

House Bill 2792

Sponsored by Representative SMITH DB; Representative LEIF (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies formula for determining child support awards to take into consideration financial advantage afforded parent's household by income of spouse or domestic partner. Provides that change in parent's cohabitation with spouse or domestic partner is substantial change in circumstances for purposes of child support modification proceedings.

A BILL FOR AN ACT

1
2 Relating to determination of child support award amounts; amending ORS 25.275, 25.280 and 25.527.

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

4 **SECTION 1.** ORS 25.275 is amended to read:

5 25.275. (1) The Division of Child Support of the Department of Justice shall establish by rule a
6 formula for determining child support awards in any judicial or administrative proceeding. In es-
7 tablishing the formula, the division shall take into consideration the following criteria:

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

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

10 (c) The reasonable necessities of each parent;

11 (d) The ability of each parent to borrow;

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

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

15 (g) Preexisting support orders and current dependents; [*and*]

16 **(h) The financial advantage afforded a parent's household by the income of a spouse or**
17 **another person with whom the parent lives in a relationship similar to that of a spouse; and**
18 [*h*] (i) Other reasonable criteria that the division may find to be appropriate.

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

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

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

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

30 (4) The child support obligation to be paid by the obligor and determined under the formula

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 described in subsection (1) of this section:

2 (a) May be reduced or increased in consideration of medical support, as provided in ORS 25.321
3 to 25.343.

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

7 (c) Shall be reduced dollar for dollar in consideration of any Survivors' and Dependents' Edu-
8 cational Assistance under 38 U.S.C. chapter 35 paid to the child, or to a representative payee ad-
9 ministering the funds for the child's use and benefit, as a result of the obligor's disability or
10 retirement.

11 **SECTION 2.** ORS 25.280 is amended to read:

12 25.280. In any judicial or administrative proceeding for the establishment or modification of a
13 child support obligation under ORS chapter 107, 108, 109 or 110 or ORS 25.501 to 25.556, 419B.400,
14 419B.923, 419C.590 or 419C.610, the amount of support determined by the formula established under
15 ORS 25.275 is presumed to be the correct amount of the obligation. This is a rebuttable presumption
16 and a written finding or a specific finding on the record that the application of the formula would
17 be unjust or inappropriate in a particular case is sufficient to rebut the presumption. The following
18 criteria shall be considered in making the finding:

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

20 (2) The reasonable necessities of a parent;

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

23 (4) A parent's ability to borrow;

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

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

27 (7) The needs of the child;

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

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

32 [*(10) The financial advantage afforded a parent's household by the income of a spouse or another*
33 *person with whom the parent lives in a relationship similar to that of a spouse.*]

34 **SECTION 3.** ORS 25.527 is amended to read:

35 25.527. (1) Any time support enforcement services are being provided under ORS 25.080, the
36 obligor, the obligee, the party holding the support rights or the administrator may move for the
37 existing order to be modified under this section. The motion shall be in writing in a form prescribed
38 by the administrator, shall set out the reasons for modification and shall state the address of the
39 party requesting modification.

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

41 (a) Whether there is pending in this state or any other jurisdiction any type of support pro-
42 ceeding involving the dependent child, including a proceeding brought under ORS 25.287, 25.511,
43 107.085, 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 125.025, 419B.400 or 419C.590 or ORS
44 chapter 110; and

45 (b) Whether there exists in this state or any other jurisdiction a support order, as defined in

1 ORS 110.503, involving the dependent child, other than the order the party is moving to modify.

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

6 (4) The moving party shall serve the motion upon the obligor, the obligee, the party holding the
 7 support rights and the administrator, as appropriate. The nonrequesting parties must be served in
 8 the same manner as provided for service of the notice and finding of financial responsibility under
 9 ORS 25.511 (1)(a). Notwithstanding ORS 25.085, the requesting party must be served by first class
 10 mail to the requesting party's last known address. The nonrequesting parties have 30 days to resolve
 11 the matter by stipulated agreement or to serve the moving party by regular mail with a written
 12 response setting forth any objections to the motion and a request for hearing. The hearing shall be
 13 conducted under ORS 25.513.

14 (5) When the moving party is other than the administrator and no objections and request for
 15 hearing have been served within 30 days, the moving party may submit a true copy of the motion
 16 to the administrative law judge as provided in ORS 25.513, except the default may not be construed
 17 to be a contested case as defined in ORS chapter 183. Upon proof of service, the administrative law
 18 judge shall issue an order granting the relief sought.

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

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

24 (8) An administrative order filed in accordance with ORS 25.529 is a final judgment as to any
 25 installment or payment of money that has accrued up to the time the nonrequesting party is served
 26 with a motion to set aside, alter or modify the judgment. The administrator may not set aside, alter
 27 or modify any portion of the judgment that provides for any payment of money for minor children
 28 that has accrued before the motion is served. However:

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

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

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

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

39 (11) An obligor's incarceration for a period of at least 180 consecutive days or an obligor's re-
 40 lease from incarceration is considered a substantial change of circumstances for purposes of pro-
 41 ceedings brought under this section.

