shall give credit for payments not made to the department:

(a) When payments are not assigned to this or another state and the obligee and obligor agree in writing that specific payments were made and should be credited;

(b) When payments are assigned to the State of Oregon, the obligor and obligee make sworn written statements that specific payments were made, canceled checks or other substantial evidence is presented to corroborate their statements and the obligee has been given prior written notice of any potential criminal or civil liability that may attach to an admission of the receipt of assigned support;

(c) When payments are assigned to another state and that state verifies that payments not paid to the department were received by the other state; or

(d) As provided by rule adopted under ORS 180.345.

(13) An obligor may apply to the Department of Justice for credit for payments made other than to the Department of Justice. If the obligee or other state does not provide the agreement, sworn statement or verification required by subsection (12) of this section, credit may be given pursuant to order of an administrative law judge assigned from the Office of Administrative Hearings after notice and opportunity to object and be heard are given to both obligor and obligee. Notice shall be served upon the obligee as provided by ORS 25.085. Notice to the obligor may be by regular mail at the address provided in the application for credit. A hearing conducted under this subsection is a contested case hearing and ORS 183.413 to 183.470 apply. Any party may seek a hearing de novo in the circuit court.

(14) Nothing in this section precludes the Department of Justice from giving credit for payments not made to the department when there has been a judicially determined credit or satisfaction or when there has been a satisfaction of support executed by the person to whom support is owed.

(15) The Department of Justice shall adopt rules that:

(a) Direct how support payments that are made through the department are to be applied and distributed; and

(b) Are consistent with federal regulations.

25.025 Annual notice to parties receiving services under ORS 25.020. Once each year, the Department of Justice shall notify the parties in child support cases receiving services under ORS 25.020 of all the following:

(1) When physical custody of a child changes from the obligee to the obligor, the obligation to pay child support for the child is not automatically terminated.

(2) When a physical change of custody of a child occurs, either party may request a modification of the support order to terminate support based on a substantial change of circumstances.

(3) At the request of either party, child support may be established for the parent with current physical custody of the child.

(4) If a change in the physical custody of a child is temporary, the obligee may satisfy support accruing for the child for periods that the child is in the physical custody of the obligor as provided in ORS 18.225, 18.228, 18.232 and 18.235. [1997 c.385 §4; 2003 c.73 §18; 2003 c.576 §575]

Note: 25.025 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 25 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

25.030 When payment payable to bank account or escrow agent. (1) Support orders in respect of obligees not subject to ORS 25.020 may provide for payment under the order to a checking or savings account or by electronic transfer to an account maintained by an escrow agent, licensed under ORS 696.511, for distribution to the obligee, if the obligor and obligee have so elected or if the court in its discretion believes that payment to a checking or savings account or payment by electronic transfer to an account maintained by a licensed escrow agent will be in the best interest of the parties.

(2) Subsection (1) of this section applies only if an election has been made as provided in ORS 25.130. [Formerly 23.767; 1989 c.976 §36; 1991 c.230 §32; 1997 c.872 §4; 1999 c.80 §78; 2003 c.210 §1]

25.040 [Formerly 23.775; 1993 c.33 §281; 1993 c.448 §3; repealed by 1999 c.80 §95]

25.050 [Formerly 23.777; 1989 c.633 §4; 1989 c.726 §4; 1991 c.519 §1; repealed by 1993 c.798 §21]

25.060 [Formerly 23.780; repealed by 1999 c.80 §95]

25.070 Order may include payment of support enforcement fees; limitation. Any judgment or order entered in a proceeding for the enforcement of any delinquent support obligation, including an order entered under ORS 25.378, shall include, on the motion of the Division of Child Support of the Department of Justice or the district attorney, if either has appeared in the case, an order for payment of any support enforcement fees required by law in addition to any other costs chargeable to the obligor, and in addition to the support obligation. The Department of Justice shall deduct the amount of any previously imposed support enforcement fees from any payment subsequently made by the obligor but the amount of the deduction shall not exceed 25 percent of any payment. The support enforcement fee, when collected, shall be paid to the Division of Child Support of the Department of Justice or the district attorney, whichever appeared in the case. [Formerly 23.787; 1993 c.798 §34; 1997 c.704 §15; 1999 c.80 §79; 2003 c.576 §294]

25.075 Cooperative agreements with Indian tribes or tribal organizations. (1) Notwithstanding the provisions of ORS 25.080, the Department of Justice may enter into cooperative agreements with Indian tribes or tribal organizations within the borders of this state, if the Indian tribe or tribal organization demonstrates that the tribe or organization has an established tribal court system or a Court of Indian Offenses with the authority to:

(a) Establish paternity;

(b) Establish, modify and enforce support orders; and

(c) Enter support orders in accordance with child support guidelines established by the tribe or organization.

(2) The agreements must provide for the cooperative delivery of child support enforcement services and for the forwarding of all child support collections pursuant to the functions performed by the tribe or organization to the department, or conversely, by the department to the tribe or organization,

which shall distribute the child support collections in accordance with the agreement. [1997 c.746 §131; 1999 c.735 §5; 2003 c.73 §19]

Note: 25.075 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 25 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

25.080 Entity primarily responsible for support enforcement services; duties; application fees; rules. (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 (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 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.

(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.

(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.

(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.

(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.

(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. [Formerly 23.790; 1991 c.758 §1; 1993 c.33 §367; 1995 c.608 §9; 1997 c.704 §16; 2001 c.900 §236; 2003 c.73 §20; 2003 c.576 §295; 2005 c.560 §2]

25.081 Access to records with Social Security number. (1) Notwithstanding any other provision of law, an entity providing support enforcement services under ORS 25.080 shall have access, using a Social Security number as an identifier, to any record required by law to contain the Social Security number of an individual.

(2) To the maximum extent feasible, a public body maintaining records described in ORS 25.785, including automated records, shall make the records accessible by Social Security number for purposes of support enforcement.

(3) For purposes of this section, "public body" has the meaning given that term in ORS 192.410. [1997 c.746 §118]

Note: 25.081 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 25 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

25.082 Administrative subpoenas; civil penalty; rules. (1) When services are being provided under Title IV-D of the Social Security Act, the enforcing agency of this or any other state may subpoena financial records and other information needed to establish paternity or to establish, modify or enforce a support order. The subpoena may be served on a party or on a public or private entity. Service of the subpoena may be by certified mail.

(2) A party or public or private entity that discloses information to the enforcing agency in compliance with a subpoena served under subsection (1) of this section is not liable to any person for any loss, damage or injury arising out of the disclosure.

(3) Upon request of an enforcing agency of another state, only a court or enforcing agency of Oregon may enforce a subpoena issued by the enforcing agency of the other state.

(4) Notwithstanding ORS 192.575, a party or public or private entity that fails without good cause to comply with a subpoena issued under this section is subject to a civil penalty not to exceed $250. A civil penalty under this section must be imposed in the manner provided by ORS 183.745.

(5) The Department of Justice shall adopt rules to implement the provisions of this section. [1997 c.746 §33; 2003 c.73 §21]

Note: 25.082 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 25 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

25.083 High-volume automated administrative enforcement services. (1) As necessary to meet the requirements of 42 U.S.C. 666(a)(14), the Division of Child Support of the Department of Justice, when requested by another state, shall provide high-volume automated administrative enforcement services. In providing services to another state under this section, the division may:

(a) Through automated data matches with financial institutions and other entities where assets may be found, identify assets owned by persons who owe child support in other states; and

(b) Seize such assets by execution as defined in ORS 18.005 or by such other processes to seize property as the division is authorized by law to use.

(2) A request by another state for services provided under subsection (1) of this section:

(a) Must include information, as required by rule, that will enable the department to compare the information about the case with information in databases within Oregon; and

(b) Constitutes a certification by the state requesting the services:

(A) Of the amount of periodic support under an order, the payment of which is in arrears; and

(B) That it has complied with all procedural due process requirements applicable to the case.

(3) The administrator is authorized to request from other states services of the type provided under subsection (1) of this section. [1999 c.930 §2; 2001 c.249 §71; 2003 c.576 §576]

25.085 Service on obligee; methods. (1) In any proceeding under ORS 25.080, service of legal documents upon an obligee may be by regular mail to the address at which the obligee receives public assistance, to an address provided by the obligee on the obligee's application for child support enforcement services or to any other address given by the obligee. When service is authorized by regular mail under this section, proof of service may be by notation upon the computerized case record made by the person making the mailing. The notation shall set forth the address to which the documents were mailed, the date they were mailed, the description of the documents mailed and the name of the person making the notation. If the documents are returned by the postal service as undeliverable as addressed, that fact shall be noted on the computerized case record. If no new address for service by regular mail can be obtained, service shall be by certified mail, return receipt requested or by personal service upon the obligee.

(2) Notwithstanding any other provision of this chapter or ORS chapter 110 or 416, when a case is referred to this state by a public child support agency of another state for action in this state, there is no requirement that an obligee, present in the initiating state and receiving child support enforcement services from that state, be served in any action taken in this state as a consequence of the interstate referral. In such cases the requirement to serve the obligee that would otherwise apply is satisfied by sending to the initiating agency in the other state, by regular mail, any documents that would otherwise be served upon the obligee.

(3) The appropriate child support agency of the state shall make any mailings to or service upon the obligee that is required by this section. [1993 c.596 §17; 1995 c.608 §26; 1997 c.249 §16; 1999 c.87 §1; 2003 c.572 §4]

Note: 25.085 was added to and made a part of ORS chapter 25 by legislative action but was not added to any series therein. See Preface to Oregon Revised Statutes for further explanation.

25.089 Enforcement and modification of child support judgments. (1) As used in this section, "child support judgment" means the terms of a judgment or order of a court, or an order that has been filed under ORS 416.440, that provide for past or current monetary support or for a health benefit plan under ORS 25.321 to 25.343 for the benefit of a child. "Child support judgment" does not include any term of a judgment or order that deals with matters other than monetary support or a health benefit plan under ORS 25.321 to 25.343 for the benefit of a child.

(2)(a) A child support judgment originating under ORS 416.440 has all the force, effect and attributes of a circuit court judgment. The judgment lien created by a child support judgment originating under ORS 416.440 applies to all arrearages owed under the underlying order from the date the administrator or administrative law judge entered, filed or registered the underlying order under ORS 416.400 to 416.465 or ORS chapter 110.

(b) Until the underlying order is filed under ORS 416.440, the order may not be enforced against and has no lien effect on real property.

(c) No action to enforce a child support judgment originating under ORS 416.440 may be taken while the child support judgment is stayed under ORS 416.427, except as permitted in the order granting the stay.

(3) In any judicial or administrative proceeding in which child support may be awarded under this chapter or ORS chapter 107, 108, 109, 110 or 416 or ORS 125.025, 419B.400 or 419C.590, if a child support judgment already exists with regard to the same obligor and child:

(a) A court may only enforce the existing child support judgment, modify the existing child support judgment as specifically authorized by law or set aside the existing child support judgment under subsection (6) of this section or under the provisions of ORCP 71. If the court sets aside the existing child support judgment, the court may issue a new child support judgment.

(b) The administrator or administrative law judge may only enforce the existing child

support judgment, modify the existing child support judgment as specifically authorized by law or, with regard to an existing child support judgment originating under ORS 416.400, move to set aside the existing child support judgment under subsection (6) of this section or for the reasons set out in ORCP 71.

(4) If the administrator or administrative law judge finds that there exist two or more child support judgments involving the same obligor and child and the same period of time, the administrator or administrative law judge shall apply the provisions of ORS 416.448.

(5)(a) If the court finds that there exist two or more child support judgments involving the same obligor and child and the same period of time, and each judgment was issued in this state, the court shall apply the provisions of ORS 25.091 to determine the controlling terms of the child support judgments and to issue a governing child support judgment as defined in ORS 25.091.

(b) If the court finds that there exist two or more child support judgments involving the same obligor and child and the same period of time, and one or more of the judgments was issued by a tribunal of another state, the court shall apply the provisions of ORS chapter 110 to determine which judgment is the controlling child support order.

(6) Subject to the provisions of subsection (3) of this section, a court may modify or set aside a child support judgment issued in this state when:

(a) The child support judgment was issued without prior notice to the issuing court, administrator or administrative law judge that:

(A) There was pending in this state or any other jurisdiction any type of support proceeding involving the child; or

(B) There existed in this state or any other jurisdiction another child support judgment involving the child; or

(b) The child support judgment was issued after another child support judgment, and the later judgment did not enforce, modify or set aside the earlier judgment in accordance with this section.

(7) When modifying a child support judgment, the court, administrator or administrative law judge shall specify in the modification judgment the effects of the modification on the child support judgment being modified. [2003 c.146 §2; 2003 c.576 §298a; 2005 c.22 §14]

Note: 25.089 and 25.091 were added to and made a part of ORS chapter 25 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

25.090 [Formerly 23.790; repealed by 1999 c.80 §95]

25.091 Multiple child support judgments. (1) As used in this section:

(a) "Child support judgment" has the meaning given that term in ORS 25.089.

(b) "Governing child support judgment" means a child support judgment issued in this state that addresses both monetary support and a health benefit plan under ORS 25.321 to 25.343 and is entitled to exclusive prospective enforcement or modification with respect to any earlier child support judgment issued in this state.

(2) Notwithstanding any other provision of this section or ORS 25.089, when two or more child support judgments exist involving the same obligor and child and one or more of the judgments was issued by a tribunal of another state, the court shall apply the provisions of ORS chapter 110 before enforcing or modifying a judgment under this section or ORS 25.089.

(3) When two or more child support judgments exist involving the same obligor and child and the same period, any party to one or more of the child support judgments or the administrator, under ORS 416.448, may file a petition with the court for a governing child support judgment under this section. When a matter involving a child is before the court and the court finds that two or more child support judgments exist involving the same obligor and child and the same period, the court on its own motion, and after notice to all affected parties, may determine the controlling terms of the child support judgments and issue a governing child support judgment under this section.

