

# Enrolled Senate Bill 303

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CHAPTER .....

AN ACT

Relating to garnishment; creating new provisions; and amending ORS 18.385, 18.618, 18.625, 18.685, 18.750, 18.838, 18.840, 18.845, 18.855, 18.896 and 90.300.

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

**SECTION 1.** ORS 18.618 is amended to read:

18.618. (1)(a) Notwithstanding ORS 18.615, the following are not garnishable property:

[(a)] (A) Equitable interests, except to the extent allowed under ORS chapter 130.

[(b)] (B) Property in the custody of the law.

[(c)] (C) Property in the possession of a conservator.

[(d)] (D) Property in the possession of a personal representative that constitutes the subject matter of a trust contained in a duly probated will of a decedent.

[(e)] (E) If a residential landlord is the garnishee, property in the possession of a residential landlord that is held as a security deposit or prepaid rent under ORS 90.300.

[(f)] (F) The right of a seller under a land sale contract, as defined by ORS 18.960, to receive payments that are due more than 45 days after the writ of garnishment is delivered.

[(2)] (b) If a garnishee holds any property described in [subsection (1) of this section] **paragraph (a) of this subsection**, the garnishee must note in the garnishee response required by ORS 18.680 that the garnishee holds the property, but may not deliver the property to the garnishor.

**(2)(a) Notwithstanding ORS 18.615, wages owing by a garnishee to a debtor for a specific pay period are not garnishable property if:**

**(A) The writ is delivered within two business days before the debtor's normal payday for the pay period;**

**(B) When the writ is delivered to the garnishee, the debtor's wages are paid by direct deposit to a financial institution, or the garnishee uses the Oregon Department of Administrative Services or an independent contractor as defined in ORS 670.600 as payroll administrator for the garnishee's payroll; and**

**(C) Before the writ is delivered to the garnishee, the garnishee issued instructions to the financial institution or the payroll administrator to pay the debtor for the pay period.**

**(b) If a garnishee owes any wages as described in paragraph (a) of this subsection, the garnishee must so note in the garnishee response required by ORS 18.680.**

(3) Notwithstanding any other provision of law, if a voluntary or involuntary bankruptcy petition has been filed by or on behalf of the debtor after a writ of garnishment could be issued under

ORS 18.605, the garnishment of any property of the debtor in the garnishee's possession, control or custody is stayed pursuant to section 362 of the United States Bankruptcy Code (11 U.S.C. 101 to 1330).

**SECTION 2.** ORS 18.625 is amended to read:

18.625. (1) For any property other than wages, a writ of garnishment acts to garnish only garnishable property of the debtor that is in the garnishee's possession, control or custody at the time the writ is delivered, including money that is owed but not yet due.

(2) **Except as provided in ORS 18.618 (2)**, a writ of garnishment acts to garnish all wages owed by the garnishee to the debtor at the time the writ is delivered. Except as provided in subsection (3) of this section, a writ also acts to garnish all wages earned by the debtor by reason of services to the garnishee during the period commencing with the date the writ is delivered and ending on the earlier of:

- (a) The expiration of 90 days after the date the writ is delivered; or
- (b) The date on which the garnishment is released or satisfied in full.

(3) If a writ of garnishment is issued on behalf of a county or county agency, the writ acts to garnish all wages earned by the debtor by reason of services to the garnishee until the full amount owed to the county or county agency is paid or until the writ of garnishment is released by the county or county agency or by a court order. A writ of garnishment issued on behalf of a county or county agency shall contain language reasonably designed to notify the garnishee of the provisions of this subsection.

**SECTION 3.** ORS 18.838 is amended to read:

18.838. Instructions to garnishees must be in substantially the following form:

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### INSTRUCTIONS TO GARNISHEE

Except as specifically provided in these instructions, you must complete and deliver the Garnishee Response within seven calendar days after you receive the writ of garnishment. If the writ does not comply with Oregon law, the writ is not effective to garnish any property of the Debtor, but you still must complete and deliver the Garnishee Response. You must complete and deliver the response even though you cannot determine from the writ whether you hold any property or owe any debt to the Debtor. If the seventh calendar day is a Saturday, Sunday or legal holiday, you must deliver your response on or before the next following day that is not a Saturday, Sunday or legal holiday.

The writ is not effective, and you need not make a Garnishee Response, if:

- You do not receive the writ within 60 days after the date of issuance shown on the face of the writ.
- You do not receive an original writ of garnishment or a copy of the writ.

Statutes that may affect your rights and duties under the writ can be found in ORS 18.600 to 18.850.

NOTE: The Garnishor may be the Creditor, the attorney for the Creditor or some other person who is authorized by law to issue the writ of garnishment. See the writ to determine who the Garnishor is.

### STEP 1. FILL OUT THE GARNISHEE RESPONSE.

All garnishees who are required to deliver a garnishee response must fill in Part I of the Garnishee Response. Garnishees who employ the Debtor must also fill in Part II of the response. You should keep a copy of the response for your records.

Completing Part I of the Garnishee Response. If you discover before you deliver your response that a bankruptcy petition has been filed by or on behalf of the Debtor, and the bankruptcy petition was filed after a judgment was entered against the Debtor or after the debt otherwise became subject to garnishment (see the date specified in the writ), you must put a check by the appropriate statement in Part I. If a bankruptcy petition has been filed, you should not make any payments to the Garnishor unless the court orders otherwise. You need not complete any other part of the response, but you still must sign the response and deliver it in the manner described in Step 2 of these instructions.

In all other cases you must list in Part I all money and personal property of the Debtor that is in your possession, control or custody at the time of delivery of the writ. You must also list all debts that you owe to the Debtor, whether or not those debts are currently due (e.g., money loaned to you by the Debtor that is to be repaid at a later time).

If you are the employer of the Debtor at the time the writ is delivered to you, you must put a check by the appropriate statement in Part I. In addition, you must complete Part II of the response.

If you believe that you may hold property of the Debtor or that you owe a debt to the Debtor, but you are not sure, you must put a check by the appropriate statement and provide an explanation. When you find out what property you hold that belongs to the Debtor, or you find out whether you owe money to the Debtor and how much, you must prepare and deliver an amended response. You must do this even if you find out that you have no property of the Debtor or that you do not owe anything to the Debtor.

If you determine that the writ, on its face, does not comply with Oregon laws governing writs of garnishment, or if you are unable to determine the identity of the Debtor from the information in the writ, then the writ is not effective to garnish any property of the Debtor. You must put a check by the appropriate statement in Part I and provide an explanation. You still must complete the response and deliver the response in the manner described in Step 2 of these instructions.

If you have received an order to withhold income that applies to the income of the Debtor and that order has priority over the garnishment, and if compliance with the order will reduce or eliminate the money or property that you would otherwise deliver under the garnishment, you must put a check by the appropriate statement in Part I. You still must fill out the remainder of the response and deliver the response in the manner described in Step 2 of these instructions. If you employ the Debtor, you still must complete Part II of the response.

If you receive notice of a challenge to the garnishment before you send your response, you must complete and deliver your response as otherwise required by these instructions. However, see Step 3 of these instructions regarding payment of money or delivery of property after receipt of notice of a challenge to the garnishment.

If you owe a debt to the Debtor and the Debtor owes a debt to the holder of an underlying lien on your property, you may be able to offset the amount payable to the underlying lienholder. See ORS 18.620. You must note that you have made the offset in Part I of the response (under "Other") and specify the amount that was offset.

Completing Part II of the Garnishee Response (employers only). You must fill in Part II of the response if you employ the Debtor on the date the writ of garnishment is delivered to you, or if you previously employed the Debtor and still owe wages to the Debtor on the date the writ is delivered to you.

Wages affected. **Except as provided below**, the writ garnishes all wages that you owe to the Debtor for work performed before the date you received the writ, even though the wages will not be paid until a later date. The writ also garnishes all wages that are attributable to services per-

formed during the 90-day period following the date you received the writ, even though you would not pay the Debtor for all or part of those services until after the end of the 90-day period. Wages subject to garnishment under the writ include all amounts paid by you as an employer, whether on an hourly, weekly or monthly basis, and include commission payments and bonuses.

Example 1: Debtor A is employed by you and is paid a monthly salary on the first day of each month. You receive a writ of garnishment on July 17. The writ garnishes all wages that you owe to Debtor A for work performed on or before July 17. If Debtor A was paid on July 1 for services performed in the month of June, the writ garnishes Debtor A's salary for the period beginning July 1 and ending October 15 (90 days after receipt of the writ).

