

D R A F T

SUMMARY

Exempts certain student assistance payments and child care tax credits from execution.

Provides that at least \$400 in debtor's account at financial institution is not subject to garnishment.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to execution on property; creating new provisions; amending ORS
3 18.345, 18.600, 18.784, 18.785, 18.790, 18.838 and 18.847; and declaring an
4 emergency.

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

6 **SECTION 1.** ORS 18.345 is amended to read:

7 18.345. (1) All property, including franchises, or rights or interest therein,
8 of the judgment debtor, shall be liable to an execution, except as provided
9 in this section and in other statutes granting exemptions from execution. The
10 following property, or rights or interest therein of the judgment debtor, ex-
11 cept as provided in ORS 18.305, shall be exempt from execution:

12 (a) Books, pictures and musical instruments to the value of \$600.

13 (b) Wearing apparel, jewelry and other personal items to the value of
14 \$1,800.

15 (c) The tools, implements, apparatus, team, harness or library, necessary
16 to enable the judgment debtor to carry on the trade, occupation or profession
17 by which the judgment debtor habitually earns a living, to the value of
18 \$5,000.

19 (d) A vehicle to the value of \$3,000. As used in this paragraph "vehicle"

1 includes an automobile, truck, trailer, truck and trailer or other motor ve-
2 hicle.

3 (e) Domestic animals and poultry kept for family use, to the total value
4 of \$1,000 and food sufficient to support such animals and poultry for 60 days.

5 (f) Household goods, furniture, radios, a television set and utensils all to
6 the total value of \$3,000, if the judgment debtor holds the property primarily
7 for the personal, family or household use of the judgment debtor; provisions
8 actually provided for family use and necessary for the support of a
9 householder and family for 60 days and also 60 days' supply of fuel.

10 (g) All property of the state or any county or incorporated city therein,
11 or of any other public or municipal corporation of like character.

12 (h) All professionally prescribed health aids for the debtor or a dependent
13 of the debtor.

14 (i) Spousal support, child support, or separate maintenance to the extent
15 reasonably necessary for the support of the debtor and any dependent of the
16 debtor.

17 (j) The debtor's right to receive, or property that is traceable to, an award
18 under any crime victim reparation law.

19 (k) The debtor's right to receive, or property that is traceable to, a pay-
20 ment or payments, not to exceed a total of \$10,000, on account of personal
21 bodily injury of the debtor or an individual of whom the debtor is a de-
22 pendent.

23 (L) The debtor's right to receive, or property that is traceable to, a pay-
24 ment in compensation of loss of future earnings of the debtor or an individ-
25 ual of whom the debtor is or was a dependent, to the extent reasonably
26 necessary for the support of the debtor and any dependent of the debtor.

27 (m) Veterans' benefits and loans.

28 (n) The debtor's right to receive an earned income tax credit under the
29 federal tax laws and any moneys that are traceable to a payment of an
30 earned income tax credit under the federal tax laws.

31 **(o) The debtor's right to receive a grant, a loan or work assistance**

1 **exempt from garnishment under 20 U.S.C. 1095a(d) and any moneys**
2 **that are traceable to a grant, a loan or work assistance exempt from**
3 **garnishment under 20 U.S.C. 1095a(d).**

4 **(p) The debtor's right to receive a child care tax credit under state**
5 **or federal tax laws and any moneys that are traceable to receipt of a**
6 **child care tax credit under state or federal tax laws.**

7 [(o)] **(q)** The debtor's interest, not to exceed \$400 in value, in any personal
8 property. However, this exemption may not be used to increase the amount
9 of any other exemption.

10 (2) If the property claimed by the judgment debtor as exempt is adjudi-
11 cated by the court out of which the execution issued to be of a value in ex-
12 cess of that allowed by the appropriate paragraph of subsection (1) of this
13 section, the officer seizing the property shall proceed to sell such property.
14 Out of the proceeds of such sale, the officer shall deduct costs of sale and
15 shall pay to the judgment debtor an amount equivalent to the value declared
16 to be exempt by any of the paragraphs of subsection (1) of this section and
17 shall apply the balance of the proceeds of sale on the execution. A sale may
18 not be made under such execution unless the highest bid made exceeds the
19 appropriate exemption claimed and allowed plus costs of sale. If no bid is
20 received in excess of the value allowed by the appropriate paragraph of
21 subsection (1) of this section, the costs of sale shall be borne by the judgment
22 creditor.