(4) When two or more child support judgments exist involving the same obligor and child and the same period, and each judgment was issued in this state, there is a presumption that the terms of the last-issued child support judgment are the controlling terms and terminate contrary terms of each earlier-issued child support judgment, except that:

(a) When the last-issued child support judgment is silent about monetary support for the benefit of the child, the monetary support terms of an earlier-issued child support judgment continue; and

(b) When the last-issued child support judgment is silent about a health benefit plan under ORS 25.321 to 25.343 for the benefit of a child, the health benefit plan terms of an earlier-issued child support judgment continue.

(5) A party may rebut the presumption in subsection (4) of this section by showing that:

(a) The last-issued child support judgment should be set aside under the provisions of ORCP 71;

(b) The last-issued child support judgment was issued without prior notice to the issuing court, administrator or administrative law judge that:

(A) There was pending in this state or any other jurisdiction any type of support proceeding involving the child; or

(B) There existed in this state or any other jurisdiction another child support judgment involving the child; or

(c) The last-issued child support judgment was issued after an earlier child support judgment and did not enforce, modify or set aside the earlier child support judgment in accordance with ORS 25.089.

(6) When a court finds that two or more child support judgments exist involving the same obligor and child and the same period, and each child support judgment was issued in this state, the court shall set the matter for hearing to determine the controlling terms of the child support judgments. When the child support judgments were issued in different counties of this state, the court may cause the records from the original proceedings to be transmitted to the court in accordance with ORS 25.100.

(7) Following a review of each child support judgment and any other evidence admitted by the court:

(a) The court shall apply the presumption in subsection (4) of this section, unless the presumption is rebutted, and shall determine the controlling terms of the child support judgments; and

(b) Notwithstanding ORS 25.089 (3), the court shall issue a governing child support judgment addressing both monetary support and a health benefit plan under ORS 25.321 to 25.343 for the benefit of the child.

(8) The governing child support judgment must include:

(a) A reference to each child support judgment considered and a copy of the judgment;

(b) A determination of which terms regarding monetary support and a health benefit plan under ORS 25.321 to 25.343 are controlling and which child support judgment or judgments contain those terms;

(c) An affirmation, termination or modification of the terms regarding monetary support and a health benefit plan under ORS 25.321 to 25.343 in each of the child support judgments;

(d) Except as provided in subsection (9) of this section, a reconciliation of any monetary support arrears or credits under all of the child support judgments; and

(e) The effective date of each controlling term and the termination date of each noncontrolling term in each of the child support judgments. In determining these dates, the court may apply the following:

(A) A controlling term is effective on the date specified in the child support judgment containing that term or, if no date is specified, on the date the child support judgment was entered as described in ORS 18.075.

(B) A noncontrolling term is terminated on the date the governing child support judgment is entered as described in ORS 18.075.

(9) The court may order the parties, in a separate proceeding under ORS 25.167 or 416.429, to reconcile any monetary support arrears or credits under all of the child support judgments.

(10) When the governing child support judgment is entered as described in ORS 18.075, the noncontrolling terms of each earlier child support judgment regarding monetary support or a health benefit plan under ORS 25.321 to 25.343 are terminated. However, subject to subsection (11) of this section, the entry of the governing child support judgment does not affect any support payment arrearage or any liability related to health benefit plan coverage that has accrued under a child support judgment before the governing child support judgment is entered.

(11) For purposes of reconciling any monetary support arrears or credits under all of the child support judgments, amounts collected and credited for a particular period under one child support judgment must be credited against the amounts accruing or accrued for the same period under any other child support judgment.

(12) Not sooner than 30 days and not later than 60 days after entry of the governing child support judgment, a party named by the court, or the petitioner if the court names no other party, shall file a certified copy of the governing child support judgment with each court or the administrator that issued an earlier child support judgment. A party who fails to file a certified copy of the governing child support judgment as required by this subsection is subject to monetary sanctions, including but not limited to attorney fees, costs and disbursements. A failure to file does not affect the validity or enforceability of the governing child support judgment.

(13) This section applies to any judicial proceeding in which child support may be awarded or modified under this chapter or

ORS chapter 107, 108, 109 or 416 or ORS 125.025, 419B.400, 419B.923, 419C.590 or 419C.610. [2003 c.146 §3; 2005 c.22 §15; 2005 c.83 §2]

Note: See note under 25.089.

Note: Section 1, chapter 83, Oregon Laws 2005, provides:

Sec. 1. (1) As used in this section:

(a) "Administrator" has the meaning given that term in ORS 25.010.

(b) "Child support judgment" has the meaning given that term in ORS 25.089.

(2) Notwithstanding the provisions of ORS 25.089, 25.091 and 416.448 to the contrary, the monetary support terms of a child support judgment originating under ORS 416.440 are terminated by the monetary support terms of a later-issued child support judgment of a court if:

(a) The two child support judgments involve the same obligor and child and the same period;

(b) The administrator was providing services under ORS 25.080;

(c) The later-issued child support judgment was entered before January 1, 2004;

(d) The administrator or a court gave the later-issued child support judgment precedence over the earlier-issued child support judgment originating under ORS 416.440; and

(e) All parties had an opportunity to challenge the amount of child support ordered in the later-issued child support judgment.

(3) Notwithstanding the provisions of ORS 25.091 (11) and 416.448 (7), for purposes of reconciling any monetary support arrears or credits under the two child support judgments described in subsection (2) of this section:

(a) The monetary support terms of the child support judgment originating under ORS 416.440 are deemed terminated on the effective date of the later-issued child support judgment; and

(b) Entry of the later-issued child support judgment does not affect any support payment arrearage or credit that has accrued under the earlier-issued child support judgment originating under ORS 416.440. [2005 c.83 §1; 2007 c.356 §2]

25.100 Transfer of files to county where party resides or property located. (1) With respect to any order or judgment entered pursuant to ORS 107.095, 107.105, 108.120, 109.155, 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter 110, if a party seeking modification or enforcement of an order or judgment for the payment of money files a certificate to the effect that a party is presently in another county of this state, the court may, upon motion of the party, order that certified copies of the files, records and prepared transcripts of testimony in the original proceeding be transmitted to the clerk of the circuit court of any county in this state in which the obligee or obligor resides, or in which property of the obligor is located.

(2) Any files, records and prepared transcripts of testimony maintained in the county to which certified copies have been transmitted as provided in subsection (1) of this section shall be auxiliary to those maintained in the county of origin, whose files, records and prepared transcripts shall remain the official record.

(3) The original of any order entered in the auxiliary county under ORS 25.110 shall be entered in the files and records of the auxiliary county and certified copies thereof shall be forwarded to the county of origin for filing. The party submitting the original order for signature shall submit an extra copy for forwarding by the clerk and shall indicate on that copy where it is to be forwarded.

(4) Notwithstanding any file number assigned in the auxiliary county for purposes of identification, the file number assigned in the county of origin shall be the reference number for all purposes including support payment records in the Department of Justice. [Formerly 23.795; 1993 c.33 §283; 1995 c.608 §27; 1995 c.609 §4; 1997 c.704 §18; 1999 c.80 §43; 2003 c.576 §296]

25.110 Jurisdiction of circuit court in county to which files transferred. (1) Upon receipt of such certified copies referred to in ORS 25.100, the circuit court of the county to which such certified copies have been transmitted shall have jurisdiction to compel compliance with such order or judgment the same as if it were the court which made and entered the original order or judgment for the payment of support. The only court having jurisdiction to modify any provision of the original order or judgment is the court having original jurisdiction of the cause in which such order or judgment was entered or the circuit court of the county in which either party resides if that court has received the certified copies referred to in ORS 25.100.

(2) The provisions of ORS 25.100 (2) to (4) shall apply to this section. [Formerly 23.800; 2003 c.576 §297]

25.120 [Formerly 23.805; 1993 c.33 §284; repealed by 1999 c.80 §95]

25.125 Disposition of support obligation overpayments; rules. (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 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, 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.

(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. [1997 c.385 §2; 2001 c.961 §2; 2003 c.73 §22a; 2003 c.75 §72; 2003 c.572 §5; 2005 c.560 §3]

25.130 Election of alternative support payment method; termination of election. (1) The parties may elect to make support payments as provided in ORS 25.030 unless the provisions of ORS 25.020 (1) apply. The election terminates when the provisions of ORS 25.020 (1) apply subsequent to the election.

(2) The election must be in writing and filed with the court that entered the support order. The election must be signed by both the obligor and the obligee and must specify the amount of the support payment, the date payment is due, the court order number and:

(a) The account number of the checking or savings account that is to be used; or

(b) The name of an escrow agent, licensed under ORS 696.511, to whom, and the account number into which, the payments are to be electronically transferred.

(3) Notice of termination of the bank or escrow agent option and payment requirements pursuant to ORS 25.020 or 25.030 shall be sent by the Department of Justice to the obligor's and to the obligee's last-known address. [Formerly 23.807; 1993 c.596 §3; 1995 c.608 §8; 1997 c.704 §19; 1999 c.80 §80; 2003 c.210 §2]

25.140 Copies of new or modified support orders to department. Counties that have heretofore transferred the collection, accounting and disbursement responsibilities to the Department of Justice, or that have elected not to maintain support collections, accounting and disbursement services, and clerks of courts not maintaining support collection services, shall forward to the department copies of all new and modified support orders, satisfactions or other pertinent documents in a timely manner. [Formerly 23.808; 1997 c.704 §20]

25.150 Department to collect fees for services. The Department of Justice shall assess and collect any fees for establishment, enforcement, collection, accounting and disbursement services required by state law or administrative rule or by federal law or regulation, including the annual fee required under Title IV-D of the Social Security Act. [Formerly 23.815; 1997 c.704 §21; 1999 c.80 §81; 2007 c.878 §2]

25.160 Referral of support cases by district attorney to department; duration of collection services. (1) For the purposes of ORS 25.020, 25.030, 25.070, 25.080, 25.085 and 25.130 to 25.160, all support cases shall be referred by the district attorney to the Department of Justice for provision of collection, accounting and disbursement services when a written application for enforcement is made to the district attorney or the Division of Child Support and the case qualifies for support enforcement services under federal regulations and state law.

(2) The Department of Justice shall continue collection, accounting and disbursement services for any case referred under subsection (1) of this section until notified by the district attorney or the Division of Child Support that enforcement action has been discontinued. [Formerly 23.825; 1997 c.704 §22; 1999 c.80 §82]

25.164 Payment of support through Department of Justice. (1) If the payment method for support payments set forth in the support judgment does not require payments to be made through the Department of Justice, the obligor, obligee, district attorney or Division of Child Support of the Department of Justice may request to have subsequent payments made through the department. All of the following apply to the request:

(a) The request must be in writing;

(b) The request must include the last-known addresses of the obligor and the obligee; and

(c) The request must be filed with the department.

(2) When a request is made under this section, all of the following apply:

(a) The existing method of support accounting shall terminate effective the first day of the month following the month the request was filed;

(b) The department shall commence support accounting and distribution when the existing method is terminated; and

(c) The request constitutes an application for support enforcement services and for the use of state and federal laws, regulations and rules relating to support payments and enforcement of judgments.

(3) If there is no appropriate record of support payments for purposes of this section, the department may establish a record of arrearage under ORS 25.167. [Formerly 25.320; 2003 c.146 §6]

25.167 Procedure for determining arrearages. This section establishes procedures for determining the amount of arrearage and for making a record of arrearage of support payments. All of the following apply to this section:

(1) A record of support payment arrearage may be established by:

(a) Court order;

(b) A governing child support judgment issued under ORS 25.091 or 416.448;

(c) Administrative order issued under ORS 416.427 or 416.429;

(d) Stipulation of the parties; or

(e) The procedures under subsection (2) of this section whenever an existing child or spousal support case enters the Department of Justice records system without a current payment record maintained by any court clerk.

(2) When allowed under subsection (1) of this section, arrearage amounts may be established under this subsection. All of the following apply to this subsection:

(a) The obligee or obligor may execute a certificate in a form acceptable to the Department of Justice that states the total amount owed or the payment history in as much detail as is necessary to demonstrate the periods and amounts of any arrearage.

(b) The person making the certificate shall file the original certificate with the court in which the support judgment was entered. When a governing child support judgment has been issued, the person making the certificate shall file the original certificate with the court that issued the governing child support judgment.

(c) The person making the certificate shall serve a true copy of the certificate upon the other party together with a notice that the certificate will be the basis of a permanent record unless the other party files objections.

(d) For objections to be valid under paragraph (c) of this subsection, the other party must file the objection with the court within 14 days from the date of service of the certificate and must mail or serve true copies of the objections on both the party who filed the certificate and either:

(A) The district attorney; or

(B) If support rights are or have been assigned to the State of Oregon at any time within the last five months or if arrears under the support judgment are so assigned, the Division of Child Support of the Department of Justice.

(e) If objections are filed within the time allowed, the party filing the certificate must file a supplemental certificate that is in a form acceptable to the department and that provides any information concerning the payment history that the department determines necessary.

(f) If objections are filed within the time allowed, the district attorney or the Division of Child Support shall cause the case to be set for a court hearing. At the hearing, the court shall consider the correctness of the certificate but may not consider objections to the merits of the support judgment. The parties may settle the case by written agreement anytime before the court hearing. Notice of the court hearing shall be served upon the party filing the objections as authorized in ORCP 9 B.

(g) If no objections are filed under this subsection within the time allowed, the amount of arrearage stated in the certificate is the amount owed for purposes of any subsequent action. The district attorney or the Division of Child Support shall file with the court a certificate stating the arrearage established under this paragraph.

(3) When a request for accounting and distribution services is made under ORS 25.164, an agency or court may not take or allow any ex parte enforcement action on amounts owed as arrearage from before the time that the Department of Justice commences support accounting and distribution until the amount is established under this section. This subsection does not prohibit or limit any enforcement action on support payments that become due subsequent to the department's commencement of support accounting and distribution under ORS 25.164.

