

B-Engrossed
Senate Bill 926

Ordered by the Senate May 17
Including Senate Amendments dated April 29 and May 17

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.

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**

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

24 [(5)] (7) “Financial institution” means a financial institution or trust company as those terms

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 are defined in ORS 706.008.

2 [(6)] (8) "Garnishable property" means all property described in ORS 18.615, but does not in-
3 clude:

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

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

6 [(7)] (9) "Garnishee" means a person to whom a writ of garnishment has been delivered.

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

10 [(8)] (11) "Garnishor" means:

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

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

15 [(9)] (12) "Past due support" means the amount of child or spousal support, or both, determined
16 under a court or administrative order in a proceeding under ORS chapter 107, 108, 109, 110, 416,
17 419B or 419C that has not been paid or is certified to be owed by another state under ORS 25.083.

18 [(10)] (13) "Wages" includes all amounts paid for the services of an employee by an employer,
19 including amounts paid as a commission or bonus.

20 [(11)] (14) "Writ" means a writ of garnishment.

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

22 18.619. (1) **Except as provided in subsection (6) of this section,** if a writ of garnishment is
23 delivered to a financial institution that has an account of the debtor, *[and]* **the financial institution**
24 **shall conduct a garnishment account review of all accounts in the name of the debtor before**
25 **taking any other action that may affect funds in those accounts. If the financial institution**
26 **determines from the garnishment account review that** one or more payments described in sub-
27 section [(2)] (3) of this section were deposited in *[the]* **an account of the debtor** by direct deposit
28 or electronic payment during the *[calendar month that preceded the month in which the writ of*
29 *garnishment is delivered to the financial institution]* **lookback period described in subsection (2)**
30 **of this section,** an amount equal to the lesser of the sum of those payments or the total balance in
31 the debtor's account is not subject to garnishment.

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

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

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

41 [(2)] (3) The provisions of this section apply only to:

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

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

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

45 [(c) *Public assistance payments from the state or a state agency;*]

1 *[(d) Unemployment compensation payments from the state or a state agency;]*

2 **(c) Public assistance payments from the State of Oregon or an agency of the State of**
3 **Oregon;**

4 **(d) Unemployment compensation payments from the State of Oregon or an agency of the**
5 **State of Oregon;**

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

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

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

9 *[(3)]* **(4) The provisions of this section apply only to[:]**

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

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

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

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

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

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

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

35 **(6) A financial institution may not conduct a garnishment account review under this**
36 **section if a Notice of Right to Garnish Federal Benefits from the United States Government**
37 **or from a state child support enforcement agency is attached to or included in the**
38 **garnishment as provided in 31 C.F.R. part 212. If a Notice of Right to Garnish Federal Ben-**
39 **efits is attached to or included in the garnishment, the financial institution shall proceed on**
40 **the garnishment as otherwise provided in ORS 18.600 to 18.850.**

41 *[(6)]* **(7) The provisions of this section do not affect the ability of a debtor to claim any ex-**
42 **emption that otherwise may be available to the debtor under law for any amounts in an account in**
43 **a financial institution [in excess of the amount specified in subsection (1) of this section].**

44 **SECTION 3. Sections 4 to 6 of this 2011 Act are added to and made a part of ORS 18.600**
45 **to 18.850.**

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

7 (a) Immediately calculate and establish the amount in the debtor's account that is not
8 subject to garnishment and ensure that the debtor has full customary access to that amount;
9 and

10 (b) Issue a notice to the account holder in substantially the form set forth in section 10
11 of this 2011 Act.

12 (2) A financial institution shall issue the notice required by this section directly to the
13 account holder or to a fiduciary who administers the account and receives communications
14 on behalf of the account holder.

15 (3) The notice required by this section must be sent separately to the debtor and may
16 not be included with other materials being provided to the debtor by the financial institution
17 that do not relate to the garnishment.

18 (4) The notice required by this section must be sent to the account holder within three
19 business days after the financial institution completes the garnishment account review re-
20 quired by ORS 18.619 (1).

21 (5) A financial institution shall perform the calculation described in subsection (1) of this
22 section for each account of the account holder. However, the financial institution may issue
23 a single notice under this section for multiple accounts of the same account holder.

24 (6) Issuance of a notice under this section does not constitute the giving of legal advice
25 and a financial institution is not obligated to provide legal advice by reason of issuing a no-
26 tice required by this section.