23 (3) If two or more members of a household are joint judgment debtors,
24 each judgment debtor shall be entitled to claim the exemptions in subsection
25 (1)(a), (b), (c), (d) and [(o)] **(q)** of this section in the same or different prop-
26 erties. The exemptions provided by subsection (1)(a), (b), (c), (d), (j), (k) and
27 [(o)] **(q)** of this section, when claimed for jointly owned property, may be
28 combined at the option of the debtors.

29 (4) Notwithstanding any other provision of law except ORS 657.855, if a
30 writ of garnishment or other execution is issued to collect past due support
31 as defined in ORS 18.600, 50 percent of unemployment compensation benefits,

1 workers' compensation benefits and other benefits paid to the debtor by the
2 United States, by the state or by a political subdivision of the state are ex-
3 empt. The exemption related to unemployment compensation benefits pro-
4 vided by this subsection is subject to ORS 657.855. The exemption provided
5 by this subsection applies without regard to whether the payment is made
6 on a periodic basis or in a lump sum, including any lump sum payable pur-
7 suant to a settlement or judgment. Notwithstanding subsection (1)(k) of this
8 section, if a payment is made under a settlement or judgment on account of
9 personal bodily injury and the garnishment or other execution is issued to
10 collect past due support as defined in ORS 18.600, the lesser of 50 percent
11 of the payment or \$7,500 is exempt.

12 **SECTION 2.** ORS 18.784 is amended to read:

13 **18.784. (1) If a writ of garnishment is delivered to a financial insti-**
14 **tution that has an account of the debtor, the greater of \$400 or the**
15 **amount described in subsection (2) of this section is not subject to**
16 **garnishment.**

17 [(1)] **(2)** Except as provided in subsection [(6)] **(7)** of this section, if a writ
18 of garnishment is delivered to a financial institution that has an account of
19 the debtor, the financial institution shall conduct a garnishment account
20 review of all accounts in the name of the debtor before taking any other
21 action that may affect funds in those accounts. If the financial institution
22 determines from the garnishment account review that one or more payments
23 described in subsection [(3)] **(4)** of this section were deposited in an account
24 of the debtor by direct deposit or electronic payment during the lookback
25 period described in subsection [(2)] **(3)** of this section, an amount equal to
26 the lesser of the sum of those payments or the total balance in the debtor's
27 account is not subject to garnishment.

28 [(2)] **(3)** The provisions of **subsection (2) of** this section apply only to
29 payments described in subsection [(3)] **(4)** of this section that are deposited
30 during the lookback period that ends on the day before the day on which the
31 garnishment account review is conducted and begins on:

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

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

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

8 (a) Federal benefit payments;

9 (b) Payments from a public or private retirement plan as defined in ORS
10 18.358;

11 (c) Public assistance payments from the State of Oregon or an agency of
12 the State of Oregon;

13 (d) Unemployment compensation payments from the State of Oregon or
14 an agency of the State of Oregon;

15 (e) Black lung benefits payments from the United States Department of
16 Labor; *[and]*

17 (f) Workers' compensation payments from a workers' compensation
18 carrier[.];

19 **(g) Payments from grants, loans or work assistance exempt from**
20 **garnishment under 20 U.S.C. 1095a(d); and**

21 **(h) Payments of child care tax credits under state or federal tax**
22 **laws.**

23 ~~[(4)]~~ (5) The provisions of this section apply only to a payment that a fi-
24 nancial institution can identify as being one of the types of payments de-
25 scribed in subsection ~~[(3)]~~ (4) of this section from information transmitted
26 to the financial institution by the payor.

27 ~~[(5)]~~ (6) A financial institution shall perform a garnishment account re-
28 view only one time for a specific garnishment. If the same garnishment is
29 served on a financial institution more than once, the financial institution
30 may not perform a garnishment account review or take any other action re-
31 lating to the garnishment based on the second and subsequent service of the

1 garnishment.

