

House Bill 2559

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of for House Interim Committee on Revenue)

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**.

Allows state agency to impose and collect fee of \$_____ for notice of garnishment issued by agency.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to garnishment; creating new provisions; amending ORS 18.855 and 18.999; and declaring
3 an emergency.

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

5 **SECTION 1.** ORS 18.855 is amended to read:

6 18.855. (1) Notwithstanding ORS 18.607, a notice of garnishment issued by a state agency need
7 not contain the name of a court whose authority is invoked.

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

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

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

19 (5) Notwithstanding ORS 18.700, a challenge to a notice of garnishment issued by a state agency
20 must be delivered in person or by first class mail to the state agency within the time specified by
21 ORS 18.700 (2). Upon receiving a challenge, the state agency shall provide notice of the challenge
22 in the manner provided by ORS 18.702. Upon a sheriff receiving notice under ORS 18.702, the sheriff
23 shall proceed as provided by ORS 18.760, except that upon determination of the challenge by an
24 administrative law judge, the sheriff shall proceed as directed by the judge. Within 14 days after
25 receiving the challenge, the state agency must either concede the challenge or give the person
26 making the challenge opportunity for hearing. If the person making the challenge requests a hearing,
27 the agency shall immediately refer the challenge to the Office of Administrative Hearings estab-
28 lished under ORS 183.605. The hearing shall be conducted as soon as possible. Notwithstanding ORS
29 183.315, the hearing shall be conducted as a contested case hearing. An issue that was decided in
30 a previous hearing, or for which the debtor was previously afforded an opportunity for hearing, may

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 not be reconsidered.

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

12 (7) A special notice of garnishment issued under subsection (6) of this section shall contain a
 13 statement indicating that it is a special notice of garnishment under subsection (6) of this section
 14 and a statement reflecting the provisions of subsection (6) of this section. Notwithstanding ORS
 15 18.854 (1), a wage exemption calculation form shall not be delivered to the garnishee with a special
 16 notice of garnishment.

17 **(8) A state agency may impose and collect a fee of \$_____ for every notice of**
 18 **garnishment issued by the agency.**

19 **SECTION 2.** ORS 18.999 is amended to read:

20 18.999. This section establishes the right of a plaintiff to recover certain moneys the plaintiff
 21 has expended to recover a debt under ORS 18.854 or to enforce a judgment and establishes proce-
 22 dures for that recovery. The following apply to this section:

23 (1) When a plaintiff receives moneys under a garnishment, attachment or payment, the plaintiff
 24 may proceed as follows:

25 (a) Before crediting the total amount of moneys received against the judgment or debt, the
 26 plaintiff may recover and keep from the total amount received under the garnishment, attachment
 27 or payment any moneys allowed to be recovered under this section.

28 (b) After recovering moneys as allowed under paragraph (a) of this subsection, the plaintiff shall
 29 credit the remainder of the moneys received against the judgment or debt as provided by law.

30 (2) Moneys recovered under subsection (1)(a) of this section shall not be considered moneys paid
 31 on and to be credited against the original judgment or debt sought to be enforced. No additional
 32 judgment is necessary to recover moneys in the manner provided in subsection (1)(a) of this section.

33 (3) The only moneys a plaintiff may recover under subsection (1)(a) of this section are those
 34 described in subsection (4) of this section that the plaintiff has paid to enforce the existing specific
 35 judgment or debt that the specific garnishment or attachment was issued to enforce or upon which
 36 the payment was received. Moneys recoverable under subsection (1)(a) of this section remain re-
 37 coverable and, except as provided under subsection (8) of this section, may be recovered from mon-
 38 eys received by the plaintiff under subsequent garnishments, attachments or payments on the same
 39 specific judgment or debt.

40 (4) This section allows the recovery only of the following:

41 (a) Statutorily established moneys that meet the requirements under subsection (3) of this sec-
 42 tion, as follows:

43 (A) Garnishee's search fees under ORS 18.790.

44 (B) Fees for delivery of writs of garnishment under ORS 18.652.

45 (C) Circuit court fees as provided under ORS 21.325.

1 (D) County court fees as provided under ORS 5.125.

2 (E) County clerk recording fees as provided in ORS 205.320.

3 (F) Actual fees or disbursements made under ORS 21.410.

4 (G) Costs of execution as provided in ORS 105.112.

5 (H) Fees paid to an attorney for issuing a garnishment in an amount not to exceed \$18 for each
6 garnishment.

7 (I) Costs of an execution sale as described in ORS 18.950 (2).

8 (J) Fees paid under ORS 21.125 for motions and responses to motions filed after entry of a
9 judgment.

10 **(K) Fees for notices of garnishment imposed under ORS 18.855 (8).**

11 (b) Interest on the amounts specified in paragraph (a) of this subsection at the rate provided for
12 judgments in ORS 82.010 for the period of time beginning with the expenditure of the amount and
13 ending upon recovery of the amount under this section.

14 (5) The plaintiff shall be responsible for doing all of the following:

15 (a) Maintaining a precise accounting of moneys recovered under subsection (1)(a) of this section
16 and making the accounting available for any proceeding relating to that judgment or debt.