(4) In any determination under this section, a canceled check, payable to the obligee, indorsed by the obligee or deposited to an account of the obligee, drawn on the account of the obligor and marked as child support shall be prima facie evidence that child support was paid to the obligee in the amount shown on the face of the check. It is immaterial that the check was signed by a person other than the obligor, provided that the person who signed the check was an authorized signatory of checks drawn on the account. [Formerly 25.330; 2003 c.146 §7; 2003 c.576 §298]

25.170 Proceedings to require delinquent obligor to appear for examination of financial circumstances. When a support obligation is more than one month in arrears, the Attorney General or a district attorney may upon motion obtain an order requiring the obligor to appear for the purpose of examination regarding the obligor's financial circumstances. The court shall require the obligor to appear at a time and date certain at such place as may be appropriate. The order to appear shall inform the obligor that the obligor's answers may be used in subsequent enforcement and possible criminal proceedings, and that the obligor has a right to be represented by an attorney at the examination. The order shall be served upon the obligor in the same manner as service of summons. The order to appear shall also be served upon the obligee by regular mail. The obligee shall have the right to at-

tend any such examination. [Formerly 23.835; 1989 c.599 §1; 1993 c.596 §4]

25.180 Examination of obligor's financial circumstances. (1) The examination shall be conducted under oath by an employee of the Department of Justice or district attorney. The employee shall inform the obligor that the obligor's answers may be used in subsequent enforcement and possible criminal proceedings, and that the obligor has a right to be represented by an attorney at the examination. A record of the examination may be made by either stenographic or electronic means. The obligor may be examined in regard to the obligor's income and property, and to any matter relevant to the obligor's ability to pay support.

(2) An obligee or the obligee's attorney may examine the obligor in a proceeding conducted under this section. [Formerly 23.837; 1989 c.599 §2; 1993 c.596 §5]

25.190 Continuance of proceedings; certification of matter to court; service of notice to obligor and obligee. (1) The examination may be continued for further review of the obligor's financial circumstances and employment, or the matter may be certified to the court for a contempt hearing on the issue of failure to pay support as ordered. If the examination is to be continued for further review or is to be certified to the court for a contempt hearing, the obligor shall be served at the examination with a notice stating the time, date and place for further examination or hearing before the court. Service may be made by an employee of the Department of Justice or district attorney.

(2) Any notice served upon the obligor regarding a continuation of the examination or regarding the certification of the matter to the court for a contempt hearing must also be served upon the obligee. Such service upon the obligee may be by regular mail. [Formerly 23.842; 1989 c.599 §3; 1993 c.596 §6]

25.200 Arrest of obligor for failure to appear. (1) If the obligor fails to appear for examination or further examination, the Attorney General or a district attorney may apply to the court which issued the order to appear for an order directing the issuance of a warrant for the arrest of the obligor. The motion shall be accompanied by an affidavit which shall state the relevant facts and whether the obligor contacted the Department of Justice or district attorney, as appropriate. If the court finds that the obligor had notice and failed to appear, the court shall order the issuance of a warrant for the arrest of the obligor in order to bring the obligor before the court to show cause why the obligor should not be held in contempt for a failure to appear as ordered.

(2) If the matter has been certified to the court for a contempt hearing and the obligor, having been properly served, fails to appear, the court shall order the issuance of a warrant for the arrest of the obligor. Upon arrest, the obligor shall be brought before the court to show cause why the obligor should not be held in contempt for a failure to appear as ordered. [Formerly 23.845; 1989 c.599 §4]

25.210 Use of obligor's property for delinquent support payments. If by examination of the obligor it appears that the obligor has any property liable to execution, the court, upon motion of the Attorney General or a district attorney, shall order that the obligor apply the same in satisfaction of the arrears or that the property be levied on by execution, or both. [Formerly 23.847; 1989 c.599 §5]

25.213 Assignment of proceeds of insurance policy to secure support obligation. If by examination of the obligor under ORS 25.170, it appears that the obligor is the beneficiary and owner of an insurance policy on the life of the child, the court, upon motion of the Attorney General or a district attorney, may order that the obligor assign to the obligee the rights to as much of the proceeds of the insurance policy as necessary to secure the obligation to make support payments, if assignment is permitted in the policy. This assignment shall be in addition to any other security ordered by the court. [1997 c.54 §2]

25.220 Computer printouts of administrator; evidence of authenticity not required in support proceedings; evidentiary effect. (1) In any proceeding to establish, enforce or modify a support obligation, extrinsic evidence of authenticity is not required as a condition precedent to the admission of a computer printout of the administrator that may reflect the employment records of a parent, the support payment record of an obligor, the payment of public assistance, the amounts paid, the period during which public assistance was paid, the persons receiving or having received assistance and any other pertinent information, if the printout bears a seal purporting to be that of the administrator and is certified as a true copy by original or facsimile signature of a person purporting to be an officer or employee of the administrator. Printouts certified in accordance with this section constitute prima facie evidence of the existence of the facts stated therein.

(2) To the extent permitted under federal and state law, obligors and obligees, and their attorneys, may obtain copies of such printouts upon request made to the administrator. [Formerly 23.855; 1989 c.519 §1; 1997 c.704 §23; 1999 c.735 §19]

25.230 Court authorized to require security for support payments. Whenever a court has entered an order for the payment of support, the court may provide for such security, bond or other guarantee satisfactory to the court to secure the obligation to make support payments. [Formerly 23.865]

25.240 Order to pay support by parent with legal custody of minor. Notwithstanding any other law, where a court or the administrator has the authority under ORS chapter 107, 108, 109, 110 or 416 or ORS 419B.400 to 419B.406 or 419C.590, 419C.592 and 419C.597 to require a parent without legal custody to pay support for a minor child, then the court or administrator may require a parent with legal custody to pay support for such a child as long as that parent does not have physical custody of such child or is not providing the child with the necessities of life, including but not limited to lodging, food and clothing. [1985 c.610 §11; 1993 c.33 §368; 1995 c.608 §28; 2001 c.455 §5]

25.243 Grievance procedure; rules. In addition to any other hearing rights authorized by law, an applicant for services provided under ORS 25.080 and any party to a child support order for which services are provided under ORS 25.080 may file a grievance with the Department of Justice concerning any service provided under ORS 25.080. The department shall adopt rules establishing a process for handling grievances under this section. The process must provide that grievances not involving a public child support agency in another state be addressed no later than 90 days after the grievance is submitted to the department. [1995 c.608 §45; 2003 c.73 §23]

25.245 Rebuttable presumption of inability to pay child support when parent receiving certain assistance payments; rules. (1) Notwithstanding any other provision of Oregon law, a parent who is eligible for and receiving cash payments under ORS 412.001 to 412.069 and 418.647, the general assistance program as provided in ORS chapter 411 or a general assistance program of another state or tribe, the Oregon Supplemental Income Program or the federal Supplemental Security Income Program shall be rebuttably presumed unable to pay child support and a child support obligation does not accrue unless the presumption is rebutted.

(2) Each month, the Department of Human Services shall identify those persons receiving cash payments under the programs listed in subsection (1) of this section that are administered by the State of Oregon and provide that information to the administrator. If benefits are received from programs listed in subsection (1) of this section that are administered by other states, tribes or federal agencies, the obligor shall provide the administrator with written documentation of the benefits. The Department of Human Services shall adopt rules to implement this subsection.

(3) The administrator shall refer to the information provided in subsection (2) of this section prior to establishing any child support obligation. Within 30 days following identification of persons under subsection (2) of this section, the entity responsible for support enforcement services under ORS 25.080 shall provide notice of the presumption to the obligee and obligor and shall inform all parties to the support order that, unless a party objects as provided in subsection (4) of this section, child support shall cease accruing beginning with the support payment due on or after the date the obligor first begins receiving the cash payments and continuing through the support payment due in the last month in which the obligor received the cash payments. The entity responsible for support enforcement services shall serve the notice on the obligee in the manner provided for the service of summons in a civil action or by certified mail, return receipt requested, and shall serve the notice on the obligor by first class mail to the obligor's last-known address. The notice shall specify the month in which cash payments are first made and shall contain a statement that the administrator represents the state and that low cost legal counsel may be available.

(4) A party may object to the presumption by sending an objection to the entity responsible for support enforcement services under ORS 25.080 within 20 days after the date of service of the notice. The objection must describe the resources of the obligor or other evidence that might rebut the presumption of inability to pay child support. The entity receiving the objection shall cause the case to be set for a hearing before a court or an administrative law judge. The court or administrative law judge may consider only whether the presumption has been rebutted.

(5) If no objection is made, or if the court or administrative law judge finds that the presumption has not been rebutted, the Department of Justice shall discontinue billing the obligor for the period of time described in subsection (3) of this section and no arrearage shall accrue for the period during which the obligor is not billed. In addition, the entity providing support enforcement services shall file with the circuit court in which the support order or judgment has been entered a copy of the notice described in subsection (3) of this section or, if an ob-

jection is made and the presumption is not rebutted, a copy of the administrative law judge's order.

(6)(a) Within 30 days after the date the obligor ceases receiving cash payments under a program listed in subsection (1) of this section, the Department of Justice shall provide notice to all parties to the support order:

(A) Specifying the last month in which a cash payment was made;

(B) Stating that the payment of those benefits has terminated and that by operation of law billing and accrual of support resumes; and

(C) Informing the parties of their rights to request a review and modification of the support order based on a substantial change in circumstance or pursuant to ORS 25.287 or any other provision of law.

(b) The notice shall include a statement that the administrator represents the state and that low cost legal counsel may be available.

(c) The entity providing enforcement services shall file a copy of the notice required by paragraph (a) of this subsection with the circuit court in which the support order or judgment has been entered.

(7) Receipt by a child support obligor of cash payments under any of the programs listed in subsection (1) of this section shall be sufficient cause for a court or administrative law judge to allow a credit and satisfaction against child support arrearage for months that the obligor received the cash payments.

(8) The notice and finding of financial responsibility required by ORS 416.415 shall include notice of the presumption, nonaccrual and arrearage credit rights provided for in this section.

(9) The presumption, nonaccrual and arrearage credit rights created by this section shall apply whether or not child support enforcement services are being provided under Title IV-D of the Social Security Act.

(10) Application of the presumption, nonaccrual and arrearage credit rights created by this section does not constitute a modification but does not limit the right of any party to seek a modification of a support order based upon a change of circumstances or pursuant to ORS 25.287 or any other provision of law. In determining whether a change in circumstances has occurred or whether three years have elapsed, or such shorter cycle as determined by rule of the Department of Justice, since entry of a support order, the court or administrative law judge may not consider any action taken under this section as entry of a support order. The presumption stated in subsection (1) of this section applies in any modification proceeding. [1991 c.520 §3; 1993 c.799 §1; 1997 c.704 §24; 2001 c.104 §5; 2001 c.455 §6; 2003 c.75 §73; 2003 c.576 §299; 2007 c.861 §11; 2007 c.878 §3]

25.250 [1987 c.427 §1; repealed by 1993 c.798 §21]

25.255 [1989 c.812 §2; 1991 c.67 §4; 1991 c.519 §2; 1993 c.33 §286; 1993 c.800 §1; 1995 c.506 §§12,12a; 1999 c.80 §10; 2003 c.73 §24a; 2003 c.75 §74; repealed by 2003 c.637 §14]

25.260 Confidentiality of records; rules. (1) As used in this section, "Child Support Program" means:

(a) The program described in ORS 180.345;

(b) The Administrator of the Division of Child Support of the Department of Justice;

(c) A district attorney; and

(d) The administrator's or district attorney's authorized representative.

(2) Unless otherwise authorized by law, child support records, including data contained in the Child Support Program's automated system, are confidential and may be disclosed or used only as necessary for the administration of the program.

(3) In administering the Child Support Program, the program may:

(a) In accordance with rules adopted under subsection (7) of this section, report abuse as defined in ORS 419B.005 if the abuse is discovered while providing program services.

(b) Extract and receive information from other databases as necessary to carry out the program's responsibilities under state and federal law.

(4) The Child Support Program may compare and share information with public and private entities as necessary to perform the program's responsibilities under state and federal law.

(5) The Child Support Program may exchange information with state agencies administering programs funded under Title XIX and Part A of Title IV of the Social Security Act as necessary for the Child Support Program and the state agencies to perform their responsibilities under state and federal law.

(6) In addition to any penalty to which an individual may be subject under ORS 25.990, an employee of the Department of Justice, of a district attorney or of the Department of Human Services who discloses or uses the contents of any records in violation of subsection (2) of this section is subject to discipline, up to and including dismissal from employment.

(7) The Department of Justice shall adopt rules consistent with federal regulations governing confidentiality of Child Support

Program information. [1989 c.812 §3(1); 1991 c.758 §2; 1995 c.609 §7; 1999 c.80 §72; 2003 c.450 §1; 2005 c.22 §16]

25.265 Access to information in Federal Parent Locator Service; rules. The Department of Justice shall adopt rules establishing a procedure by which a person authorized under federal law may access information in the Federal Parent Locator Service. [1997 c.746 §22a; 2003 c.73 §25]

Note: 25.265 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 25 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

FORMULA FOR DETERMINING AMOUNT OF CHILD SUPPORT

25.270 Legislative findings. The Legislative Assembly finds that:

(1) The federal Family Support Act of 1988 mandates that the state must establish a formula for child support award amounts that is applicable in any judicial or administrative proceeding for the award of child support.

(2) It is further mandated that the amount of child support determined by the formula must be presumed to be the correct amount unless rebutted by a specific finding on the record that the application of the formula would be unjust or inappropriate in the particular case as determined under criteria established by the state.

(3) It is also mandated that the formula is to be reviewed at least once every four years to insure that the application of the formula results in appropriate child support awards.

(4) There is a need for uniformity in child support awards, and child support awards often are based upon noneconomic factors and are inadequate in terms of the needs of the child.