2 [(6)] (7) A financial institution may not conduct a garnishment account
3 review under this section if a Notice of Right to Garnish Federal Benefits
4 from the United States Government or from a state child support enforce-
5 ment agency is attached to or included in the garnishment as provided in 31
6 C.F.R. part 212. If a Notice of Right to Garnish Federal Benefits is attached
7 to or included in the garnishment, the financial institution shall proceed on
8 the garnishment as otherwise provided in ORS 18.600 to 18.850.

9 [(7)] (8) The provisions of this section do not affect the ability of a debtor
10 to claim any exemption that otherwise may be available to the debtor under
11 law for any amounts in an account in a financial institution.

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

13 18.838. Instructions to garnishees must be in substantially the following
14 form:

15 _____
16 INSTRUCTIONS TO GARNISHEE
17

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

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

31

- 1 • You do not receive the writ within 60 days after the date of issuance
2 shown on the face of the writ.

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

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

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

13
14 STEP 1. FILL OUT THE GARNISHEE RESPONSE.

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

20
21 Completing Part I of the Garnishee Response. If you discover before you
22 deliver your response that a bankruptcy petition has been filed by or on be-
23 half of the Debtor, and the bankruptcy petition was filed after a judgment
24 was entered against the Debtor or after the debt otherwise became subject
25 to garnishment (see the date specified in the writ), you must put a check by
26 the appropriate statement in Part I. If a bankruptcy petition has been filed,
27 you should not make any payments to the Garnishor unless the court orders
28 otherwise. You need not complete any other part of the response, but you
29 still must sign the response and deliver it in the manner described in Step
30 2 of these instructions.

31 In all other cases you must list in Part I all money and personal property

1 of the Debtor that is in your possession, control or custody at the time of
2 delivery of the writ. You must also list all debts that you owe to the Debtor,
3 whether or not those debts are currently due (e.g., money loaned to you by
4 the Debtor that is to be repaid at a later time).

5 If you are the employer of the Debtor at the time the writ is delivered to
6 you, you must put a check by the appropriate statement in Part I. In addi-
7 tion, you must complete Part II of the response.

8 If you believe that you may hold property of the Debtor or that you owe
9 a debt to the Debtor, but you are not sure, you must put a check by the
10 appropriate statement and provide an explanation. When you find out what
11 property you hold that belongs to the Debtor, or you find out whether you
12 owe money to the Debtor and how much, you must prepare and deliver an
13 amended response. You must do this even if you find out that you have no
14 property of the Debtor or that you do not owe anything to the Debtor.

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

22 If you have received an order to withhold income that applies to the in-
23 come of the Debtor and that order has priority over the garnishment, and if
24 compliance with the order will reduce or eliminate the money or property
25 that you would otherwise deliver under the garnishment, you must put a
26 check by the appropriate statement in Part I. You still must fill out the re-
27 mainder of the response and deliver the response in the manner described in
28 Step 2 of these instructions. If you employ the Debtor, you still must com-
29 plete Part II of the response.

30 If you receive notice of a challenge to the garnishment before you send
31 your response, you must complete and deliver your response as otherwise

1 required by these instructions. However, see Step 3 of these instructions re-
2 garding payment of money or delivery of property after receipt of notice of
3 a challenge to the garnishment.

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

9

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

14

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

24

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

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

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

5 (b) When the writ is delivered to you, the Debtor's wages are paid by di-
6 rect deposit to a financial institution, or you use an independent contractor
7 as payroll administrator for your payroll; and

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

11 If any wages are not garnishable by reason of the issuance of instructions
12 to a financial institution or a payroll administrator as described above, you
13 must so note in the Garnishee Response. Thereafter, you must pay to the
14 Garnishor all wages that are subject to garnishment that are attributable to
15 services performed by the Debtor during the 90-day period following the date
16 you received the writ.

17

18 Calculation of wages subject to garnishment. A Wage Exemption Calcu-
19 lation form is attached to the writ of garnishment. You must use this form
20 to calculate the amount of the Debtor's wages that is subject to garnishment.
21 You should read the instructions printed on the Wage Exemption Calculation
22 form to determine the normal wage exemption and the minimum wage ex-
23 emption for each payment you make under the writ.

24 A Wage Exemption Calculation form must be sent with the first payment
25 you make under the writ. For the 90-day period during which the writ is ef-
26 fective, you must also fill out and return a Wage Exemption Calculation
27 form with a subsequent payment any time the initial calculation changes.
28 Finally, you must fill out and return a Wage Exemption Calculation form
29 with the final payment that you make under the writ.