17 (b) Providing reasonable notice to the defendant of moneys the plaintiff recovers under sub-
18 section (1)(a) of this section.

19 (6) Moneys recovered under subsection (1)(a) of this section remain subject to all other pro-
20 visions of law relating to payments, or garnished or attached moneys including, but not limited to,
21 those relating to exemption, claim of exemption, overpayment and holding periods.

22 (7) Nothing in this section limits the right of a plaintiff to recover moneys described in this
23 section or other moneys in any manner otherwise allowed by law.

24 (8) A writ of garnishment or attachment is not valid if issued solely to recover moneys recov-
25 erable under subsection (1)(a) of this section unless the right to collect the moneys is first reduced
26 to a judgment or to a debt enforceable under ORS 18.854.

27 **SECTION 3.** ORS 18.999, as amended by section 7, chapter 659, Oregon Laws 2009, is amended
28 to read:

29 18.999. This section establishes the right of a plaintiff to recover certain moneys the plaintiff
30 has expended to recover a debt under ORS 18.854 or to enforce a judgment and establishes proce-
31 dures for that recovery. The following apply to this section:

32 (1) When a plaintiff receives moneys under a garnishment, attachment or payment, the plaintiff
33 may proceed as follows:

34 (a) Before crediting the total amount of moneys received against the judgment or debt, the
35 plaintiff may recover and keep from the total amount received under the garnishment, attachment
36 or payment any moneys allowed to be recovered under this section.

37 (b) After recovering moneys as allowed under paragraph (a) of this subsection, the plaintiff shall
38 credit the remainder of the moneys received against the judgment or debt as provided by law.

39 (2) Moneys recovered under subsection (1)(a) of this section shall not be considered moneys paid
40 on and to be credited against the original judgment or debt sought to be enforced. No additional
41 judgment is necessary to recover moneys in the manner provided in subsection (1)(a) of this section.

42 (3) The only moneys a plaintiff may recover under subsection (1)(a) of this section are those
43 described in subsection (4) of this section that the plaintiff has paid to enforce the existing specific
44 judgment or debt that the specific garnishment or attachment was issued to enforce or upon which
45 the payment was received. Moneys recoverable under subsection (1)(a) of this section remain re-

1 coverable and, except as provided under subsection (8) of this section, may be recovered from mon-
 2 eys received by the plaintiff under subsequent garnishments, attachments or payments on the same
 3 specific judgment or debt.

4 (4) This section allows the recovery only of the following:

5 (a) Statutorily established moneys that meet the requirements under subsection (3) of this sec-
 6 tion, as follows:

7 (A) Garnishee's search fees under ORS 18.790.

8 (B) Fees for delivery of writs of garnishment under ORS 18.652.

9 (C) Circuit court fees as provided under ORS 21.325.

10 (D) County court fees as provided under ORS 5.125.

11 (E) County clerk recording fees as provided in ORS 205.320.

12 (F) Actual fees or disbursements made under ORS 21.410.

13 (G) Costs of execution as provided in ORS 105.112.

14 (H) Fees paid to an attorney for issuing a garnishment in an amount not to exceed \$12 for each
 15 garnishment.

16 (I) Costs of an execution sale as described in ORS 18.950 (2).

17 (J) Fees paid under ORS 21.125 for motions and responses to motions filed after entry of a
 18 judgment.

19 **(K) Fees for notices of garnishment imposed under ORS 18.855 (8).**

20 (b) Interest on the amounts specified in paragraph (a) of this subsection at the rate provided for
 21 judgments in ORS 82.010 for the period of time beginning with the expenditure of the amount and
 22 ending upon recovery of the amount under this section.

23 (5) The plaintiff shall be responsible for doing all of the following:

24 (a) Maintaining a precise accounting of moneys recovered under subsection (1)(a) of this section
 25 and making the accounting available for any proceeding relating to that judgment or debt.

26 (b) Providing reasonable notice to the defendant of moneys the plaintiff recovers under sub-
 27 section (1)(a) of this section.

28 (6) Moneys recovered under subsection (1)(a) of this section remain subject to all other pro-
 29 visions of law relating to payments, or garnished or attached moneys including, but not limited to,
 30 those relating to exemption, claim of exemption, overpayment and holding periods.

31 (7) Nothing in this section limits the right of a plaintiff to recover moneys described in this
 32 section or other moneys in any manner otherwise allowed by law.

33 (8) A writ of garnishment or attachment is not valid if issued solely to recover moneys recov-
 34 erable under subsection (1)(a) of this section unless the right to collect the moneys is first reduced
 35 to a judgment or to a debt enforceable under ORS 18.854.

36 **SECTION 4. The amendments to ORS 18.855 and 18.999 by sections 1, 2 and 3 of this 2011**
 37 **Act apply only to notices of garnishment issued on or after the effective date of this 2011**
 38 **Act.**

39 **SECTION 5. This 2011 Act being necessary for the immediate preservation of the public**
 40 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
 41 **on its passage.**