**The writ does not garnish any wages you owe to a Debtor for a specific pay period if:**

**(a) The writ is delivered to you within two business days before the Debtor's normal payday for the pay period;**

**(b) When the writ is delivered to you, the Debtor's wages are paid by direct deposit to a financial institution, or you use an independent contractor as payroll administrator for your payroll; and**

**(c) Before the writ was delivered to you, you issued instructions to the financial institution or the payroll administrator to pay the Debtor for the pay period.**

**If any wages are not garnishable by reason of the issuance of instructions to a financial institution or a payroll administrator as described above, you must so note in the Garnishee Response. Thereafter, you must pay to the Garnishor all wages that are subject to garnishment that are attributable to services performed by the Debtor during the 90-day period following the date you received the writ.**

Calculation of wages subject to garnishment. A Wage Exemption Calculation form is attached to the writ of garnishment. You must use this form to calculate the amount of the Debtor's wages that is subject to garnishment. You should read the instructions printed on the Wage Exemption Calculation form to determine the normal wage exemption and the minimum wage exemption for each payment you make under the writ.

A Wage Exemption Calculation form must be sent with the first payment you make under the writ. For the 90-day period during which the writ is effective, you must also fill out and return a Wage Exemption Calculation form with a subsequent payment any time the initial calculation changes. Finally, you must fill out and return a Wage Exemption Calculation form with the final payment that you make under the writ.

Payment of amount subject to garnishment. Payments under the writ must be made at the following times, unless the amount owing on the judgment or other debt is fully paid before the final payment is made or the writ is released:

(a) You must make a payment to the Garnishor of all wages subject to garnishment at the time you next pay wages to the Debtor. Complete the wage exemption computation, using the Wage Exemption Calculation form, to determine the portion of the Debtor's wages that is subject to garnishment. Be sure to adjust the minimum exemption amount for any payment that covers less than a full pay period. You must include a copy of the Wage Exemption Calculation form with this first payment.

Example 2: Using the facts given in Example 1, when you next make any payment of wages to Debtor A after you receive the writ on July 17, you must complete the Wage Exemption Calculation form and send the form to the Garnishor along with all amounts determined to be subject to garnishment that are attributable to the period covered by the payment. If you pay Debtor A on August 1, the payment will be for all wages attributable to the period beginning July 1 and ending July 31.

(b) Unless the writ of garnishment is satisfied or released, during the 90-day period following the date you received the writ, you must pay to the Garnishor all wages that are determined to be subject to garnishment whenever you issue a paycheck to the Debtor. If the Debtor is paid on a weekly basis, you must make payment under the writ on a weekly basis. If the Debtor is paid on a monthly basis, you must make payment under the writ on a monthly basis. If the amount paid to the Debtor varies from paycheck to paycheck, or changes at any time from the amount being paid at the time the writ was delivered to you, you must perform a new wage exemption computation to determine the amount of wages subject to garnishment under the writ. You must send a copy of the new Wage Exemption Calculation form with your payment to the Garnishor.

Example 3: Using the facts given above, as you make each subsequent payment of wages to Debtor A you must make a payment of that portion of the Debtor's wages that are subject to garnishment. If you continue to pay Debtor A on the first of each month, payments must be made on September 1 and October 1.

(c) Upon the expiration of the 90-day period, you must make a final payment to the Garnishor for all wages that were owing to the Debtor for the work performed by the Debtor through the 90th day following your receipt of the writ. This payment may be made at the time of the Debtor's next paycheck. You will need to complete another Wage Exemption Calculation form to determine the amount of the wages subject to garnishment.

Example 4: Using the facts given above, you must make a final payment for the wages owing to Debtor A for the period beginning October 1 and ending October 15. You may make this payment at the time you issue Debtor A's paycheck on November 1, but you must make the payment at any time you issue a paycheck to Debtor A after October 15. Be sure that in completing the wage exemption computation for the final payment you adjust the minimum exemption amount to take into account the fact that the period covered is only 15 days of the full month (see instructions on Wage Exemption Calculation form).

Processing fee. You may collect a \$1 processing fee for each week of wages, or fraction of a week of wages, for which a payment is made under the writ. The fee must be collected after you make the last payment under the writ. The fee must be withheld from the wages of the debtor, and is in addition to the amounts withheld for payment to the garnishor under the writ or under any other writ you have received.

If you receive more than one writ of garnishment. If you receive a second writ of garnishment for the same Debtor from another Garnishor, the first writ will have priority for wages. The priority of the first writ lasts for the 90-day period following delivery of that writ to you, or until the first writ is paid in full, whichever comes first. In your response to the second writ, you must put a check by the appropriate statement in Part II and indicate the date on which the first writ will expire (90 days after the date you received the writ). You should make no payments under the second writ until expiration of the first writ. The expiration date of the second writ is 90 days after the date you received the second writ; the expiration date is not affected by any delay in payment attributable to the priority of the first writ.

## STEP 2. DELIVER THE GARNISHEE RESPONSE.

You must deliver your Garnishee Response and copies of the response in the manner provided in this step. The response and copies may be mailed or delivered personally.

You must complete and deliver the Garnishee Response within seven calendar days after you receive the writ of garnishment. If the seventh calendar day is a Saturday, Sunday or legal holiday,

you must deliver your response on or before the next following day that is not a Saturday, Sunday or legal holiday.

If you are required to hold any property under the writ or make any payment under the writ, either at the time of making your response or later, you must:

(a) Send the original of your Garnishee Response to the Garnishor at the address indicated on the writ under Important Addresses.

(b) Send a copy of your Garnishee Response to the court administrator at the address indicated on the writ under Important Addresses.

(c) Send a copy of your Garnishee Response to the Debtor if an address is indicated on the writ under Important Addresses.

If you are not required to hold any property under the writ or make any payment under the writ, either at the time of making your response or later, you must:

(a) Send the original of your Garnishee Response to the Garnishor at the address indicated on the writ under Important Addresses.

(b) Send a copy of your Garnishee Response to the Debtor if an address is indicated on the writ under Important Addresses.

### STEP 3. DELIVER THE FUNDS OR OTHER PROPERTY.

As long as the writ is in effect, you may be liable to the Creditor if you pay any debt or turn over any property to the Debtor except as specifically allowed by law. If you have any money or property of the Debtor in your possession, control or custody at the time of delivery of the writ, or owe any debt to the Debtor, you must pay the money or hold the property as required by this step. Exceptions to this requirement are listed below.

IF YOU ARE HOLDING MONEY FOR THE DEBTOR OR OWE A DEBT THAT IS CURRENTLY DUE, you must pay the money to the Garnishor with your response. You must send your payment to the Garnishor at the address indicated on the writ under Important Addresses. Make your check payable to the Garnishor.

IF YOU OWE A DEBT TO THE DEBTOR THAT WILL BECOME DUE WITHIN 45 DAYS AFTER THE DATE YOU RECEIVED THE WRIT, you must send your payment directly to the Garnishor at the address provided in the writ when the debt becomes due. Make your check payable to the Garnishor.

IF YOU ARE HOLDING PROPERTY THAT BELONGS TO THE DEBTOR, OR OWE A DEBT TO THE DEBTOR THAT WILL NOT BECOME DUE WITHIN 45 DAYS AFTER THE DATE YOU RECEIVED THE WRIT, you must keep the property or debt in your possession, control or custody until you receive written notice from the Sheriff. The Sheriff's notice will tell you what to do with the property or debt. If you have followed all of the instructions in the writ and you receive no notice from the Sheriff within 30 days after the date on which you delivered your Garnishee Response, you may treat the writ as being of no further force or effect.

#### EXCEPTIONS:

1. Challenge to garnishment or specific directions from court. If you are making any payments under the garnishment and before making a payment you receive notice of a challenge to the garnishment from the court, or receive a specific direction from the court to make payments to the court, you must send or deliver the payment directly to the court administrator. If the money is currently due when you receive the notice, send the payment promptly to the court. If the payment

is for a debt that is payable within 45 days after you receive the writ, make the payment to the court promptly when it becomes due. If you make payment by check, make the check payable to the State of Oregon. Because you may be liable for any payment that does not reach the court, it is better not to send cash by mail.

A challenge to the garnishment does not affect your duty to follow the instructions you receive from the Sheriff for property that belongs to the Debtor and debts that you owe to the Debtor that do not become due within 45 days.

2. Previous writ of garnishment. If you receive a second writ of garnishment for the same Debtor from another Garnishor, the first writ will have priority and you need not make payments or deliver property under the second writ to the extent that compliance with the first writ will reduce or eliminate the payment of money or delivery of property that you would otherwise make under the garnishment. You must still deliver a Garnishee Response to the second writ, and must commence payment under the second writ as soon as the first writ is satisfied or expires.

3. Offset for payment of underlying lien. If you owe a debt to the Debtor and the Debtor owes a debt to the holder of an underlying lien on your property, you may be able to offset the amount payable to the underlying lienholder. See ORS 18.620.