30

31 Payment of amount subject to garnishment. Payments under the writ must

1 be made at the following times, unless the amount owing on the judgment
2 or other debt is fully paid before the final payment is made or the writ is
3 released:

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

11

12 Example 2: Using the facts given in Example 1, when you next make
13 any payment of wages to Debtor A after you receive the writ on July
14 17, you must complete the Wage Exemption Calculation form and send
15 the form to the Garnishor along with all amounts determined to be
16 subject to garnishment that are attributable to the period covered by
17 the payment. If you pay Debtor A on August 1, the payment will be
18 for all wages attributable to the period beginning July 1 and ending
19 July 31.

20

21 (b) Unless the writ of garnishment is satisfied or released, during the
22 90-day period following the date you received the writ, you must pay to the
23 Garnishor all wages that are determined to be subject to garnishment
24 whenever you issue a paycheck to the Debtor. If the Debtor is paid on a
25 weekly basis, you must make payment under the writ on a weekly basis. If
26 the Debtor is paid on a monthly basis, you must make payment under the
27 writ on a monthly basis. If the amount paid to the Debtor varies from pay-
28 check to paycheck, or changes at any time from the amount being paid at
29 the time the writ was delivered to you, you must perform a new wage ex-
30 emption computation to determine the amount of wages subject to
31 garnishment under the writ. You must send a copy of the new Wage Ex-

1 exemption Calculation form with your payment to the Garnishor.

2

3 Example 3: Using the facts given above, as you make each subsequent
4 payment of wages to Debtor A you must make a payment of that por-
5 tion of the Debtor's wages that are subject to garnishment. If you
6 continue to pay Debtor A on the first of each month, payments must
7 be made on September 1 and October 1.

8

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

15

16 Example 4: Using the facts given above, you must make a final pay-
17 ment for the wages owing to Debtor A for the period beginning Octo-
18 ber 1 and ending October 15. You may make this payment at the time
19 you issue Debtor A's paycheck on November 1, but you must make the
20 payment at any time you issue a paycheck to Debtor A after October
21 15. Be sure that in completing the wage exemption computation for the
22 final payment you adjust the minimum exemption amount to take into
23 account the fact that the period covered is only 15 days of the full
24 month (see instructions on Wage Exemption Calculation form).

25

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

1 If you receive more than one writ of garnishment. If you receive a second
2 writ of garnishment for the same Debtor from another Garnishor, the first
3 writ will have priority for wages. The priority of the first writ lasts for the
4 90-day period following delivery of that writ to you, or until the first writ
5 is paid in full, whichever comes first. In your response to the second writ,
6 you must put a check by the appropriate statement in Part II and indicate
7 the date on which the first writ will expire (90 days after the date you re-
8 ceived the writ). You should make no payments under the second writ until
9 expiration of the first writ. The expiration date of the second writ is 90 days
10 after the date you received the second writ; the expiration date is not af-
11 fected by any delay in payment attributable to the priority of the first writ.

12

13 STEP 2. DELIVER THE GARNISHEE RESPONSE.

14

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

18

19 You must complete and deliver the Garnishee Response within seven
20 calendar days after you receive the writ of garnishment. If the seventh cal-
21 endar day is a Saturday, Sunday or legal holiday, you must deliver your re-
22 sponse on or before the next following day that is not a Saturday, Sunday
23 or legal holiday.

24

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

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

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

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

3

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

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

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

11

12 STEP 3. DELIVER THE FUNDS OR OTHER PROPERTY.

13

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

20

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

26

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

1 IF YOU ARE HOLDING PROPERTY THAT BELONGS TO THE
2 DEBTOR, OR OWE A DEBT TO THE DEBTOR THAT WILL NOT BECOME
3 DUE WITHIN 45 DAYS AFTER THE DATE YOU RECEIVED THE WRIT,
4 you must keep the property or debt in your possession, control or custody
5 until you receive written notice from the Sheriff. The Sheriff's notice will
6 tell you what to do with the property or debt. If you have followed all of the
7 instructions in the writ and you receive no notice from the Sheriff within
8 30 days after the date on which you delivered your Garnishee Response, you
9 may treat the writ as being of no further force or effect.

