

Senate Bill 303

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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**.

Provides that wages owing by garnishee to debtor for specific pay period are not garnishable property under certain circumstances in which garnishee had issued order to third-party payroll administrator to pay wages.

A BILL FOR AN ACT

1
2 Relating to garnishment; creating new provisions; and amending ORS 18.618, 18.625, 18.685, 18.750,
3 18.838, 18.855 and 90.300.

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

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

6 18.618. (1)(a) Notwithstanding ORS 18.615, the following are not garnishable property:

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

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

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

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

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

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

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

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

21 **(A) Before the writ was delivered to the garnishee, the garnishee entered into an agree-**
22 **ment with a financial institution or other third party to act as payroll administrator for the**
23 **garnishee's payroll;**

24 **(B) The debtor's wages are paid by direct deposit to a financial institution, or by an in-**
25 **strument issued to the debtor by the payroll administrator;**

26 **(C) Before the writ was delivered, the garnishee issued instructions to the payroll ad-**
27 **ministrator to pay the debtor's wages; and**

28 **(D) The writ is delivered within two business days before the debtor's normal payday for**
29 **the pay period, or the writ is delivered more than two business days before the debtor's**
30 **normal payday for the pay period but the garnishee is unable to cancel the instructions to**

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 **the payroll administrator using reasonable efforts.**

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

4 (3) Notwithstanding any other provision of law, if a voluntary or involuntary bankruptcy peti-
 5 tion has been filed by or on behalf of the debtor after a writ of garnishment could be issued under
 6 ORS 18.605, the garnishment of any property of the debtor in the garnishee’s possession, control or
 7 custody is stayed pursuant to section 362 of the United States Bankruptcy Code (11 U.S.C. 101 to
 8 1330).

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

10 18.625. (1) For any property other than wages, a writ of garnishment acts to garnish only
 11 garnishable property of the debtor that is in the garnishee’s possession, control or custody at the
 12 time the writ is delivered, including money that is owed but not yet due.

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

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

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

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

27 18.838. Instructions to garnishees must be in substantially the following form:

28
29
30 INSTRUCTIONS TO GARNISHEE

31
32 Except as specifically provided in these instructions, you must complete and deliver the
 33 Garnishee Response within seven calendar days after you receive the writ of garnishment. If the
 34 writ does not comply with Oregon law, the writ is not effective to garnish any property of the
 35 Debtor, but you still must complete and deliver the Garnishee Response. You must complete and
 36 deliver the response even though you cannot determine from the writ whether you hold any property
 37 or owe any debt to the Debtor. If the seventh calendar day is a Saturday, Sunday or legal holiday,
 38 you must deliver your response on or before the next following day that is not a Saturday, Sunday
 39 or legal holiday.

40
41 The writ is not effective, and you need not make a Garnishee Response, if:

- 42
- 43 • You do not receive the writ within 60 days after the date of issuance shown on the face of
- 44 the writ.
- 45

- 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

1 Debtor, you still must complete Part II of the response.

2 If you receive notice of a challenge to the garnishment before you send your response, you must
3 complete and deliver your response as otherwise required by these instructions. However, see Step
4 3 of these instructions regarding payment of money or delivery of property after receipt of notice
5 of a challenge to the garnishment.

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

10
11 Completing Part II of the Garnishee Response (employers only). You must fill in Part II of the
12 response if you employ the Debtor on the date the writ of garnishment is delivered to you, or if you
13 previously employed the Debtor and still owe wages to the Debtor on the date the writ is delivered
14 to you.

15
16 Wages affected. **Except as provided below,** the writ garnishes all wages that you owe to the
17 Debtor for work performed before the date you received the writ, even though the wages will not
18 be paid until a later date. The writ also garnishes all wages that are attributable to services per-
19 formed during the 90-day period following the date you received the writ, even though you would
20 not pay the Debtor for all or part of those services until after the end of the 90-day period. Wages
21 subject to garnishment under the writ include all amounts paid by you as an employer, whether on
22 an hourly, weekly or monthly basis, and include commission payments and bonuses.

23
24 Example 1: Debtor A is employed by you and is paid a monthly salary on the first day of
25 each month. You receive a writ of garnishment on July 17. The writ garnishes all wages
26 that you owe to Debtor A for work performed on or before July 17. If Debtor A was paid
27 on July 1 for services performed in the month of June, the writ garnishes Debtor A’s salary
28 for the period beginning July 1 and ending October 15 (90 days after receipt of the writ).