4. Subsequent events:

(a) Bankruptcy. If you make your response and then discover that a voluntary or involuntary bankruptcy petition has been filed by or on behalf of the Debtor after the judgment was entered against the Debtor or after the debt otherwise became subject to garnishment (see date in writ), you may not make any further payments or delivery of property under the writ unless the court orders otherwise. If you have not delivered all property that is subject to garnishment under this writ when you discover that a bankruptcy petition has been filed, you must mail the following notice to the Garnishor and to the Debtor.

(b) Order to withhold income. If you make your response and then receive an order to withhold income that has priority over the writ, you may make payments or deliver property under the writ only after payment of the amounts required under the order to withhold income. If you have not delivered all property that is subject to garnishment under this writ when you receive an order to withhold income that has priority, you must mail the following notice to the Garnishor and to the Debtor.

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SUPPLEMENTAL GARNISHEE  
RESPONSE

TO: The Garnishor and the Debtor

RE: Writ of garnishment received \_\_\_\_\_, 2\_\_ (date), in the case of \_\_\_\_\_ (Plaintiff)  
vs. \_\_\_\_\_ (Defendant), Circuit Court of \_\_\_\_\_ County, Oregon, Case No. \_\_\_\_\_.

The undersigned Garnishee furnished a Garnishee Response to this writ of garnishment on \_\_\_\_\_, 2\_\_ (date). Since that time (check appropriate statement):

\_\_\_ I have discovered that a voluntary or involuntary bankruptcy petition has been filed by or on behalf of the Debtor after the judgment was entered against the Debtor or after the debt otherwise became subject to garnishment.

— I have received an order to withhold income of the Debtor by reason of a support obligation. Under ORS 25.375, the order to withhold income has priority over any other legal process under Oregon law against the same income. The withholding of income pursuant to the order to withhold income might reduce or eliminate subsequent payments under the garnishment. (Provide details, including the name of the agency serving the order to withhold, the date the order was served on you and the amounts to be withheld.)

Dated \_\_\_\_\_, 2\_\_

\_\_\_\_\_  
Name of Garnishee

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

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SPECIAL INSTRUCTIONS FOR BANKS  
AND OTHER FINANCIAL INSTITUTIONS

If the Garnishor fails to pay the search fee required by ORS 18.790 and you do not employ the Debtor, you are not required to deliver a Garnishee Response and you may deal with any property of the Debtor as though the garnishment had not been issued.

If the Debtor owes a debt to you that was due at the time you received the writ of garnishment, you may be able to offset the amount of that debt. See ORS 18.795. You must note that you have made the offset in Part I of the Garnishee Response (under "Other") and specify the amount that was offset.

Before making a payment under the writ, you may first deduct any processing fee that you are allowed under ORS 18.790.

You need not deliver any property contained in a safe deposit box unless the Garnishor pays you in advance for the costs that will be incurred in gaining entry to the box. See ORS 18.792.

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**SECTION 4.** ORS 18.855 is amended to read:

18.855. (1) Notwithstanding ORS 18.607, a notice of garnishment issued by a state agency need not contain the name of a court whose authority is invoked.

(2) State agencies shall make such modifications as are necessary in the wage exemption calculation form provided by ORS 18.840 if a notice of garnishment is issued for a debt due for a state tax that is subject to the provisions of ORS 18.385 (6).

(3) Notwithstanding ORS 18.625, **but subject to ORS 18.618 (2)**, a notice of garnishment issued by a state agency acts to garnish all wages earned by the debtor by reason of services to the garnishee until the full amount of the debt is paid or until the notice of garnishment is released by the state agency or by court order. A notice of garnishment issued by a state agency must contain language reasonably designed to notify the garnishee of the provisions of this subsection.

(4) Notwithstanding ORS 18.690, a garnishee who receives a notice of garnishment issued by a state agency need not deliver a copy of the garnishee response to the clerk of the court, but must deliver the original of the response to the state agency.



(5) Notwithstanding ORS 18.700, a challenge to a notice of garnishment issued by a state agency must be delivered in person or by first class mail to the state agency within the time specified by ORS 18.700 (2). Within 14 days after receiving the challenge, the state agency must either concede the challenge or give the person making the challenge opportunity for hearing. If the person making the challenge requests a hearing, the agency shall immediately refer the challenge to the Office of Administrative Hearings established under ORS 183.605. The hearing shall be conducted as soon as possible. Notwithstanding ORS 183.315, the hearing shall be conducted as a contested case hearing. An issue that was decided in a previous hearing, or for which the debtor was previously afforded an opportunity for hearing, may not be reconsidered.

(6) If a state agency is issuing a notice of garnishment for collection of a state tax, and the state agency has reason to believe that the debtor intends to leave the state or do any other act that would jeopardize collection of the tax, the state agency may issue a special notice of garnishment. Any earnings, as defined in ORS 18.375, garnished under a special notice of garnishment are not subject to a claim of exemption under ORS 18.385. A special notice of garnishment issued under this subsection garnishes only that property of the debtor that is in the garnishee's possession, control or custody at the time the special notice is delivered, including debts not yet due, and all wages owed by the garnishee to the debtor at the time the special notice is delivered. A special notice of garnishment does not act to garnish wages earned by the debtor by reason of services rendered to the garnishee after the delivery of the special notice of garnishment.

(7) A special notice of garnishment issued under subsection (6) of this section shall contain a statement indicating that it is a special notice of garnishment under subsection (6) of this section and a statement reflecting the provisions of subsection (6) of this section. Notwithstanding ORS 18.854 (1), a wage exemption calculation form shall not be delivered to the garnishee with a special notice of garnishment.

**SECTION 5.** ORS 18.685 is amended to read:

18.685. A garnishee must note upon a garnishee response the date on which the garnishee received the writ of garnishment. The garnishee must also note upon the response the following information and deliver the response in the manner provided by ORS 18.690:

(1) If the garnishee discovers that a voluntary or involuntary bankruptcy petition has been filed by or on behalf of the debtor and the petition was filed after the date shown on the face of the writ as the date on which the judgment was entered or otherwise first became subject to garnishment.

(2) If the garnishee does not employ the debtor and the garnishee does not have any garnishable property of the debtor in the possession, control or custody of the garnishee, the garnishee must so note on the response.

(3) If the garnishee employs the debtor, the garnishee must so state on the response and make all other responses required by this section or ORS 18.688. The garnishee must thereafter make payment under the writ in the manner provided by ORS 18.735.

(4) If the garnishee has any cash belonging to the debtor, or the garnishee owes any money to the debtor other than wages that is due as of the time the response is made, the garnishee must so note on the response. The garnishee must make payment with the response in the manner provided by ORS 18.730 of the amount subject to the garnishment, or of such amount as will satisfy the garnishment, whichever amount is less.

(5) If the garnishee owes any money to the debtor other than wages that is not due as of the time the response is made but that will become due within 45 days after the time the writ is delivered, the garnishee must so note on the response. When the money becomes due, the garnishee must make payment in the manner provided by ORS 18.732 of the amount subject to the garnishment, or of such amount as will satisfy the garnishment, whichever amount is less.

(6) Except as provided in ORS 18.618 [(1)(f)] **(1)(a)(F)**, if the garnishee owes any money to the debtor other than wages that is not due as of the time the response is made and the money will not become due within 45 days after the time the writ is delivered, the garnishee must so note on the response. The garnishee must thereafter comply with ORS 18.750 to 18.760.

(7) If the garnishee has any garnishable property of the debtor in the possession, control or custody of the garnishee that is not cash or owed money, the garnishee must so note on the response. The garnishee must thereafter comply with ORS 18.750 to 18.760.

(8) If the garnishee can determine from the writ that the garnishee may owe money to or hold garnishable property of the debtor, but is not sure what or how much, the garnishee must so state on the response and must state that the garnishee will file an amended response when the garnishee determines what or how much money or property the garnishee owes or holds.

(9) If the garnishee determines that the writ of garnishment does not comply on its face with ORS 18.600 to 18.850, or if the garnishee is unable to determine the identity of the debtor from the information contained in the writ, the writ of garnishment is ineffective to garnish the property of the debtor. The garnishee must so note on the response and provide an explanation.

(10) If, before delivering the garnishee response, the garnishee receives an order to withhold income issued under ORS chapter 25 that applies to the income of the debtor, the garnishee must so note on the response. The garnishee must provide details of the order to withhold income, including the name of the agency serving the order, the date the order was served on the garnishee and the amount to be withheld. If the garnishee employs the debtor, the garnishee must make the responses required under ORS 18.688.

(11) If the garnishee receives notice of a challenge to the garnishment before delivering the response, the garnishee must so note on the response. The garnishee must thereafter comply with ORS 18.708.

**SECTION 6.** ORS 18.750 is amended to read:

18.750. (1) A garnishee shall not deliver the property described in this section to the garnishor. If the garnishor seeks to apply the property described in this section against the debt of the debtor, the property must be sold by the sheriff in the manner specified in ORS 18.750 to 18.760.