27 **SECTION 5.** A financial institution is not liable to any account holder, garnishor or other
28 financial institution, and may not be assessed any penalty, by reason of any action taken by
29 the financial institution in good faith under section 4 of this 2011 Act or ORS 18.619, includ-
30 ing:

31 (1) Delivery or refusal to deliver any funds that are not subject to garnishment under
32 ORS 18.619 to a garnishor;

33 (2) Providing the notice required by this section to an account holder;

34 (3) Customary clearing and settlement adjustments made to a debtor's account that af-
35 fect the balance in the debtor's account; and

36 (4) Any bona fide errors that occur under section 4 of this 2011 Act or ORS 18.619 despite
37 reasonable procedures implemented by the financial institution to prevent those errors.

38 **SECTION 6.** A financial institution shall maintain records of account activity and actions
39 taken by the financial institution in response to a garnishment that are adequate to demon-
40 strate compliance with the requirements of section 4 of this 2011 Act and ORS 18.619 for a
41 period of not less than two years after the financial institution receives the writ of
42 garnishment.

43 **SECTION 7.** ORS 18.790 is amended to read:

44 18.790. (1) Except as provided in subsection (4) of this section, at the time of delivery of any
45 writ of garnishment on a financial institution or at the time a notice of garnishment is delivered to

1 the financial institution under ORS 18.854:

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

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

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

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

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

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

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

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

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

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

26 **(7) If a garnishment account review reveals that a payment was made by direct deposit**
27 **or electronic payment to the debtor's account during the lookback period described in ORS**
28 **18.619 (2), the financial institution may not charge or collect a garnishment processing fee**
29 **under subsection (6) of this section against the amount that is not subject to garnishment,**
30 **and may not charge or collect a garnishment processing fee under subsection (6) of this**
31 **section against any amounts in the account after the date of the garnishment account re-**
32 **view.**

33 **SECTION 8.** ORS 18.838 is amended to read:

34 18.838. Instructions to garnishees must be in substantially the following form:
35

36
37 INSTRUCTIONS TO GARNISHEE
38

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

1 or legal holiday.

2
3 The writ is not effective, and you need not make a Garnishee Response, if:

- 4
- 5 • You do not receive the writ within 60 days after the date of issuance shown on the face of
 - 6 the writ.
 - 7
 - 8 • You do not receive an original writ of garnishment or a copy of the writ.
 - 9

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

11 18.850.

12

13 NOTE: The Garnishor may be the Creditor, the attorney for the Creditor or some other person

14 who is authorized by law to issue the writ of garnishment. See the writ to determine who the

15 Garnishor is.

16

17 STEP 1. FILL OUT THE GARNISHEE RESPONSE.

18

19 All garnishees who are required to deliver a garnishee response must fill in Part I of the

20 Garnishee Response. Garnishees who employ the Debtor must also fill in Part II of the response.

21 You should keep a copy of the response for your records.

22

23 Completing Part I of the Garnishee Response. If you discover before you deliver your response

24 that a bankruptcy petition has been filed by or on behalf of the Debtor, and the bankruptcy petition

25 was filed after a judgment was entered against the Debtor or after the debt otherwise became sub-

26 ject to garnishment (see the date specified in the writ), you must put a check by the appropriate

27 statement in Part I. If a bankruptcy petition has been filed, you should not make any payments to

28 the Garnishor unless the court orders otherwise. You need not complete any other part of the re-

29 sponse, but you still must sign the response and deliver it in the manner described in Step 2 of these

30 instructions.

31 In all other cases you must list in Part I all money and personal property of the Debtor that is

32 in your possession, control or custody at the time of delivery of the writ. You must also list all debts

33 that you owe to the Debtor, whether or not those debts are currently due (e.g., money loaned to you

34 by the Debtor that is to be repaid at a later time).

35 If you are the employer of the Debtor at the time the writ is delivered to you, you must put a

36 check by the appropriate statement in Part I. In addition, you must complete Part II of the response.

37 If you believe that you may hold property of the Debtor or that you owe a debt to the Debtor,

38 but you are not sure, you must put a check by the appropriate statement and provide an explana-

39 tion. When you find out what property you hold that belongs to the Debtor, or you find out whether

40 you owe money to the Debtor and how much, you must prepare and deliver an amended response.

