

A-Engrossed
Senate Bill 926

Ordered by the Senate April 29
Including Senate Amendments dated April 29

Sponsored by Senator BONAMICI

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.

[Clarifies that provision of law making certain amounts in debtor's account not subject to garnishment does not affect ability of debtor to claim exemption provided by law for other amounts deposited in account.]

Requires financial institution to perform garnishment account review of accounts of debtor when financial institution receives writ of garnishment for purpose of determining whether certain protected payments have been deposited in debtor's account during specified lookback period.

Requires financial institution to ensure that debtor has full customary access to protected amounts in account, and to give notice to account holder of results of garnishment account review.

Provides that requirements do not apply if Notice of Right to Garnish Federal Benefits is attached to or included in writ of garnishment.

Prescribes form of notice to debtor.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to garnishment; creating new provisions; amending ORS 18.600, 18.619, 18.790 and 18.838;
3 and declaring an emergency.

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

5 **SECTION 1.** ORS 18.600 is amended to read:

6 18.600. As used in ORS 18.600 to 18.850:

7 (1) **"Account" means an account at a financial institution, including a master account**
8 **or subaccount, to which an electronic payment may be directly routed.**

9 [(1)] (2) "Check" has the meaning given that term in ORS 73.0104.

10 [(2)] (3) "Creditor" means a person to whom a debt is owed by a debtor.

11 [(3)] (4) "Debt" means any monetary obligation for which a garnishment may be issued under
12 ORS 18.605.

13 [(4)] (5) "Debtor" means a person whose property is being garnished for the purpose of paying
14 a debt owed to a creditor.

15 (6) **"Federal benefit payment" means:**

16 (a) **A benefit payment from the United States Social Security Administration that is**
17 **protected under 42 U.S.C. 407 and 1383(d)(1);**

18 (b) **A benefit payment from the United States Department of Veterans Affairs that is**
19 **protected under 38 U.S.C. 5301(a);**

20 (c) **A benefit payment from the Railroad Retirement Board that is protected under 45**
21 **U.S.C. 231m(a) and 352(e); or**

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 **(d) A benefit payment from the United States Office of Personnel Management that is**
2 **protected under 5 U.S.C. 8346 and 8470.**

3 [(5)] (7) “Financial institution” means a financial institution or trust company as those terms
4 are defined in ORS 706.008.

5 [(6)] (8) “Garnishable property” means all property described in ORS 18.615, but does not in-
6 clude:

7 (a) Any property that is not subject to garnishment under ORS 18.618; and

8 (b) Any property that is applied as a setoff under ORS 18.620 or 18.795.

9 [(7)] (9) “Garnishee” means a person to whom a writ of garnishment has been delivered.

10 **(10) “Garnishment account review” means the process of examining deposits to an ac-**
11 **count to determine whether benefit payments described in ORS 18.619 (3) have been deposited**
12 **in the account during the lookback period.**

13 [(8)] (11) “Garnishor” means:

14 (a) The creditor, if the writ is issued by the court administrator on behalf of the creditor under
15 ORS 18.635 (2); or

16 (b) The issuer, if the writ is issued under ORS 18.635 by any person other than the court ad-
17 ministrator.

18 [(9)] (12) “Past due support” means the amount of child or spousal support, or both, determined
19 under a court or administrative order in a proceeding under ORS chapter 107, 108, 109, 110, 416,
20 419B or 419C that has not been paid or is certified to be owed by another state under ORS 25.083.

21 [(10)] (13) “Wages” includes all amounts paid for the services of an employee by an employer,
22 including amounts paid as a commission or bonus.

23 [(11)] (14) “Writ” means a writ of garnishment.