(2) The provisions of ORS 18.750 to 18.760 apply to:

- (a) Except as provided in ORS 18.618 [(1)(f)] **(1)(a)(F)**, any money owed by a garnishee to a debtor the payment of which is not due at the time the writ of garnishment is delivered to the garnishee and the payment of which does not become due within 45 days after the date of delivery;
- (b) Property of the debtor that the garnishee holds under an unexpired bailment or lease;
- (c) Property of the debtor in which the garnishee has a security interest that was granted to the garnishee by the debtor before the delivery of the writ; and
- (d) Any other garnishable property that is not payable in money.

(3) The property described in subsection (2)(a) to (c) of this section must be delivered by the garnishee to the purchaser in the manner provided by ORS 18.758 (3) if the interest of the debtor in the property is sold by the sheriff under ORS 18.758. Subject to the provisions of ORS 18.755, the garnishee must deliver to the sheriff any other garnishable property that is not payable in money upon receiving notice from the sheriff under ORS 18.755 (4).

**SECTION 7.** ORS 90.300 is amended to read:

90.300. (1) As used in this section, "security deposit" includes any last month's rent deposit.

(2) Except as otherwise provided in this section, a landlord may require the payment of a security deposit. A security deposit or prepaid rent shall be held by the landlord for the tenant who is a party to the rental agreement. The claim of a tenant to the security deposit or prepaid rent shall be prior to the claim of any creditor of the landlord, including a trustee in bankruptcy. The holder of the landlord's interest in the premises at the time of termination of the tenancy is responsible to the tenant for any security deposit or prepaid rent and is bound by this section.

(3)(a) A landlord may not change the rental agreement to require the payment of a new or increased security deposit during the first year after the tenancy has begun, except that an additional deposit may be required if the landlord and tenant agree to modify the terms and conditions of the rental agreement to permit a pet or for other cause and the additional deposit relates to that modification. This paragraph does not prevent the collection of a security deposit that was provided for under an initial rental agreement but remained unpaid at the time the tenancy began.

(b) If a landlord requires a new or increased security deposit after the first year of the tenancy, the landlord shall allow the tenant at least three months to pay that deposit.

(4) The landlord may claim all or part of the security deposit only if the security deposit was made for any or all of the purposes provided by subsection (5) of this section.

(5) The landlord may claim from the security deposit only the amount reasonably necessary:

(a) To remedy the tenant's defaults in the performance of the rental agreement including, but not limited to, unpaid rent; and

(b) To repair damages to the premises caused by the tenant, not including ordinary wear and tear.

(6) A landlord may not require that a security deposit or prepaid rent be required or forfeited to the landlord upon the failure of the tenant to maintain a tenancy for a minimum number of months in a month-to-month tenancy.

(7) Any last month's rent deposit must be applied to the rent due for the last month of the tenancy:

(a) Upon either the landlord or tenant giving to the other a notice of termination, pursuant to this chapter, other than a notice of termination under ORS 90.394;

(b) Upon agreement by the landlord and tenant to terminate the tenancy; or

(c) Upon termination pursuant to the provisions of a written rental agreement for a term tenancy.

(8) Any portion of a last month's rent deposit not applied as provided under subsection (7) of this section shall be accounted for and refunded as provided under subsections (10) to (12) of this section. Unless the tenant and landlord agree otherwise, a last month's rent deposit shall not be applied to rent due for any period other than the last month of the tenancy. A last month's rent deposit shall not operate to limit the amount of rent charged unless a written rental agreement provides otherwise.

(9) Upon termination of the tenancy, a landlord shall account for and refund to the tenant the unused balance of any prepaid rent not previously refunded to the tenant as required by ORS 90.380 and 105.120 (4)(b) or any other provision of this chapter, in the same manner as required for security deposits by this section. The landlord may claim from the remaining prepaid rent only the amount reasonably necessary to pay the tenant's unpaid rent.

(10) In order to claim all or part of any prepaid rent or security deposit, within 31 days after the termination of the tenancy and delivery of possession the landlord shall give to the tenant a written accounting that states specifically the basis or bases of the claim. The landlord shall give a separate accounting for security deposits and for prepaid rent.

(11) The security deposit or prepaid rent or portion thereof not claimed in the manner provided by subsections (9) and (10) of this section shall be returned to the tenant not later than 31 days after the termination of the tenancy and delivery of possession to the landlord.

(12) The landlord shall give the written accounting as required by subsection (10) of this section or shall return the security deposit or prepaid rent as required by subsection (11) of this section by personal delivery or by first class mail.

(13) If a security deposit or prepaid rent secures a tenancy for a space for a tenant owned and occupied manufactured dwelling or floating home, whether or not in a facility, and the dwelling or home is abandoned as described in ORS 90.425 (2) or 90.675 (2), the 31-day period described in subsections (10) and (11) of this section commences on the earliest of:

(a) Waiver of the abandoned property process under ORS 90.425 (25) or 90.675 (22);

(b) Removal of the manufactured dwelling or floating home from the rented space;

(c) Destruction or other disposition of the manufactured dwelling or floating home under ORS 90.425 (10)(b) or 90.675 (10)(b); or

(d) Sale of the manufactured dwelling or floating home pursuant to ORS 90.425 (10)(a) or 90.675 (10)(a).

(14) If the landlord fails to comply with subsection (11) of this section or if the landlord in bad faith fails to return all or any portion of any prepaid rent or security deposit due to the tenant

under this chapter or the rental agreement, the tenant may recover the money due in an amount equal to twice the amount:

- (a) Withheld without a written accounting under subsection (10) of this section; or
- (b) Withheld in bad faith.

(15)(a) A security deposit or prepaid rent in the possession of the landlord is not garnishable property, as provided in ORS 18.618.

(b) If a security deposit or prepaid rent is delivered to a garnishor in violation of ORS 18.618 [(2)] (1)(b), the landlord that delivered the security deposit or prepaid rent to the garnishor shall allow the tenant at least 30 days after a copy of the garnishee response required by ORS 18.680 is delivered to the tenant under ORS 18.690 to restore the security deposit or prepaid rent. If the tenant fails to restore a security deposit or prepaid rent under the provisions of this paragraph before the tenancy terminates, and the landlord retains no security deposit or prepaid rent from the tenant after the garnishment, the landlord is not required to refund or account for the security deposit or prepaid rent under subsection (9) of this section.

(16) This section does not preclude the landlord or tenant from recovering other damages under this chapter.

**SECTION 8. The amendments to ORS 18.618, 18.625, 18.685, 18.750, 18.838, 18.855 and 90.300 by sections 1 to 7 of this 2007 Act apply only to writs of garnishment and notices of garnishment delivered on or after the effective date of this 2007 Act.**

**SECTION 9.** ORS 18.385 is amended to read:

18.385. (1) Except as provided in this section, 75 percent of the disposable earnings of an individual are exempt from execution.

(2) The disposable earnings of an individual are exempt from execution to the extent that payment under a garnishment would result in net disposable earnings for an individual of less than the following amounts:

- (a) [ \$170 ] **\$183** for any period of one week or less;
- (b) [ \$340 ] **\$366** for any two-week period;
- (c) [ \$368 ] **\$394** for any half-month period;
- (d) [ \$731 ] **\$786** for any one-month period; and

(e) For any other period longer than one week, [ \$170 ] **\$183** multiplied by that fraction produced by dividing the number of days for which the earnings are paid by seven. The amount calculated under this paragraph must be rounded to the nearest dollar.

(3) If an individual is paid for a period shorter than one week, the exemption calculated under subsection (2) of this section may not exceed [ \$170 ] **\$183** for any one-week period.

(4) An employer shall deduct from the amount of disposable earnings determined to be nonexempt under subsections (1) to (3) of this section any amounts withheld from the individual's earnings for the same period of time under an order issued pursuant to ORS 25.378, 419B.408 or 419C.600 or ORS chapter 110. The employer shall make payment under a garnishment only of those amounts remaining after the deduction is made.

(5) Subsections (1) to (4) of this section do not apply to:

- (a) Any order of a court of bankruptcy.
- (b) Any debt due for federal tax.

(6) Subsections (2) to (4) of this section do not apply to any debt due for state tax. Subsection (1) of this section does not apply to a debt due for state tax if a state agency issues a special notice of garnishment under ORS 18.855 (6).

(7) A court may not make, execute or enforce any order or process in violation of this section.

(8) Any waiver by an individual of the provisions of this section is void.

(9) An employer may not discharge any individual because the individual has had earnings garnished.