41 You must do this even if you find out that you have no property of the Debtor or that you do not

42 owe anything to the Debtor.

43 If you determine that the writ, on its face, does not comply with Oregon laws governing writs

44 of garnishment, or if you are unable to determine the identity of the Debtor from the information

45 in the writ, then the writ is not effective to garnish any property of the Debtor. You must put a

1 check by the appropriate statement in Part I and provide an explanation. You still must complete
2 the response and deliver the response in the manner described in Step 2 of these instructions.

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

9 If you receive notice of a challenge to the garnishment before you send your response, you must
10 complete and deliver your response as otherwise required by these instructions. However, see Step
11 3 of these instructions regarding payment of money or delivery of property after receipt of notice
12 of a challenge to the garnishment.

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

17
18 Completing Part II of the Garnishee Response (employers only). You must fill in Part II of the
19 response if you employ the Debtor on the date the writ of garnishment is delivered to you, or if you
20 previously employed the Debtor and still owe wages to the Debtor on the date the writ is delivered
21 to you.

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

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

36
37 The writ does not garnish any wages you owe to a Debtor for a specific pay period if:

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

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

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

44 If any wages are not garnishable by reason of the issuance of instructions to a financial insti-
45 tution or a payroll administrator as described above, you must so note in the Garnishee Response.

1 Thereafter, you must pay to the Garnishor all wages that are subject to garnishment that are at-
2 tributable to services performed by the Debtor during the 90-day period following the date you re-
3 ceived the writ.

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

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

15
16 Payment of amount subject to garnishment. Payments under the writ must be made at the fol-
17 lowing times, unless the amount owing on the judgment or other debt is fully paid before the final
18 payment is made or the writ is released:

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

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

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

42
43 Example 3: Using the facts given above, as you make each subsequent payment of wages to
44 Debtor A you must make a payment of that portion of the Debtor's wages that are subject
45 to garnishment. If you continue to pay Debtor A on the first of each month, payments must

1 be made on September 1 and October 1.

2

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

8

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

16

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

22

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

32

33 STEP 2. DELIVER THE GARNISHEE RESPONSE.

34

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

37

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

42

43 If you are required to hold any property under the writ or make any payment under the writ,
44 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 court administrator at the address indicated
3 on the writ under Important Addresses.

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

6
7 If you are not required to hold any property under the writ or make any payment under the
8 writ, either at the time of making your response or later, you must:

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

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

13
14 STEP 3. DELIVER THE FUNDS OR OTHER PROPERTY.

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

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

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

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

39
40 EXCEPTIONS:

41
42 1. Challenge to garnishment or specific directions from court. If you are making any payments
43 under the garnishment and before making a payment you receive notice of a challenge to the
44 garnishment from the court, or receive a specific direction from the court to make payments to the
45 court, you must send or deliver the payment directly to the court administrator. If the money is

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

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

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

16
17 3. Offset for payment of underlying lien. If you owe a debt to the Debtor and the Debtor owes
18 a debt to the holder of an underlying lien on your property, you may be able to offset the amount
19 payable to the underlying lienholder. See ORS 18.620.

20
21 4. Subsequent events:

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

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

37
38
39 SUPPLEMENTAL GARNISHEE
40 RESPONSE

41
42 TO: The Garnishor and the Debtor

43
44 RE: Writ of garnishment received _____, 2__ (date), in the case of _____ (Plaintiff)
45 vs. _____ (Defendant), Circuit Court of _____ County, Oregon, Case No. _____

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

3

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

7

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

14

15 Dated _____, 2___

16

17 _____

18 Name of Garnishee

19

20 _____

21 Signature

22

23 _____

24 Address

25

26

27

SPECIAL INSTRUCTIONS FOR BANKS
AND OTHER FINANCIAL INSTITUTIONS

28

29

30 **Unless a Notice of Right to Garnish Federal Benefits from the United States Government**
31 **or from a state child support enforcement agency is attached to or included in the**
32 **garnishment, you must conduct a garnishment account review for each account that you**
33 **hold for the debtor. If a Notice of Right to Garnish Federal Benefits from the United States**
34 **Government or from a state child support enforcement agency is attached to or included in**
35 **the garnishment, you should not conduct a garnishment account review, and should proceed**
36 **upon the garnishment in the normal manner.**