10

11 EXCEPTIONS:

12

13 1. Challenge to garnishment or specific directions from court. If you are
14 making any payments under the garnishment and before making a payment
15 you receive notice of a challenge to the garnishment from the court, or re-
16 ceive a specific direction from the court to make payments to the court, you
17 must send or deliver the payment directly to the court administrator. If the
18 money is currently due when you receive the notice, send the payment
19 promptly to the court. If the payment is for a debt that is payable within 45
20 days after you receive the writ, make the payment to the court promptly
21 when it becomes due. If you make payment by check, make the check payable
22 to the State of Oregon. Because you may be liable for any payment that does
23 not reach the court, it is better not to send cash by mail.

24 A challenge to the garnishment does not affect your duty to follow the
25 instructions you receive from the Sheriff for property that belongs to the
26 Debtor and debts that you owe to the Debtor that do not become due within
27 45 days.

28

29 2. Previous writ of garnishment. If you receive a second writ of
30 garnishment for the same Debtor from another Garnishor, the first writ will
31 have priority and you need not make payments or deliver property under the

1 second writ to the extent that compliance with the first writ will reduce or
2 eliminate the payment of money or delivery of property that you would oth-
3 erwise make under the garnishment. You must still deliver a Garnishee Re-
4 sponse to the second writ, and must commence payment under the second
5 writ as soon as the first writ is satisfied or expires.

6

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

11

12 4. Subsequent events:

13

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

23

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

31

SUPPLEMENTAL GARNISHEE
RESPONSE

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TO: The Garnishor and the Debtor

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

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

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

___ I have received an order to withhold income of the Debtor by reason
of a support obligation. Under ORS 25.375, the order to withhold in-
come has priority over any other legal process under Oregon law
against the same income. The withholding of income pursuant to the
order to withhold income might reduce or eliminate subsequent pay-
ments under the garnishment. (Provide details, including the name of
the agency serving the order to withhold, the date the order was
served on you and the amounts to be withheld.)

Dated _____, 2__

Name of Garnishee

1 _____
2 Signature

3
4 _____
5 Address

6
7 SPECIAL INSTRUCTIONS FOR BANKS
8 AND OTHER FINANCIAL INSTITUTIONS

9
10 Unless a Notice of Right to Garnish Federal Benefits from the United
11 States Government or from a state child support enforcement agency is at-
12 tached to or included in the garnishment, you must conduct a garnishment
13 account review for each account that you hold for the debtor. If a Notice
14 of Right to Garnish Federal Benefits from the United States Government or
15 from a state child support enforcement agency is attached to or included in
16 the garnishment, you should not conduct a garnishment account review, and
17 should proceed upon the garnishment in the normal manner.

18 If you hold an account for the debtor, *[and]* **at least \$400 is not subject**
19 **to garnishment, and you may not deliver that amount to the**
20 **garnishor. If** any of the payments listed below has been deposited in the
21 account by direct deposit or electronic payment during the lookback period
22 described in ORS 18.784 [(2)] **(3)** (the period that begins on the date preceding
23 the date of your garnishment account review and that ends on the corre-
24 sponding date of the month two months earlier, or on the last day of the
25 month two months earlier if the corresponding date does not exist) **and the**
26 **sum of those payments is greater than \$400**, an amount equal to the
27 lesser of the sum of those payments or the total balance in the debtor's ac-
28 count is not subject to garnishment, and you may not deliver that amount
29 to the garnishor:

30 (a) Federal benefit payments as defined in ORS 18.600 (payments from the
31 United States Social Security Administration, the United States Department

1 of Veterans Affairs, the United States Office of Personnel Management or
2 the Railroad Retirement Board);

3 (b) Payments from a public or private retirement plan as defined in ORS
4 18.358;

5 (c) Public assistance payments from the State of Oregon or an agency of
6 the State of Oregon;

7 (d) Unemployment compensation payments from the State of Oregon or
8 an agency of the State of Oregon;

9 (e) Black lung benefits payments from the United States Department of
10 Labor; [and]

11 (f) Workers' compensation payments from a workers' compensation
12 carrier[.]:

13 **(g) Payments from grants, loans or work assistance exempt from**
14 **garnishment under 20 U.S.C. 1095a(d); and**

15 **(h) Payments of child care tax credits under state or federal tax**
16 **laws.**

17

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

22

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

28

29 Before making a payment under the writ, you may first deduct any pro-
30 cessing fee that you are allowed under ORS 18.790. If you are required to
31 conduct a garnishment account review, you may not charge or collect a

1 processing fee against any amount that is not subject to garnishment, and
2 may not charge or collect a garnishment processing fee against any amounts
3 in the account after the date that you conduct the review.