24 **SECTION 2.** ORS 18.619 is amended to read:

25 18.619. (1) If a writ of garnishment is delivered to a financial institution that has an account of
26 the debtor, *[and]* **the financial institution shall conduct a garnishment account review of all**
27 **accounts in the name of the debtor before taking any other action that may affect funds in**
28 **those accounts. If the financial institution determines from the garnishment account review**
29 **that one or more payments described in subsection [(2)] (3) of this section were deposited in [the]**
30 **an account of the debtor by direct deposit or electronic payment during the [calendar month that**
31 **preceded the month in which the writ of garnishment is delivered to the financial institution] lookback**
32 **period described in subsection (2) of this section, an amount equal to the lesser of the sum of**
33 **those payments or the total balance in the debtor’s account is not subject to garnishment.**

34 **(2) The provisions of this section apply only to payments described in subsection (3) of**
35 **this section that are deposited during the lookback period that ends on the day before the**
36 **day on which the garnishment account review is conducted and begins on:**

37 **(a) The day in the second calendar month preceding the month in which the garnishment**
38 **account review is conducted, that has the same number as the day on which the period ends;**
39 **or**

40 **(b) If there is no day as described in paragraph (a) of this subsection, the last day of the**
41 **second calendar month preceding the month in which the garnishment account review is**
42 **conducted.**

43 [(2)] (3) The provisions of this section apply only to:

44 **(a) Federal benefit payments;**

45 [(a)] **(b) Payments from a public or private retirement plan as defined in ORS 18.358;**

1 [(b) Payments from the Social Security Administration;]

2 (c) Public assistance payments from the state or a state agency;

3 (d) Unemployment compensation payments from the state or a state agency;

4 (e) Black lung benefits payments from the United States Department of Labor; **and**

5 [(f) Veteran benefits payments from the Veterans Benefits Administration; and]

6 [(g)] (f) Workers' compensation payments from a workers' compensation carrier.

7 [(3)] (4) The provisions of this section apply only to[:]

8 [(a)] a payment that a financial institution can identify as being one of the types of payments
9 described in subsection [(2)] (3) of this section from information transmitted to the financial insti-
10 tution by the payor[; or].

11 [(b) Payments for which the debtor has given a financial institution written notification under
12 subsection (4) of this section.]

13 [(4)(a) At the time a person opens a new account with a financial institution in this state, the fi-
14 nancial institution may require that the person sign an affidavit indicating whether the person is re-
15 ceiving any of the payments described in subsection (2) of this section that will be deposited in the
16 account by direct deposit or electronic payment.]

17 [(b) A financial institution in this state shall make available a form of affidavit that a person may
18 use when opening an account, or may use at any time while the account is open, to indicate that the
19 person is receiving any of the payments described in subsection (2) of this section that will be deposited
20 in the account by direct deposit or electronic payment.]

21 [(c) Without regard to whether an affidavit has been signed under this subsection, payments that
22 are subject to subsection (1) of this section and that can be readily identified by the financial institution
23 as one of the types of payments described in subsection (2) of this section are not subject to
24 garnishment.]

25 [(5) A financial institution is not liable to any person for any determination made in good faith,
26 as defined in ORS 73.0103, with respect to whether amounts are subject to garnishment under this
27 section.]

28 (5) **A financial institution shall perform a garnishment account review only one time for**
29 **a specific garnishment. If the same garnishment is served on a financial institution more**
30 **than once, the financial institution may not perform a garnishment account review or take**
31 **any other action relating to the garnishment based on the second and subsequent service of**
32 **the garnishment.**

33 (6) The provisions of this section do not affect the ability of a debtor to claim any exemption
34 that otherwise may be available to the debtor under law for any amounts in an account in a finan-
35 cial institution [*in excess of the amount specified in subsection (1) of this section*].

36 **SECTION 3. Section 4 of this 2011 Act is added to and made a part of ORS 18.600 to 18.850.**

37 **SECTION 4. (1) Except as provided in this section, if a financial institution determines**
38 **from a garnishment account review conducted under ORS 18.619 (1) that one or more pay-**
39 **ments described in ORS 18.619 (3) have been deposited into the debtor's account by direct**
40 **deposit or electronic payment during the lookback period described in ORS 18.619 (2), and**
41 **there is a positive balance in the account at the time the garnishment account review is**
42 **conducted, the financial institution shall:**

43 (a) **Immediately calculate and establish the amount in the debtor's account that is not**
44 **subject to garnishment and ensure that the debtor has full customary access to that amount;**
45 **and**

1 **(b) Issue a notice to the account holder in substantially the form set forth in section 8**
2 **of this 2011 Act.**

