

Chapter 25

1985 REPLACEMENT PART

Support Enforcement

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GENERAL PROVISIONS

25.010 Definitions for support enforcement laws. As used in ORS chapters 23, 107, 108, 293, 416 and 418 and ORS 25.010 to 25.240, 25.350 and 25.360 and any other statutes providing for support payments or support enforcement procedures, unless the context requires otherwise:

(1) "Obligor" means any person who has been ordered by a court or the administrator, as defined in ORS 416.400, to make payments for the support of a child or a caretaker parent or custodian, spouse, former spouse or other dependent person.

(2) "Obligee" means a child or caretaker parent or custodian, spouse, former spouse or other dependent person for whose benefit a court or the administrator, as defined in ORS 416.400, has ordered a payment of support. [Formerly 23.760]

25.020 When support payment to be made to Department of Human Resources; duties of department. (1)(a) After October 1, 1981, when any court decrees, orders or modifies any preexisting order for support of any person under ORS chapter 107, 108, 109, 110, 416 or 419, or when any such order exists, the obligor shall make payment thereof to the Department of Human Resources when the obligee is receiving general or public assistance, as defined by ORS 411.010, or care, support or services pursuant to ORS 418.015, and for a period of three months from the month following the month in which the obligee ceased to receive assistance or care, support or services, and for any period of time following for which there remains unpaid support assigned to the State of Oregon, and for any case referred by the district attorney or the Support Enforcement Division of the Department of Justice, whichever is appropriate. The Department of Human Resources shall, except for amounts required by federal law or regulation to be paid to the obligee, retain either all of the support money or the amount equal to the general or public assistance or care, support or services paid, whichever is less.

(b) The department may immediately transmit payments received from any obligor who has not previously tendered any payment by a check or instrument which was not paid or was dishonored, to the obligee, without waiting for payment or clearance of the check or instrument received.

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

(2) The decree or order shall contain the home address and Social Security number of the obligee and the home, business address and Social Security number of the obligor. Each person shall inform the court and the Department of Human Resources in writing of any change in home or business address within 10 days after such change. The Department of Human Resources may also require of the parties any additional information which is authorized by law and is necessary for the operation of support enforcement and collection activities.

(3) When a support payment which is due the Department of Human Resources or the clerk of the court, whichever is appropriate, is delinquent, the department or clerk shall promptly send notice to the defaulting party of the amount due. If payment is not made to the department or clerk within 10 days after the notice is sent, the department or clerk shall send to the Support Enforcement Division of the Department of Justice or to the district attorney, whichever is appropriate, a copy of the statement of the delinquent amount. A statement of the amount due may be used in lieu of the affidavit required under ORS 33.040.

(4) Whether or not any payments by an obligor are delinquent, payment of any money by an obligor direct to an obligee or on behalf of an obligee to a person other than the Department of Human Resources or the clerk of the court out of which the order is issued, whichever is appropriate, shall not be credited against the support obligation of the obligor during the period payments are required to be made to the department or clerk.

(5) Subject to ORS 25.030, this section, to the extent it imposes any duty or function upon the Department of Human Resources, shall be deemed to supersede any provisions of ORS chapters 107, 108, 109, 110, 416 and 419 which would otherwise impose the same duties or functions upon the county clerk. [Formerly 23.765]

25.030 When payment payable to clerk of court, bank account or obligee; discontinuance of payment to clerk. (1) Support orders in respect of obligees not subject to ORS 25.020 may provide for payment under the order:

(a) To the clerk of the court if the Chief Justice of the Supreme Court determines it is practicable and efficient that the clerk maintain support collection, accounting and disbursement services for those obligees and directs the clerk, by order, to maintain those services;

(b) To a checking or savings account established pursuant to ORS 25.130, if the obligor and obligee have so elected or if the court in its

discretion believes that checking or savings account payment will be in the best interest of the parties; or

(c) Directly to the obligee by deposit into the obligee's bank account.

(2) The maintenance by the clerk of a court of support collection, accounting and disbursement services under paragraph (a) of subsection (1) of this section may be discontinued by the Chief Justice of the Supreme Court by order. Immediately upon such discontinuance, the support due under orders of the court shall become payable as provided in paragraph (c) of subsection (1) of this section.

(3) If the clerk of a court maintains support collection, accounting and disbursement services under paragraph (a) of subsection (1) of this section, the clerk shall collect, from persons ordered to make support payments, such fees for those services as may be established under ORS 21.060 (6) or 205.320 (13). Those fees shall be a charge against the person ordered to make support payments and may be collected out of payments before transmitting the payments to the person for whose benefit the decree or order was made. [Formerly 23 767]

25.040 When support payments payable to clerk of court. (1) When any court decrees or orders the payment of money for the support of any person under ORS 107.095, 107.105, 108.120, 109.155 or 419.513, the person ordered to pay the money shall make payment thereof to the clerk of the court, if the clerk maintains support records pursuant to ORS 25.030. The clerk shall transmit the payment to the person for whose benefit the decree or order was made.

(2) The decree or order shall contain the home address of the person for whose benefit the decree or order was made and the home and business address of the person against whom the decree or order is directed. Each person shall inform the clerk in writing of any change in the home or business address of the person within 10 days after such change.

(3) Within 10 days after the second payment is delinquent, the clerk shall send notice by certified mail to the defaulting party of the amount due and an explanation of the procedure for collection under this section, ORS 25.060 and 25.090 to 25.120. [Formerly 23.775]

25.050 Alternative procedure when payments delinquent. (1) In addition to any other remedy provided in law for the enforcement of support, the court, upon notice that support

payments or any fees provided for in ORS 23.185, 25.010 to 25.050, 25.070 to 25.090, 25.130 to 25.160, 25.350, 108.110, 109.100, 109.125, 180.165, 184.785 and 418.042, are delinquent and application by the obligee or by the district attorney or Support Enforcement Division of the Department of Justice, shall issue an order directing any employer or trustee, including but not limited to a conservator, of the obligor to withhold and pay over to the Department of Human Resources or the clerk of the court out of which the order is issued, or to the obligee, by deposit into the obligee's bank account whichever is appropriate, money due or to become due such obligor in an amount not to exceed:

(a) One-fourth of the disposable earnings as defined in ORS 23.175 due or becoming due the obligor at each pay period, until all delinquent amounts due together with interest are paid in full, plus all further amounts coming due before the delinquent amounts are paid in full.