29
30 **The writ does not garnish any wages you owe to a debtor for a specific pay period if:**

31 **(a) Before the writ was delivered to you, you entered into an agreement with a financial**
32 **institution or other third party to act as payroll administrator for your payroll;**

33 **(b) The debtor’s wages are paid by direct deposit to a financial institution, or by an in-**
34 **strument issued to the debtor by the payroll administrator;**

35 **(c) Before the writ was delivered, you issued instructions to the payroll administrator to**
36 **pay the debtor’s wages; and**

37 **(d) The writ was delivered within two business days before the debtor’s normal payday**
38 **for the pay period, or the writ was delivered more than two business days before the debtor’s**
39 **normal payday for the pay period but you were unable to cancel the instructions to the**
40 **payroll administrator using reasonable efforts.**

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

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

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

11
12 Payment of amount subject to garnishment. Payments under the writ must be made at the fol-
13 lowing times, unless the amount owing on the judgment or other debt is fully paid before the final
14 payment is made or the writ is released:

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

21
22 Example 2: Using the facts given in Example 1, when you next make any payment of wages
23 to Debtor A after you receive the writ on July 17, you must complete the Wage Exemption
24 Calculation form and send the form to the Garnishor along with all amounts determined to
25 be subject to garnishment that are attributable to the period covered by the payment. If you
26 pay Debtor A on August 1, the payment will be for all wages attributable to the period be-
27 ginning July 1 and ending July 31.

28
29 (b) Unless the writ of garnishment is satisfied or released, during the 90-day period following the
30 date you received the writ, you must pay to the Garnishor all wages that are determined to be
31 subject to garnishment whenever you issue a paycheck to the Debtor. If the Debtor is paid on a
32 weekly basis, you must make payment under the writ on a weekly basis. If the Debtor is paid on a
33 monthly basis, you must make payment under the writ on a monthly basis. If the amount paid to the
34 Debtor varies from paycheck to paycheck, or changes at any time from the amount being paid at the
35 time the writ was delivered to you, you must perform a new wage exemption computation to deter-
36 mine the amount of wages subject to garnishment under the writ. You must send a copy of the new
37 Wage Exemption Calculation form with your payment to the Garnishor.

38
39 Example 3: Using the facts given above, as you make each subsequent payment of wages to
40 Debtor A you must make a payment of that portion of the Debtor's wages that are subject
41 to garnishment. If you continue to pay Debtor A on the first of each month, payments must
42 be made on September 1 and October 1.

43
44 (c) Upon the expiration of the 90-day period, you must make a final payment to the Garnishor
45 for all wages that were owing to the Debtor for the work performed by the Debtor through the 90th

1 day following your receipt of the writ. This payment may be made at the time of the Debtor's next
2 paycheck. You will need to complete another Wage Exemption Calculation form to determine the
3 amount of the wages subject to garnishment.

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

12
13 Processing fee. You may collect a \$1 processing fee for each week of wages, or fraction of a
14 week of wages, for which a payment is made under the writ. The fee must be collected after you
15 make the last payment under the writ. The fee must be withheld from the wages of the debtor, and
16 is in addition to the amounts withheld for payment to the garnishor under the writ or under any
17 other writ you have received.

18
19 If you receive more than one writ of garnishment. If you receive a second writ of garnishment
20 for the same Debtor from another Garnishor, the first writ will have priority for wages. The priority
21 of the first writ lasts for the 90-day period following delivery of that writ to you, or until the first
22 writ is paid in full, whichever comes first. In your response to the second writ, you must put a check
23 by the appropriate statement in Part II and indicate the date on which the first writ will expire (90
24 days after the date you received the writ). You should make no payments under the second writ
25 until expiration of the first writ. The expiration date of the second writ is 90 days after the date
26 you received the second writ; the expiration date is not affected by any delay in payment attribut-
27 able to the priority of the first writ.

28
29 STEP 2. DELIVER THE GARNISHEE RESPONSE.

30
31 You must deliver your Garnishee Response and copies of the response in the manner provided
32 in this step. The response and copies may be mailed or delivered personally.

33
34 You must complete and deliver the Garnishee Response within seven calendar days after you
35 receive the writ of garnishment. If the seventh calendar day is a Saturday, Sunday or legal holiday,
36 you must deliver your response on or before the next following day that is not a Saturday, Sunday
37 or legal holiday.

38
39 If you are required to hold any property under the writ or make any payment under the writ,
40 either at the time of making your response or later, you must:

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

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

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

1 under Important Addresses.

2
 3 If you are not required to hold any property under the writ or make any payment under the
 4 writ, either at the time of making your response or later, you must:

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

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

9
 10 STEP 3. DELIVER THE FUNDS OR OTHER PROPERTY.

11
 12 As long as the writ is in effect, you may be liable to the Creditor if you pay any debt or turn
 13 over any property to the Debtor except as specifically allowed by law. If you have any money or
 14 property of the Debtor in your possession, control or custody at the time of delivery of the writ, or
 15 owe any debt to the Debtor, you must pay the money or hold the property as required by this step.
 16 Exceptions to this requirement are listed below.