3 **(2) This section does not apply to a garnishment if a Notice of Right to Garnish Federal**
4 **Benefits from the United States Government or from a state child support enforcement**
5 **agency is attached to or included in the garnishment as provided in 31 C.F.R. part 212.**

6 **(3) A financial institution shall issue the notice required by this section directly to the**
7 **account holder or to a fiduciary who administers the account and receives communications**
8 **on behalf of the account holder.**

9 **(4) The notice required by this section must be sent separately to the debtor and may**
10 **not be included with other materials being provided to the debtor by the financial institution**
11 **that do not relate to the garnishment.**

12 **(5) The notice required by this section must be sent to the account holder within three**
13 **business days after the financial institution completes the garnishment account review re-**
14 **quired by ORS 18.619 (1).**

15 **(6) A financial institution shall perform the calculation described in subsection (1) of this**
16 **section for each account of the account holder. However, the financial institution may issue**
17 **a single notice under this section for multiple accounts of the same account holder.**

18 **(7) Issuance of a notice under this section does not constitute the giving of legal advice**
19 **and a financial institution is not obligated to provide legal advice by reason of issuing a no-**
20 **tice required by this section.**

21 **(8) A financial institution is not liable to any account holder, garnishor or other financial**
22 **institution, and may not be assessed any penalty, by reason of any action taken by the fi-**
23 **nanical institution in good faith under this section or ORS 18.619, including:**

24 **(a) Delivery or refusal to deliver any funds that are not subject to garnishment under**
25 **ORS 18.619 to a garnishor;**

26 **(b) Providing the notice required by this section to an account holder;**

27 **(c) Customary clearing and settlement adjustments made to a debtor's account that af-**
28 **fect the balance in the debtor's account; and**

29 **(d) Any bona fide errors that occur under this section or ORS 18.619 despite reasonable**
30 **procedures implemented by the financial institution to prevent those errors.**

31 **(9) A financial institution shall maintain records of account activity and actions taken**
32 **by the financial institution in response to a garnishment that are adequate to demonstrate**
33 **compliance with the requirements of this section and ORS 18.619 for a period of not less than**
34 **two years after the financial institution receives the writ of garnishment.**

35 **SECTION 5.** ORS 18.790 is amended to read:

36 18.790. (1) Except as provided in subsection (4) of this section, at the time of delivery of any
37 writ of garnishment on a financial institution or at the time a notice of garnishment is delivered to
38 the financial institution under ORS 18.854:

39 (a) A search fee of \$10 must be paid to the financial institution if the garnishor is the Depart-
40 ment of Revenue.

41 (b) A search fee of \$15 must be paid to the financial institution if the garnishor is a person other
42 than the department.

43 (2) A separate search fee must be paid under this section to the financial institution for each
44 debtor if the writ is issued for more than one debtor under ORS 18.607 (5).

45 (3) If the search fee required under this section is not paid:

1 (a) The garnishment is not effective to garnish any property of the debtor; and

2 (b) The financial institution need not file a garnishee response.

3 (4) The search fee required under this section need not be paid to a financial institution if the
4 debtor is an employee of the financial institution.

5 (5) Notwithstanding subsection (1) of this section, a financial institution may enter into an
6 agreement with any state agency authorized to garnish pursuant to ORS 18.645 or 18.854 for periodic
7 billing and payment of garnishee search fees required under this section.

8 (6) The right of a financial institution to receive the search fee required under this section does
9 not in any way restrict or impair the right of the financial institution to charge and collect an ad-
10 ditional garnishment processing fee from any debtor whose property the financial institution holds,
11 or to whom the financial institution owes money. However, a financial institution may not charge
12 or collect a garnishment processing fee in violation of ORS 652.610. If a financial institution charges
13 a garnishment processing fee, the financial institution may collect the fee by deducting the amount
14 of the fee from any amount that the financial institution owes to the debtor.