(5) The Division of Child Support of the Department of Justice is the appropriate agency to establish the required formula. [1989 c.811 §2]

25.275 Formula for determining child support awards; criteria to be considered; mandated standards; reduction; rules. (1) The Division of Child Support of the Department of Justice shall establish by rule a formula for determining child support awards in any judicial or administrative proceeding. In establishing the formula, the division shall take into consideration the following criteria:

(a) All earnings, income and resources of each parent, including real and personal property;

(b) The earnings history and potential of each parent;

(c) The reasonable necessities of each parent;

(d) The ability of each parent to borrow;

(e) The educational, physical and emotional needs of the child for whom the support is sought;

(f) The amount of assistance that would be paid to the child under the full standard of need of the state's IV-A plan;

(g) Preexisting support orders and current dependents; and

(h) Other reasonable criteria that the division may find to be appropriate.

(2) The formula described in subsection (1) of this section must also comply with the following standards:

(a) The child is entitled to benefit from the income of both parents to the same extent that the child would have benefited had the family unit remained intact or if there had been an intact family unit consisting of both parents and the child.

(b) Both parents should share in the costs of supporting the child in the same proportion as each parent's income bears to the combined income of both parents.

(3) The formula described in subsection (1) of this section must be designed to ensure, as a minimum, that the child for whom support is sought benefits from the income and resources of the absent parent on an equitable basis in comparison with any other minor children of the absent parent.

(4) The child support obligation to be paid by the obligor and determined under the formula described in subsection (1) of this section:

(a) May be reduced or increased in consideration of the costs of a health benefit plan incurred by the obligor or obligee, as provided in ORS 25.321 to 25.343.

(b) May be reduced dollar for dollar in consideration of any Social Security or apportioned Veterans' benefits paid to the child, or to a representative payee administering the funds for the child's use and benefit, as a result of the obligor's disability or retirement.

(c) Shall be reduced dollar for dollar in consideration of any Survivors' and Dependents' Educational Assistance under 38 U.S.C. chapter 35 paid to the child, or to a representative payee administering the funds for the child's use and benefit, as a result of the obligor's disability or retirement. [1989 c.811 §3; 1993 c.800 §2; 1999 c.1030 §1; 2003 c.73 §26a; 2003 c.75 §75; 2003 c.572 §6; 2003 c.637 §15]

25.280 Formula amount presumed correct; rebuttal of presumption; criteria. In any judicial or administrative proceeding for the establishment or modification of a child support obligation under ORS chapter 107, 108, 109, 110 or 416 or ORS 419B.400, 419B.923, 419C.590 or 419C.610, the amount of support determined by the formula established under ORS 25.275 is presumed to be the correct amount of the obligation. This is a rebuttable presumption and a written finding or a specific finding on the record that the application of the formula would be unjust or inappropriate in a particular case is sufficient to rebut the presumption. The following criteria shall be considered in making the finding:

(1) Evidence of the other available resources of a parent;

(2) The reasonable necessities of a parent;

(3) The net income of a parent remaining after withholdings required by law or as a condition of employment;

(4) A parent's ability to borrow;

(5) The number and needs of other dependents of a parent;

(6) The special hardships of a parent including, but not limited to, any medical circumstances of a parent affecting the parent's ability to pay child support;

(7) The needs of the child;

(8) The desirability of the custodial parent remaining in the home as a full-time parent and homemaker;

(9) The tax consequences, if any, to both parents resulting from spousal support awarded and determination of which parent will name the child as a dependent; and

(10) The financial advantage afforded a parent's household by the income of a spouse or another person with whom the parent lives in a relationship similar to husband and wife. [1989 c.811 §4; 1993 c.33 §287; 1993 c.354 §1; 1995 c.608 §30; 2001 c.622 §42; 2007 c.71 §8; 2007 c.356 §3]

25.285 [1989 c.811 §5; repealed by 1991 c.519 §8 (25.287 enacted in lieu of 25.285 in 1993)]

25.287 Proceedings to modify orders to comply with formula; when proceeding may be initiated; issues considered. (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 25.275.

(b) Proceedings under this subsection may occur only after three years have elapsed, or such shorter cycle as determined by rule of the Department of Justice, 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 three years have elapsed, or such shorter cycle as determined by rule of the department, and whether the support obligation is in substantial compliance with the formula established under ORS 25.275.

(e) Upon review, if the administrator determines that a support obligation does not qualify for modification under this section, a party may object to the determination within 30 days after the date of the determination. A hearing on the objection shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings. 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 three years have elapsed, or such shorter cycle as determined by rule of the department, 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 25.275, 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 this chapter or ORS chapter 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 416.465, 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 three years have elapsed, or such shorter cycle as determined by rule of the department.

(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. [1991 c.519 §3; 1993 c.33 §369; 1993 c.596 §7 (enacted in lieu of 25.285 in 1993); 1995 c.608 §31; 1999 c.80 §64; 1999 c.735 §1; 2001 c.455 §§7,8; 2003 c.75 §24; 2003 c.116 §§1,2; 2003 c.576 §§183,184; 2005 c.560 §4; 2007 c.71 §9; 2007 c.878 §4]

25.290 Determining disposable income of obligor; offsets; rules. (1) In determining the disposable income of an obligor, the obligor may claim offsets against gross receipts for ordinary and necessary business expenses and taxes directly related to the income withheld. The obligor has the burden of proof and must furnish documentation to support any offsets claimed.

(2) The Department of Justice may adopt rules governing the determination of the income subject to withholding that remains after application of offsets. Withholding actions in a case that is not receiving support enforcement services under ORS 25.080 may be appealed to the circuit court. [1995 c.608 §1b; 2003 c.73 §27]

25.310 [1985 c.671 §4; 1989 c.812 §4; 1991 c.362 §2; repealed by 1993 c.798 §21]

25.311 [1993 c.798 §5; 1995 c.608 §32; 1999 c.80 §2; 1999 c.735 §8; 1999 c.849 §§38,39; renumbered 25.378 in 1999]

25.313 [1993 c.798 §3; renumbered 25.393 in 1999]

25.314 [1993 c.798 §6; 1995 c.272 §6; 1997 c.704 §26; 1999 c.80 §3; renumbered 25.402 in 1999]

25.315 [1993 c.798 §7; 1999 c.80 §4; renumbered 25.399 in 1999]

25.316 [1993 c.798 §8; 1999 c.80 §5; 1999 c.735 §12; renumbered 25.405 in 1999]

25.317 [1993 c.798 §9; 1999 c.735 §11; renumbered 25.396 in 1999]

25.318 [1993 c.798 §10; renumbered 25.390 in 1999]

25.320 [1985 c.671 §5; 1997 c.704 §27; renumbered 25.164 in 1999]

HEALTH CARE COVERAGE

25.321 Definitions for ORS 25.321 to 25.343. As used in ORS 25.321 to 25.343:

(1) "Accessible" means that, unless otherwise provided in a support order:

(a) A health benefit plan does not have service area limitations or the health benefit plan provides an option not subject to service area limitations;

(b) A health benefit plan has service area limitations and the child lives within 30 miles or 30 minutes of a primary care provider under the plan; or

(c) A health benefit plan is accessible as defined in rules of the Department of Justice.

(2) "Enforcing agency" means the administrator.

(3) "Enroll" means to be eligible for and covered by a health benefit plan.

(4) "Health benefit plan" means any policy or contract of insurance, indemnity, subscription or membership issued by an insurer, including health care coverage provided by a public entity, and any self-insured employee benefit plan that provides coverage for medical expenses.

(5)(a) "Health care coverage" means providing and paying for the medical needs of a child through a health benefit plan.

(b) "Health care coverage" does not include and is a separate obligation from any monetary amount of child support or spousal support ordered to be paid.

(6) "Medical support" means an amount ordered to be paid toward the cost of:

(a) Health care coverage, including premiums, provided by a public entity or by another parent through employment or otherwise; and

(b) Copayments, deductibles and other medical expenses not covered by a health benefit plan.

(7) "Medical support notice" means a notice as prescribed under 42 U.S.C. 666(a)(19)

or a substantially similar notice that is issued and forwarded by the enforcing agency to enforce health care coverage provisions of a support order.

(8) "Plan administrator" means:

(a) The employer, union or other provider that offers a health benefit plan; or

(b) The person to whom, under a written agreement of the parties, the duty of plan administrator is delegated by the employer, union or other provider that offers a health benefit plan.

(9) "Primary care provider" means a physician who provides primary care and is a family or general practitioner, pediatrician, internist, obstetrician, or gynecologist.

(10) "Providing party" means a party to a child support order who has been ordered by the court or the enforcing agency to provide health care coverage for a child or to provide such coverage when it becomes available to the party.

(11) "Satisfactory health care coverage" means coverage provided under a health benefit plan that, at a minimum, includes medical and hospital coverage, provides for preventive, emergency, acute and chronic care and imposes reasonable deductibles and copayments. [2003 c.637 §2; 2007 c.878 §5]

25.323 Health care coverage; rules. (1) Except as provided in this section, whenever a child support order is entered or modified under this chapter, ORS chapter 107, 108, 109, 110 or ORS 416.400 to 416.465, 419B.400 or 419C.590, the court or the enforcing agency shall order one or both parties to provide satisfactory health care coverage that is reasonable in cost and accessible to the child. An order for health care coverage under this subsection may include health care coverage provided by a public entity.

(2) In addition to ordering health care coverage under subsection (1) of this section, the court or enforcing agency may order one or both parties to pay medical support for the child. Medical support ordered under this subsection must be reasonable in cost.

(3) If the court or the enforcing agency finds that the parties cannot provide satisfactory health care coverage because satisfactory health care coverage that is reasonable in cost and accessible to the child is not available at the time the child support order is entered, the court or the enforcing agency:

(a) Shall order one or both parties to provide satisfactory health care coverage that is reasonable in cost and accessible to the child when the coverage becomes available; and

(b) May order that, until the court or enforcing agency determines that satisfactory health care coverage that is reasonable in cost and accessible to the child is available and modifies the order, one or both parties pay medical support that is reasonable in cost. The court or enforcing agency shall make written findings on whether to order the payment of medical support under this paragraph.

(4) The cost of any amount ordered to provide satisfactory health care coverage and medical support under this section must be included in the child support calculation made under ORS 25.275.

(5) The court or enforcing agency may not order a party to pay medical support under this section if the party is eligible to receive medical assistance under ORS 414.032, or has a dependent child in the household who is eligible to receive medical assistance under ORS 414.032.

(6) The Department of Justice shall adopt rules for determining the reasonableness of the cost of satisfactory health care coverage and of medical support for the purposes of this section, and for determining how the costs of providing health care coverage and medical support affect the total support obligation for a child under ORS 25.275. [2003 c.637 §3; 2007 c.878 §6]

25.325 Enforcing health care coverage. (1) When a child support order requires a party to provide health care coverage for a child under a health benefit plan:

(a) The court or the enforcing agency may issue a qualified medical child support order as provided in section 609 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1169) directing the providing party's employer or plan administrator to enroll the providing party's child in a health benefit plan and directing the providing party's employer to withhold any required premium from the providing party's compensation.

(b) If support enforcement services are being provided under ORS 25.080, the enforcing agency shall, when appropriate:

(A) Issue a medical support notice in accordance with rules adopted by the Department of Justice.

(B) Issue a medical support notice to the providing party's employer within two business days of receiving information under ORS 25.790 that the employer has hired or rehired the providing party.

(2) If an order to provide health care coverage is in effect or is being sought:

(a) The providing party's employer or plan administrator shall release to the en-

forcing agency, upon request, the name and address of the insurer and any plan administrator; and

(b) The plan administrator shall release to the obligee or the enforcing agency, upon request, information about dependent health care coverage under the health benefit plan.

(3) If a qualified medical child support order or a medical support notice has been served on the providing party's employer, the order or notice is binding on the employer and the plan administrator to the extent that the child is eligible to be enrolled in the health benefit plan under the applicable terms and conditions of the plan and the standard enrollment guidelines as described in ORS 743.847. Enrollment of the child shall be allowed at any time, notwithstanding any enrollment season restrictions. [2003 c.637 §4; 2007 c.878 §7]

25.327 Service of medical support notice. (1) The enforcing agency shall serve the medical support notice on the providing party's employer as a withholder. The notice may be served upon the withholder or the withholder's registered agent, corporate officer, bookkeeper, accountant, person responsible for payroll or local office manager by:

(a) Personal service;

(b) Any type of mail that is calculated to give actual notice and is addressed to one of the persons listed in this subsection; or

(c) Electronic means if the employer has the ability to receive the medical support notice in that manner.

(2) Service of a medical support notice constitutes receipt of a medical child support order.