(b) Thereafter at each pay period, the amount ordered to be paid for support, but not more than one-fourth of the disposable earnings as defined in ORS 23.175 due or becoming due the obligor at each pay period.

(2)(a) An order entered pursuant to this section shall recite the amount of all delinquent support amounts due, together with interest, and the amount required to be paid as continuing support.

(b) Effective October 1, 1981, the Department of Human Resources, the clerk of the court out of which the order is issued or the obligee, whichever is appropriate, shall notify any employer or trustee upon whom such an order has been served whenever all delinquent support payment and interest have been paid in full, and whenever for any other reason the amount required to be withheld and paid over to the department under the order as to future pay periods is to be reduced.

(c) If the obligor's support obligation is required to be paid monthly and pay periods are at more frequent intervals, the employer or trustee may at the request of the obligor and with the consent of the department withhold and pay over to the department, after all delinquent amounts together with interest have been paid in full, an equal amount at each pay period cumulatively sufficient to pay the monthly support obligation; otherwise the full amount of the support obligation (but not more than one-fourth, or such larger proportion as the court may have ordered pursuant to subsection (3) of this section, of the disposable earnings coming due)

shall be withheld and paid from the obligor's first pay periods each month.

(3) Subject to the provisions of subsections (1) and (2) of this section, the court may in its discretion order the payment of a percentage or gross amount per pay period which is more than one-fourth of the disposable earnings due or becoming due the obligor at each pay period, if so requested in the application filed under subsection (1) of this section, and after citation and opportunity for hearing being accorded to the obligor and the employer or trustee. Upon application of the obligor, the court out of which the order was issued may provide for a hearing based upon affidavits and exhibits and such testimony as the court may find necessary to determine whether to continue the order of the court as it affects future earnings and future, unaccrued support obligations.

(4) An order issued under subsection (1) or (3) of this section shall be a continuing order and shall remain in effect and be binding upon any employer or trustee upon whom it is served until further order of the court.

(5) An order to withhold issued and served pursuant to this section shall have priority over any notice of garnishment subsequently served upon any employer or trustee of an obligor.

(6) No employer or trustee who complies according to its terms with an order under this section or the notice provided for in paragraph (b) of subsection (2) of this section shall be liable to the obligor or to any other person claiming rights derived from the obligor for wrongful withholding.

(7) An employer or trustee described in subsection (1) of this section who wilfully fails or refuses to withhold or pay the amounts as ordered shall be deemed to be in contempt of the authority of the court and may be held personally liable.

(8) No employer shall discharge or refuse to hire an employe because of the entry or service of an order of withholding under this section. Any person who violates this subsection shall be deemed to be in contempt of the authority of the court. [Formerly 23.777]

25.060 Clerk of court to notify district attorney of continued delinquencies; when other agencies to be notified. (1) If payment is not made within 10 days after the notice is sent, the clerk shall send to the district attorney a copy of the support decree or order and a statement of the delinquent amount. If the person for whose benefit a payment described in ORS 25.040 is decreed or ordered is a person to whom or for

whom general assistance or public assistance, as the terms are defined in ORS 411.010, is granted, the clerk, if the clerk has notice thereof, or the district attorney, if the district attorney has notice thereof, shall send the notice of default to the Support Enforcement Division if such a division is functioning in that county; otherwise the district attorney shall proceed as the district attorney would in any other case under this section.

(2) If the Adult and Family Services Division is required to grant or increase assistance for the benefit of any child because support payments under a court decree or order are not being paid when due, the division shall cause notice to be sent to the district attorney or to the Support Enforcement Division if such a division is functioning in that county. [Formerly 23 780]

25.070 Order may include payment of support enforcement fees; limitation; use.

Any decree, judgment or order entered in a proceeding for the enforcement of any delinquent support obligation, including an order entered under ORS 25.050, shall include, on the motion of the Support Enforcement Division 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 Human Resources or the clerk of the court out of which the order is issued, whichever is appropriate, 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 Support Enforcement Division of the Department of Justice or the district attorney whichever appeared in the case. [Formerly 23.787]

25.080 Agency responsible for support enforcement services. (1) This subsection describes the entity responsible for providing support enforcement services described in subsection (2) of this section for any order or decree that is or could be entered under ORS chapter 107, 108, 109, 110, 416 or 419. The following entity is responsible:

(a) The Support Enforcement Division of the Department of Justice if:

(A) Support rights are, or were within the past five months assigned to the Department of Human Resources, one of its divisions or a public assistance agency of another state; or

(B) In any case where arrearages under a support order are assigned to a government agency.

(b) Except as provided in subsection (3) of this section, the district attorney in cases other than those described in paragraph (a) of this subsection if any of the following apply:

(A) The obligee or beneficiary of any order or decree requests support enforcement services; and

(B) The payment records are being maintained by the Department of Human Resources.

(2) The entity described under subsection (1) of this section is responsible for providing support enforcement services on behalf of the State of Oregon. When responsible for providing support enforcement services, the entity:

(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; and

(d) May enforce any other order or decree for spousal support and may initiate and respond to modification proceedings concerning existing support orders or decrees.

(3) The district attorney of any county, the Department of Human Resources and the Support Enforcement Division of the Department of Justice may provide by agreement for assumption by the Support Enforcement Division of the functions of the district attorney under subsection (1) of this section.

(4) All county governing bodies and all district attorneys shall enter into child support cooperative agreements with the Department of Human Resources. 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.

(5) The district attorney or the Support Enforcement Division, whichever is appropriate, shall provide the services specified in subsections (1) and (2) 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 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 Support Enforcement Division of an application fee, in accordance with an application fee schedule established by rule by the Department of Human Resources. If service performed results in the district attorney or the Support Enforcement Division recovering any support enforcement fees, such fees shall be paid to the applicant in an amount equal to the amount of the application fee.

(6) An obligee may request the Support Enforcement Division of the Department of Justice 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 of Human Resources, by rule, shall set out the circumstances under which such requests shall be honored. [Formerly 23 789]

25.090 Compelling payment to clerk of court or department for transmission to beneficiary; transmittal; notice. (1) Upon application by the obligee to the district attorney or the Support Enforcement Division of the Department of Justice, whichever is appropriate, for enforcement services, future payments shall be made to the clerk of the court or to the Department of Human Resources, whichever is appropriate.