15 *[(7) A financial institution may not charge or collect a garnishment processing fee under subsection*
16 *(6) of this section for a writ of garnishment if none of the debtor's property held by the financial in-*
17 *stitution is subject to garnishment.]*

18 **(7) If a garnishment account review reveals that a payment was made by direct deposit**
19 **or electronic payment to the debtor's account during the lookback period described in ORS**
20 **18.619 (2), the financial institution may not charge or collect a garnishment processing fee**
21 **under subsection (6) of this section against the amount that is not subject to garnishment,**
22 **and may not charge or collect a garnishment processing fee under subsection (6) of this**
23 **section against any amounts in the account after the date of the garnishment account re-**
24 **view.**

25 **SECTION 6.** ORS 18.838 is amended to read:

26 18.838. Instructions to garnishees must be in substantially the following form:
27 _____

28
29 INSTRUCTIONS TO GARNISHEE

30
31 Except as specifically provided in these instructions, you must complete and deliver the
32 Garnishee Response within seven calendar days after you receive the writ of garnishment. If the
33 writ does not comply with Oregon law, the writ is not effective to garnish any property of the
34 Debtor, but you still must complete and deliver the Garnishee Response. You must complete and
35 deliver the response even though you cannot determine from the writ whether you hold any property
36 or owe any debt to the Debtor. If the seventh calendar day is a Saturday, Sunday or legal holiday,
37 you must deliver your response on or before the next following day that is not a Saturday, Sunday
38 or legal holiday.

39
40 The writ is not effective, and you need not make a Garnishee Response, if:

- 41
42 • You do not receive the writ within 60 days after the date of issuance shown on the face of
43 the writ.
44
45 • You do not receive an original writ of garnishment or a copy of the writ.

1 Statutes that may affect your rights and duties under the writ can be found in ORS 18.600 to
2 18.850.

3
4 NOTE: The Garnishor may be the Creditor, the attorney for the Creditor or some other person
5 who is authorized by law to issue the writ of garnishment. See the writ to determine who the
6 Garnishor is.

7
8 STEP 1. FILL OUT THE GARNISHEE RESPONSE.

9
10 All garnishees who are required to deliver a garnishee response must fill in Part I of the
11 Garnishee Response. Garnishees who employ the Debtor must also fill in Part II of the response.
12 You should keep a copy of the response for your records.

13
14 Completing Part I of the Garnishee Response. If you discover before you deliver your response
15 that a bankruptcy petition has been filed by or on behalf of the Debtor, and the bankruptcy petition
16 was filed after a judgment was entered against the Debtor or after the debt otherwise became sub-
17 ject to garnishment (see the date specified in the writ), you must put a check by the appropriate
18 statement in Part I. If a bankruptcy petition has been filed, you should not make any payments to
19 the Garnishor unless the court orders otherwise. You need not complete any other part of the re-
20 sponse, but you still must sign the response and deliver it in the manner described in Step 2 of these
21 instructions.

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

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

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

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

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

45 If you receive notice of a challenge to the garnishment before you send your response, you must

1 complete and deliver your response as otherwise required by these instructions. However, see Step
2 3 of these instructions regarding payment of money or delivery of property after receipt of notice
3 of a challenge to the garnishment.

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

8
9 Completing Part II of the Garnishee Response (employers only). You must fill in Part II of the
10 response if you employ the Debtor on the date the writ of garnishment is delivered to you, or if you
11 previously employed the Debtor and still owe wages to the Debtor on the date the writ is delivered
12 to you.

13
14 Wages affected. Except as provided below, the writ garnishes all wages that you owe to the
15 Debtor for work performed before the date you received the writ, even though the wages will not
16 be paid until a later date. The writ also garnishes all wages that are attributable to services per-
17 formed during the 90-day period following the date you received the writ, even though you would
18 not pay the Debtor for all or part of those services until after the end of the 90-day period. Wages
19 subject to garnishment under the writ include all amounts paid by you as an employer, whether on
20 an hourly, weekly or monthly basis, and include commission payments and bonuses.

21
22 Example 1: Debtor A is employed by you and is paid a monthly salary on the first day of
23 each month. You receive a writ of garnishment on July 17. The writ garnishes all wages
24 that you owe to Debtor A for work performed on or before July 17. If Debtor A was paid
25 on July 1 for services performed in the month of June, the writ garnishes Debtor A’s salary
26 for the period beginning July 1 and ending October 15 (90 days after receipt of the writ).