4

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

8

9 If you are required to conduct a garnishment account review and you
10 determine from the review that one or more of the payments listed in ORS
11 18.784 [(3)] (4) have been deposited into the debtor's account by direct deposit
12 or electronic payment during the lookback period described in ORS 18.784
13 [(2)] (3), and that there is a positive balance in the account, you must issue
14 a notice to the account holder in substantially the form set forth in ORS
15 18.847. The notice must be issued directly to the account holder or to a
16 fiduciary who administers the account and receives communications on be-
17 half of the account holder. The notice must be sent separately to the account
18 holder and may not be included with other materials being provided to the
19 account holder that do not relate to the garnishment. You must send the
20 notice to the account holder within three business days after you complete
21 the garnishment account review. You may issue one notice with information
22 related to multiple accounts of a single account holder.

23

24 **SECTION 4.** ORS 18.847 is amended to read:

25 18.847. The notice given by a financial institution to a debtor under ORS
26 18.785 (1) must be in substantially the following form:

27

28

29

30

31

(Name, address of financial institution)

1 As required by state and federal regulations, therefore, we have established
2 a “protected amount” of funds that will remain available to you and that
3 will not be frozen or removed from your account in response to the
4 garnishment order.

5

6 (Conditional paragraph if funds have been frozen)

7

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

13

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

15

16 ACCOUNT SUMMARY AS OF _____ [DATE OF ACCOUNT REVIEW]

17

Amount		
Account	in	Amount
Number	Account	Protected
_____	_____	_____
_____	_____	_____

24

25 Amount
26 Subject to
27 garnish-
28 ment (now Garnish-
29 frozen/ ment fee
30 removed) charged

31

1 _____
2 _____

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

5

6 Please note that these amount(s) may be affected by deposits or with-
7 draws after the protected amount was calculated on _____ (date of
8 garnishment account review).

9

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

11

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

14

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

17

18 Who garnished my account?

19

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

22

23 What types of benefit payments are protected from garnishment?

24

25 In most cases, **at least \$400 in your account is protected from**
26 **garnishment and** you have protections from garnishment if the funds in
27 your account include one or more of the following benefit payments:

28

- 29 • Social Security benefits
- 30 • Supplemental Security Income benefits
- 31 • Veterans' benefits

- 1 • Railroad retirement benefits
- 2 • Railroad Unemployment Insurance benefits
- 3 • Civil Service Retirement System benefits
- 4 • Federal Employees Retirement System benefits
- 5 • Payments from a public or private retirement plan as defined in ORS
- 6 18.358
- 7 • Public assistance payments from the State of Oregon or an agency of
- 8 the State of Oregon
- 9 • Unemployment compensation payments from the State of Oregon or
- 10 an agency of the State of Oregon
- 11 • Black lung benefits payments from the United States Department of
- 12 Labor
- 13 • Workers' compensation payments from a workers' compensation car-
- 14 rier
- 15 • **Payments from grants, loans or work assistance exempt from**
- 16 **garnishment under 20 U.S.C. 1095a(d)**
- 17 • **Payments of child care tax credits under state or federal tax laws**

18
19 What should I do if I think that additional funds in my account are from
20 protected benefit payments?

21
22 If you believe that funds in your account(s) should not have been frozen
23 or removed, there are several things you can do:

24
25 You can fill out a Challenge to Garnishment form and submit it to the
26 court.

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

30 You may consult an attorney to help you prove to the creditor that
31 garnished your account that additional funds are from protected benefit

1 payments and cannot be taken. For information about how to find an attor-
2 ney, contact the Oregon State Bar's Lawyer Referral Service at (800) 452-7636
3 or go online to www.oregonlawhelp.org.

4

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

8

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

10 18.600. As used in ORS 18.600 to 18.850:

11 (1) "Account" means an account at a financial institution, including a
12 master account or subaccount, to which an electronic payment may be di-
13 rectly routed.