(2) The clerk or department, after deducting any fees required under ORS 25.150, shall transmit the payments to the person for whose benefit the decree or order was made.

(3) The clerk or department shall notify each obligor by mail when support payments must be made to the clerk or department and when the obligation to make payments in this manner ends. [Formerly 23.790]

25.100 Transfer of files to county where party resides or property located.

(1) With respect to any order or decree entered or docketed pursuant to ORS 107.095, 107.105, 108.120, 109.155, 416.400 to 416.470, 419.513 or ORS chapter 110:

(a) If the party in whose favor such order or decree for the payment of money has been made files an affidavit to the effect that the party ordered to make such payments is in default in the payment of moneys due under such order or decree and is presently in another county of this state, the court may, upon motion of the party entitled to such support payments, 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 the county in which the moving party or the defaulting party resides or in which property of the defaulting party is located; or

(b) If the moving party files an affidavit to the effect that the nonmoving party resides in another county of this state, the court may, upon motion of the moving 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 the county in which the nonmoving party resides.

(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 Human Resources. [Formerly 23.795]

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 decree the same as if it were the court which made and entered the original order or decree for the payment of support. The only court having jurisdiction to modify any provision of the original order or decree is the court having origi-

nal jurisdiction of the cause in which such order or decree 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]

25.120 Transfer of files when party or child is recipient of public assistance. The transmittal of such certified copies referred to in ORS 25.100 may be made upon motion of the district attorney or of the Support Enforcement Division of the Department of Justice with respect to any suit or proceeding in which a party thereto, or a child of such party, is a recipient of public assistance, and with respect to an order made pursuant to ORS 419.513. [Formerly 23.805]

25.130 Election of alternative support payment method; termination of election.

(1) Whenever the obligee is not a recipient of general or public assistance or is not a former recipient with unreimbursed past assistance, the obligee and obligor may elect not to make payments in the manner described in ORS 25.030 (1)(a), but may instead elect to make payments directly into a checking or savings account established in the obligee's name. The election shall be in writing and filed with the court that entered the support order if the clerk of the court maintains support collection services. 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 the account number of the checking or savings account that is to be used.

(2) The checking or savings account election does not alter the requirement set out in ORS 25.020 (1)(a) providing for payments to the Department of Human Resources. The election may be filed subsequent to or contemporaneously with the order or decree.

(3) The election authorized by this section is terminated if:

(a) The obligee becomes a recipient of general or public assistance, as defined by ORS 411.010, or care, support or services pursuant to ORS 418.015;

(b) Either party requests cancellation; or

(c) The obligee applies to the district attorney or the Support Enforcement Division for enforcement services.

(4) Notice of termination of the bank option and payment requirements pursuant to ORS 25.020 or 25.030 shall be sent by either the clerk or the department to the obligor's last-known address. [Formerly 23 807]

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 Human Resources, 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]

25.150 Department or clerk to collect fees for services. (1) The Department of Human Resources shall assess and collect any fees for enforcement services and collection, accounting and disbursement services required by federal law or regulation, or state law or administrative rule.

(2) The clerk of the court shall assess and collect any fees for enforcement services and collection, accounting and disbursement services required by federal law or regulation, state law, or county ordinance or resolution. [Formerly 23.815]

25.160 Referral of support cases by district attorney to department; duration of collection services. (1) For the purposes of ORS 25.020 to 25.050, 25.070, 25.090, 25.130 to 25.160 and 25.350, any support case may be referred by the district attorney to the Department of Human Resources for provision of collection, accounting and disbursement services when:

(a) A written application for enforcement is made to the district attorney and the district attorney agrees to take enforcement action; or

(b) A written application for enforcement is made to the district attorney and any support obligation due as current support within the preceding six months is more than 60 days overdue.

(2)(a) The Department of Human Resources shall continue collection, accounting and disbursement services for any case referred under paragraph (a) of subsection (1) of this section until notified by the district attorney that enforcement action has been discontinued.

(b) The Department of Human Resources shall continue collection, accounting and disbursement services for any case referred under paragraph (b) of subsection (1) of this section for at least six months. If at the end of the six-month period, the district attorney has not agreed to provide enforcement services, the Department of Human Resources may discontinue collection, accounting and disbursement services. [Formerly 23.825]

25.170 Proceedings to require delinquent obligor to appear and make financial disclosure; order for appearance; contents; service. When a support obligation is more than one month in arrears, the Attorney General 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. [Formerly 23.835]

25.180 Examination of obligor; conduct and scope of examination; record. The examination shall be conducted under oath by an employe of the Department of Justice. The employe 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. [Formerly 23.837]

25.190 Continuance of proceedings; service of notice to obligor. 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 employe of the Department of Justice. [Formerly 23.842]

25.200 Arrest of obligor for failure to appear. (1) If the obligor fails to appear for examination or further examination, the Attorney General 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. 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]

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, 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]

25.220 Department of Human Resources computer printouts; evidence of authenticity not required in support proceedings; evidentiary effect. 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 Department of Human Resources computer printout which may reflect 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 department and is certified as a true copy by original or facsimile signature of a person purporting to be an officer or employe of the department. Printouts certified in accordance with this section constitute prima facie evidence of the existence of the facts stated therein. [Formerly 23.855]

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. (1) Notwithstanding any other law, where a court or the administrator has the authority under ORS chapter 107, 108, 109, 110, 416 or 419 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.

(2) For purposes of this section, "administrator" means an administrator as defined in ORS 416.400. [1985 c 610 §11]

INCOME WITHHOLDING AND PAYMENT RECORDS

25.310 Withholding of income from obligor; notice to obligor and employer; effect of noncompliance. (1) In addition to any other remedy provided by law for the enforcement of support, when a support order is or has been issued in Oregon by the circuit court or the administrator, as defined in ORS 416.400, or has been registered in Oregon, and current support payment records are being maintained by the Department of Human Resources, then so much of an obligor's disposable earnings must be withheld in accordance with subsections (2) to (14) of this section as is necessary to comply with the order and provide for the payment of any fee to the employer which may be required. Withholding shall occur without the need for any amendment to the support order involved or for any further action, other than those actions required under this section, by the court or administrator.