27
28 The writ does not garnish any wages you owe to a Debtor for a specific pay period if:

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

31 (b) When the writ is delivered to you, the Debtor’s wages are paid by direct deposit to a finan-
32 cial institution, or you use an independent contractor as payroll administrator for your payroll; and

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

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

40
41 Calculation of wages subject to garnishment. A Wage Exemption Calculation form is attached
42 to the writ of garnishment. You must use this form to calculate the amount of the Debtor’s wages
43 that is subject to garnishment. You should read the instructions printed on the Wage Exemption
44 Calculation form to determine the normal wage exemption and the minimum wage exemption for
45 each payment you make under the writ.

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

6
7 Payment of amount subject to garnishment. Payments under the writ must be made at the fol-
8 lowing times, unless the amount owing on the judgment or other debt is fully paid before the final
9 payment is made or the writ is released:

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

16
17 Example 2: Using the facts given in Example 1, when you next make any payment of wages
18 to Debtor A after you receive the writ on July 17, you must complete the Wage Exemption
19 Calculation form and send the form to the Garnishor along with all amounts determined to
20 be subject to garnishment that are attributable to the period covered by the payment. If you
21 pay Debtor A on August 1, the payment will be for all wages attributable to the period be-
22 ginning July 1 and ending July 31.

23
24 (b) Unless the writ of garnishment is satisfied or released, during the 90-day period following the
25 date you received the writ, you must pay to the Garnishor all wages that are determined to be
26 subject to garnishment whenever you issue a paycheck to the Debtor. If the Debtor is paid on a
27 weekly basis, you must make payment under the writ on a weekly basis. If the Debtor is paid on a
28 monthly basis, you must make payment under the writ on a monthly basis. If the amount paid to the
29 Debtor varies from paycheck to paycheck, or changes at any time from the amount being paid at the
30 time the writ was delivered to you, you must perform a new wage exemption computation to deter-
31 mine the amount of wages subject to garnishment under the writ. You must send a copy of the new
32 Wage Exemption Calculation form with your payment to the Garnishor.

33
34 Example 3: Using the facts given above, as you make each subsequent payment of wages to
35 Debtor A you must make a payment of that portion of the Debtor's wages that are subject
36 to garnishment. If you continue to pay Debtor A on the first of each month, payments must
37 be made on September 1 and October 1.

38
39 (c) Upon the expiration of the 90-day period, you must make a final payment to the Garnishor
40 for all wages that were owing to the Debtor for the work performed by the Debtor through the 90th
41 day following your receipt of the writ. This payment may be made at the time of the Debtor's next
42 paycheck. You will need to complete another Wage Exemption Calculation form to determine the
43 amount of the wages subject to garnishment.

44
45 Example 4: Using the facts given above, you must make a final payment for the wages owing

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

7

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

13

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

23

24 STEP 2. DELIVER THE GARNISHEE RESPONSE.

25

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

28

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

33

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

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

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

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

42

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

45 (a) Send the original of your Garnishee Response to the Garnishor at the address indicated on

1 the writ under Important Addresses.

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

4
5 STEP 3. DELIVER THE FUNDS OR OTHER PROPERTY.

6
7 As long as the writ is in effect, you may be liable to the Creditor if you pay any debt or turn
8 over any property to the Debtor except as specifically allowed by law. If you have any money or
9 property of the Debtor in your possession, control or custody at the time of delivery of the writ, or
10 owe any debt to the Debtor, you must pay the money or hold the property as required by this step.
11 Exceptions to this requirement are listed below.

12
13 IF YOU ARE HOLDING MONEY FOR THE DEBTOR OR OWE A DEBT THAT IS CUR-
14 RRENTLY DUE, you must pay the money to the Garnishor with your response. You must send your
15 payment to the Garnishor at the address indicated on the writ under Important Addresses. Make
16 your check payable to the Garnishor.

17
18 IF YOU OWE A DEBT TO THE DEBTOR THAT WILL BECOME DUE WITHIN 45 DAYS
19 AFTER THE DATE YOU RECEIVED THE WRIT, you must send your payment directly to the
20 Garnishor at the address provided in the writ when the debt becomes due. Make your check payable
21 to the Garnishor.