(3) The enforcing agency shall, as provided in ORS 25.333, notify the parties that the medical support notice has been served on the providing party's employer. [2003 c.637 §5; 2007 c.878 §8]

25.329 Actions required after service of medical support notice; rules. When the enforcing agency serves a medical support notice on an employer:

(1) The employer shall comply with the provisions in the medical support notice;

(2) The plan administrator and the employer shall treat the medical support notice as an application by the enforcing agency for health care coverage for the named child under the health benefit plan to the extent an application is required by the plan;

(3) If the providing party named in the medical support notice is not an employee of the employer, or if a health benefit plan is not offered or available to the providing party, the employer shall notify the enforcing agency within 20 business days after the date of the medical support notice;

(4) If a health benefit plan is offered or available to the providing party, the employer shall send the plan administrator's portion of the notice to each appropriate plan administrator within 20 business days after the date of the medical support notice;

(5) Within 40 business days after the date of the medical support notice, the plan administrator shall do all of the following as directed by the notice:

(a) Complete the appropriate portion of the notice and return the portion to the enforcing agency;

(b) If the child is or will be enrolled, notify the parties and furnish the obligee with the information necessary to effectuate coverage and submit claims for benefits;

(c) If the child has been or will be enrolled, provide the enforcing agency with the type of health benefit plan under which the child has been or will be enrolled, including whether dental, optical, office visits and prescription drugs are covered services;

(d) If more than one health benefit plan is available to the providing party and the providing party is not enrolled, forward the health benefit plan descriptions and documents to the enforcing agency;

(e) If the providing party is subject to a waiting period that expires more than 90 days after the date of receipt of the medical support notice by the plan administrator or if the providing party has not completed a waiting period that is measured in a manner other than the passage of time, notify the employer, the enforcing agency and the parties; and

(f) Upon completion of the enrollment, notify the employer of the enrollment;

(6) If the plan administrator notifies the employer that the providing party is subject to a waiting period that expires more than 90 days after the date of receipt of the medical support notice by the plan administrator or that the providing party is subject to a waiting period that is measured in a manner other than the passage of time, the employer shall, when the providing party becomes eligible to enroll in the plan, notify the plan administrator that the medical support notice requires that the child named in the notice be enrolled in the plan; and

(7) The plan administrator shall enroll the child and, if necessary to the enrollment of the child, enroll the providing party in the plan as provided by rules adopted by the Department of Justice. [2003 c.637 §6; 2007 c.878 §9]

25.330 [1985 c.671 §6; 1991 c.588 §1; 1995 c.609 §5; 1997 c.704 §28; renumbered 25.167 in 1999]

25.331 Obligation to withhold. (1) Upon notification from the plan administrator that the child is enrolled in the health benefit plan, the employer shall withhold from the providing party's compensation the providing party's share, if any, of premiums for the health benefit plan. The employer shall forward the amount withheld as required by the health benefit plan.

(2) The withholding required by a qualified medical child support order or a medical support notice is a continuing obligation. The qualified medical child support order or medical support notice and the withholding remain in effect and are binding upon the employer until further notice from the court or the enforcing agency.

(3)(a) An amount withheld by an employer in compliance with a withholding order issued for monetary support and a qualified medical child support order or medical support notice may not exceed 50 percent of the providing party's net disposable income.

(b) Notwithstanding paragraph (a) of this subsection, upon the motion of a party and after a hearing, the court may order the withholding of more than 50 percent of the providing party's net disposable income. However, the amount withheld may not exceed the amount allowed under section 303(b) of the federal Consumer Credit Protection Act (15 U.S.C. 1673(b)).

(4) If a providing party's compensation drops to a level at which withholding under this section exceeds the amount allowed under subsection (3) of this section, the employer shall stop the withholding and send the court or the enforcing agency, as the case may be, a written notice within 15 days of stopping the withholding. The notice shall include the providing party's name, address and Social Security number and the date the employer stopped withholding under this section.

(5) An employer is not subject to civil liability to an individual or agency for conduct or actions in compliance with a medical support notice if the employer:

(a) Is served with a medical support notice under ORS 25.327 that is regular on its face; and

(b) Complies with the provisions of the medical support notice if the notice appears to be in conformance with section 609 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1169). [2003 c.637 §7; 2007 c.878 §10]

25.333 Contesting medical support notice. (1) When the enforcing agency issues a medical support notice under ORS 25.325, the enforcing agency shall notify the parties by regular mail to the last known addresses of the parties:

(a) That the notice has been sent to the providing party's employer; and

(b) Of the providing party's rights and duties under the notice.

(2) A providing party may contest a medical support notice within 14 days after the date the premium is first withheld pursuant to the notice or, if the health benefit plan is provided at no cost to the providing party, the date the first premium is paid by the employer.

(3) The only basis for contesting a medical support notice is a mistake of fact. A "mistake of fact" means any of the following:

(a) No order to provide health care coverage under a health benefit plan has been issued in regard to the providing party's child;

(b) The amount to be withheld for premiums is greater than is permissible under ORS 25.331; or

(c) The alleged providing party is not the party from whom health care coverage is required.

(4) The providing party may contest the medical support notice by requesting an administrative review. After receiving a request for review and within 45 days after the date the premium is first withheld pursuant to the medical support notice, the enforcing agency shall determine, based on an evaluation of the facts, whether the withholding for premiums may continue. The enforcing agency shall inform the parties of the determination in writing and include information regarding the right to appeal the determination.

(5) Any appeal of the enforcing agency's determination under subsection (4) of this section is to the circuit court for a hearing under ORS 183.484.

(6) The initiation of proceedings to contest a medical support notice or an appeal of the enforcing agency's determination under this section does not stay the withholding of premiums. [2003 c.637 §8; 2007 c.878 §11]

25.335 Termination of support order. When support enforcement services are being provided under ORS 25.080, the enforcing agency shall notify the employer when there is no longer in effect a support order requiring health care coverage for which the enforcing agency is responsible. However, termination of the health care coverage is governed by the health benefit plan's provisions for termination and by applicable federal law. [2003 c.637 §9]

25.337 Liability. (1) If the plan administrator or the employer fails to comply with the requirements described in ORS 25.329 or 25.331, the enforcing agency or obligee may bring a civil action against the plan administrator or employer for medical expenses, the providing party's share of the premiums, attorney fees and costs.

(2) An employer commits an unlawful employment practice if the employer discharges a providing party, refuses to hire a providing party or in any other manner discriminates, retaliates or takes disciplinary action against a providing party because of the entry of a medical support notice or qualified medical child support order or because of the obligations imposed upon the plan administrator by the order. An employee may bring a civil action under ORS 659A.885 or may file a complaint with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS 659A.820.

(3) A providing party who fails to maintain health care coverage for a child as ordered is liable, from the date of the order, for any medical expenses resulting from the failure to maintain coverage.

(4) The remedies described in this section are not exclusive. Nothing in this section precludes action by the court to enforce a judicial or administrative order requiring health care coverage or payment of medical support by imposition of remedial or punitive sanctions for contempt or otherwise. [2003 c.637 §10; 2007 c.878 §12]

25.339 Priority of medical support notice. A medical support notice issued under ORS 25.325 has priority over any previously filed attachment, execution, garnishment or assignment of income other than a withholding order issued for monetary support, unless otherwise requested by the obligee. [2003 c.637 §11]

25.340 [1985 c.671 §7; 1993 c.798 §35; renumbered 25.381 in 1999]

25.341 Notice of termination of employer's relationship with providing party. When an employer is unable to continue withholding from a providing party's compensation because the relationship between the employer and the providing party ends, the employer shall send the enforcing agency a written notice within 15 days of the termination of the relationship. The notice must include the providing party's name, the providing party's last known address, the providing party's Social Security number, the date the relationship terminated and, if known, the name and address of a new employer of or other provider of a health benefit plan to the providing party. [2003 c.637 §12; 2007 c.878 §13]

25.343 Authorization for reimbursement payments. The signature of the obligee or guardian of a child covered by a health benefit plan is a valid authorization for purposes of processing an insurance reimbursement payment to the provider of the health services as provided in ORS 743.847. [2003 c.637 §13]

25.350 [Formerly 23.783; repealed by 1993 c.798 §21]

25.351 [1993 c.798 §12; 1995 c.272 §1; 1997 c.704 §29; 1999 c.80 §6; renumbered 25.414 in 1999]

25.353 [1993 c.798 §14; 1995 c.272 §7; 1997 c.704 §30; 1999 c.80 §7; renumbered 25.417 in 1999]

25.354 [1995 c.272 §4; 1999 c.735 §15; renumbered 25.387 in 1999]

25.355 [1993 c.798 §15; 1997 c.704 §31; 1999 c.80 §8; renumbered 25.411 in 1999]

25.357 [1993 c.798 §16; renumbered 25.421 in 1999]

25.359 [1993 c.798 §17; renumbered 25.408 in 1999]

25.360 [Formerly 23.778; repealed by 1993 c.798 §21]

25.361 [1993 c.798 §18; repealed by 1999 c.735 §23]

25.363 [1993 c.798 §19; 1999 c.80 §9; renumbered 25.424 in 1999]

25.365 [1993 c.798 §20; renumbered 25.427 in 1999]

25.367 [1993 c.798 §2; 1995 c.608 §33; 1999 c.130 §3; renumbered 25.372 in 1999]

25.370 [1985 c.671 §8; 1989 c.812 §5; 1993 c.798 §26; 1997 c.704 §32; renumbered 25.384 in 1999]

INCOME WITHHOLDING AND PAYMENT RECORDS

25.372 Applicability. ORS 25.372 to 25.427 apply to current support, arrears and interest on arrears, independently or combined, whether arrears are owed to an obligee, the state or a foreign jurisdiction. [Formerly 25.367; 2001 c.249 §73; 2003 c.73 §28; 2003 c.572 §7]

25.375 Priority of withholding. Except as provided in ORS 25.339, withholding under ORS 25.378 has priority over any other legal process under Oregon law against the same income. [Formerly 25.722; 2003 c.637 §16]

25.378 Payment of support by income withholding; initiation of income withholding. (1) Except as otherwise provided in ORS 25.396, when a support order is entered or modified by the Division of Child Support, a district attorney, an administrative law judge or a circuit court, including a juvenile court, the order shall include a provision requiring the obligor to pay support by income withholding regardless of whether support enforcement services are being provided under ORS 25.080. In addition to the income withholding provided for in this subsection, income withholding may be initiated in accordance with subsections (2) to (6) of this section.

(2) When an obligor is subject to a support order issued or registered in this state and fails to make payments at least equal to the amount of support payable for one

month, a court or the administrator, whichever is appropriate, shall initiate income withholding without the need for a judicial or administrative hearing and without the need for advance notice to the obligor of the withholding.

(3) When an arrearage exists and notice of the delinquent amount has been given to the obligor, a court, upon application, shall issue a withholding order upon the ex parte request of a person holding support rights or the administrator.

(4) If an obligor is not otherwise subject to income withholding a court or the administrator may issue an order to withhold upon the ex parte motion of the obligor.

(5)(a) Upon the request of the holder of support rights, a court or the administrator, as appropriate, may issue a withholding order at any time if:

(A) The obligor is not otherwise subject to withholding; and

(B) After notice and an opportunity to object has been given to the obligor, a finding is made that it would be in the best interests of the child to issue a withholding order.

(b) If the obligor has been granted an exception to withholding under ORS 25.396 by a court, the holder of support rights must apply for withholding under this subsection by motion to the court.

(6) A court or the administrator shall issue an order to withhold when a support order or an arrearage from another jurisdiction is entered in Oregon in accordance with interstate income withholding under ORS chapter 110. [Formerly 25.311; 2001 c.104 §§6,7; 2003 c.73 §§29,30; 2003 c.75 §25]

25.381 Establishing income withholding as method of paying support; records. (1) Whenever services are being provided under ORS 25.080, support rights are not and have not at any time during the past five months been assigned to this or another state, and no arrearages under a support order are so assigned, the administrator shall provide, upon request of an obligor or obligee, services sufficient to permit establishment of income withholding under ORS 25.378, including services necessary to establish a support payment record under ORS 25.164 and 25.167.

(2) Regardless of whether services are being provided under ORS 25.080, the administrator shall provide, upon request of an obligor or obligee, services sufficient to permit establishment of income withholding under ORS 25.378:

(a) For the payment of child support without the necessity of an application for support enforcement services under Title IV-D of the Social Security Act (42 U.S.C. 651 et seq.); and

(b) For the payment of spousal support if the obligee is receiving food stamps or any other form of public assistance, as defined in ORS 411.010, from the Department of Human Services. [Formerly 25.340; 2001 c.900 §8; 2003 c.73 §31; 2005 c.265 §1]

25.384 Statement on withholding in support order. (1) Any child support order issued or modified after October 1, 1989, shall include a statement in substantially the following form:

NOTICE OF INCOME WITHHOLDING

The support order is enforceable by income withholding under ORS 25.372 to 25.427. Withholding shall occur immediately, whenever there are arrears at least equal to the support payment for one month, whenever the obligated parent requests such withholding or whenever the obligee requests withholding for good cause. The district attorney or, as appropriate, the Division of Child Support of the Department of Justice will assist in securing such withholding. Exceptions may apply in some circumstances.

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(2) The Department of Justice shall provide annual notice to each obligor and obligee on support orders being enforced by the district attorney or Division of Child Support of the availability of and requirements for exceptions to withholding. [Formerly 25.370]

25.387 Withholding more than amount authorized by law. Notwithstanding ORS 25.414 and 656.234, the court upon motion of a party holding the support rights, the Division of Child Support or the district attorney, and after a hearing, may order the withholding of more than the amount otherwise authorized by law. In no case may an order require payment of an amount that exceeds the limits imposed by the Consumer Credit Protection Act (15 U.S.C. 1673(b)). [Formerly 25.354]

25.390 Amendment of support order not required for withholding. Disposable income is subject to an order to withhold to satisfy a support obligation without the need for any amendment to the support order involved or for any further action, other than those actions required or permitted under ORS 25.378. [Formerly 25.318]

25.393 Remedy additional to other remedies. Collection of support by withholding income pursuant to ORS chapter 25 is in addition to any other remedy provided

by law for the enforcement of support. [Formerly 25.313]

25.396 Exception to withholding; termination of withholding; rules. (1) When a court or the administrator enters or modifies a support order, the court or administrator may grant an exception to income withholding required under ORS 25.378 if the court or administrator makes a written finding that there is good cause not to require income withholding. Good cause exists when there is proof of timely payment of previously ordered support and when initiating or continuing income withholding would not be in the best interests of the child.

(2) The court or administrator may grant an exception to income withholding required under ORS 25.378 if:

(a) The obligor and obligee at any time agree in writing to an alternative payment method;

(b) When money is owed to the state under the support order, the state agrees in writing to the alternative payment method;

(c) The obligor has paid in full all arrears accrued under the support order;

(d) The obligor has complied with the terms of any previous exception granted under this section; and

(e) The court or administrator accepts the alternative payment method.

(3) Notwithstanding subsection (1) of this section, when child support is currently assigned to the state and the child is in the custody of the Oregon Youth Authority or the Department of Human Services, the state or the obligor may request and the court or administrator may grant an exception from income withholding if:

(a) The order to withhold is a barrier to reunification of the family or rehabilitation of the youth or is prejudicial to the obligor's ability to provide for another child to whom a duty of support is owed; and

(b) The state and the obligor agree in writing to an alternative payment method.