(2) An obligor shall become subject to such withholding, and the advance notice required under subsection (4) of this section must be given, on the earliest of:

(a) The date on which the payments which the obligor has failed to make under such order are at least equal to the support payable for one month; or

(b) The date as of which the obligor requests that such withholding begin.

(3) The advance notice regarding the delinquency of support payments and potential withholding shall be issued and sent by regular mail by the Department of Human Resources to the last-known address of the obligor. A copy of the notice shall be mailed by the department to the last-known address of the obligee. The advance notice must state:

(a) The amount of arrearages and the amount to be withheld;

(b) That the provision for withholding applies to any current or subsequent employer or period of employment;

(c) 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;

(d) That the obligor has 14 days from the date of the notice to contact the district attorney or the Support Enforcement Division of the Department of Justice, as appropriate, in order to contest the withholding, and that failure to make such contact within 14 days will result in the department notifying the employer to begin withholding; and

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

(4) Upon request of either the district attorney or the Support Enforcement Division, a new advance notice which increases the amount to be withheld may be issued by the department.

(5) The amount to be withheld shall include any fee to the employer, as defined in ORS 23.175, which the department may establish, and may include arrearages.

(6) If the obligor does not make the contact within the period specified in paragraph (d) of subsection (3) of this section, the department shall immediately send notice to the employer to begin withholding.

(7) If the obligor makes the appropriate contact outlined in paragraph (d) of subsection (3) of this section within the 14-day period, then the district attorney or Support Enforcement Division, as appropriate, shall provide the obligor with an opportunity to show that there is an error in the amount of current support or arrearages, or an error in the identity of the obligor. Payment of all arrearages may not be the sole basis for not implementing withholding. The department shall by rule set additional criteria for not implementing withholding. The district attorney or Support Enforcement Division need not provide an opportunity for a contested case administrative hearing pursuant to ORS 183.310 to 183.550 or a hearing in circuit court. Within 45 days of the date of the advance notice, the district attorney or Support Enforcement Division must determine if the withholding shall occur based on an evaluation of the facts, notify the obligor whether or not the withholding is to occur, notify the obligor of the right to appeal the determination and send the employer's notice with the information required by subsection (9) of this section. If withholding is to occur, the notice to the obligor shall state when withholding will begin and shall include the information given to the employer in the employer's notice.

(8) Any appeal of the district attorney's or Support Enforcement Division's decision made pursuant to subsection (7) of this section is to the circuit court for a hearing de novo. The appeal shall not act to stay withholding without a court order to that effect. No stay or partial stay shall be ordered by any court unless the obligor can show there is a substantial probability that the obligor would suffer irreparable injury and the obligee would not suffer irreparable injury.

(9) The notice to the employer of the obligor shall inform the employer of all the following:

(a) The employer shall withhold from the obligor's disposable earnings, as defined in ORS 23.175, the amount stated in the notice, subject to the following:

(A) For as long as arrearages are owed, the amount to be withheld shall not be less than 25 percent of the obligor's disposable earnings plus an employer fee or the amount of the monthly support obligation plus \$1 plus an employer fee, whichever is greater.

(B) When arrearages are paid in full, the amount to be withheld shall equal the monthly support obligation plus an employer fee.

(C) Notwithstanding subparagraph (A) or (B) of this paragraph, the amount to be withheld shall not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. §1673(b)) as of January 3, 1985.

(b) Out of the amount withheld, the employer may deduct an employer fee as stated in the notice, or the employer may waive the fee. If an employer waives the fee, the amount to be withheld under subparagraph (A) or (B) of paragraph (a) of this subsection shall not include an employer fee.

(c) Payments of the amount withheld, less any employer fee, shall be identified and made to the department within 10 days of the date the obligor is paid.

(d) The employer shall implement withholding no later than the first payday that occurs after five days following the date the notice was received.

(e) The withholding required by this notice is a continuing obligation. This notice and the withholding required by it remain in effect and are binding upon the employer until further notice from the department or a court.

(f) The employer is liable for all amounts which the employer fails to withhold and pay to the department pursuant to this section. Upon

motion to the court by the district attorney or Support Enforcement Division, the court may also fine the employer in an amount not to exceed \$250 for a violation of this paragraph.

(g) The employer shall not inquire about the existence of a support or withholding obligation and shall not discharge, discipline or refuse to hire an obligor because of the existence of a withholding obligation under this section. Upon motion by the district attorney or Support Enforcement Division, the court may also fine the employer for a violation of this paragraph in an amount not to exceed \$250.

(h) Withholding under this section has priority over any other legal process under Oregon law against the same income.

(i) The employer may combine amounts from obligors' incomes in a single payment to the department, as long as such payment is accompanied by a list which separately identifies which portion of the payment is attributable to each obligor and the obligor's name and case number.

(j) If there is more than one notice requiring withholding against a single obligor under this section, the employer shall honor all withholdings to the extent that the total amount withheld from the obligor's income does not exceed the limits imposed under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. §1673(b)) as of January 3, 1985. If the obligor's income is not sufficient to fully comply with multiple notices requiring withholding, the distribution of the withholding by the department shall be conducted pursuant to the department's rules.

(k) The employer shall notify the department promptly when the obligor terminates employment, and shall provide the obligor's last-known address and the name and address of the obligor's new employer, if known.

(10) The employer is bound by and required to follow the notice and its provisions as set out in subsection (9) of this section. Failure to comply with the notice subjects the employer to the consequences set out in subsection (9) of this section.

(11) Withholding under this section has priority over any other legal process under Oregon law against the same income.

(12) Withholding under this section may not be terminated solely because all arrearages are paid. Withholding may be terminated if all arrearages are paid and:

(a) The duty to support under the support order no longer exists; or

(b) The obligor and obligee request termination in writing and public assistance is not being granted to either party, their minor dependents or their children who are attending school, as defined in ORS 107.108.

(13) The employer's notice may be personally served upon the employer or the employer's registered agent, bookkeeper, accountant, person responsible for payroll or local manager or may be served by any type of mail which requests a return receipt or other written acknowledgment of receipt and is addressed to one of the persons listed in this subsection.

(14) No employer who complies with an employer's notice issued pursuant to this section shall be liable to the obligor or to any other person claiming rights derived from the obligor for wrongful withholding. [1985 c 671 §4]

25.320 Payment of support through Department of Human Resources. (1) If the payment method for support payments set forth in the governing support order does not require payments to be made through the Department of Human Resources, the obligor, obligee, district attorney or Support Enforcement Division 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 orders.