22
23 IF YOU ARE HOLDING PROPERTY THAT BELONGS TO THE DEBTOR, OR OWE A DEBT
24 TO THE DEBTOR THAT WILL NOT BECOME DUE WITHIN 45 DAYS AFTER THE DATE YOU
25 RECEIVED THE WRIT, you must keep the property or debt in your possession, control or custody
26 until you receive written notice from the Sheriff. The Sheriff's notice will tell you what to do with
27 the property or debt. If you have followed all of the instructions in the writ and you receive no
28 notice from the Sheriff within 30 days after the date on which you delivered your Garnishee Re-
29 sponse, you may treat the writ as being of no further force or effect.

30
31 EXCEPTIONS:

32
33 1. Challenge to garnishment or specific directions from court. If you are making any payments
34 under the garnishment and before making a payment you receive notice of a challenge to the
35 garnishment from the court, or receive a specific direction from the court to make payments to the
36 court, you must send or deliver the payment directly to the court administrator. If the money is
37 currently due when you receive the notice, send the payment promptly to the court. If the payment
38 is for a debt that is payable within 45 days after you receive the writ, make the payment to the
39 court promptly when it becomes due. If you make payment by check, make the check payable to the
40 State of Oregon. Because you may be liable for any payment that does not reach the court, it is
41 better not to send cash by mail.

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

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

7
 8 3. Offset for payment of underlying lien. If you owe a debt to the Debtor and the Debtor owes
 9 a debt to the holder of an underlying lien on your property, you may be able to offset the amount
 10 payable to the underlying lienholder. See ORS 18.620.

11
 12 4. Subsequent events:

13
 14 (a) Bankruptcy. If you make your response and then discover that a voluntary or involuntary
 15 bankruptcy petition has been filed by or on behalf of the Debtor after the judgment was entered
 16 against the Debtor or after the debt otherwise became subject to garnishment (see date in writ), you
 17 may not make any further payments or delivery of property under the writ unless the court orders
 18 otherwise. If you have not delivered all property that is subject to garnishment under this writ when
 19 you discover that a bankruptcy petition has been filed, you must mail the following notice to the
 20 Garnishor and to the Debtor.

21
 22 (b) Order to withhold income. If you make your response and then receive an order to withhold
 23 income that has priority over the writ, you may make payments or deliver property under the writ
 24 only after payment of the amounts required under the order to withhold income. If you have not
 25 delivered all property that is subject to garnishment under this writ when you receive an order to
 26 withhold income that has priority, you must mail the following notice to the Garnishor and to the
 27 Debtor.

28
 29
 30 SUPPLEMENTAL GARNISHEE
 31 RESPONSE

32
 33 TO: The Garnishor and the Debtor

34
 35 RE: Writ of garnishment received _____, 2___ (date), in the case of _____ (Plaintiff)
 36 vs. _____ (Defendant), Circuit Court of _____ County, Oregon, Case No. _____.

37
 38 The undersigned Garnishee furnished a Garnishee Response to this writ of garnishment on
 39 _____, 2___ (date). Since that time (check appropriate statement):

40
 41 ___ I have discovered that a voluntary or involuntary bankruptcy petition has been filed by or
 42 on behalf of the Debtor after the judgment was entered against the Debtor or after the debt
 43 otherwise became subject to garnishment.

44
 45 ___ I have received an order to withhold income of the Debtor by reason of a support obligation.

1 Under ORS 25.375, the order to withhold income has priority over any other legal process
2 under Oregon law against the same income. The withholding of income pursuant to the or-
3 der to withhold income might reduce or eliminate subsequent payments under the
4 garnishment. (Provide details, including the name of the agency serving the order to with-
5 hold, the date the order was served on you and the amounts to be withheld.)
6

7 Dated _____, 2____

8
9 _____
10 Name of Garnishee

11
12 _____
13 Signature

14
15 _____
16 Address

17 _____

18

19 SPECIAL INSTRUCTIONS FOR BANKS
20 AND OTHER FINANCIAL INSTITUTIONS

21

22 If you hold an account for the debtor, and any of the *[following]* payments **listed below** has been
23 *[identified by the debtor, or can be identified by you from information transmitted to you by the payor,*
24 *as having been]* deposited in the account by direct deposit or electronic payment during the *[calen-*
25 *dar month that preceded the month in which the writ of garnishment was delivered to you]* **the**
26 **lookback period described in ORS 18.619 (2) (the period that begins on the date preceding the**
27 **date of your garnishment account review and that ends on the corresponding date of the**
28 **month two months earlier, or on the last day of the month two months earlier if the corre-**
29 **sponding date does not exist),** an amount equal to the lesser of the sum of those payments or the
30 total balance in the debtor’s account is not subject to garnishment, and you may not deliver that
31 amount to the garnishor **unless a Notice of Right to Garnish Federal Benefits from the United**
32 **States Government or from a state child support enforcement agency is attached to or in-**
33 **cluded in the garnishment:**