17
 18 IF YOU ARE HOLDING MONEY FOR THE DEBTOR OR OWE A DEBT THAT IS CUR-
 19 RENTLY DUE, you must pay the money to the Garnishor with your response. You must send your
 20 payment to the Garnishor at the address indicated on the writ under Important Addresses. Make
 21 your check payable to the Garnishor.

22
 23 IF YOU OWE A DEBT TO THE DEBTOR THAT WILL BECOME DUE WITHIN 45 DAYS
 24 AFTER THE DATE YOU RECEIVED THE WRIT, you must send your payment directly to the
 25 Garnishor at the address provided in the writ when the debt becomes due. Make your check payable
 26 to the Garnishor.

27
 28 IF YOU ARE HOLDING PROPERTY THAT BELONGS TO THE DEBTOR, OR OWE A DEBT
 29 TO THE DEBTOR THAT WILL NOT BECOME DUE WITHIN 45 DAYS AFTER THE DATE YOU
 30 RECEIVED THE WRIT, you must keep the property or debt in your possession, control or custody
 31 until you receive written notice from the Sheriff. The Sheriff's notice will tell you what to do with
 32 the property or debt. If you have followed all of the instructions in the writ and you receive no
 33 notice from the Sheriff within 30 days after the date on which you delivered your Garnishee Re-
 34 sponse, you may treat the writ as being of no further force or effect.

35
 36 EXCEPTIONS:

37
 38 1. Challenge to garnishment or specific directions from court. If you are making any payments
 39 under the garnishment and before making a payment you receive notice of a challenge to the
 40 garnishment from the court, or receive a specific direction from the court to make payments to the
 41 court, you must send or deliver the payment directly to the court administrator. If the money is
 42 currently due when you receive the notice, send the payment promptly to the court. If the payment
 43 is for a debt that is payable within 45 days after you receive the writ, make the payment to the
 44 court promptly when it becomes due. If you make payment by check, make the check payable to the
 45 State of Oregon. Because you may be liable for any payment that does not reach the court, it is

1 better not to send cash by mail.

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

5
6 2. Previous writ of garnishment. If you receive a second writ of garnishment for the same Debtor
7 from another Garnishor, the first writ will have priority and you need not make payments or deliver
8 property under the second writ to the extent that compliance with the first writ will reduce or
9 eliminate the payment of money or delivery of property that you would otherwise make under the
10 garnishment. You must still deliver a Garnishee Response to the second writ, and must commence
11 payment under the second writ as soon as the first writ is satisfied or expires.

12
13 3. Offset for payment of underlying lien. If you owe a debt to the Debtor and the Debtor owes
14 a debt to the holder of an underlying lien on your property, you may be able to offset the amount
15 payable to the underlying lienholder. See ORS 18.620.

16
17 4. Subsequent events:

18
19 (a) Bankruptcy. If you make your response and then discover that a voluntary or involuntary
20 bankruptcy petition has been filed by or on behalf of the Debtor after the judgment was entered
21 against the Debtor or after the debt otherwise became subject to garnishment (see date in writ), you
22 may not make any further payments or delivery of property under the writ unless the court orders
23 otherwise. If you have not delivered all property that is subject to garnishment under this writ when
24 you discover that a bankruptcy petition has been filed, you must mail the following notice to the
25 Garnishor and to the Debtor.

26
27 (b) Order to withhold income. If you make your response and then receive an order to withhold
28 income that has priority over the writ, you may make payments or deliver property under the writ
29 only after payment of the amounts required under the order to withhold income. If you have not
30 delivered all property that is subject to garnishment under this writ when you receive an order to
31 withhold income that has priority, you must mail the following notice to the Garnishor and to the
32 Debtor.

33 _____
34
35 SUPPLEMENTAL GARNISHEE
36 RESPONSE
37

38 TO: The Garnishor and the Debtor

39
40 RE: Writ of garnishment received _____, 2__ (date), in the case of _____ (Plaintiff)
41 vs. _____ (Defendant), Circuit Court of _____ County, Oregon, Case No. _____
42

43 The undersigned Garnishee furnished a Garnishee Response to this writ of garnishment on
44 _____, 2__ (date). Since that time (check appropriate statement):
45

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

4
5 — I have received an order to withhold income of the Debtor by reason of a support obligation.
6 Under ORS 25.375, the order to withhold income has priority over any other legal process
7 under Oregon law against the same income. The withholding of income pursuant to the or-
8 der to withhold income might reduce or eliminate subsequent payments under the
9 garnishment. (Provide details, including the name of the agency serving the order to with-
10 hold, the date the order was served on you and the amounts to be withheld.)