(3) If there is no appropriate record of support payments for purposes of this section, the department may establish a record of arrearages under ORS 25.330. [1985 c.671 §5]

25.330 Procedure for determining arrearages. This section establishes procedures for determining the amount of arrearages and for making a record of arrearages of support

payments. All of the following apply to this section:

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

(a) Court order;

(b) Stipulation of the parties; or

(c) The procedures under subsection (2) of this section whenever an existing child or spousal support case enters the Department of Human Resources 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 an affidavit in a form acceptable to the Department of Human Resources 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 affidavit shall file the original affidavit with the court in which the decree was entered.

(c) The person making the affidavit shall serve a true copy of the affidavit upon the other party together with a notice that the affidavit 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 affidavit and must mail or serve true copies of the objections on both the party who filed the affidavit 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 arrearages under the support order are so assigned, the Support Enforcement Division of the Department of Justice.

(e) If objections are filed within the time allowed, the party filing the affidavit must file a supplemental affidavit 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 Support Enforcement Division shall cause the case to be set for a court hearing. At the hearing, the court shall consider the correctness of the affidavit but shall not consider objections to the merits of the

support order or decree. 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 9B.

(g) If no objections are filed under this subsection within the time allowed, the amount of arrearages stated in the affidavit is the amount owed for purposes of any subsequent action. The district attorney or the Support Enforcement Division 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 25.320, no agency or court shall take or allow any ex parte enforcement action on amounts owed as arrearages from before the time that the Department of Human Resources 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 25.320. [1985 c.671 §6]

25.340 Establishing of income withholding as method of paying support; records. Whenever support rights are not and have not at any time during the past five months been assigned to the Department of Human Resources or one of its divisions, or to a public assistance agency of another state, and no arrearages under a support order are so assigned, the district attorney or, as appropriate, the Support Enforcement Division of the Department of Justice, shall provide, upon request of an obligor or obligee, services sufficient to permit establishment of income withholding under ORS 25.310, including such services as are necessary to establish a support payment record under ORS 25.320 and 25.330. These services shall be provided to the obligee 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.). [1985 c.671 §7]

25.350 Order to employer or trustee to withhold delinquent payments from money otherwise due. (1) Any decree, judgment or order for the payment of support for the benefit of a spouse and child may in the discretion of the court include an order directing any employer or trustee, including but not limited to a conservator, of the obligor to withhold and pay over to the Department of Human Resources, the clerk of the court out of which the order is issued or to the

obligee by deposit into the obligee's bank account, whichever is appropriate, out of money due or to become due such obligor at each pay period, an amount ordered to be paid for support.

(2)(a) The order shall recite the amount of the obligor's continuing support obligation and shall require withholding from the gross amounts due or becoming due to the obligor at each pay period and payment to the Department of Human Resources, the clerk of the court out of which the order is issued or to the obligee by deposit into the obligee's bank account, whichever is appropriate, of the amount of the support obligation.

(b) If the obligor's support obligation is required to be paid monthly and pay periods are at more frequent intervals, the employer or trustee may at the request of the obligor and with the consent of the Department of Human Resources, the clerk of the court out of which the order is issued or the obligee, whichever is appropriate, withhold and pay over to the department, clerk or obligee by deposit into the obligee's bank account an equal amount at each pay period cumulatively sufficient to pay the monthly support obligation.

(3) An order issued under this section shall be a continuing order and shall remain in effect and be binding upon any employer or trustee upon whom it is served until further order of the court.

(4) An order to withhold issued and served pursuant to this section shall have priority over any notice of garnishment subsequently served upon any employer or trustee of an obligor.

(5) No employer or trustee who complies according to its terms with an order under this section served upon the employer or trustee shall be liable to the obligor or to any other person claiming rights derived from the obligor for wrongful withholding.

(6) An employer or trustee described in subsection (1) of this section who wilfully fails or refuses to withhold or pay the amounts as ordered shall be deemed to be in contempt of the authority of the court and may be held personally liable.

(7) No employer shall discharge an employee or refuse to hire a person because of the entry or service of an order of withholding under this section. Any person who violates this subsection shall be deemed to be in contempt of the authority of the court. [Formerly 23 783]

25.360 Service of withholding order.

An order directing an employer or trustee to withhold support payments under ORS 25.050 and 25.350 may be served upon the employer or

trustee or the employer or trustee's registered agent, bookkeeper, accountant, person responsible for payroll or local office manager in the manner provided by law for service of a summons or may be served by any type of mail which requests a return receipt or other written acknowledgment of receipt and is addressed to one of the persons listed above. [Formerly 23.778]

25.370 Statement on withholding in support order. Any child support order issued or modified after October 1, 1985, shall include a statement in substantially the following form:

NOTICE OF INCOME WITHHOLDING

The support order is enforceable by income withholding under ORS 25.310. Withholding may occur whenever there are arrearages at least equal to the support payment for one month, or whenever the obligated parent requests such withholding. The district attorney or, as appropriate, the Support Enforcement Division of the Department of Justice will assist you in securing such withholding.

[1985 c 671 §8]

INTERSTATE INCOME WITHHOLDING

25.410 Definitions for ORS 25.410 to 25.530. As used in ORS 25.410 to 25.530:

(1) "Agency" means the Department of Human Resources and, when the context requires, means either the court or agency of any other jurisdiction with functions similar to those provided in ORS 25.410 to 25.530, including the issuance and enforcement of support orders.

(2) "Court" means the circuit court of this state and, when the context requires, means either the court or agency of any other jurisdiction with functions similar to those provided in ORS 25.410 to 25.530, including the issuance and enforcement of support orders.

(3) "Employer" has the meaning given in ORS 23.175 and includes any payer of income.

(4) "Income" means "earnings" as defined in ORS 23.175.

(5) "Income derived in this jurisdiction" means any income, the payer of which is subject to the jurisdiction of this state for the purpose of imposing and enforcing income withholding under ORS 25.310.

(6) "Jurisdiction" means any state or political subdivision, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

(7) "Obligee" means any person or entity which is entitled to receive support under an order of support and shall include an agency of another jurisdiction to which a person has assigned the right to support.

(8) "Obligor" means any person required to make payments under the terms of a support order for a child, spouse or former spouse.