34 (a) **Federal benefit payments as defined in ORS 18.600 (payments from the United States**
35 **Social Security Administration, the United States Department of Veterans Affairs, the**
36 **United States Office of Personnel Management or the Railroad Retirement Board);**

37 *[(a)]* (b) **Payments from a public or private retirement plan as defined in ORS 18.358;**

38 *[(b)]* **Payments from the Social Security Administration;**

39 (c) **Public assistance payments from the state or a state agency;**

40 (d) **Unemployment compensation payments from the state or a state agency;**

41 (e) **Black lung benefits payments from the United States Department of Labor; and**

42 *[(f)]* **Veteran benefits payments from the Veterans Benefits Administration; and]**

43 *[(g)]* (f) **Workers’ compensation payments from a workers’ compensation carrier.**

44

45 If the Garnishor fails to pay the search fee required by ORS 18.790 and you do not employ the

1 Debtor, you are not required to deliver a Garnishee Response and you may deal with any property
2 of the Debtor as though the garnishment had not been issued.

3
4 If the Debtor owes a debt to you that was due at the time you received the writ of garnishment,
5 you may be able to offset the amount of that debt. See ORS 18.795. You must note that you have
6 made the offset in Part I of the Garnishee Response (under "Other") and specify the amount that
7 was offset.

8
9 Before making a payment under the writ, you may first deduct any processing fee that you are
10 allowed under ORS 18.790. [*You may not deduct a processing fee if all amounts held by you for the*
11 *debtor are not subject to garnishment.*] **You may not charge or collect a processing fee against**
12 **any amount that is not subject to garnishment, and may not charge or collect a garnishment**
13 **processing fee against any amounts in the account after the date of your garnishment ac-**
14 **count review.**

15
16 You need not deliver any property contained in a safe deposit box unless the Garnishor pays
17 you in advance for the costs that will be incurred in gaining entry to the box. See ORS 18.792.

18
19 **If you determine from a garnishment account review conducted under ORS 18.619 (1) that**
20 **one or more of the payments listed in ORS 18.619 (3) have been deposited into the debtor's**
21 **account by direct deposit or electronic payment during the lookback period described in ORS**
22 **18.619 (2), and that there is a positive balance in the account, you must issue a notice to the**
23 **account holder in substantially the form set forth in section 8 of this 2011 Act unless a No-**
24 **tice of Right to Garnish Federal Benefits from the United States Government or from a state**
25 **child support enforcement agency was attached to or included in the garnishment. The notice**
26 **must be issued directly to the account holder or to a fiduciary who administers the account**
27 **and receives communications on behalf of the account holder. The notice must be sent sep-**
28 **arately to the account holder and may not be included with other materials being provided**
29 **to the account holder that do not relate to the garnishment. You must send the notice to**
30 **the account holder within three business days after you complete the garnishment account**
31 **review. You may issue one notice with information related to multiple accounts of a single**
32 **account holder.**

33
34
35 **SECTION 7.** ORS 18.619 and section 8 of this 2011 Act are added to and made a part of
36 **ORS 18.600 to 18.850.**

37 **SECTION 8.** The notice given by a financial institution to a garnishee under section 4 (1)
38 **of this 2011 Act must be in substantially the following form:**

39 _____
40
41 _____
42 _____
43 _____
44 (Name, address of financial institution)
45

**IMPORTANT INFORMATION ABOUT
YOUR ACCOUNT**

Date: _____
Notice to: _____
Account Number: _____

Why am I receiving this notice?

On _____ [date on which garnishment order was served], _____ [name of financial institution] received a garnishment order from a court to garnish funds in your account. The amount of the garnishment order was for \$_____ [amount of garnishment order]. We are sending you this notice to let you know what we have done in response to the garnishment order.