**SECTION 10.** ORS 18.840 is amended to read:

18.840. A wage exemption calculation form must be delivered to the garnishee with each writ of garnishment. A wage exemption calculation form must be in substantially the following form:

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WAGE EXEMPTION CALCULATION  
(to be filled out by employers only)

1. Debtor's gross wages for period covered by this payment..... \$\_\_\_\_\_
2. Total amount required to be withheld by law for amount in Line 1 (Federal and state withholding, Social Security, etc.)..... \$\_\_\_\_\_
3. Debtor's disposable wages (Subtract Line 2 from Line 1)..... \$\_\_\_\_\_
4. Normal exemption (Enter 75 percent of Line 3) ..... \$\_\_\_\_\_
5. Minimum exemption (check one)  
— [\$170] **\$183** (payment of wages weekly)  
— [\$340] **\$366** (payment of wages every two weeks)  
— [\$368] **\$394** (payment of wages half-monthly)  
— [\$731] **\$786** (payment of wages monthly)  
— \$\_\_\_\_\_ (Any other period longer than one week, including partial payments for less than full pay period)  
(Multiply [\$170] **\$183** by number of weeks or fraction of a week)
6. Wages exempt from garnishment (Line 4 or 5, whichever is greater) ..... \$\_\_\_\_\_
7. Nonexempt wages (Subtract Line 6 from Line 3) ..... \$\_\_\_\_\_
8. Amount withheld for this pay period pursuant to a support order under support withholding process or under another writ with priority ..... \$\_\_\_\_\_
9. Wages subject to garnishment (Subtract Line 8 from Line 7)..... \$\_\_\_\_\_

INSTRUCTIONS FOR WAGE  
EXEMPTION CALCULATION FORM

If you employ the Debtor named in the writ of garnishment, you must fill out and return this Wage Exemption Calculation form. A Wage Exemption Calculation form must be sent with the first payment you make under the writ. For the 90-day period during which the writ is effective, you must also fill out and return a Wage Exemption Calculation form with a subsequent payment any time the initial calculation changes. Finally, you must fill out and return a Wage Exemption Calculation form with the final payment that you make under the writ.

Normal wage exemption. The wage exemption calculation is based on the amount of the payment you make under the writ of garnishment. The normal wage exemption in Line 4 is 75 percent of the employee's disposable wages in Line 3.

Minimum wage exemption. The minimum exemption in Line 5 is also based on the amount of the payment you are making. The minimum exemption is designed to ensure that an employee receives at least a certain minimum amount in any one-week period. If the payment is for a one-week period (without regard to whether the period is a calendar week or any other seven-day period), the minimum exemption is [~~\$170~~] **\$183**. The minimum exemption is [~~\$340~~] **\$366** if the payment is for a two-week period. If the payment is for one-half of one month (i.e., the Debtor is paid twice each month), the minimum exemption is [~~\$368~~] **\$394**. The minimum exemption for a monthly payment is [~~\$731~~] **\$786**.

If the payment you are making is based on some period of time other than one week, two weeks, half month or month, and the payment is for more than one week, you must calculate the minimum exemption by multiplying [~~\$170~~] **\$183** by the number of weeks covered by the paycheck, including any fraction of a week. You should round the amount calculated to the nearest dollar.

Example 1: You pay Debtor A every 10 days. Each 10-day period is equal to 1.429 weeks (10 divided by 7). The minimum exemption is [~~\$243~~] **\$262** (~~[\$170] \$183~~ × 1.429 rounded to the nearest dollar).

You must use this same calculation for computing the minimum exemption when making a payment for less than a full pay period (e.g., for the final payment at the end of the 90-day period covered by the writ).

Example 2: You pay Debtor A on a monthly basis. You are required to make a final payment under a writ of garnishment for the wages owing to Debtor A for the period beginning October 1 and ending October 15. This period is equal to 2.143 weeks (15 divided by 7). The minimum exemption is [~~\$364~~] **\$392** (~~[\$170] \$183~~ × 2.143 rounded to the nearest dollar).

The amount of time actually worked by the Debtor during the period covered by the paycheck does not affect the calculation of the minimum exemption.

Example 3: You pay Debtor A on a weekly basis. Debtor A works two days per week. The minimum exemption is [~~\$170~~] **\$183** for each weekly payment you make for Debtor A.

If the payment you are making is based on a period of time less than one week, the minimum wage exemption may not exceed [~~\$170~~] **\$183** for any one-week period.

If you receive more than one writ of garnishment. If you receive more than one writ of garnishment for the same debtor, the writs have priority based on the date on which you receive them. If the full amount of wages subject to garnishment for a given pay period is paid on the first writ, you should not make any payment on subsequently received writs until the first writ expires. In some cases, it may be necessary to make payments on two or more writs for the same pay period.

Example 4. You have received two writs of garnishment for Debtor A. You pay Debtor A on a monthly basis. The first writ expires on October 16. The second writ will not expire until November 15. You will need to prepare two wage exemption calculation forms for Debtor A's October wages and make payments under both writs. The wage exemption calculation form for the first writ will be for the wages attributable to October 1 to October 15 as described in Example 2. The wage exemption calculation form for the second writ will be for all wages for the month of October, but the amounts withheld under the first writ

must be subtracted on Line 8 to determine the October wages subject to garnishment under the second writ.

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**SECTION 11.** ORS 18.845 is amended to read:

18.845. A notice of exemptions form must be in substantially the form set forth in this section. Nothing in the notice form described in this section is intended to expand or restrict the law relating to exempt property. A determination as to whether property is exempt from execution, attachment and garnishment must be made by reference to other law. The form provided in this section may be modified to provide more information or to update the notice based on subsequent changes in exemption laws.

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**NOTICE OF EXEMPT PROPERTY  
AND INSTRUCTIONS FOR  
CHALLENGE TO GARNISHMENT**

Property belonging to you may have been taken or held in order to satisfy a debt. The debt may be reflected in a judgment or in a warrant or order issued by a state agency. Important legal papers are enclosed.

**YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CAREFULLY.**

State and federal law specify that certain property may not be taken. Some of the property that you may be able to get back is listed below.

(1) Wages or a salary as described in ORS 18.375 and 18.385. Whichever of the following amounts is greater:

- (a) 75 percent of your take-home wages; or
  - (b) [~~\$170~~] **\$183** per workweek.
- (2) Social Security benefits.
- (3) Supplemental Security Income (SSI).
- (4) Public assistance (welfare).
- (5) Unemployment benefits.
- (6) Disability benefits (other than SSI benefits).
- (7) Workers' compensation benefits.

(8) Exempt wages, Social Security benefits (other than SSI), welfare, unemployment benefits and disability benefits when placed in a checking or savings account (up to \$7,500).

(9) Spousal support, child support or separate maintenance to the extent reasonably necessary for your support or the support of any of your dependents.

(10) A homestead (house, mobile home or houseboat) occupied by you, or occupied by your spouse, parent or child. The value of the homestead is exempt up to the following amounts:

(a) For a mobile home or houseboat located on land that is not owned by you, \$20,000. If you jointly own the mobile home or houseboat with another person who is also liable on the debt, \$27,000.

(b) For a mobile home or houseboat located on land that is owned by you, \$23,000. If you jointly own the mobile home or houseboat with another person who is also liable on the debt, \$30,000.

(c) For any other homestead, \$30,000. If you jointly own the homestead with another person who is also liable on the debt, \$39,600.

(11) Proceeds from the sale of a homestead described in item 10, up to the limits described in item 10, if you hold the proceeds for less than one year and intend to use those proceeds to procure another homestead.

(12) Household goods, furniture, radios, a television set and utensils with a combined value not to exceed \$3,000.

- \*(13) An automobile, truck, trailer or other vehicle with a value not to exceed \$2,150.
- \*(14) Tools, implements, apparatus, team, harness or library that are necessary to carry on your occupation, with a combined value not to exceed \$3,000.
- \*(15) Books, pictures and musical instruments with a combined value not to exceed \$600.
- \*(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed \$1,800.
- (17) Domestic animals and poultry for family use with a combined value not to exceed \$1,000 and their food for 60 days.
- (18) Provisions and fuel for your family for 60 days.
- (19) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt may not exceed \$1,000.
- (20) Public or private pensions.
- (21) Veterans' benefits and loans.
- (22) Medical assistance benefits.
- (23) Health insurance proceeds and disability proceeds of life insurance policies.
- (24) Cash surrender value of life insurance policies not payable to your estate.
- (25) Federal annuities.
- (26) Other annuities to \$250 per month (excess over \$250 per month is subject to the same exemption as wages).
- (27) Professionally prescribed health aids for you or any of your dependents.
- \*(28) Elderly rental assistance allowed pursuant to ORS 310.635.
- (29) Your right to receive, or property traceable to:
  - (a) An award under any crime victim reparation law.
  - (b) A payment or payments, not exceeding a total of \$10,000, on account of personal bodily injury suffered by you or an individual of whom you are a dependent.
  - (c) A payment in compensation of loss of future earnings of you or an individual of whom you are or were a dependent, to the extent reasonably necessary for your support and the support of any of your dependents.
- (30) Amounts paid to you as an earned income tax credit under federal tax law.
- \*(31) Interest in personal property to the value of \$400, but this cannot be used to increase the amount of any other exemption.
- (32) Equitable interests in property.
- (33) Security deposits or prepaid rent held by a residential landlord under ORS 90.300.
- (34) If the amount shown as owing on the Debt Calculation form exceeds the amount you actually owe to the creditor, the difference between the amount owed and the amount shown on the Debt Calculation form.