(9) "Support order" means any order, decree or judgment for the support or for the payment of arrearages on such support of a child, spouse or former spouse issued by a court or agency of another jurisdiction, whether interlocutory or final, whether or not prospectively or retroactively modifiable, whether incidental to a proceeding for dissolution, judicial or legal separation, separate maintenance, paternity, guardianship, civil protection or otherwise. [1985 c 671 §13a]

25.420 Construction of ORS 25.410 to 25.530. ORS 25.410 to 25.530 shall be construed liberally in order to enhance the interstate enforcement of support obligations by providing a quick and effective procedure for withholding income derived in this jurisdiction to enforce support orders of other jurisdictions and by requiring that income withholding to enforce the support orders of this jurisdiction be sought in other jurisdictions. [1985 c.671 §13]

25.430 Status of remedy under ORS 25.410 to 25.530. (1) The remedy provided in ORS 25.410 to 25.530 is in addition to, and not in substitution for, any other remedy otherwise available to enforce a support order of another jurisdiction.

(2) Relief under ORS 25.410 to 25.530 shall not be denied, delayed or otherwise affected because of the availability of other remedies, nor shall relief under any other statute be delayed or denied because of the availability of this remedy. [1985 c.671 §13b]

25.440 Withholding in another jurisdiction; notice of contest. (1) On behalf of any person for whom the support enforcement services are being provided, or on behalf of the Department of Human Resources, the district attorney or Support Enforcement Division of the Department of Justice shall promptly request the agency of another jurisdiction in which the obligor of a support order derives income to enter the order for the purpose of obtaining income withholding against such income. The district attorney or Support Enforcement Division shall compile and transmit promptly to the agency of the other jurisdiction all documentation required to enter a support order for this purpose. The

district attorney or Support Enforcement Division also shall transmit immediately to the agency of the other jurisdiction a certified copy of any subsequent modifications of the support order.

(2) If the district attorney or Support Enforcement Division receives notice that the obligor is contesting income withholding in another jurisdiction, the individual obligee shall be notified immediately of the date, time and place of the hearings and of the obligee's right to attend. [1985 c.671 §14]

25.450 Withholding on support order from another jurisdiction; documentation.

(1) Upon receiving a support order of another jurisdiction with the documentation specified in subsection (2) of this section from an agency of another jurisdiction, the Department of Human Resources shall forward those documents to the district attorney or Support Enforcement Division of the Department of Justice. The district attorney or Support Enforcement Division shall file these documents with the clerk of the court in which withholding is being sought. The clerk shall accept and file the documents without requiring payment of fees, and such acceptance shall constitute entry of the support order and arrearages under ORS 23.170, 23.175, 25.010, 25.020, 25.080, 25.310 to 25.340, 25.370, 25.410 to 25.530, 25.610, 25.620, 25.650 to 25.690, 25.710, 25.720, 25.990, 109.015, 109.175, 109.252 to 109.258, 237.201, 239.261, 416.400 to 416.415, 416.425 to 416.440, 416.455 and 416.470.

(2) The following documents are required for the entry of a support order of another jurisdiction:

(a) A certified copy of the support order with all modifications;

(b) A certified copy of an income withholding order or notice, if any, still in effect;

(c) A copy of the portion of the income withholding statute of the jurisdiction which issued the support order which states the requirements for obtaining income withholding under the law of that jurisdiction;

(d) A sworn statement of the obligee or certified statement of the agency of the arrearages and the assignment of support rights, if any; and

(e) A statement of:

(A) The name, address and Social Security number of the obligor, if known;

(B) The name and address of the obligor's employer or of any other source of income of the obligor derived in this state against which income withholding is sought; and

(C) The name and address of the agency or person to whom support payments collected by income withholding shall be transmitted.

(3) If the documentation received by the district attorney or Support Enforcement Division under subsection (1) of this section does not conform to the requirements of subsection (2) of this section, the district attorney or Support Enforcement Division shall make reasonable effort to remedy any defect without the assistance of the requesting agency. If the district attorney or Support Enforcement Division is unable to make such corrections, the requesting agency shall be notified immediately of the necessary additions or corrections. In neither case shall the documents be returned. The district attorney or Support Enforcement Division and court shall accept the documents required by subsections (1) and (2) of this section even if they are not in the usual form required by state or local rules, if the substantive requirements of subsections (1) and (2) of this section are met.

(4) A support order and arrearages entered under subsection (1) of this section shall be enforceable by income withholding against income derived in this state in the manner and with the effect as set forth in ORS 25.310 and 25.460 to 25.530. Entry of the order and arrearages under subsection (1) of this section shall not confer jurisdiction on the courts of this state for any purpose other than income withholding. [1985 c 671 §15]

25.460 Service of notice on obligor; notice of hearing. (1) When a support order and arrearages are entered pursuant to ORS 25.450, the district attorney or Support Enforcement Division of the Department of Justice shall serve upon the obligor, in accordance with ORS 25.310, notice of a proposed income withholding. That notice shall contain the same information required in ORS 25.310. The notice shall also advise the obligor that the income withholding was requested on the basis of a support order of another jurisdiction. The date of serving notice on the obligor shall be the equivalent of the date the advance notice was issued under ORS 25.310 (2) for the purpose of measuring time for holding a hearing and rendering a decision.

(2) If the obligor seeks a hearing under ORS 25.310 (8) to contest the proposed income withholding, the district attorney or Support Enforcement Division shall immediately notify the requesting agency of the date, time and place of the hearing and of the obligee's right to attend the hearing. [1985 c.671 §16]

25.470 Evidentiary status of order from another jurisdiction; defenses of obli-

gor; other evidence. (1) At any hearing under ORS 25.310 concerning proposed income withholding where the withholding is based on a support order and arrearage entered under ORS 25.450, the entered order, accompanying sworn or certified statement and a certified copy of an income withholding order or notice, if any, still in effect shall constitute prima facie proof, without further proof or foundation, that the support order is valid, that the amount of current support payments and arrearages is as stated, and that the obligee would be entitled to income withholding under the law of the jurisdiction which issued the support order.

(2) When a prima facie case has been established, the obligor may raise only the following additional defenses:

(a) That withholding is not proper because of a mistake of fact concerning matters which are not *res judicata*, such as an error in the amount of current support owed or accrued arrearage, mistaken identity of the obligor or error in the amount of income to be withheld;

(b) That the court or agency which issued the support order entered under ORS 25.410 to 25.530 lacked personal jurisdiction over the obligor;

(c) That the support order entered under ORS 25.410 to 25.530 was obtained by fraud; or

(d) That the statute of limitations under ORS 25.530 (3) precludes enforcement of all or part of the arrearages.