(4) Exceptions to income withholding described in this section may be granted by the administrator or the court, except that when support enforcement services are being provided under ORS 25.080 the only permissible alternative payment methods are an electronic funds transfer to the Department of Justice or another method permitted under rules adopted under this section.

(5) A party may appeal the administrator's decision granting or denying an exception under this section to the circuit court in accordance with ORS 183.484.

(6) Income withholding may be terminated only if the conditions set forth in this section are met.

(7) The Department of Justice shall adopt rules and establish procedures to implement this section. [Formerly 25.317; 2001 c.171 §1; 2003 c.73 §32; 2003 c.572 §8]

25.399 Notice of order to withhold; contents of notice. (1) When an order to withhold is issued under ORS 25.378, the party or entity initiating the action shall send notice of the order to withhold to the obligor and the obligee by regular mail to the last-known addresses of the obligor and obligee. The notice shall state:

(a) That withholding has commenced;

(b) The amount to be withheld and the amount of arrears, if any;

(c) That the order to withhold applies to any current or subsequent withholder or period of employment;

(d) The procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact, which means an error in the amount of current support or arrearages, or an error in the identity of the obligor;

(e) The availability of and requirements for exceptions to withholding;

(f) That the obligor has 14 days from the date that the income is first withheld pursuant to the order to withhold to contest the withholding; and

(g) The actions that will be taken if the obligor contests the withholding.

(2) The notice requirement of subsection (1) of this section may be met by mailing a copy of the order to withhold, by regular mail, to the obligor and to the obligee. [Formerly 25.315]

25.402 Service of order on withholder; contents. (1)(a) The party initiating the support action shall serve the order to withhold on the withholder. The order may be personally served upon the withholder or the withholder's registered agent, an officer of the corporation, bookkeeper, accountant, person responsible for payroll or local office manager or may be served by any type of mail which is calculated to give actual notice and is addressed to one of the persons listed above.

(b) Notwithstanding paragraph (a) of this subsection and unless the Department of Justice, prior to initiating service, receives written notice of completion of service by another party, the department shall serve the order to withhold in all cases affecting a support order for which the department or the district attorney has responsibility under ORS 25.080 for providing support enforce-

ment services regardless of whether the department or another party initiated the support action.

(2) The order to withhold shall inform the withholder of all of the following:

(a) The amount of the obligor's continuing support obligation.

(b) That the withholder is required to withhold from the obligor's disposable income due or becoming due to the obligor at each pay period an amount as determined by ORS 25.414.

(c) The appropriate person to whom to make the withholding payment.

(d) The information contained in ORS 25.375, 25.387, 25.411, 25.414, 25.417, 25.421 and 25.424. [Formerly 25.314]

25.405 Contesting order to withhold; basis. (1) An obligor contesting an order to withhold issued under ORS 25.378 must do so within 14 days from the date income is first withheld pursuant to the order to withhold. The obligor may not contest an order to withhold issued under ORS 25.378 (5).

(2) The only basis for contesting the order to withhold is a mistake of fact. "Mistake of fact" means an error in the amount of current support or arrearages, or an error in the identity of the obligor. Payment of all arrearages shall not be the sole basis for not implementing withholding.

(3) If the order to withhold was issued by a court of this state, the obligor must contest the order to withhold in the court that issued the order.

(4) If the order to withhold was issued by a court or administrative agency of another state and was received directly by an employer in this state under ORS 110.394, the obligor may contest the order to withhold by:

(a) Seeking relief from enforcement of the order in the appropriate tribunal of the state that issued the order; or

(b) Registering the underlying withholding order in Oregon and seeking relief from enforcement of the order in an Oregon circuit court.

(5) If the order to withhold was issued pursuant to a request for enforcement under ORS 25.080, the obligor may contest the order to withhold to the district attorney or the Division of Child Support. The district attorney or the Division of Child Support need not provide an opportunity for a contested case administrative hearing under ORS chapter 183 or a hearing in circuit court. Within 45 days after the date income is first withheld pursuant to the order to withhold, the district attorney or the Division of Child Support shall determine, based on an evaluation of the facts, if the withholding shall continue and notify the obligor of the determination and of the obligor's right to appeal the determination.

(6) Any appeal of the decision of the district attorney or the Division of Child Support made under subsection (5) of this section is to the circuit court for a hearing under ORS 183.484.

(7) The initiation of proceedings to contest an order to withhold under subsection (4) of this section, a motion or request to contest an order to withhold or an appeal of the decision of the district attorney or the Division of Child Support made under subsection (5) of this section does not act to stay withholding unless otherwise ordered by a court. [Formerly 25.316]

25.408 Withholding is continuing obligation. The withholding required by the order is a continuing obligation. The notice and the withholding required by the order remain in effect and are binding upon the withholder until further notice from the court or the entity issuing the notice. [Formerly 25.359]

25.410 [1985 c.671 §13a; 1993 c.798 §27; 1993 c.800 §3; repealed by 1995 c.608 §46]

25.411 When withholding begins; payment to Department of Justice or obligee. (1) The withholder shall start withholding not later than the first pay period occurring five days after the date of the order to withhold. However, if on the date the employer receives the order the employer has already calculated the payroll for that pay period and has prepared the paycheck or submitted a deposit for that payroll, the employer shall start withholding no later than the second pay period occurring after the date of the order to withhold.

(2) Within seven business days after the date the obligor receives income, the withholder shall pay amounts withheld to the Department of Justice or to the obligee by deposit into the obligee's bank account, whichever is specified in the order to withhold. The withholder shall include, with the payment, the obligor's name and case number and the date upon which the income was withheld.

(3) When payments are made to the Department of Justice, the withholder may combine amounts withheld from different obligors' incomes in a single payment as long as such payment is accompanied by a list that separately identifies which portion of the payment is attributable to each obligor, the obligor's name and case number, if any.

(4) As used in this section, "business day" means a day on which the Department of Justice is open for regular business. [Formerly 25.355; 2007 c.356 §4]

25.414 Standard amount to be withheld; processing fee; rules. (1) The withholder shall withhold from the obligor's disposable monthly income, other than workers' compensation under ORS chapter 656 or unemployment compensation under ORS chapter 657, the amount stated in the order to withhold. The entity issuing the order to withhold shall compute this amount subject to the following:

(a) If withholding is for current support only, the amount to be withheld is the amount specified as current support in the support order.

(b) If withholding is for current support and there is an arrearage, the amount to be withheld is 120 percent of the amount specified as current support in the support order.

(c) If withholding is only for arrearage, the amount to be withheld is one of the following:

(A) The amount of the last ordered monthly support.

(B) If there is no last ordered monthly support amount, the monthly support amount used to calculate the arrearage amount specified in the order or judgment for arrearage.

(C) If there is no last ordered monthly support amount and if there was no monthly support amount, an amount calculated under the formula established under ORS 25.275. For purposes of this subparagraph, this calculation shall be based on the obligor's current monthly gross income or, if the obligor's current monthly gross income is not known, the Oregon hourly minimum wage converted to a monthly amount based upon a 40-hour workweek, zero income for the obligee, and one joint child, regardless of how many children the parties may actually have. No rebuttals to this calculation may be allowed.

(d) Notwithstanding the amount determined to be withheld under paragraph (c) of this subsection, the obligor must retain disposable monthly income of at least 160 times the applicable federal minimum hourly wage prescribed by section 6 (a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) or any future minimum hourly wages prescribed in that section.

(2) The amount to be withheld from unemployment compensation under ORS chapter 657 is calculated as follows:

(a) If withholding is for a current support order, regardless of the existence of arrearage, the amount to be withheld is the lesser of:

(A) Twenty-five percent of the benefits paid; or

(B) The current monthly support obligation. The entity issuing the order to withhold may convert the monthly support obligation amount to a percentage to be withheld from each benefits payment. However, the total amount withheld in one month may not exceed 25 percent of the benefits paid in that month or the current monthly support obligation, whichever is less.

(b) If withholding is for arrearage only, the amount to be withheld is the lesser of:

(A) Fifteen percent of the benefits paid; or

(B) The amount of the last ordered monthly support obligation. The entity issuing the order to withhold may convert the last ordered monthly support obligation amount to a percentage to be withheld from each benefits payment. However, the total amount withheld in one month may not exceed 15 percent of the benefits paid in that month or the amount of the last ordered monthly support obligation, whichever is less.

(c) The withholder may not charge or collect a processing fee when withholding from unemployment compensation.

(3) The amount to be withheld from workers' compensation under ORS chapter 656 is set forth in ORS 656.234.

(4) Notwithstanding any other provision of this section, when withholding is from a lump sum payment or benefit, including but not limited to retroactive workers' compensation benefits, lump sum retirement plan disbursements or withdrawals, insurance payments or settlements, severance pay, bonus payments or any other similar payments or benefits that are not periodic recurring income, the amount subject to withholding for payment of a support obligation may not exceed one-fourth of the amount of the lump sum payment or benefit.

(5) Notwithstanding any other provision of this section, the administrator may set a lesser amount to be withheld if the obligor demonstrates the withholding is prejudicial to the obligor's ability to provide for a child the obligor has a duty to support. The Department of Justice shall adopt rules consistent with federal regulations to implement this subsection.

(6) Except as provided in subsection (2) of this section, the withholder may deduct from the obligor's disposable income a monthly processing fee not to exceed $5. The processing fee is in addition to the amount calculated to be withheld for support, unless the amount to be withheld for support is the maximum allowed under subsection (8) of

this section, in which case the fee is deducted from the amount withheld as support.

(7) If there are multiple withholding orders against the same obligor, the amount to be withheld is the sum of each support order calculated independently.

(8) No withholding as calculated under this section, including the processing fee permitted in subsection (6) of this section, shall exceed 50 percent of the obligor's net disposable income. The limit established in this subsection applies whenever withholding is implemented under this section, whether by a single order or by multiple orders against the same obligor.

(9) When the obligor's income is not sufficient for the withholder to fully comply with each withholding order, the withholder shall withhold the maximum amount allowed under this section. If all withholding orders for a particular obligor are payable to or through the department, the withholder shall pay to the department the income withheld and the department shall determine priorities for allocating income withheld to multiple child support cases relative to that obligor. If one or more of the withholding orders for a particular obligor require payment other than to or through the department, the withholder shall use the following to determine priorities for withholding and allocating income withheld to multiple child support cases:

(a) If the amount withheld from the obligor's income is sufficient to pay the current support due to each case but is not enough to fully comply with the withholding order for each case where past due support is owed, the withholder shall:

(A) Pay to each case the amount of support due for the current month; and

(B) Pay the remainder of the amount withheld in equal amounts to each case where past due support is owed. However, no case shall receive more than the total amount of current support and past due support owed to that case at the time the payment is made.

(b) If the amount withheld is not sufficient to pay the current support due to each case, each case shall be paid a proportionate share of the amount withheld. The withholder shall determine this for each case by dividing the monthly amount ordered as current support for that case by the combined monthly amount ordered as current support for all cases relative to the same obligor, and multiplying this percentage by the total amount withheld.

(10) An order to withhold income is not subject to the limitations of ORS 18.385.

(11) A withholder shall withhold funds as directed in the order to withhold, except that when a withholder receives an income-withholding order issued by another state, the withholder shall apply the income-withholding law of the state of the obligor's principal place of employment in determining:

(a) The withholder's fee for processing an income-withholding order;

(b) The maximum amount permitted to be withheld from the obligor's income;

(c) The time periods within which the withholder must implement the income-withholding order and forward the child support payment;

(d) The priorities for withholding and allocating income withheld for multiple child support obligees; and

(e) Any withholding terms or conditions not specified in the order. [Formerly 25.351; 2001 c.455 §10; 2003 c.73 §33; 2003 c.572 §9]

25.417 Amount to be withheld when obligor paid more frequently than monthly. When an obligor is required to pay support by income withholding and is paid more often than monthly, the withholder shall withhold up to the full amount specified in the order to withhold, based on the obligor's pay period as specified in the order to withhold. The amount withheld may not exceed the maximum amount allowed under ORS 25.414 (8). [Formerly 25.353; 2001 c.455 §11]

25.420 [1985 c.671 §13; 1993 c.800 §4; repealed by 1995 c.608 §46]

25.421 Procedure if withholder does not withhold support. If for any reason a withholder does not withhold support in any month, the withholder shall explain the reason for not withholding. The withholder shall send the explanation for not withholding to the person or entity to whom the withholder sends payments and shall send the explanation on the date that the withholder would normally send a payment. If the withholder does not send a payment because the obligor is no longer employed by the withholder, the withholder may include in the explanation the name and address of the obligor's new employer, if known. A withholder is not liable to the obligor for disclosure of this information. [Formerly 25.357]

25.424 Liability of withholder for withholding and for failing to withhold; unlawful employment practice. (1) A withholder is not subject to civil liability to an individual or agency for conduct or actions in compliance with an order to withhold if the withholder:

(a) Is served with an order to withhold under ORS 25.402 that is regular on its face; and

(b) Complies with the terms of the order if the order appears to be in compliance with ORS 25.402.

(2) The withholder is liable for all amounts that the withholder fails to withhold or pay as required by the order to withhold or withholds or pays in excess of the amount required by the order to withhold. The holder of support rights, the obligor, the Division of Child Support or a district attorney may bring an action against the withholder:

(a) To recover all amounts that the withholder failed to withhold or pay or withheld or paid in excess of the amount required;

(b) To recover an additional amount as damages not to exceed the amount referred to in paragraph (a) of this subsection; and

(c) If the failure to withhold was willful or the result of gross negligence by the withholder, to have an additional amount imposed as a fine payable to the court not to exceed $250 for each time the withholder failed to withhold or pay or withheld or paid an amount exceeding the amount required and to pay reasonable costs of the action including attorney fees.