Note: If two or more people in your household owe the claim or judgment, each of them may claim the exemptions marked by an asterisk (\*).

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**SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND SPOUSAL SUPPORT.** Some property that may not otherwise be taken for payment against the debt may be taken to pay for overdue support. For instance, Social Security benefits, workers' compensation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but only 75 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support obligation.

**YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK.** You may seek to reclaim your exempt property by doing the following:

- (1) Fill out the Challenge to Garnishment form that you received with this notice.





THIS FORM MAY BE USED BY THE DEBTOR ONLY TO CLAIM SUCH EXEMPTIONS FROM EXECUTION AS ARE PERMITTED BY LAW.

THIS FORM MAY BE USED BY PERSONS OTHER THAN THE DEBTOR ONLY TO CLAIM AN INTEREST IN THE PROPERTY THAT IS TO BE SOLD ON EXECUTION.

THIS FORM MAY NOT BE USED TO CHALLENGE THE VALIDITY OF THE DEBT.

I/We claim that the following described property or money is exempt from execution:

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I/We believe this property is exempt from execution because (the Notice of Exempt Property at the end of this form describes most types of property that you can claim as exempt from execution):

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I am a person other than the Debtor and I have the following interest in the property:

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Name _____	Name _____
Signature _____	Signature _____
Address _____	Address _____
_____	_____
Telephone Number _____ (Required)	Telephone Number _____ (Required)

**YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK.**  
You may seek to reclaim your exempt property by doing the following:

- (1) Fill out the Challenge to Execution form that you received with this notice.
- (2) Mail or deliver the Challenge to Execution form to the court administrator at the address shown on the writ of execution.
- (3) Mail or deliver a copy of the Challenge to Execution form to the judgment creditor at the address shown on the writ of execution.

You should be prepared to explain your exemption in court. If you have any questions about the execution or the debt, you should see an attorney.

YOU MAY USE THE CHALLENGE TO EXECUTION FORM ONLY TO CLAIM SUCH EXEMPTIONS FROM EXECUTION AS ARE PERMITTED BY LAW.

YOU MAY NOT USE THE CHALLENGE TO EXECUTION FORM TO CHALLENGE THE VALIDITY OF THE DEBT.

IF YOU CLAIM AN EXEMPTION IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. Penalties that you could be subject to are listed in ORS 18.899.

#### NOTICE OF EXEMPT PROPERTY

Property belonging to you may have been taken or held in order to satisfy a debt. The debt may be reflected in a judgment or in a warrant or order issued by a state agency. Important legal papers are enclosed.

YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CAREFULLY.

State and federal law specify that certain property may not be taken. Some of the property that you may be able to get back is listed below.

(1) Wages or a salary as described in ORS 18.375 and 18.385. Whichever of the following amounts is greater:

- (a) 75 percent of your take-home wages; or
- (b) [~~\$170~~] **\$183** per workweek.
- (2) Social Security benefits.
- (3) Supplemental Security Income (SSI).
- (4) Public assistance (welfare).
- (5) Unemployment benefits.
- (6) Disability benefits (other than SSI benefits).
- (7) Workers' compensation benefits.

(8) Exempt wages, Social Security benefits (other than SSI), welfare, unemployment benefits and disability benefits when placed in a checking or savings account (up to \$7,500).

(9) Spousal support, child support or separate maintenance to the extent reasonably necessary for your support or the support of any of your dependents.

(10) A homestead (house, mobile home or houseboat) occupied by you, or occupied by your spouse, parent or child. The value of the homestead is exempt up to the following amounts:

(a) For a mobile home or houseboat located on land that is not owned by you, \$20,000. If you jointly own the mobile home or houseboat with another person who is also liable on the debt, \$27,000.

(b) For a mobile home or houseboat located on land that is owned by you, \$23,000. If you jointly own the mobile home or houseboat with another person who is also liable on the debt, \$30,000.

(c) For any other homestead, \$30,000. If you jointly own the homestead with another person who is also liable on the debt, \$39,600.

(11) Proceeds from the sale of a homestead described in item 10, up to the limits described in item 10, if you hold the proceeds for less than one year and intend to use those proceeds to procure another homestead.

(12) Household goods, furniture, radios, a television set and utensils with a combined value not to exceed \$3,000.

\*(13) An automobile, truck, trailer or other vehicle with a value not to exceed \$2,150.

\*(14) Tools, implements, apparatus, team, harness or library that are necessary to carry on your occupation, with a combined value not to exceed \$3,000.

\*(15) Books, pictures and musical instruments with a combined value not to exceed \$600.

\*(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed \$1,800.

(17) Domestic animals and poultry for family use with a combined value not to exceed \$1,000 and their food for 60 days.

(18) Provisions and fuel for your family for 60 days.

(19) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt may not exceed \$1,000.

- (20) Public or private pensions.
  - (21) Veterans' benefits and loans.
  - (22) Medical assistance benefits.
  - (23) Health insurance proceeds and disability proceeds of life insurance policies.
  - (24) Cash surrender value of life insurance policies not payable to your estate.
  - (25) Federal annuities.
  - (26) Other annuities to \$250 per month (excess over \$250 per month is subject to the same exemption as wages).
  - (27) Professionally prescribed health aids for you or any of your dependents.
  - \* (28) Elderly rental assistance allowed pursuant to ORS 310.635.
  - \* (29) Your right to receive, or property traceable to:
    - \* (a) An award under any crime victim reparation law.
    - \* (b) A payment or payments, not exceeding a total of \$10,000, on account of personal bodily injury suffered by you or an individual of whom you are a dependent.
    - \* (c) A payment in compensation of loss of future earnings of you or an individual of whom you are or were a dependent, to the extent reasonably necessary for your support and the support of any of your dependents.
  - (30) Amounts paid to you as an earned income tax credit under federal tax law.
  - (31) Interest in personal property to the value of \$400, but this cannot be used to increase the amount of any other exemption.
  - (32) Equitable interests in property.
- Note: If two or more people in your household owe the claim or judgment, each of them may claim the exemptions marked by an asterisk (\*).

SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND SPOUSAL SUPPORT. Some property that may not otherwise be taken for payment against the debt may be taken to pay for overdue support. For instance, Social Security benefits, workers' compensation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but only 75 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support obligation.

**SECTION 13. The amendments to ORS 18.385, 18.840, 18.845 and 18.896 by sections 9 to 12 of this 2007 Act become operative on the effective date of this 2007 Act, and apply only to writs of garnishment and notices of garnishment delivered on or after January 1, 2008.**

**SECTION 14.** ORS 18.385, as amended by section 9 of this 2007 Act, is amended to read:

18.385. (1) Except as provided in this section, 75 percent of the disposable earnings of an individual are exempt from execution.

(2) The disposable earnings of an individual are exempt from execution to the extent that payment under a garnishment would result in net disposable earnings for an individual of less than the following amounts:

- (a) [~~\$183~~] **\$196** for any period of one week or less;
- (b) [~~\$366~~] **\$392** for any two-week period;
- (c) [~~\$394~~] **\$420** for any half-month period;
- (d) [~~\$786~~] **\$840** for any one-month period; and

(e) For any other period longer than one week, [~~\$183~~] **\$196** multiplied by that fraction produced by dividing the number of days for which the earnings are paid by seven. The amount calculated under this paragraph must be rounded to the nearest dollar.

(3) If an individual is paid for a period shorter than one week, the exemption calculated under subsection (2) of this section may not exceed [~~\$183~~] **\$196** for any one-week period.

(4) An employer shall deduct from the amount of disposable earnings determined to be nonexempt under subsections (1) to (3) of this section any amounts withheld from the individual's earnings for the same period of time under an order issued pursuant to ORS 25.378, 419B.408 or 419C.600 or ORS chapter 110. The employer shall make payment under a garnishment only of those amounts remaining after the deduction is made.

(5) Subsections (1) to (4) of this section do not apply to:

(a) Any order of a court of bankruptcy.

(b) Any debt due for federal tax.

(6) Subsections (2) to (4) of this section do not apply to any debt due for state tax. Subsection (1) of this section does not apply to a debt due for state tax if a state agency issues a special notice of garnishment under ORS 18.855 (6).

(7) A court may not make, execute or enforce any order or process in violation of this section.