(3) If the obligor presents evidence which constitutes a full or partial defense, the district attorney or Support Enforcement Division of the Department of Justice shall, on the request of the obligee, continue the case to permit further evidence relative to the defense to be adduced by either party, provided, however, that if the obligor acknowledges liability sufficient to entitle the obligee to income withholding, income withholding is required for the payment of current support payments under the support order and of so much of any arrearage as is not in dispute, while the case is continued with respect to those matters still in dispute. Those matters still in dispute are to be determined as soon as possible, and if appropriate, the withholding order shall be modified to conform to that resolution.

(4) In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses in another state, including the parties and any of the children, by deposition, by written discovery, by

photographic discovery such as videotaped depositions or by personal appearance before the court by telephone or photographic means. In any appeal pursuant to ORS 25.310 (8), the court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

(5) In any appeal pursuant to ORS 25.310 (8), a court of this state may request the appropriate court or agency of another state to hold a hearing to adduce evidence, to permit a deposition to be taken before the court or agency, to order a party to produce or give evidence under other procedures of that state and to forward to the court of this state certified copies of the evidence adduced in compliance with the request.

(6) In any appeal pursuant to ORS 25.310 (8), upon request of a court or agency of another state, the courts of this state which are competent to hear support matters may order a person in this state to appear at a hearing or deposition before the court to adduce evidence or to produce or give evidence under other procedures available in this state. A certified copy of the evidence adduced, such as a transcript or videotape, shall be forwarded by the clerk of the court to the requesting court or agency.

(7) A person within this state may testify voluntarily by statement or affidavit in this state for use in a proceeding to obtain income withholding outside this state. [1985 c.671 §17]

25.480 Income withholding notice to obligor, employer and requesting agency.

If the obligor does not request a hearing pursuant to ORS 25.310 in the time provided, or if a hearing is held and it is determined that the obligee has or is entitled to income withholding under the local law of the jurisdiction which issued the support order, the Department of Human Resources shall issue an income withholding notice to the obligor and employer pursuant to ORS 25.310 (7) and (10). The district attorney or Support Enforcement Division of the Department of Justice shall notify the requesting agency of the date upon which withholding will begin. [1985 c.671 §18]

25.490 Application of ORS 25.310 to order from other jurisdiction. The provisions of ORS 25.310 (3) to (14) apply to income withholding based on a support order of another jurisdiction entered under ORS 25.410 to 25.530, to the extent they are not inconsistent with ORS 25.410 to 25.530. [1985 c.671 §19]

25.500 Transmittal of payment; effect on order in this jurisdiction. (1) The income

withholding notice issued pursuant to ORS 25.310 shall direct payment to be made to the Department of Human Resources. The department shall promptly transmit payments received pursuant to an income withholding notice based on a support order of another jurisdiction entered under ORS 25.410 to 25.530 to the agency or person designated in ORS 25.450 (2)(e)(C).

(2) A support order entered pursuant to ORS 25.450 does not nullify and is not nullified by a support order made by a court of this state pursuant to any other law or by a support order made by a court of any other state. Amounts collected by any withholding of income shall be credited against the amounts accruing or accrued for any period under any support orders issued by any jurisdiction. [1985 c.671 §20]

25.510 Procedure if order modified; duty if obligor obtains employment or income in another state. (1) The district attorney or Support Enforcement Division of the Department of Justice, upon receiving a certified copy of any amendment or modification to a support order entered pursuant to ORS 25.450, shall initiate necessary procedures to amend or modify the income withholding notice of this state which was entered pursuant to ORS 25.310 and was based upon the entered support order as though it were an order of this state.

(2) If the district attorney or Support Enforcement Division determines that the obligor has obtained employment in another state or has a new or additional source of income in another state, then the district attorney or Support Enforcement Division shall notify the agency of the state which requested the income withholding under ORS 25.410 to 25.530 the changes within 10 working days of receiving that information and shall forward to that agency all information obtained or obtainable with respect to the obligor's new address and the name and address of the obligor's new employer or other source of income. The district attorney or Support Enforcement Division shall include with the notice a certified copy of the income withholding notice in effect in this state. [1985 c.671 §21]

25.520 Voluntary income withholding.

Any person who is the obligor on a support order of another jurisdiction may obtain voluntary income withholding by filing with the court a request for such withholding and a certified copy of the support order of another jurisdiction. The Department of Human Resources shall issue an income withholding notice under ORS 25.310. Payment shall be made to the department. All protections, conditions and penalties set out in

ORS 25.310 apply to withholding pursuant to this section. [1985 c.671 §22]

25.530 Law applicable to income withholding based on order from other jurisdiction. (1) The law of this state shall apply in all actions and proceedings concerning the issuance, enforcement and duration of income withholding notice issued by the Department of Human Resources, which is based upon a support order of another jurisdiction entered pursuant to ORS 25.450, except as provided in subsections (2) and (3) of this section.

(2) The law of the jurisdiction which issued the support order shall govern the following:

(a) The interpretation of the support order entered under ORS 25.450, including amount, form of payment and the duration of support;

(b) The amount of support arrearages necessary to require the issuance of an income withholding notice; and

(c) The definition of what costs, in addition to the periodic support obligation, are included as arrearages which are enforceable by income withholding, including, but not limited to, interest, attorney fees, court costs and costs of paternity testing.

(3) The Department of Human Resources shall upon request apply the statute of limitations for maintaining an action on arrearages of support payments of either the law of this state or of the state which issued the support order entered under this section and ORS 25.410 to 25.530, whichever is longer. [1985 c.671 §23]

STATE TAX INTERCEPT

25.610 Procedure to collect support orders from tax refunds. (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 district attorney or the Support Enforcement Division of the Department of Justice, whichever is appropriate, may request the Department of Revenue, through the Department of Human Resources or its designee, to collect past due child and spousal support from income tax and homeowner or renter refunds due to the obligor. Such request shall be based upon the payment record maintained pursuant to ORS 25.020.

(2) If support payment records have not been maintained as provided in ORS 25.020, then such a payment record may be established pursuant to ORS 25.320 and 25.330.