37

38 If you hold an account for the debtor, and any of the [following] payments **listed below** has been
39 [identified by the debtor, or can be identified by you from information transmitted to you by the payor,
40 as having been] deposited in the account by direct deposit or electronic payment during the [calen-
41 dar month that preceded the month in which the writ of garnishment was delivered to you] **the**
42 **lookback period described in ORS 18.619 (2) (the period that begins on the date preceding the**
43 **date of your garnishment account review and that ends on the corresponding date of the**
44 **month two months earlier, or on the last day of the month two months earlier if the corre-**
45 **sponding date does not exist), an amount equal to the lesser of the sum of those payments or the**
total balance in the debtor’s account is not subject to garnishment, and you may not deliver that

1 amount to the garnishor:

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

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

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

7 [(c) *Public assistance payments from the state or a state agency;*]

8 [(d) *Unemployment compensation payments from the state or a state agency;*]

9 (c) **Public assistance payments from the State of Oregon or an agency of the State of**
10 **Oregon;**

11 (d) **Unemployment compensation payments from the State of Oregon or an agency of the**
12 **State of Oregon;**

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

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

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

16
17 If the Garnishor fails to pay the search fee required by ORS 18.790 and you do not employ the
18 Debtor, you are not required to deliver a Garnishee Response and you may deal with any property
19 of the Debtor as though the garnishment had not been issued.

20
21 If the Debtor owes a debt to you that was due at the time you received the writ of garnishment,
22 you may be able to offset the amount of that debt. See ORS 18.795. You must note that you have
23 made the offset in Part I of the Garnishee Response (under "Other") and specify the amount that
24 was offset.

25
26 [*Before making a payment under the writ, you may first deduct any processing fee that you are*
27 *allowed under ORS 18.790. You may not deduct a processing fee if all amounts held by you for the*
28 *debtor are not subject to garnishment.*]

29
30 [*You need not deliver any property contained in a safe deposit box unless the Garnishor pays you*
31 *in advance for the costs that will be incurred in gaining entry to the box. See ORS 18.792.*]

32
33 [_____]

34
35 **Before making a payment under the writ, you may first deduct any processing fee that**
36 **you are allowed under ORS 18.790. If you are required to conduct a garnishment account**
37 **review, you may not charge or collect a processing fee against any amount that is not sub-**
38 **ject to garnishment, and may not charge or collect a garnishment processing fee against any**
39 **amounts in the account after the date that you conduct the review.**

40
41 **You need not deliver any property contained in a safe deposit box unless the Garnishor**
42 **pays you in advance for the costs that will be incurred in gaining entry to the box. See ORS**
43 **18.792.**

44
45 **If you are required to conduct a garnishment account review and you determine from the**

1 review that one or more of the payments listed in ORS 18.619 (3) have been deposited into
2 the debtor's account by direct deposit or electronic payment during the lookback period de-
3 scribed in ORS 18.619 (2), and that there is a positive balance in the account, you must issue
4 a notice to the account holder in substantially the form set forth in section 10 of this 2011
5 Act. The notice must be issued directly to the account holder or to a fiduciary who admin-
6 isters the account and receives communications on behalf of the account holder. The notice
7 must be sent separately to the account holder and may not be included with other materials
8 being provided to the account holder that do not relate to the garnishment. You must send
9 the notice to the account holder within three business days after you complete the
10 garnishment account review. You may issue one notice with information related to multiple
11 accounts of a single account holder.

12 _____
13
14 **SECTION 9.** ORS 18.619 and section 10 of this 2011 Act are added to and made a part of
15 ORS 18.600 to 18.850.

16 **SECTION 10.** The notice given by a financial institution to a garnishee under section 4
17 (1) of this 2011 Act must be in substantially the following form:

18 _____
19
20 _____
21 _____
22 _____

23 (Name, address of financial institution)

24
25 **IMPORTANT INFORMATION ABOUT**
26 **YOUR ACCOUNT**

27 **Date:** _____
28 **Notice to:** _____
29 **Account Number:** _____

30
31
32 **Why am I receiving this notice?**

33
34 On _____ [date on which garnishment order was served], _____ [name
35 of financial institution] received a garnishment order from a court to garnish funds in your
36 account. The amount of the garnishment order was for \$_____ [amount of garnishment
37 order]. We are sending you this notice to let you know what we have done in response to the
38 garnishment order.