(8) Any waiver by an individual of the provisions of this section is void.

(9) An employer may not discharge any individual because the individual has had earnings garnished.

**SECTION 15.** ORS 18.840, as amended by section 10 of this 2007 Act, is amended to read:

18.840. A wage exemption calculation form must be delivered to the garnishee with each writ of garnishment. A wage exemption calculation form must be in substantially the following form:

**WAGE EXEMPTION CALCULATION**  
(to be filled out by employers only)

1. Debtor's gross wages for period covered by this payment..... \$\_\_\_\_\_
2. Total amount required to be withheld by law for amount in Line 1 (Federal and state withholding, Social Security, etc.)..... \$\_\_\_\_\_
3. Debtor's disposable wages (Subtract Line 2 from Line 1)..... \$\_\_\_\_\_
4. Normal exemption (Enter 75 percent of Line 3)..... \$\_\_\_\_\_
5. Minimum exemption (check one)
  - [\$183] **\$196** (payment of wages weekly)
  - [\$366] **\$392** (payment of wages every two weeks)
  - [\$394] **\$420** (payment of wages half-monthly)
  - [\$786] **\$840** (payment of wages monthly)
  - \$\_\_\_\_\_ (Any other period longer than one week, including partial payments for less than full pay period) (Multiply [\$183] **\$196** by number of weeks or fraction of a week)
6. Wages exempt from garnishment (Line 4 or 5, whichever is greater)..... \$\_\_\_\_\_
7. Nonexempt wages (Subtract Line 6 from Line 3)..... \$\_\_\_\_\_

- 8. Amount withheld for this pay period pursuant to a support order under support withholding process or under another writ with priority ..... \$\_\_\_\_\_
- 9. Wages subject to garnishment (Subtract Line 8 from Line 7)..... \$\_\_\_\_\_

**INSTRUCTIONS FOR WAGE EXEMPTION CALCULATION FORM**

If you employ the Debtor named in the writ of garnishment, you must fill out and return this Wage Exemption Calculation form. A Wage Exemption Calculation form must be sent with the first payment you make under the writ. For the 90-day period during which the writ is effective, you must also fill out and return a Wage Exemption Calculation form with a subsequent payment any time the initial calculation changes. Finally, you must fill out and return a Wage Exemption Calculation form with the final payment that you make under the writ.

Normal wage exemption. The wage exemption calculation is based on the amount of the payment you make under the writ of garnishment. The normal wage exemption in Line 4 is 75 percent of the employee’s disposable wages in Line 3.

Minimum wage exemption. The minimum exemption in Line 5 is also based on the amount of the payment you are making. The minimum exemption is designed to ensure that an employee receives at least a certain minimum amount in any one-week period. If the payment is for a one-week period (without regard to whether the period is a calendar week or any other seven-day period), the minimum exemption is [~~\$183~~] **\$196**. The minimum exemption is [~~\$366~~] **\$392** if the payment is for a two-week period. If the payment is for one-half of one month (i.e., the Debtor is paid twice each month), the minimum exemption is [~~\$394~~] **\$420**. The minimum exemption for a monthly payment is [~~\$786~~] **\$840**.

If the payment you are making is based on some period of time other than one week, two weeks, half month or month, and the payment is for more than one week, you must calculate the minimum exemption by multiplying [~~\$183~~] **\$196** by the number of weeks covered by the paycheck, including any fraction of a week. You should round the amount calculated to the nearest dollar.

Example 1: You pay Debtor A every 10 days. Each 10-day period is equal to 1.429 weeks (10 divided by 7). The minimum exemption is [~~\$262~~] **\$280** (~~[\$183] \$196~~ × 1.429 rounded to the nearest dollar).

You must use this same calculation for computing the minimum exemption when making a payment for less than a full pay period (e.g., for the final payment at the end of the 90-day period covered by the writ).

Example 2: You pay Debtor A on a monthly basis. You are required to make a final payment under a writ of garnishment for the wages owing to Debtor A for the period beginning October 1 and ending October 15. This period is equal to 2.143 weeks (15 divided by 7). The minimum exemption is [~~\$392~~] **\$420** (~~[\$183] \$196~~ × 2.143 rounded to the nearest dollar).

The amount of time actually worked by the Debtor during the period covered by the paycheck does not affect the calculation of the minimum exemption.

Example 3: You pay Debtor A on a weekly basis. Debtor A works two days per week. The minimum exemption is ~~[\$183]~~ **\$196** for each weekly payment you make for Debtor A.

If the payment you are making is based on a period of time less than one week, the minimum wage exemption may not exceed ~~[\$183]~~ **\$196** for any one-week period.

If you receive more than one writ of garnishment. If you receive more than one writ of garnishment for the same debtor, the writs have priority based on the date on which you receive them. If the full amount of wages subject to garnishment for a given pay period is paid on the first writ, you should not make any payment on subsequently received writs until the first writ expires. In some cases, it may be necessary to make payments on two or more writs for the same pay period.

Example 4. You have received two writs of garnishment for Debtor A. You pay Debtor A on a monthly basis. The first writ expires on October 16. The second writ will not expire until November 15. You will need to prepare two wage exemption calculation forms for Debtor A's October wages and make payments under both writs. The wage exemption calculation form for the first writ will be for the wages attributable to October 1 to October 15 as described in Example 2. The wage exemption calculation form for the second writ will be for all wages for the month of October, but the amounts withheld under the first writ must be subtracted on Line 8 to determine the October wages subject to garnishment under the second writ.

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**SECTION 16.** ORS 18.845, as amended by section 11 of this 2007 Act, is amended to read:

18.845. A notice of exemptions form must be in substantially the form set forth in this section. Nothing in the notice form described in this section is intended to expand or restrict the law relating to exempt property. A determination as to whether property is exempt from execution, attachment and garnishment must be made by reference to other law. The form provided in this section may be modified to provide more information or to update the notice based on subsequent changes in exemption laws.

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NOTICE OF EXEMPT PROPERTY  
AND INSTRUCTIONS FOR  
CHALLENGE TO GARNISHMENT

Property belonging to you may have been taken or held in order to satisfy a debt. The debt may be reflected in a judgment or in a warrant or order issued by a state agency. Important legal papers are enclosed.

**YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CAREFULLY.**

State and federal law specify that certain property may not be taken. Some of the property that you may be able to get back is listed below.

(1) Wages or a salary as described in ORS 18.375 and 18.385. Whichever of the following amounts is greater:

- (a) 75 percent of your take-home wages; or
  - (b) ~~[\$183]~~ **\$196** per workweek.
- (2) Social Security benefits.
  - (3) Supplemental Security Income (SSI).
  - (4) Public assistance (welfare).
  - (5) Unemployment benefits.
  - (6) Disability benefits (other than SSI benefits).

- (7) Workers' compensation benefits.
- (8) Exempt wages, Social Security benefits (other than SSI), welfare, unemployment benefits and disability benefits when placed in a checking or savings account (up to \$7,500).
- (9) Spousal support, child support or separate maintenance to the extent reasonably necessary for your support or the support of any of your dependents.
- (10) A homestead (house, mobile home or houseboat) occupied by you, or occupied by your spouse, parent or child. The value of the homestead is exempt up to the following amounts:
  - (a) For a mobile home or houseboat located on land that is not owned by you, \$20,000. If you jointly own the mobile home or houseboat with another person who is also liable on the debt, \$27,000.
  - (b) For a mobile home or houseboat located on land that is owned by you, \$23,000. If you jointly own the mobile home or houseboat with another person who is also liable on the debt, \$30,000.
  - (c) For any other homestead, \$30,000. If you jointly own the homestead with another person who is also liable on the debt, \$39,600.
- (11) Proceeds from the sale of a homestead described in item 10, up to the limits described in item 10, if you hold the proceeds for less than one year and intend to use those proceeds to procure another homestead.
- (12) Household goods, furniture, radios, a television set and utensils with a combined value not to exceed \$3,000.
- \*(13) An automobile, truck, trailer or other vehicle with a value not to exceed \$2,150.
- \*(14) Tools, implements, apparatus, team, harness or library that are necessary to carry on your occupation, with a combined value not to exceed \$3,000.
- \*(15) Books, pictures and musical instruments with a combined value not to exceed \$600.
- \*(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed \$1,800.
- (17) Domestic animals and poultry for family use with a combined value not to exceed \$1,000 and their food for 60 days.
- (18) Provisions and fuel for your family for 60 days.
- (19) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt may not exceed \$1,000.
- (20) Public or private pensions.
- (21) Veterans' benefits and loans.
- (22) Medical assistance benefits.
- (23) Health insurance proceeds and disability proceeds of life insurance policies.
- (24) Cash surrender value of life insurance policies not payable to your estate.
- (25) Federal annuities.
- (26) Other annuities to \$250 per month (excess over \$250 per month is subject to the same exemption as wages).
- (27) Professionally prescribed health aids for you or any of your dependents.
- \*(28) Elderly rental assistance allowed pursuant to ORS 310.635.
- (29) Your right to receive, or property traceable to:
  - (a) An award under any crime victim reparation law.
  - (b) A payment or payments, not exceeding a total of \$10,000, on account of personal bodily injury suffered by you or an individual of whom you are a dependent.
  - (c) A payment in compensation of loss of future earnings of you or an individual of whom you are or were a dependent, to the extent reasonably necessary for your support and the support of any of your dependents.
- (30) Amounts paid to you as an earned income tax credit under federal tax law.
- \*(31) Interest in personal property to the value of \$400, but this cannot be used to increase the amount of any other exemption.
- (32) Equitable interests in property.
- (33) Security deposits or prepaid rent held by a residential landlord under ORS 90.300.



