

House Bill 3474

Sponsored by Representative STIEGLER; Representatives BARKER, CLEM, ESQUIVEL, GARRETT, HUFFMAN, HUNT, KOTEK, NOLAN, G SMITH, J SMITH, VANORMAN, WHISNANT

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**.

Increases processing fee chargeable to employee by employer for garnishments of employee's wages.

A BILL FOR AN ACT

1
2 Relating to garnishments; creating new provisions; and amending ORS 18.736 and 18.838.

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

4 **SECTION 1.** ORS 18.736 is amended to read:

5 18.736. (1) If a garnishee that employs a debtor is required to make any payment under a writ
6 of garnishment by reason of wages payable to the debtor, the garnishee may collect a [~~\$1~~] **\$2** pro-
7 cessing fee for each week of wages, or fraction of a week of wages, for which a payment is made
8 under the provisions of ORS 18.735. The processing fee must be collected after the last payment is
9 made under the writ. The fee shall be withheld from the wages of the debtor, and is in addition to
10 the amounts withheld for payment to the garnishor under the writ or under any other writ delivered
11 to the garnishee.

12 (2) The fee provided for in this section may not be collected if withholding of the fee would re-
13 duce the debtor's net disposable income below the minimum amounts prescribed by ORS 18.385.

14 **SECTION 2.** ORS 18.838 is amended to read:

15 18.838. Instructions to garnishees must be in substantially the following form:
16
17

INSTRUCTIONS TO GARNISHEE

18
19
20 Except as specifically provided in these instructions, you must complete and deliver the
21 Garnishee Response within seven calendar days after you receive the writ of garnishment. If the
22 writ does not comply with Oregon law, the writ is not effective to garnish any property of the
23 Debtor, but you still must complete and deliver the Garnishee Response. You must complete and
24 deliver the response even though you cannot determine from the writ whether you hold any property
25 or owe any debt to the Debtor. If the seventh calendar day is a Saturday, Sunday or legal holiday,
26 you must deliver your response on or before the next following day that is not a Saturday, Sunday
27 or legal holiday.

28
29 The writ is not effective, and you need not make a Garnishee Response, if:

- 30
31
- You do not receive the writ within 60 days after the date of issuance shown on the face of

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 writ.

2

- 3 • You do not receive an original writ of garnishment or a copy of the writ.

4

5 Statutes that may affect your rights and duties under the writ can be found in ORS 18.600 to
6 18.850.

7

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

11

12 STEP 1. FILL OUT THE GARNISHEE RESPONSE.

13

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

17

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

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

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

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

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

43 If you have received an order to withhold income that applies to the income of the Debtor and
44 that order has priority over the garnishment, and if compliance with the order will reduce or elim-
45 inate the money or property that you would otherwise deliver under the garnishment, you must put

1 a check by the appropriate statement in Part I. You still must fill out the remainder of the response
 2 and deliver the response in the manner described in Step 2 of these instructions. If you employ the
 3 Debtor, you still must complete Part II of the response.

4 If you receive notice of a challenge to the garnishment before you send your response, you must
 5 complete and deliver your response as otherwise required by these instructions. However, see Step
 6 3 of these instructions regarding payment of money or delivery of property after receipt of notice
 7 of a challenge to the garnishment.

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

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

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

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

31
 32 The writ does not garnish any wages you owe to a Debtor for a specific pay period if:

- 33 (a) The writ is delivered to you within two business days before the Debtor’s normal payday for
 34 the pay period;
 35 (b) When the writ is delivered to you, the Debtor’s wages are paid by direct deposit to a finan-
 36 cial institution, or you use an independent contractor as payroll administrator for your payroll; and
 37 (c) Before the writ was delivered to you, you issued instructions to the financial institution or
 38 the payroll administrator to pay the Debtor for the pay period.

39 If any wages are not garnishable by reason of the issuance of instructions to a financial insti-
 40 tution or a payroll administrator as described above, you must so note in the Garnishee Response.
 41 Thereafter, you must pay to the Garnishor all wages that are subject to garnishment that are at-
 42 tributable to services performed by the Debtor during the 90-day period following the date you re-
 43 ceived the writ.

44
 45 Calculation of wages subject to garnishment. A Wage Exemption Calculation form is attached

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

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

10
 11 Payment of amount subject to garnishment. Payments under the writ must be made at the fol-
 12 lowing times, unless the amount owing on the judgment or other debt is fully paid before the final
 13 payment is made or the writ is released:

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

20
 21 Example 2: Using the facts given in Example 1, when you next make any payment of wages
 22 to Debtor A after you receive the writ on July 17, you must complete the Wage Exemption
 23 Calculation form and send the form to the Garnishor along with all amounts determined to
 24 be subject to garnishment that are attributable to the period covered by the payment. If you
 25 pay Debtor A on August 1, the payment will be for all wages attributable to the period be-
 26 ginning July 1 and ending July 31.