39
40 **What is garnishment?**

41
42 Garnishment is a legal process that allows a creditor to remove funds from your
43 bank/credit union account to satisfy a debt that you have not paid. In other words, if you
44 owe money to a person or company, they can obtain a court order directing your bank/credit
45 union to take money out of your account to pay off your debt. If this happens, you cannot

1 use that money in your account.

2
3 **What has happened to my account?**

4
5 On _____ [date of account review], we researched your account and identified
6 that one or more payments identified by ORS 18.619 (1) has been deposited in the last two
7 months (see below for a list of qualifying payments). In most cases, these payments are
8 protected from garnishment. As required by state and federal regulations, therefore, we have
9 established a “protected amount” of funds that will remain available to you and that will not
10 be frozen or removed from your account in response to the garnishment order.

11
12 **(Conditional paragraph if funds have been frozen)**

13
14 _____ (check if applicable) Your account contained additional money that may not be
15 protected from garnishment. As required by law, we have placed a hold on or removed these
16 funds in the amount of \$_____ [amount frozen] and may have to turn these funds over
17 to your creditor as directed by the garnishment order.

18
19 The chart below summarizes this information about your account(s):

20
21 **ACCOUNT SUMMARY AS OF _____ [DATE OF ACCOUNT REVIEW]**

Account Number	Amount in Account	Amount Protected	Amount Subject to garnishment (now frozen/ removed)	Garnishment fee charged
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

22
23
24
25
26
27
28
29
30 (If the account holder has multiple accounts, use a separate row for each account)

31
32 Please note that these amount(s) may be affected by deposits or withdrawals after the
33 protected amount was calculated on _____ (date of garnishment account review).

34
35 **Do I need to do anything to access my protected funds?**

36
37 You may use the protected amount of money in your account as you normally would.

38
39 There is nothing else you need to do to make sure that the protected amount is safe.

40
41 **Who garnished my account?**

42
43 The creditor who obtained a garnishment order against you is _____ (name of
44 creditor).

1 **What types of benefit payments are protected from garnishment?**

2
3 In most cases, you have protections from garnishment if the funds in your account in-
4 clude one or more of the following benefit payments:

- 5
6 • Social Security benefits
7 • Supplemental Security Income benefits
8 • Veterans' benefits
9 • Railroad retirement benefits
10 • Railroad Unemployment Insurance benefits
11 • Civil Service Retirement System benefits
12 • Federal Employees Retirement System benefits
13 • Payments from a public or private retirement plan as defined in ORS 18.358
14 • Public assistance payments from the State of Oregon or an agency of the State of
15 Oregon
16 • Unemployment compensation payments from the State of Oregon or an agency of the
17 State of Oregon
18 • Black lung benefits payments from the United States Department of Labor
19 • Workers' compensation payments from a workers' compensation carrier
20

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

23
24 If you believe that funds in your account(s) should not have been frozen or removed,
25 there are several things you can do:

26
27 You can fill out a Challenge to Garnishment form and submit it to the court.

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

31 You may consult an attorney to help you prove to the creditor that garnished your ac-
32 count that additional funds are from protected benefit payments and cannot be taken. For
33 information about how to find an attorney, contact the Oregon State Bar's Lawyer Referral
34 Service at (800) 452-7636 or go online to www.oregonlawhelp.org.
35

36 This notice contains all the information that we have about the garnishment order.
37 However, if you have a question about your account, you may contact us at
38 _____ (telephone number of financial institution).
39
40

41 **SECTION 11.** (1) Sections 4, 5, 6 and 10 of this 2011 Act and the amendments to ORS
42 18.600, 18.619, 18.790 and 18.838 by sections 1, 2, 7 and 8 of this 2011 Act become operative 30
43 days after the effective date of this 2011 Act.

44 (2) Sections 4, 5, 6 and 10 of this 2011 Act and the amendments to ORS 18.600, 18.619,
45 18.790 and 18.838 by sections 1, 2, 7 and 8 of this 2011 Act apply only to garnishments issued

1 on or after the operative date specified in subsection (1) of this section.

2 **SECTION 12.** This 2011 Act being necessary for the immediate preservation of the public
3 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
4 on its passage.

5