(34) If the amount shown as owing on the Debt Calculation form exceeds the amount you actually owe to the creditor, the difference between the amount owed and the amount shown on the Debt Calculation form.

Note: If two or more people in your household owe the claim or judgment, each of them may claim the exemptions marked by an asterisk (\*).

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**SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND SPOUSAL SUPPORT.** Some property that may not otherwise be taken for payment against the debt may be taken to pay for overdue support. For instance, Social Security benefits, workers' compensation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but only 75 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support obligation.

**YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK.** You may seek to reclaim your exempt property by doing the following:

- (1) Fill out the Challenge to Garnishment form that you received with this notice.
- (2) Mail or deliver the Challenge to Garnishment form to the court administrator at the address shown on the writ of garnishment, and mail or deliver a copy of the form to the Garnishor at the address shown on the writ of garnishment. If you wish to claim wages or salary as exempt, you must mail or deliver the form within 120 days after you receive this notice. If you wish to claim that any other money or property is exempt, or claim that the property is not subject to garnishment, you must mail or deliver the form within 30 days after you receive this notice. You have the burden of showing that your challenge is made on time, so you should keep records showing when the challenge was mailed or delivered.
- (3) The law only requires that the Garnishor hold the garnished money or property for 10 days before applying it to the Creditor's use. You may be able to keep the property from being used by the Creditor by promptly following (1) and (2) above.

You should be prepared to explain your exemption in court. If you have any questions about the garnishment or the debt, you should see an attorney.

**YOU MAY USE THE CHALLENGE TO GARNISHMENT FORM ONLY FOR THE FOLLOWING PURPOSES:**

- (1) To claim such exemptions from garnishment as are permitted by law.
- (2) To assert that property is not garnishable property under ORS 18.618.
- (3) To assert that the amount specified in the writ of garnishment as being subject to garnishment is greater than the total amount owed.

**YOU MAY NOT USE THE CHALLENGE TO GARNISHMENT FORM TO CHALLENGE THE VALIDITY OF THE DEBT.**

**IF YOU FILE A CHALLENGE TO A GARNISHMENT IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES IMPOSED BY THE COURT THAT COULD INCLUDE A FINE.** Penalties that you could be subject to are listed in ORS 18.715.

When you file a Challenge to Garnishment form, the Garnishee may be required to make all payments under the garnishment to the court, and the Garnishor may be required to pay to the court all amounts received by the Garnishor that are subject to the challenge to the garnishment. The Garnishee and Garnishor are subject to penalties if they do not. For a complete explanation of their responsibilities, see ORS 18.705 and 18.708.

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**SECTION 17.** ORS 18.896, as amended by section 12 of this 2007 Act, is amended to read:



(Required)

(Required)

YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK. You may seek to reclaim your exempt property by doing the following:

- (1) Fill out the Challenge to Execution form that you received with this notice.
- (2) Mail or deliver the Challenge to Execution form to the court administrator at the address shown on the writ of execution.
- (3) Mail or deliver a copy of the Challenge to Execution form to the judgment creditor at the address shown on the writ of execution.

You should be prepared to explain your exemption in court. If you have any questions about the execution or the debt, you should see an attorney.

YOU MAY USE THE CHALLENGE TO EXECUTION FORM ONLY TO CLAIM SUCH EXEMPTIONS FROM EXECUTION AS ARE PERMITTED BY LAW.

YOU MAY NOT USE THE CHALLENGE TO EXECUTION FORM TO CHALLENGE THE VALIDITY OF THE DEBT.

IF YOU CLAIM AN EXEMPTION IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. Penalties that you could be subject to are listed in ORS 18.899.

#### NOTICE OF EXEMPT PROPERTY

Property belonging to you may have been taken or held in order to satisfy a debt. The debt may be reflected in a judgment or in a warrant or order issued by a state agency. Important legal papers are enclosed.

YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CAREFULLY.

State and federal law specify that certain property may not be taken. Some of the property that you may be able to get back is listed below.

(1) Wages or a salary as described in ORS 18.375 and 18.385. Whichever of the following amounts is greater:

- (a) 75 percent of your take-home wages; or
  - (b) [~~\$183~~] **\$196** per workweek.
- (2) Social Security benefits.
  - (3) Supplemental Security Income (SSI).
  - (4) Public assistance (welfare).
  - (5) Unemployment benefits.
  - (6) Disability benefits (other than SSI benefits).
  - (7) Workers' compensation benefits.

(8) Exempt wages, Social Security benefits (other than SSI), welfare, unemployment benefits and disability benefits when placed in a checking or savings account (up to \$7,500).

(9) Spousal support, child support or separate maintenance to the extent reasonably necessary for your support or the support of any of your dependents.

(10) A homestead (house, mobile home or houseboat) occupied by you, or occupied by your spouse, parent or child. The value of the homestead is exempt up to the following amounts:

(a) For a mobile home or houseboat located on land that is not owned by you, \$20,000. If you jointly own the mobile home or houseboat with another person who is also liable on the debt, \$27,000.

(b) For a mobile home or houseboat located on land that is owned by you, \$23,000. If you jointly own the mobile home or houseboat with another person who is also liable on the debt, \$30,000.

(c) For any other homestead, \$30,000. If you jointly own the homestead with another person who is also liable on the debt, \$39,600.

(11) Proceeds from the sale of a homestead described in item 10, up to the limits described in item 10, if you hold the proceeds for less than one year and intend to use those proceeds to procure another homestead.

(12) Household goods, furniture, radios, a television set and utensils with a combined value not to exceed \$3,000.

\*(13) An automobile, truck, trailer or other vehicle with a value not to exceed \$2,150.

\*(14) Tools, implements, apparatus, team, harness or library that are necessary to carry on your occupation, with a combined value not to exceed \$3,000.

\*(15) Books, pictures and musical instruments with a combined value not to exceed \$600.

\*(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed \$1,800.

(17) Domestic animals and poultry for family use with a combined value not to exceed \$1,000 and their food for 60 days.

(18) Provisions and fuel for your family for 60 days.

(19) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt may not exceed \$1,000.

(20) Public or private pensions.

(21) Veterans' benefits and loans.

(22) Medical assistance benefits.

(23) Health insurance proceeds and disability proceeds of life insurance policies.

(24) Cash surrender value of life insurance policies not payable to your estate.

(25) Federal annuities.

(26) Other annuities to \$250 per month (excess over \$250 per month is subject to the same exemption as wages).

(27) Professionally prescribed health aids for you or any of your dependents.

\*(28) Elderly rental assistance allowed pursuant to ORS 310.635.

\*(29) Your right to receive, or property traceable to:

\*(a) An award under any crime victim reparation law.

\*(b) A payment or payments, not exceeding a total of \$10,000, on account of personal bodily injury suffered by you or an individual of whom you are a dependent.

\*(c) A payment in compensation of loss of future earnings of you or an individual of whom you are or were a dependent, to the extent reasonably necessary for your support and the support of any of your dependents.

(30) Amounts paid to you as an earned income tax credit under federal tax law.

(31) Interest in personal property to the value of \$400, but this cannot be used to increase the amount of any other exemption.

(32) Equitable interests in property.

Note: If two or more people in your household owe the claim or judgment, each of them may claim the exemptions marked by an asterisk (\*).

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**SECTION 18.** The amendments to ORS 18.385, 18.840, 18.845 and 18.896 by sections 14 to 17 of this 2007 Act become operative on January 1, 2009, and apply only to writs of garnishment and notices of garnishment delivered on or after January 1, 2009.

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Passed by Senate April 17, 2007

Received by Governor:

Repassed by Senate June 7, 2007

.....M,....., 2007

Approved:

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Secretary of Senate

.....M,....., 2007

.....  
President of Senate

.....  
Governor

Passed by House June 4, 2007

Filed in Office of Secretary of State:

.....  
Speaker of House

.....M,....., 2007

.....  
Secretary of State