27
 28 (b) Unless the writ of garnishment is satisfied or released, during the 90-day period following the
 29 date you received the writ, you must pay to the Garnishor all wages that are determined to be
 30 subject to garnishment whenever you issue a paycheck to the Debtor. If the Debtor is paid on a
 31 weekly basis, you must make payment under the writ on a weekly basis. If the Debtor is paid on a
 32 monthly basis, you must make payment under the writ on a monthly basis. If the amount paid to the
 33 Debtor varies from paycheck to paycheck, or changes at any time from the amount being paid at the
 34 time the writ was delivered to you, you must perform a new wage exemption computation to deter-
 35 mine the amount of wages subject to garnishment under the writ. You must send a copy of the new
 36 Wage Exemption Calculation form with your payment to the Garnishor.

37
 38 Example 3: Using the facts given above, as you make each subsequent payment of wages to
 39 Debtor A you must make a payment of that portion of the Debtor’s wages that are subject
 40 to garnishment. If you continue to pay Debtor A on the first of each month, payments must
 41 be made on September 1 and October 1.

42
 43 (c) Upon the expiration of the 90-day period, you must make a final payment to the Garnishor
 44 for all wages that were owing to the Debtor for the work performed by the Debtor through the 90th
 45 day following your receipt of the writ. This payment may be made at the time of the Debtor’s next

1 paycheck. You will need to complete another Wage Exemption Calculation form to determine the
 2 amount of the wages subject to garnishment.

3
 4 Example 4: Using the facts given above, you must make a final payment for the wages owing
 5 to Debtor A for the period beginning October 1 and ending October 15. You may make this
 6 payment at the time you issue Debtor A’s paycheck on November 1, but you must make the
 7 payment at any time you issue a paycheck to Debtor A after October 15. Be sure that in
 8 completing the wage exemption computation for the final payment you adjust the minimum
 9 exemption amount to take into account the fact that the period covered is only 15 days of
 10 the full month (see instructions on Wage Exemption Calculation form).

11
 12 Processing fee. You may collect a [~~\$1~~] ~~\$2~~ processing fee for each week of wages, or fraction of
 13 a week of wages, for which a payment is made under the writ. The fee must be collected after you
 14 make the last payment under the writ. The fee must be withheld from the wages of the debtor, and
 15 is in addition to the amounts withheld for payment to the garnishor under the writ or under any
 16 other writ you have received.

17
 18 If you receive more than one writ of garnishment. If you receive a second writ of garnishment
 19 for the same Debtor from another Garnishor, the first writ will have priority for wages. The priority
 20 of the first writ lasts for the 90-day period following delivery of that writ to you, or until the first
 21 writ is paid in full, whichever comes first. In your response to the second writ, you must put a check
 22 by the appropriate statement in Part II and indicate the date on which the first writ will expire (90
 23 days after the date you received the writ). You should make no payments under the second writ
 24 until expiration of the first writ. The expiration date of the second writ is 90 days after the date
 25 you received the second writ; the expiration date is not affected by any delay in payment attribut-
 26 able to the priority of the first writ.

27
 28 STEP 2. DELIVER THE GARNISHEE RESPONSE.

29
 30 You must deliver your Garnishee Response and copies of the response in the manner provided
 31 in this step. The response and copies may be mailed or delivered personally.

32
 33 You must complete and deliver the Garnishee Response within seven calendar days after you
 34 receive the writ of garnishment. If the seventh calendar day is a Saturday, Sunday or legal holiday,
 35 you must deliver your response on or before the next following day that is not a Saturday, Sunday
 36 or legal holiday.

37
 38 If you are required to hold any property under the writ or make any payment under the writ,
 39 either at the time of making your response or later, you must:

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

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

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

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

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

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

7
8 STEP 3. DELIVER THE FUNDS OR OTHER PROPERTY.

9
10 As long as the writ is in effect, you may be liable to the Creditor if you pay any debt or turn
11 over any property to the Debtor except as specifically allowed by law. If you have any money or
12 property of the Debtor in your possession, control or custody at the time of delivery of the writ, or
13 owe any debt to the Debtor, you must pay the money or hold the property as required by this step.
14 Exceptions to this requirement are listed below.

15
16 IF YOU ARE HOLDING MONEY FOR THE DEBTOR OR OWE A DEBT THAT IS CUR-
17 RENTLY DUE, you must pay the money to the Garnishor with your response. You must send your
18 payment to the Garnishor at the address indicated on the writ under Important Addresses. Make
19 your check payable to the Garnishor.