(3)(a) An employer commits an unlawful employment practice if the employer discharges an employee, refuses to hire an individual or in any other manner discriminates, retaliates or takes disciplinary action against an obligor because of the entry or service of an order to withhold under ORS 25.378 and 25.402 or because of the obligations or additional obligations that the order imposes upon the employer. An obligor may bring an action under ORS 659A.885 or may file a complaint with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS 659A.820. These remedies are in addition to any other remedy available in law or equity.

(b) Paragraph (a) of this subsection does not apply to actions taken by an employer pursuant to any condition of employment required by law.

(4) Nothing in ORS 25.372 to 25.427 precludes an action for contempt for disobedience of a judicial order to withhold. [Formerly 25.363; 2001 c.621 §67; 2003 c.572 §10]

25.427 Rules. The Department of Justice shall make rules and take action as is necessary to carry out the purposes of ORS 25.372 to 25.427. [Formerly 25.365; 2003 c.73 §34]

25.430 [1985 c.671 §13b; repealed by 1995 c.608 §46]

25.440 [1985 c.671 §14; repealed by 1995 c.608 §46]

25.450 [1985 c.671 §15; 1989 c.520 §1; 1993 c.596 §9; 1993 c.798 §28; 1993 c.800 §5; repealed by 1995 c.608 §46]

25.460 [1985 c.671 §16; 1993 c.596 §10; 1993 c.798 §29; repealed by 1995 c.608 §46]

25.470 [1985 c.671 §17; 1993 c.798 §30; repealed by 1995 c.608 §46]

25.480 [1985 c.671 §18; 1993 c.596 §11; 1993 c.798 §36; repealed by 1995 c.608 §46]

25.490 [1985 c.671 §19; 1993 c.798 §37; repealed by 1995 c.608 §46]

25.500 [1985 c.671 §20; 1993 c.798 §38; repealed by 1995 c.608 §46]

25.510 [1985 c.671 §21; 1993 c.798 §39; repealed by 1995 c.608 §46]

25.520 [1985 c.671 §22; 1993 c.798 §40; repealed by 1995 c.608 §46]

25.530 [1985 c.671 §23; repealed by 1995 c.608 §46]

INCOME TAX INTERCEPT

25.610 Procedure to collect support orders from state tax refunds; voluntary withholding; rules. (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 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. [1985 c.671 §§27,28; 1989 c.519 §6; 1991 c.588 §2; 1993 c.596 §12; 1997 c.170 §12; 1997 c.704 §33; 2001 c.455 §12; 2003 c.73 §35; 2003 c.572 §11; 2005 c.560 §5]

25.620 Procedures to collect past due support from state tax refunds; fees. (1) The Department of Revenue shall establish procedures consistent with ORS 25.610 to collect past due child and spousal support from income tax refunds due to the obligor in the same manner that other delinquent accounts are collected under ORS 293.250.

(2) The Department of Revenue shall establish procedures to ensure that when an obligor has filed a joint income tax return, the obligor's spouse may apply for a share of the refund, if any. The procedures shall provide for notice to the obligee regarding any application by the obligor's spouse for a share of the refund.

(3) No collection shall be made by the Department of Revenue unless the debt is in a liquidated amount.

(4) Notwithstanding the provisions of ORS 293.250, the Department of Revenue shall designate a single fee to retain from moneys collected for child support as a reasonable fee to cover only the actual cost.

(5) The Department of Revenue shall forward the net proceeds of collections made under subsection (1) of this section to the Department of Justice. Such proceeds shall be applied pursuant to ORS 25.610 (3).

(6) Notwithstanding any other law relating to the confidentiality of tax records, the Department of Revenue shall send the Department of Justice the obligor's home address and Social Security number or numbers on each case submitted for collection pursuant to ORS 25.610. [1985 c.671 §29; 1993 c.596 §13; 1997 c.170 §13; 1997 c.704 §34; 2001 c.455 §27]

25.625 Federal tax offset; passport denial; rules. (1) The Department of Justice may furnish to the United States Secretary of Health and Human Services certifications appropriate to and required for action by the secretary to offset federal income tax returns and to deny, revoke or limit passports of individuals owing child support arrearages.

(2) The department shall adopt rules to carry out the purposes of subsection (1) of this section. [1997 c.746 §13; 2003 c.73 §36]

Note: 25.625 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 25 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

DISCLOSURES OF INFORMATION BY FINANCIAL INSTITUTIONS

25.640 Definitions for ORS 25.643 and 25.646. For purposes of ORS 25.643 and 25.646:

(1) "Account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, share draft account, time deposit account or money-market mutual fund account.

(2) "Customer" has the meaning given that term in ORS 192.550.

(3) "Financial institution" means:

(a) A depository institution, as defined in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c));

(b) Any federal credit union or state credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752), including an institution-affiliated party of such a credit union, as defined in section 206(r) of the Federal Credit Union Act (12 U.S.C. 1786(r)); and

(c) Any benefit association, insurance company, safe deposit company, money-market mutual fund or similar entity authorized to do business in the state.

(4) "Financial records" has the meaning given that term in ORS 192.550. [1997 c.746 §120]

Note: 25.640 to 25.646 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 25 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

25.643 Disclosure of information on obligors by financial institutions; fees; liability. (1) The Department of Justice and financial institutions doing business in this state shall enter into agreements to develop and operate a data match system using automated data exchanges to the maximum extent feasible.

(2) Pursuant to the agreements, financial institutions shall provide, for each calendar quarter, the name, address, Social Security number or other taxpayer identification number and other identifying information for each obligor who:

(a) Maintains an account at the institution; and

(b) Owes past due support, as identified by the department by name and Social Security number or other taxpayer identification number.

(3) The department shall pay a reasonable fee to a financial institution for conducting the data match provided for in this section. The fee may not exceed the actual costs incurred by the financial institution.

(4) A financial institution, including an institution-affiliated party as defined in section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u)), is not liable under any state law to any person:

(a) For any disclosure of information to the department under this section;

(b) For encumbering or surrendering any assets held by the financial institution in response to a notice of lien or levy issued by the department; or

(c) For any other action taken in good faith to comply with the requirements of this section. [1997 c.746 §121; 2003 c.73 §37]

Note: See note under 25.640.

25.646 Disclosure of financial records of customers by financial institutions; liability. (1) Upon request of the Department of Justice and the receipt of the certification required under subsection (2) of this section, a financial institution shall provide financial records of a customer.

(2) In requesting information under subsection (1) of this section, the department shall provide the name and Social Security number of the person whose financial records are sought and shall state with reasonable specificity the financial records requested. The department shall certify to the financial institution in writing, signed by an agent of the department:

(a) That the person whose financial records are sought is a party to a proceeding to establish, modify or enforce the child support obligation of the person; and

(b) That the department has authorization from the person for release of the financial records, has given the person written notice of its request for financial records or will give the notice within five days after the financial institution responds to the request.

(3) The department shall reimburse a financial institution supplying financial records under this section for actual costs incurred.

(4) A financial institution, including an institution-affiliated party as defined in section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u)), that supplies financial records to the department under this section is not liable to any person for any loss, damage or injury arising out of or in any way pertaining to the disclosure of the financial records.

(5) A financial institution that is requested to supply financial records under this section may enter into an agreement with the department concerning the method by which requests for financial records and responses from the financial institution shall be made.

(6) The department shall provide a reasonable time to the financial institution for responding to a request for financial records.

(7) The department shall seek financial records under this section only:

(a) With respect to a person who is a party to a proceeding to establish, modify or enforce the child support obligation of the person; or

(b) According to the provisions of ORS 25.083. [1997 c.746 §122; 1999 c.930 §4; 2001 c.455 §13]

Note: See note under 25.640.

CONSUMER REPORTING AGENCIES

25.650 Information on past due support to consumer reporting agencies; rules. (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.

(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 reporting of information to the consumer reporting agencies. The notice must inform both parties:

(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.

(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 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 administrator shall notify the obligor or obligee whose report is requested, by certified or registered mail, that the report will be requested.

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

(5) When the department has made a report to a consumer reporting agency under subsection (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. [1985 c.671 §§45,46; 1993 c.596 §14; 1997 c.704 §35; 1999 c.80 §66; 2003 c.73 §38; 2005 c.560 §6]

LIENS ON PERSONAL PROPERTY

25.670 Judgment lien on personal property. (1) Whenever there is a judgment for unpaid child or spousal support, a lien arises by operation of law on any personal property owned by the obligor, and the lien continues until the liability for the unpaid support is satisfied or the judgment or renewal thereof has expired. For purposes of this section and ORS 25.680 and 25.690, liability for the unpaid support includes the amount of unpaid support, with interest, and any costs that may be associated with lawful execution on the lien including, but not limited to, attorney fees, costs of notice and sale, storage and handling.

(2)(a) A lien arising under subsection (1) of this section may be recorded by filing a written notice of claim of lien with the county clerk of the county in which the obligor resides or the property is located. The notice of claim of lien required under this subsection shall be a written statement and must include:

(A) A statement of the total amount due, as of the date of the filing of the notice of claim of lien;

(B) The name and address of the obligor and obligee;

(C) The name and address of the office of the district attorney, Division of Child Support or other person or entity filing the notice;

(D) A statement identifying the county where the underlying support order was entered and its case number;

(E) A description of the personal property to be charged with the lien sufficient for identification; and

(F) A statement of the date the lien expires under the laws of the issuing state. If no expiration date is provided, the lien expires in Oregon five years from the date of recording.

(b) The county clerk shall record the notice of claim of lien filed under paragraph (a) of this subsection in the County Clerk Lien Record.

(3)(a) When a notice of claim of lien is recorded pursuant to subsection (2) of this section, the person or entity filing the notice of claim of lien shall send forthwith a copy of the notice to the owner of the personal property to be charged with the lien by registered or certified mail sent to the owner's last-known address.

(b) A copy of the notice shall also be sent to the obligee by regular mail.

(4) Liens described in subsection (1) of this section that arise by operation of law in another state shall be accorded full faith and

credit if the state agency, party or other entity seeking to enforce the lien follows the applicable procedures for recording and service of notice of claim of lien set forth in this section. A state agency, party or other entity may not file an action to enforce a lien described in this section until the underlying judgment has been filed in Oregon as provided in ORS chapter 110. [1985 c.671 §47; 1993 c.223 §3; 1993 c.596 §15; 1999 c.80 §34; 2003 c.576 §577]

25.680 Effect of lien; priority. (1) Whenever a notice of claim of lien has been recorded under ORS 25.670 (2), the owner of the personal property may not release, sell, transfer, pay over, encumber or convey the personal property that is the subject of the lien until the Department of Justice or person to whom the support is or was owed or, if services are being provided under ORS 25.080, the enforcing agency of this or any other state releases the lien, the lien has been satisfied or a court has ordered release of the lien on the basis that no debt exists or that the debt has been satisfied. The limitations of this subsection do not apply to transfers or conveyances of the property by the owner to the holder of a security interest that was in existence at the time the notice of claim of lien was filed.

(2) The rights of bona fide purchasers for value or persons with a security interest in the personal property are not affected by the creation or the existence of the lien.

(3) Liens filed under ORS 25.670 do not have priority over previously perfected security interests. [1985 c.671 §48; 1999 c.80 §35; 2003 c.73 §39]

25.690 Foreclosure of lien. A lien arising pursuant to ORS 25.670 may be foreclosed in the manner set out in ORS 87.262 or ORS chapter 18 or in any other manner permitted under law. [1985 c.671 §49; 1999 c.80 §36; 2003 c.576 §577a]

25.700 [1993 c.763 §§2,4; repealed by 2003 c.576 §580]

MISCELLANEOUS

25.710 Duty of district attorney. (1) Notwithstanding ORS 25.080, the district attorney, except as provided in subsection (2) of this section, shall continue to enforce support enforcement cases until the Department of Justice otherwise directs if:

(a) The case was being enforced by the district attorney on October 1, 1985; and

(b) The case involves any arrearages assigned to the state or any other state.

(2) This section does not apply when the obligor or beneficiary of the support judgment or order is receiving any of the following:

(a) Public assistance; or

(b) Care, support or services under ORS 418.015. [1985 c.671 §51a; 2003 c.73 §40; 2003 c.572 §12; 2003 c.576 §301]

25.715 Child support paid from security deposit. (1) The court may order that the portion of a security deposit made under ORS 135.265 that would otherwise be returned to the person who made the deposit or the amount of child support arrearages, whichever is less, be paid to an obligee or the Division of Child Support of the Department of Justice if:

(a) The defendant is an obligor who owes child support arrearages;

(b) The obligee or the administrator has filed a motion requesting the court to make such an order;

(c) The obligee or the administrator has served the defendant with a copy of the motion;

(d) The defendant has an opportunity to respond and request a hearing; and

(e) The court has determined that such an order is appropriate.

(2) The court may order that a portion of a security amount forfeited under ORS 135.280 be paid to the division and be applied to any unsatisfied child support judgment and to provide security for child support payments in accordance with ORS 25.230 if:

(a) The defendant is an obligor who owes child support;

(b) The administrator has filed a motion requesting the court to make such an order;

(c) The motion specifies the amount to be applied to the child support judgment under ORS 135.280; and

(d) The court has determined that such an order is appropriate. [1999 c.1030 §5; 2001 c.705 §1]

25.720 When support assignable. (1) Except as provided in ORS 25.125, 412.024, 418.032, 419B.406 or 419C.597 or subsection (2) of this section, the right to receive child or spousal support payments under ORS chapters 107, 108, 109, 110, 416, 419B and 419C is not assignable, and any transaction in violation of this section is void.

(2) Notwithstanding the provisions of subsection (1) of this section, the right to receive support payments is assignable as may be appropriate for the protection of a minor or other person for whom a fiduciary has been appointed under ORS chapter 125 or for whom a trust has been established.