42 **(12) The marriage or dissolution of marriage of an obligor or obligee or change in an**
 43 **obligor or obligee's cohabitation with a person with whom the obligor or obligee lives or lived**
 44 **in a relationship similar to that of a spouse is considered a substantial change of circum-**
 45 **stances for purposes of child support modification proceedings.**

1 [(12)] (13)(a) Notwithstanding subsections (1) to [(11)] (12) of this section, any time support
 2 enforcement services are being provided under ORS 25.080, upon request of a party to a support
 3 order or judgment or on the administrator’s own motion, the administrator may move to suspend the
 4 order or judgment and issue a temporary modification order under this subsection when:

5 (A) There is a period of significant unemployment as that term is described in paragraph (b) of
 6 this subsection; and

7 (B) A party to the support order or judgment experiences an employment-related change of in-
 8 come as defined by rule in ORS 25.505.

9 (b) Proceedings under this subsection may be initiated only when there is a period of significant
 10 unemployment in Oregon. The Attorney General shall determine when a “period of significant un-
 11 employment” exists in Oregon and designate the beginning and ending dates thereof. In making the
 12 determination of when a period of significant unemployment exists in Oregon, the Attorney General
 13 may consider whether there is in effect an “extended benefit period” as that term is defined in ORS
 14 657.321.

15 (c) Except as otherwise provided in this subsection, the provisions of subsections (1) to [(11)] (12)
 16 of this section apply to a motion for an order of suspension and temporary modification under this
 17 subsection.

18 (d) A party’s employment-related change of income during a period of significant unemployment
 19 is considered a substantial change of circumstances for purposes of proceedings brought under this
 20 section.

21 (e) The motion for an order of suspension and temporary modification must be in writing and
 22 must include, but need not be limited to:

23 (A) The amount of the existing support order or judgment;

24 (B) The amount of the obligor’s and obligee’s income immediately preceding the party’s
 25 employment-related change of income, if known;

26 (C) The reason for the party’s employment-related change of income;

27 (D) How the party’s employment-related change of income affects the party’s employment status,
 28 income and, if applicable, ability to pay support;

29 (E) The obligor’s and the obligee’s current sources of income, if known;

30 (F) The proposed amount of the temporary modification order;

31 (G) A statement that if a party objects to the motion for an order of suspension and temporary
 32 modification, then the party may request a hearing within 14 days of service of the motion as pro-
 33 vided in paragraph (g) of this subsection;

34 (H) A statement that the preexisting support order or judgment will be reinstated as provided
 35 in paragraph (h) of this subsection; and

36 (I) A statement that a party may request a renewal of the order of suspension and temporary
 37 modification prior to its expiration as provided in paragraph (j) of this subsection.

38 (f) The administrator shall serve the motion filed under this subsection upon the parties by
 39 regular first class mail, facsimile or electronic mail unless a party signs a form agreeing to accept
 40 service of the motion.

41 (g) A party may request a hearing within 14 days of service of the motion. If a hearing is re-
 42 quested, the provisions of ORS 25.513 apply. When there has been no request for hearing, the ad-
 43 ministrator may enter an order of suspension and temporary modification under this subsection. The
 44 order must be consistent with the provisions of the motion filed under this subsection and be in
 45 substantial compliance with the formula established under ORS 25.275.

1 (h) An order of suspension and temporary modification issued under this subsection is temporary
2 and remains in effect for six months from the date the order is filed under ORS 25.529 or until the
3 date specified in the notice provided under paragraph (i) of this subsection informing of the party's
4 reemployment, whichever is earlier, at which time the preexisting support order or judgment be-
5 comes immediately effective and payable on the first day of the following month unless an order of
6 renewal is issued under paragraph (j) of this subsection.

7 (i) The administrator may issue a notice of reinstatement at any time during which an order of
8 suspension and temporary modification is in effect under this subsection when a party obtains em-
9 ployment and receives income that is sufficient to reinstate support in an amount substantially
10 similar to the amount in the preexisting support order or judgment. The notice shall be served as
11 provided in paragraph (f) of this subsection and must state that, unless a request for hearing is re-
12 ceived within 14 days of service of the notice, the administrator will enter an order terminating the
13 order of suspension and temporary modification and reinstating the amount of the preexisting sup-
14 port order or judgment effective on a date to be specified in the notice. If a hearing is requested,
15 the provisions of ORS 25.513 apply. When there is no request for hearing, the administrator may
16 enter an order terminating the order of suspension and temporary modification and reinstating the
17 preexisting support order or judgment effective upon the date specified in the notice.

18 (j) Prior to expiration of an order of suspension and temporary modification under this sub-
19 section and upon request of a party, the administrator may renew the order of suspension and tem-
20 porary modification for additional six-month periods or until the party obtains employment as
21 described in paragraph (i) of this subsection, whichever occurs first, if the circumstances under
22 which the order was originally issued continue to exist unchanged.

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