11
12 Dated _____, 2____

13
14 _____
15 Name of Garnishee

16
17 _____
18 Signature

19
20 _____
21 Address

22
23
24 SPECIAL INSTRUCTIONS FOR BANKS
25 AND OTHER FINANCIAL INSTITUTIONS
26

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

30
31 If the Debtor owes a debt to you that was due at the time you received the writ of garnishment,
32 you may be able to offset the amount of that debt. See ORS 18.795. You must note that you have
33 made the offset in Part I of the Garnishee Response (under "Other") and specify the amount that
34 was offset.

35
36 Before making a payment under the writ, you may first deduct any processing fee that you are
37 allowed under ORS 18.790.

38
39 You need not deliver any property contained in a safe deposit box unless the Garnishor pays
40 you in advance for the costs that will be incurred in gaining entry to the box. See ORS 18.792.

41
42
43 **SECTION 4.** ORS 18.855 is amended to read:

44 18.855. (1) Notwithstanding ORS 18.607, a notice of garnishment issued by a state agency need
45 not contain the name of a court whose authority is invoked.

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

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

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

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

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

31 (7) A special notice of garnishment issued under subsection (6) of this section shall contain a
 32 statement indicating that it is a special notice of garnishment under subsection (6) of this section
 33 and a statement reflecting the provisions of subsection (6) of this section. Notwithstanding ORS
 34 18.854 (1), a wage exemption calculation form shall not be delivered to the garnishee with a special
 35 notice of garnishment.

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

37 18.685. A garnishee must note upon a garnishee response the date on which the garnishee re-
 38 ceived the writ of garnishment. The garnishee must also note upon the response the following in-
 39 formation and deliver the response in the manner provided by ORS 18.690:

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

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

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

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

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

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

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

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

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

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

35 (11) If the garnishee receives notice of a challenge to the garnishment before delivering the re-
36 sponse, the garnishee must so note on the response. The garnishee must thereafter comply with ORS
37 18.708.

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

39 18.750. (1) A garnishee shall not deliver the property described in this section to the garnishor.
40 If the garnishor seeks to apply the property described in this section against the debt of the debtor,
41 the property must be sold by the sheriff in the manner specified in ORS 18.750 to 18.760.

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

43 (a) Except as provided in ORS 18.618 [(1)(f)] **(1)(a)(F)**, any money owed by a garnishee to a
44 debtor the payment of which is not due at the time the writ of garnishment is delivered to the
45 garnishee and the payment of which does not become due within 45 days after the date of delivery;

1 (b) Property of the debtor that the garnishee holds under an unexpired bailment or lease;

2 (c) Property of the debtor in which the garnishee has a security interest that was granted to the
3 garnishee by the debtor before the delivery of the writ; and

4 (d) Any other garnishable property that is not payable in money.

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

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

11 90.300. (1) As used in this section, “security deposit” includes any last month’s rent deposit.

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

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

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

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

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

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

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

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

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

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

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

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

43 (8) Any portion of a last month’s rent deposit not applied as provided under subsection (7) of this
44 section shall be accounted for and refunded as provided under subsections (10) to (12) of this section.
45 Unless the tenant and landlord agree otherwise, a last month’s rent deposit shall not be applied to

1 rent due for any period other than the last month of the tenancy. A last month's rent deposit shall
2 not operate to limit the amount of rent charged unless a written rental agreement provides other-
3 wise.

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

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

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

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

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

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

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

25 (c) Destruction or other disposition of the manufactured dwelling or floating home under ORS
26 90.425 (10)(b) or 90.675 (10)(b); or

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

29 (14) If the landlord fails to comply with subsection (11) of this section or if the landlord in bad
30 faith fails to return all or any portion of any prepaid rent or security deposit due to the tenant
31 under this chapter or the rental agreement, the tenant may recover the money due in an amount
32 equal to twice the amount:

33 (a) Withheld without a written accounting under subsection (10) of this section; or

34 (b) Withheld in bad faith.

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

37 (b) If a security deposit or prepaid rent is delivered to a garnishor in violation of ORS 18.618
38 [(2)] (1)(b), the landlord that delivered the security deposit or prepaid rent to the garnishor shall
39 allow the tenant at least 30 days after a copy of the garnishee response required by ORS 18.680 is
40 delivered to the tenant under ORS 18.690 to restore the security deposit or prepaid rent. If the
41 tenant fails to restore a security deposit or prepaid rent under the provisions of this paragraph be-
42 fore the tenancy terminates, and the landlord retains no security deposit or prepaid rent from the
43 tenant after the garnishment, the landlord is not required to refund or account for the security de-
44 posit or prepaid rent under subsection (9) of this section.

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

1 this chapter.

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

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