14 (2) "Check" has the meaning given that term in ORS 73.0104.

15 (3) "Creditor" means a person to whom a debt is owed by a debtor.

16 (4) "Debt" means any monetary obligation for which a garnishment may
17 be issued under ORS 18.605.

18 (5) "Debtor" means a person whose property is being garnished for the
19 purpose of paying a debt owed to a creditor.

20 (6) "Federal benefit payment" means:

21 (a) A benefit payment from the United States Social Security Adminis-
22 tration that is protected under 42 U.S.C. 407 and 1383(d)(1);

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

25 (c) A benefit payment from the Railroad Retirement Board that is pro-
26 tected under 45 U.S.C. 231m(a) and 352(e); or

27 (d) A benefit payment from the United States Office of Personnel Man-
28 agement that is protected under 5 U.S.C. 8346 and 8470.

29 (7) "Financial institution" means a financial institution or trust company
30 as those terms are defined in ORS 706.008.

31 (8) "Garnishable property" means all property described in ORS 18.615,

1 but does not include:

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

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

4 (9) "Garnishee" means a person to whom a writ of garnishment has been
5 delivered.

6 (10) "Garnishment account review" means the process of examining de-
7 posits to an account to determine whether benefit payments described in ORS
8 18.784 [(3)] (4) have been deposited in the account during the lookback pe-
9 riod.

10 (11) "Garnishor" means:

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

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

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

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

21 (14) "Writ" means a writ of garnishment.

22 **SECTION 6.** ORS 18.785 is amended to read:

23 18.785. (1) Except as provided in this section, if a financial institution
24 determines from a garnishment account review conducted under ORS 18.784
25 [(1)] that *[one or more payments described in ORS 18.784 (3) have been de-*
26 *posited into the debtor's account by direct deposit or electronic payment during*
27 *the lookback period described in ORS 18.784 (2), and]* there is a positive bal-
28 ance in the account at the time the garnishment account review is con-
29 ducted, the financial institution shall:

30 (a) Immediately calculate and establish the amount in the debtor's ac-
31 count that is not subject to garnishment and ensure that the debtor has full

1 customary access to that amount; and

2 (b) Issue a notice to the account holder in substantially the form set forth
3 in ORS 18.847.

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

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

10 (4) The notice required by this section must be sent to the account holder
11 within three business days after the financial institution completes the
12 garnishment account review required by ORS 18.784 [(1)] (2).

13 (5) A financial institution shall perform the calculation described in sub-
14 section (1) of this section for each account of the account holder. However,
15 the financial institution may issue a single notice under this section for
16 multiple accounts of the same account holder.

17 (6) Issuance of a notice under this section does not constitute the giving
18 of legal advice and a financial institution is not obligated to provide legal
19 advice by reason of issuing a notice required by this section.

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

21 18.790. (1) Except as provided in subsection (4) of this section, at the time
22 of delivery of any writ of garnishment on a financial institution or at the
23 time a notice of garnishment is delivered to the financial institution under
24 ORS 18.854:

25 (a) A search fee of \$10 must be paid to the financial institution if the
26 garnishor is the Department of Revenue.

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

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

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

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

3 and

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

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

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

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

20 (7) If a garnishment account review reveals that [*a payment was made by*
21 *direct deposit or electronic payment to the debtor's account during the lookback*
22 *period described in]* **funds in an account are not subject to garnishment**
23 **under** ORS 18.784 (1) or (2), the financial institution may not charge or
24 collect a garnishment processing fee under subsection (6) of this section
25 against the amount that is not subject to garnishment, and may not charge
26 or collect a garnishment processing fee under subsection (6) of this section
27 against any amounts in the account after the date of the garnishment ac-
28 count review.

29 **SECTION 8. The amendments to ORS 18.345, 18.600, 18.784, 18.785,**
30 **18.790, 18.838 and 18.847 by sections 1 to 7 of this 2013 Act apply only**
31 **to executions as defined in ORS 18.005 issued on or after the effective**

1 **date of this 2013 Act.**

2 **SECTION 9. This 2013 Act being necessary for the immediate pres-**
3 **ervation of the public peace, health and safety, an emergency is de-**
4 **clared to exist, and this 2013 Act takes effect on its passage.**

5
