

Senate Bill 518

Sponsored by COMMITTEE ON GENERAL GOVERNMENT, CONSUMER AND SMALL BUSINESS PROTECTION

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

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 18.345, 18.600, 18.784,
3 18.785, 18.790, 18.838 and 18.847; and declaring an emergency.

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

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

6 18.345. (1) All property, including franchises, or rights or interest therein, of the judgment
7 debtor, shall be liable to an execution, except as provided in this section and in other statutes
8 granting exemptions from execution. The following property, or rights or interest therein of the
9 judgment debtor, except as provided in ORS 18.305, shall be exempt from execution:

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

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

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

15 (d) A vehicle to the value of \$3,000. As used in this paragraph "vehicle" includes an automobile,
16 truck, trailer, truck and trailer or other motor vehicle.

17 (e) Domestic animals and poultry kept for family use, to the total value of \$1,000 and food suf-
18 ficient to support such animals and poultry for 60 days.

19 (f) Household goods, furniture, radios, a television set and utensils all to the total value of
20 \$3,000, if the judgment debtor holds the property primarily for the personal, family or household use
21 of the judgment debtor; provisions actually provided for family use and necessary for the support
22 of a householder and family for 60 days and also 60 days' supply of fuel.

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

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

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

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

30 (k) The debtor's right to receive, or property that is traceable to, a payment or payments, not

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 to exceed a total of \$10,000, on account of personal bodily injury of the debtor or an individual of
2 whom the debtor is a dependent.

3 (L) The debtor's right to receive, or property that is traceable to, a payment in compensation
4 of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent,
5 to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

6 (m) Veterans' benefits and loans.

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

9 **(o) The debtor's right to receive a grant, a loan or work assistance exempt from
10 garnishment under 20 U.S.C. 1095a(d) and any moneys that are traceable to a grant, a loan
11 or work assistance exempt from garnishment under 20 U.S.C. 1095a(d).**

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

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

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

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

32 (4) Notwithstanding any other provision of law except ORS 657.855, if a writ of garnishment or
33 other execution is issued to collect past due support as defined in ORS 18.600, 50 percent of unem-
34 ployment compensation benefits, workers' compensation benefits and other benefits paid to the
35 debtor by the United States, by the state or by a political subdivision of the state are exempt. The
36 exemption related to unemployment compensation benefits provided by this subsection is subject to
37 ORS 657.855. The exemption provided by this subsection applies without regard to whether the
38 payment is made on a periodic basis or in a lump sum, including any lump sum payable pursuant to
39 a settlement or judgment. Notwithstanding subsection (1)(k) of this section, if a payment is made
40 under a settlement or judgment on account of personal bodily injury and the garnishment or other
41 execution is issued to collect past due support as defined in ORS 18.600, the lesser of 50 percent of
42 the payment or \$7,500 is exempt.

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

44 **18.784. (1) If a writ of garnishment is delivered to a financial institution that has an ac-
45 count of the debtor, the greater of \$400 or the amount described in subsection (2) of this**

1 **section is not subject to garnishment.**

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

11 [(2)] (3) The provisions of **subsection (2) of** this section apply only to payments described in
 12 subsection [(3)] (4) of this section that are deposited during the lookback period that ends on the
 13 day before the day on which the garnishment account review is conducted and begins on:

14 (a) The day in the second calendar month preceding the month in which the garnishment ac-
 15 count review is conducted, that has the same number as the day on which the period ends; or

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

18 [(3)] (4) The provisions of this section apply only to:

19 (a) Federal benefit payments;

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

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

22 (d) Unemployment compensation payments from the State of Oregon or an agency of the State
 23 of Oregon;

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

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

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

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

29 [(4)] (5) The provisions of this section apply only to a payment that a financial institution can
 30 identify as being one of the types of payments described in subsection [(3)] (4) of this section from
 31 information transmitted to the financial institution by the payor.

32 [(5)] (6) A financial institution shall perform a garnishment account review only one time for a
 33 specific garnishment. If the same garnishment is served on a financial institution more than once,
 34 the financial institution may not perform a garnishment account review or take any other action
 35 relating to the garnishment based on the second and subsequent service of the garnishment.

36 [(6)] (7) A financial institution may not conduct a garnishment account review under this section
 37 if a Notice of Right to Garnish Federal Benefits from the United States Government or from a state
 38 child support enforcement agency is attached to or included in the garnishment as provided in 31
 39 C.F.R. part 212. If a Notice of Right to Garnish Federal Benefits is attached to or included in the
 40 garnishment, the financial institution shall proceed on the garnishment as otherwise provided in
 41 ORS 18.600 to 18.850.

42 [(7)] (8) The provisions of this section do not affect the ability of a debtor to claim any ex-
 43 emption that otherwise may be available to the debtor under law for any amounts in an account in
 44 a financial institution.