(3) The Department of Human Resources may adopt rules setting out additional criteria for requests pursuant to subsection (1) of this section.

(4) In cases where support rights are assigned to the State of Oregon or its departments or divisions at the time the refund is intercepted, any support collection made by the Department of Revenue shall be applied first to reimburse the state and Federal Government for assistance granted or paid to or on behalf of an obligee.

(5) In those cases where an obligee who is not a recipient of public assistance, care, support or services is receiving support enforcement services and a request is made under this section for collection of arrearages not assigned to the state or its departments or divisions, the obligee must be given advance notice that collections made are to be applied as specified under subsection (4) of this section.

(6) The obligor must be sent a written notice of the intent to apply the refund to the obligor's support obligation. The notice shall inform the obligor of:

(a) The proposed action;

(b) The right to request a hearing to contest the proposed action; and

(c) That a hearing, if desired, must be requested within 30 days.

(7) Hearings must be requested within 30 days. At the hearing, no issue may 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 which resulted in the accrual of the arrearage being used as a basis for a request under this section. [1985 c 671 §27]

Note: Section 286, chapter 671, Oregon Laws 1985, provides:

Sec. 28. On July 1, 1987, section 27 [ORS 25.610] of this Act is amended to read:

25.610. (1) Whenever support enforcement services are being provided and those services are funded in part through Title IV-D of the Social Security Act (42 U.S.C. §651, et seq.), the district attorney or the Support Enforcement Division of the Department of Justice, whichever is appropriate, may request the Department of Revenue, through the Department of Human Resources or its designee, to collect past due child and spousal support from income tax and homeowner or renter refunds due to the obligor. Such request shall be based upon the payment record maintained pursuant to ORS 25.020.

(2) If support payment records have not been maintained as provided in ORS 25.020, then such a payment record may be established pursuant to ORS 25.320 and 25.330.

(3) The Department of Human Resources may adopt rules setting out additional criteria for requests pursuant to subsection (1) of this section.

(4) In cases where support rights are assigned to the State of Oregon or its departments or divisions at the time the refund is intercepted, any support collection made by the Department of Revenue shall be applied first to reimburse the state and Federal Government for assistance granted or paid to or on behalf of an obligee.

(5) In those cases under this section where an obligee is not a recipient of public assistance, care, support or services at the time a tax intercept is made, and is receiving support enforcement services, any support collection made by the Department of Revenue shall be distributed to the obligee in the same manner as regular arrearage collections are distributed to the obligee.

(6) The obligor must be sent a written notice of the intent to apply the refund to the obligor's support obligation. The notice shall inform the obligor of:

- (a) The proposed action;
- (b) The right to request a hearing to contest the proposed action, and
- (c) That a hearing, if desired, must be requested within 30 days.

(7) Hearings must be requested within 30 days. At the hearing, no issue may 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 which resulted in the accrual of the arrearage being used as a basis for a request under this section.

25.620 Procedures to collect past due support from tax refunds. (1) The Department of Revenue shall establish procedures consistent with ORS 25.610 to collect past due child and spousal support from income tax and homeowner or renter 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 insure 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.

(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 Human Resources. Such proceeds shall be applied pursuant to ORS 25.610 (4) and other applicable federal and state laws.

(6) Notwithstanding any other law relating to the confidentiality of tax records, the Department of Revenue shall send the Department of

Human Resources 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]

CONSUMER REPORTING AGENCIES

25.650 Information on overdue support to consumer reporting agencies. (1) Notwithstanding any other law, and subject to rules established by the Department of Human Resources, for cases in which there is overdue support, the department may make available to consumer reporting agencies upon their request information regarding the amount of overdue support owed by an absent parent. The department may charge the agency a fee not to exceed the actual cost to the state of providing this information.

(2) The department must provide advance notice to the absent parent who owes the support concerning the proposed release of information to the consumer reporting agency. The notice must inform the absent parent of the methods available for contesting the accuracy of the information.

(3) As used in subsections (1) and (2) of this section, unless the context requires otherwise, "consumer reporting agency" means any person which, for monetary fees, dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. [1985 c.671 §§45, 46]

LIENS ON PERSONAL PROPERTY

25.670 Judgment lien on personal property. (1) Whenever there is a judgment for unpaid child or spousal support of at least \$500, the district attorney or the Support Enforcement Division of the Department of Justice may cause a lien to be created on any personal property owned by the obligor. The lien is created 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.

(2) The notice of claim of lien required under subsection (1) of this section 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;

(c) The name and address of the office of the district attorney or Support Enforcement Division filing the notice and the name of the obligee;

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

(e) A description of the personal property to be charged with the lien sufficient for identification.

(3) The county clerk shall record the notice of claim of lien filed under subsection (1) of this section.

(4) A written notice of claim of lien filed under this section is effective for a period of five years from the date of filing.

(5) When a notice of claim of lien is filed pursuant to subsection (1) of this section, the district attorney or Support Enforcement Division, as appropriate, 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. [1985 c.671 §47]

25.680 Effect of lien; priority. (1) Whenever a notice of claim of lien has been filed, the owner of the personal property may not release, sell, transfer, pay over, encumber or convey the personal property which is the subject of the lien until the district attorney or Support Enforcement Division of the Department of Justice releases the lien, the lien has been satisfied or a court has ordered release of such lien on the basis that no debt exists or that the debt has been satisfied. The limitations of this subsection shall 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]

25.690 Foreclosure of lien. A lien created pursuant to ORS 25.670 may be foreclosed in the manner set out in ORS 87.262. [1985 c.671 §49]

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 Human Resources 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 any government agency.

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

(a) General or public assistance as defined in ORS 411.010; or

(b) Care, support or services under ORS 418.015. [1985 c.671 §51a]

25.720 When support assignable. (1) Except as provided in ORS 416.410, 418.032, 418.042, 419.513 and subsection (2) of this section, the right to receive child or spousal support payments under ORS chapters 107, 108, 109, 110, 416 and 419 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 under ORS chapters 126 and 128.

(3) No person shall solicit or accept the assignment of support rights under subsection (1) of this section. [1985 c 671 §52(1),(2),(3)]

PENALTIES

25.990 Penalty. Violation of ORS 25.720 (3) is subject, upon conviction, to a fine not to exceed \$1,000. [1985 c.671 §52(4)]