What is garnishment?

Garnishment is a legal process that allows a creditor to remove funds from your bank/credit union account to satisfy a debt that you have not paid. In other words, if you owe money to a person or company, they can obtain a court order directing your bank/credit union to take money out of your account to pay off your debt. If this happens, you cannot use that money in your account.

What has happened to my account?

On _____ [date of account review], we researched your account and identified that one or more payments identified by ORS 18.619 (1) has been deposited in the last two months (see below for a list of qualifying payments). In most cases, these payments are protected from garnishment. As required by state and federal regulations, therefore, we have established a "protected amount" of funds that will remain available to you and that will not be frozen or removed from your account in response to the garnishment order.

(Conditional paragraph if funds have been frozen)

____ (check if applicable) Your account contained additional money that may not be protected from garnishment. As required by law, we have placed a hold on or removed these funds in the amount of \$_____ [amount frozen] and may have to turn these funds over to your creditor as directed by the garnishment order.

The chart below summarizes this information about your account(s):

ACCOUNT SUMMARY AS OF _____ [DATE OF ACCOUNT REVIEW]

| Account Number | Amount in Account | Amount Protected | Amount Subject to garnishment | Garnishment fee charged |
|-----------------------|--------------------------|-------------------------|--------------------------------------|--------------------------------|
|-----------------------|--------------------------|-------------------------|--------------------------------------|--------------------------------|

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(now frozen/
removed)

(If the account holder has multiple accounts, use a separate row for each account)

Please note that these amount(s) may be affected by deposits or withdrawals after the protected amount was calculated on _____ (date of garnishment account review).

Do I need to do anything to access my protected funds?

You may use the protected amount of money in your account as you normally would.

There is nothing else you need to do to make sure that the protected amount is safe.

Who garnished my account?

The creditor who obtained a garnishment order against you is _____ (name of creditor).

What types of benefit payments are protected from garnishment?

In most cases, you have protections from garnishment if the funds in your account include one or more of the following benefit payments:

- Social Security benefits
- Supplemental Security Income benefits
- Veterans' benefits
- Railroad retirement benefits
- Railroad Unemployment Insurance benefits
- Civil Service Retirement System benefits
- Federal Employees Retirement System benefits
- Payments from a public or private retirement plan as defined in ORS 18.358
- Public assistance payments from the state or a state agency
- Unemployment compensation payments from the state or a state agency
- Black lung benefits payments from the United States Department of Labor
- Workers' compensation payments from a workers' compensation carrier

What should I do if I think that additional funds in my account are from protected benefit payments?

If you believe that funds in your account(s) should not have been frozen or removed, there are several things you can do:

1 **You can fill out a Challenge to Garnishment form and submit it to the court.**

2 **You may contact the creditor that garnished your account and explain that funds are**
3 **from protected benefit payments and should be released to you. The creditor may be con-**
4 **tacted at _____ (address of creditor).**

5 **You may consult an attorney to help you prove to the creditor that garnished your ac-**
6 **count that additional funds are from protected benefit payments and cannot be taken. For**
7 **information about how to find an attorney, contact the Oregon State Bar's Lawyer Referral**
8 **Service at (800) 452-7636 or go online to www.oregonlawhelp.org.**

9
10 **This notice contains all the information that we have about the garnishment order.**
11 **However, if you have a question about your account, you may contact us at**
12 **_____ (telephone number of financial institution).**

13
14
15 **SECTION 9. (1) Sections 4 and 8 of this 2011 Act and the amendments to ORS 18.600,**
16 **18.619, 18.790 and 18.838 by sections 1, 2, 5 and 6 of this 2011 Act become operative 30 days**
17 **after the effective date of this 2011 Act.**

18 **(2) Sections 4 and 8 of this 2011 Act and the amendments to ORS 18.600, 18.619, 18.790 and**
19 **18.838 by sections 1, 2, 5 and 6 of this 2011 Act apply only to garnishments issued on or after**
20 **the operative date of this 2011 Act.**

21 **SECTION 10. This 2011 Act being necessary for the immediate preservation of the public**
22 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
23 **on its passage.**