20
21 IF YOU OWE A DEBT TO THE DEBTOR THAT WILL BECOME DUE WITHIN 45 DAYS
22 AFTER THE DATE YOU RECEIVED THE WRIT, you must send your payment directly to the
23 Garnishor at the address provided in the writ when the debt becomes due. Make your check payable
24 to the Garnishor.

25
26 IF YOU ARE HOLDING PROPERTY THAT BELONGS TO THE DEBTOR, OR OWE A DEBT
27 TO THE DEBTOR THAT WILL NOT BECOME DUE WITHIN 45 DAYS AFTER THE DATE YOU
28 RECEIVED THE WRIT, you must keep the property or debt in your possession, control or custody
29 until you receive written notice from the Sheriff. The Sheriff's notice will tell you what to do with
30 the property or debt. If you have followed all of the instructions in the writ and you receive no
31 notice from the Sheriff within 30 days after the date on which you delivered your Garnishee Re-
32 sponse, you may treat the writ as being of no further force or effect.

33
34 EXCEPTIONS:

35
36 1. Challenge to garnishment or specific directions from court. If you are making any payments
37 under the garnishment and before making a payment you receive notice of a challenge to the
38 garnishment from the court, or receive a specific direction from the court to make payments to the
39 court, you must send or deliver the payment directly to the court administrator. If the money is
40 currently due when you receive the notice, send the payment promptly to the court. If the payment
41 is for a debt that is payable within 45 days after you receive the writ, make the payment to the
42 court promptly when it becomes due. If you make payment by check, make the check payable to the
43 State of Oregon. Because you may be liable for any payment that does not reach the court, it is
44 better not to send cash by mail.

45 A challenge to the garnishment does not affect your duty to follow the instructions you receive

1 from the Sheriff for property that belongs to the Debtor and debts that you owe to the Debtor that
2 do not become due within 45 days.

3
4 2. Previous writ of garnishment. If you receive a second writ of garnishment for the same Debtor
5 from another Garnishor, the first writ will have priority and you need not make payments or deliver
6 property under the second writ to the extent that compliance with the first writ will reduce or
7 eliminate the payment of money or delivery of property that you would otherwise make under the
8 garnishment. You must still deliver a Garnishee Response to the second writ, and must commence
9 payment under the second writ as soon as the first writ is satisfied or expires.

10
11 3. Offset for payment of underlying lien. If you owe a debt to the Debtor and the Debtor owes
12 a debt to the holder of an underlying lien on your property, you may be able to offset the amount
13 payable to the underlying lienholder. See ORS 18.620.

14
15 4. Subsequent events:

16
17 (a) Bankruptcy. If you make your response and then discover that a voluntary or involuntary
18 bankruptcy petition has been filed by or on behalf of the Debtor after the judgment was entered
19 against the Debtor or after the debt otherwise became subject to garnishment (see date in writ), you
20 may not make any further payments or delivery of property under the writ unless the court orders
21 otherwise. If you have not delivered all property that is subject to garnishment under this writ when
22 you discover that a bankruptcy petition has been filed, you must mail the following notice to the
23 Garnishor and to the Debtor.

24
25 (b) Order to withhold income. If you make your response and then receive an order to withhold
26 income that has priority over the writ, you may make payments or deliver property under the writ
27 only after payment of the amounts required under the order to withhold income. If you have not
28 delivered all property that is subject to garnishment under this writ when you receive an order to
29 withhold income that has priority, you must mail the following notice to the Garnishor and to the
30 Debtor.

31 _____
32
33 SUPPLEMENTAL GARNISHEE
34 RESPONSE
35

36 TO: The Garnishor and the Debtor

37
38 RE: Writ of garnishment received _____, 2__ (date), in the case of _____ (Plaintiff)
39 vs. _____ (Defendant), Circuit Court of _____ County, Oregon, Case No. _____

40
41 The undersigned Garnishee furnished a Garnishee Response to this writ of garnishment on
42 _____, 2__ (date). Since that time (check appropriate statement):

43
44 ___ I have discovered that a voluntary or involuntary bankruptcy petition has been filed by or
45 on behalf of the Debtor after the judgment was entered against the Debtor or after the debt

1 otherwise became subject to garnishment.

2

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

9

10 Dated _____, 2___

11

12 _____

13 Name of Garnishee

14

15 _____

16 Signature

17

18 _____

19 Address

20

21

SPECIAL INSTRUCTIONS FOR BANKS
AND OTHER FINANCIAL INSTITUTIONS

24

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

28

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

33

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

36

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

39

40

41 **SECTION 3. The amendments to ORS 18.736 and 18.838 by sections 1 and 2 of this 2009**
42 **Act apply only to writs of garnishment issued on or after the effective date of this 2009 Act.**

43