(3) A person may not solicit or accept the assignment of support rights under subsection (1) of this section. [1985 c.671 §52(1),(2),(3); 1993 c.33 §288; 1995 c.514 §12; 1995 c.608 §34; 1995 c.664 §75; 1997 c.385 §3; 2003 c.131 §1]

25.722 [1993 c.798 §11; renumbered 25.375 in 1999]

25.725 Child Support Deposit Fund. (1) The Child Support Deposit Fund is established in the State Treasury separate and distinct from the General Fund. Interest earned by the Child Support Deposit Fund shall be credited to the fund. All moneys in the Child Support Deposit Fund are appropriated continuously for use by the Department of Justice as the state disbursement unit.

(2) All moneys received by the department under ORS 25.020 and 25.620 and any other state or federal law authorizing the department to collect or receive child support payments shall be deposited in the Child Support Deposit Fund. The Child Support Deposit Fund is not subject to the provisions of ORS 291.234 to 291.260. [1995 c.262 §2; 1997 c.704 §36; 2003 c.73 §41]

25.727 Garnishing income of person required to provide health insurance for child eligible under Medicaid. (1) The Department of Justice, or its designee, may garnish the wages, salary or other employment income of, and withhold amounts from state tax refunds to, any person who:

(a) Is required by court or administrative order to provide coverage of the cost of health services to a child eligible for medical assistance under Medicaid; and

(b) Has received payment from a third party for the costs of such services but has not used the payments to reimburse either the other parent or guardian of the child or the provider of the services.

(2) The department, or its designee, may take this action to the extent necessary to reimburse the state Medicaid agency for its costs, but claims for current and past due child support shall take priority over these claims. [1995 c.506 §9; 2003 c.73 §42]

25.729 Application of laws to effectuate purposes of ORS chapter 110. Any provision in the laws of this state relating to establishment, modification and enforcement of support may be applied to effectuate the purposes of ORS chapter 110 to the extent that such application is not inconsistent with ORS chapter 110. [1995 c.608 §11]

SUSPENSION OF OCCUPATIONAL AND DRIVER LICENSES

25.750 Suspension of licenses, certificates, permits and registrations; when authorized; rules. (1) All licenses, certificates, permits or registrations that a person is required by state law to possess in order to engage in an occupation or profession or to use a particular occupational or professional title, all annual licenses issued to individuals by the Oregon Liquor Control Commission, all driver licenses or permits issued by the Department of Transportation and recreational hunting and fishing licenses, as defined by rule of the Department of Justice, are subject to suspension by the respective issuing entities upon certification to the issuing entity by the administrator that a child support case record is being maintained by the Department of Justice, that the case is being enforced by the administrator under the provisions of ORS 25.080 and that one or both of the following conditions apply:

(a) That the party holding the license, certificate, permit or registration is under order or judgment to pay monthly child support and is in arrears, with respect to any such judgment or order requiring the payment of child support, in an amount equal to three months of support or $2,500, whichever occurs later, and:

(A) Has not entered into an agreement with the administrator with respect to the child support obligation; or

(B) Is not in compliance with an agreement entered into with the administrator; or

(b) That the party holding the license, certificate, permit or registration has failed, after receiving appropriate notice, to comply with a subpoena or other procedural order relating to a paternity or child support proceeding and:

(A) Has not entered into an agreement with the administrator with respect to compliance; or

(B) Is not in compliance with such an agreement.

(2) The Department of Justice by rule shall specify the conditions and terms of agreements, compliance with which precludes the suspension of the license, certificate, permit or registration. [1993 c.365 §2; 1995 c.620 §1; 1995 c.750 §7; 1997 c.704 §37; 1999 c.80 §11; 2001 c.323 §1; 2001 c.455 §14; 2003 c.73 §43]

25.752 Memberships in professional organizations that are required by state law. As used in ORS 25.750 to 25.783, "licenses, certificates, permits or registrations" includes, but is not limited to, memberships in professional organizations that are required by state law in order to engage in a profession. [1995 c.620 §12]

25.753 [1993 c.365 §3; repealed by 1995 c.620 §13]

25.756 Identifying persons holding licenses, certificates, permits and registrations. The Department of Justice shall enter into agreements regarding the identification of persons who are subject to the provisions of ORS 25.750 to 25.783 and who hold licenses, certificates, permits or registrations with:

(1) The Oregon Liquor Control Commission;

(2) All entities that issue licenses, certificates, permits or registrations that a person is required by state law to possess to engage in an occupation, profession or recreational hunting or fishing or to use a particular occupational or professional title; and

(3) The Department of Transportation. [1993 c.365 §4; 1995 c.620 §2; 1995 c.750 §8; 1997 c.704 §38; 1999 c.80 §12]

25.759 Notice to persons subject to suspension; contents. Upon identification of a person subject to suspension under ORS 25.750 to 25.783, the administrator may issue a notice, sent by regular mail to both the address of record as shown in the records of the issuing entity and the address of record as shown on the administrator's child support file. Such notice shall contain the following information:

(1) That certain licenses, certificates, permits and registrations, which shall be specified in the notice, are subject to suspension as provided for by ORS 25.750 to 25.783.

(2) The name, Social Security number, if available, date of birth, if known, and child support case number or numbers of the person subject to the action.

(3) The amount of arrears and the amount of the monthly child support obligation, if any, or, if suspension is based on ORS 25.750 (1)(b), a description of the subpoena or other procedural order with which the person subject to the action has failed to comply.

(4) The procedures available for contesting the suspension of a license, certificate, permit or registration.

(5) That the only bases for contesting the suspension are:

(a) That the arrears are not greater than three months of support or $2,500;

(b) That there is a mistake in the identity of the obligor;

(c) That the person subject to the suspension has complied with the subpoena or other procedural order identified in subsection (3) of this section; or

(d) That the person subject to the suspension is in compliance with a previous agreement as provided for by ORS 25.750 to 25.783.

(6) That the obligor may enter into an agreement, prescribed by rule by the Department of Justice, compliance with which shall preclude the suspension under ORS 25.750 to 25.783.

(7) That the obligor has 30 days from the date of the notice to contact the administrator in order to:

(a) Contest the action in writing on a form prescribed by the administrator;

(b) Comply with the subpoena or procedural order identified in subsection (3) of this section; or

(c) Enter into an agreement authorized by ORS 25.750 and 25.762. The notice shall state that any agreement must be in writing and must be entered into within 30 days of making contact with the administrator.

(8) That failure to contact the administrator within 30 days of the date of the notice shall result in notification to the issuing entity to suspend the license, certificate, permit or registration. [1993 c.365 §5; 1995 c.620 §3; 1997 c.704 §39; 1999 c.80 §13; 2001 c.323 §2; 2001 c.455 §15; 2003 c.73 §44]

25.762 Agreement between obligor and administrator; effect of failure to contest suspension or to enter into agreement. (1) If the administrator is contacted within 30 days of the date of the notice specified in ORS 25.759, the administrator and the obligor may enter into an agreement as provided for by rule of the Department of Justice. If no contest is filed or if no agreement is entered into within the time prescribed by ORS 25.750 to 25.783, or if the obligor fails to comply with the terms of an agreement previously entered into, the administrator shall advise the issuing entity to suspend the license, certificate, permit or registration forthwith.

(2) 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. [1993 c.365 §6; 1995 c.620 §4; 1999 c.80 §14; 2001 c.323 §3; 2003 c.73 §45]

25.765 Procedure if obligor contacts administrator within time limits; hearing. (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 object to the determination described in subsection (1) of this section within 30 days after the date of the determination. Any hearing on the objection shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings. 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. [1993 c.365 §7; 1995 c.620 §5; 1999 c.80 §15; 1999 c.849 §§43,44; 2001 c.323 §§4,5; 2003 c.75 §26; 2005 c.560 §7]

25.768 Judicial review of order. The order of the administrative law judge is final and is subject to judicial review as provided in ORS 183.482. Any suspension under ORS 25.750 to 25.783 is not stayed pending judicial review. [1993 c.365 §8; 2003 c.75 §76]

25.771 Obligor holding more than one license, certificate, permit or registration. In the event that an obligor holds more than one license, certificate, permit or registration described in ORS 25.750, any determination regarding suspension of one license, certificate, permit or registration is sufficient to suspend any other license, certificate, permit or registration described in ORS 25.750. [1993 c.365 §9; 1995 c.620 §6]

25.774 Reinstatement. When, at any time after suspension under ORS 25.750 to 25.783, the conditions resulting in the suspension no longer exist, the administrator shall so notify the issuing entity and shall confirm that the license, certificate, permit or registration may be reinstated contingent upon the requirements of the issuing entity. Until the issuing entity receives notice under this section, the issuing entity may not reinstate, reissue, renew or otherwise make the license, certificate, permit or registration available to the holder of the suspended license, certificate, permit or registration. [1993 c.365 §10; 1995 c.620 §7; 1999 c.80 §16; 2001 c.323 §6]

25.777 Reimbursing issuing entities for costs incurred. The Department of Justice shall enter into agreements to reimburse issuing entities for their costs of compliance with ORS 25.750 to 25.783 to the extent that those costs are eligible for Federal Financial Participation under Title IV-D of the Social Security Act. [1993 c.365 §11; 1995 c.620 §8; 2001 c.323 §7]

25.780 Other licenses, certificates, permits and registrations subject to suspension. In addition to any other grounds for suspension provided by law:

(1) The Oregon Liquor Control Commission and any entity that issues licenses, certificates, permits or registrations that a person is required by state law to possess to engage in an occupation, profession or recreational hunting or fishing or to use a particular occupational or professional title shall suspend without further hearing the licenses, certificates, permits or registrations of a person upon certification by the administrator that the person is subject to an order suspending the license, certificate, permit or registration. The certification must include the information specified in ORS 25.750 (1).

(2) The Department of Transportation shall suspend without further hearing the driver license or driver permit of a person upon certification by the administrator that the person is subject to an order suspending the license or permit. The certification must include the information specified in ORS 25.750 (1). [1993 c.365 §13; 1995 c.620 §9; 1995 c.750 §5; 1999 c.80 §17; 2001 c.323 §8]

25.783 Confidentiality of information. Any entity described in ORS 25.756 that receives an inquiry as to the status of a person who has had a license, certificate, permit or registration suspended under ORS 25.750 to 25.783 shall respond only that the license, certificate, permit or registration was suspended pursuant to ORS 25.750 to 25.783. The entity shall not release or make other use of information that it receives pursuant to ORS 25.750 to 25.783. [1993 c.365 §14; 1995 c.620 §10]

25.785 Issuing entities to require Social Security number. (1) Any state agency, board or commission that is authorized to issue an occupational, professional, recreational or driver license, certificate, permit or registration subject to suspension under ORS 25.750 to 25.783 shall require that an individual's Social Security number be recorded on an application for, or form for renewal of, a license, certificate, permit or registration and to the maximum extent feasible shall include the Social Security number in automated databases containing information about the individual.

(2) A state agency, board or commission described in subsection (1) of this section may accept a written statement from an individual who has not been issued a Social Security number by the United States Social Security Administration to fulfill the requirement in subsection (1) of this section.

(3) An individual may not submit to a state agency, board or commission a written statement described in subsection (2) of this section knowing the statement to be false. [1997 c.746 §117; 1999 c.80 §93; 2003 c.610 §1; 2005 c.22 §17]

Note: 25.785 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 25 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

EMPLOYER REPORTING PROGRAM

25.790 Hiring or rehiring individual; report required; contents. (1)(a) An employer shall report to the Division of Child Support of the Department of Justice the hiring or rehiring of an individual who resides or works in the state and to whom the employer anticipates paying earnings if the employer:

(A) Has employees working only in this state; or

(B) Is a multistate employer and has designated to the United States Secretary of Health and Human Services that Oregon is the employer's reporting state.

(b) The employer shall submit the report by mail or other means in accordance with rules adopted by the Department of Justice.

(2)(a) An employer shall make the report required by subsection (1) of this section with respect to an employee:

(A) Not later than 20 days after the date the employer hires or rehires the employee; or

(B) In the case of an employer transmitting reports magnetically or electronically, by transmissions each month not less than 12 days nor more than 16 days apart.

(b) An employer may submit a cumulative report for all individuals hired or rehired during the previous reporting period.

(3) The report required under subsection (1) of this section may be made on a W-4 form or, at the option of the employer, an equivalent form approved by the Division of Child Support of the Department of Justice, but must contain the employer's name, address and federal tax identification number and the employee's name, address and Social Security number.

(4) As used in this section:

(a) "Employee" means an individual who must file a federal withholding form W-4 under the Internal Revenue Code.

(b) "Rehire" means to re-employ any individual who was laid off, separated, furloughed, granted a leave without pay or terminated from employment for more than 45 days. [1993 c.753 §1; 1995 c.381 §2; 1999 c.80 §18; 2003 c.73 §46]

25.792 Confidentiality. Information received under ORS 25.790 is confidential and exempt from public disclosure, except that the Division of Child Support of the Department of Justice shall provide information to other public agencies, upon request, as required by law. [1993 c.753 §2; 1999 c.80 §19]

25.794 Verification of employment; information about compensation and benefits; rules. (1) Upon the request of the administrator or an equivalent agency providing child support services in another state, all persons or entities in the state, including but not limited to for-profit, nonprofit and government employers, shall verify the employment of individuals and provide, in addition and if requested, information about compensation and benefits paid to the individual whether as an employee or a contractor.

(2) Upon request of an enforcing agency of another state, only a court or enforcing agency of Oregon may enforce a request for information made by the enforcing agency of the other state under this section.

(3) The Department of Justice shall adopt rules to implement the provisions of this section. [1993 c.753 §3; 1999 c.80 §29; 2003 c.73 §47]

PENALTIES

25.990 Penalties. (1) Violation of ORS 25.720 (3) is a Class A violation.

(2) Violation of ORS 25.260 is punishable, upon conviction, by a fine of not more than $1,000 or by imprisonment in the county jail for not more than 60 days, or by both.

(3) Violation of ORS 25.785 (3) is a Class A misdemeanor. [1985 c.671 §52(4); 1989 c.812 §3(2); 1999 c.1051 §147; 2003 c.610 §4]