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

1 18.838. Instructions to garnishees must be in substantially the following form:
 2 _____
 3

4 INSTRUCTIONS TO GARNISHEE
 5

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

14
 15 The writ is not effective, and you need not make a Garnishee Response, if:

- 16
- 17 • You do not receive the writ within 60 days after the date of issuance shown on the face of
- 18 the writ.
- 19
- 20 • You do not receive an original writ of garnishment or a copy of the writ.
- 21

22 Statutes that may affect your rights and duties under the writ can be found in ORS 18.600 to
 23 18.850.
 24

25 NOTE: The Garnishor may be the Creditor, the attorney for the Creditor or some other person
 26 who is authorized by law to issue the writ of garnishment. See the writ to determine who the
 27 Garnishor is.
 28

29 STEP 1. FILL OUT THE GARNISHEE RESPONSE.
 30

31 All garnishees who are required to deliver a garnishee response must fill in Part I of the
 32 Garnishee Response. Garnishees who employ the Debtor must also fill in Part II of the response.
 33 You should keep a copy of the response for your records.
 34

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

43 In all other cases you must list in Part I all money and personal property of the Debtor that is
 44 in your possession, control or custody at the time of delivery of the writ. You must also list all debts
 45 that you owe to the Debtor, whether or not those debts are currently due (e.g., money loaned to you

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

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

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

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

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

21 If you receive notice of a challenge to the garnishment before you send your response, you must
22 complete and deliver your response as otherwise required by these instructions. However, see Step
23 3 of these instructions regarding payment of money or delivery of property after receipt of notice
24 of a challenge to the garnishment.

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

29
30 Completing Part II of the Garnishee Response (employers only). You must fill in Part II of the
31 response if you employ the Debtor on the date the writ of garnishment is delivered to you, or if you
32 previously employed the Debtor and still owe wages to the Debtor on the date the writ is delivered
33 to you.

34
35 Wages affected. Except as provided below, the writ garnishes all wages that you owe to the
36 Debtor for work performed before the date you received the writ, even though the wages will not
37 be paid until a later date. The writ also garnishes all wages that are attributable to services per-
38 formed during the 90-day period following the date you received the writ, even though you would
39 not pay the Debtor for all or part of those services until after the end of the 90-day period. Wages
40 subject to garnishment under the writ include all amounts paid by you as an employer, whether on
41 an hourly, weekly or monthly basis, and include commission payments and bonuses.

42
43 Example 1: Debtor A is employed by you and is paid a monthly salary on the first day of
44 each month. You receive a writ of garnishment on July 17. The writ garnishes all wages
45 that you owe to Debtor A for work performed on or before July 17. If Debtor A was paid

1 on July 1 for services performed in the month of June, the writ garnishes Debtor A's salary
2 for the period beginning July 1 and ending October 15 (90 days after receipt of the writ).
3

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

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

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

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

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

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

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

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

31 (a) You must make a payment to the Garnishor of all wages subject to garnishment at the time
32 you next pay wages to the Debtor. Complete the wage exemption computation, using the Wage Ex-
33 emption Calculation form, to determine the portion of the Debtor's wages that is subject to
34 garnishment. Be sure to adjust the minimum exemption amount for any payment that covers less
35 than a full pay period. You must include a copy of the Wage Exemption Calculation form with this
36 first payment.
37

38 Example 2: Using the facts given in Example 1, when you next make any payment of wages
39 to Debtor A after you receive the writ on July 17, you must complete the Wage Exemption
40 Calculation form and send the form to the Garnishor along with all amounts determined to
41 be subject to garnishment that are attributable to the period covered by the payment. If you
42 pay Debtor A on August 1, the payment will be for all wages attributable to the period be-
43 ginning July 1 and ending July 31.
44

45 (b) Unless the writ of garnishment is satisfied or released, during the 90-day period following the

1 date you received the writ, you must pay to the Garnishor all wages that are determined to be
2 subject to garnishment whenever you issue a paycheck to the Debtor. If the Debtor is paid on a
3 weekly basis, you must make payment under the writ on a weekly basis. If the Debtor is paid on a
4 monthly basis, you must make payment under the writ on a monthly basis. If the amount paid to the
5 Debtor varies from paycheck to paycheck, or changes at any time from the amount being paid at the
6 time the writ was delivered to you, you must perform a new wage exemption computation to deter-
7 mine the amount of wages subject to garnishment under the writ. You must send a copy of the new
8 Wage Exemption Calculation form with your payment to the Garnishor.

9
10 Example 3: Using the facts given above, as you make each subsequent payment of wages to
11 Debtor A you must make a payment of that portion of the Debtor's wages that are subject
12 to garnishment. If you continue to pay Debtor A on the first of each month, payments must
13 be made on September 1 and October 1.

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

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

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

34
35 If you receive more than one writ of garnishment. If you receive a second writ of garnishment
36 for the same Debtor from another Garnishor, the first writ will have priority for wages. The priority
37 of the first writ lasts for the 90-day period following delivery of that writ to you, or until the first
38 writ is paid in full, whichever comes first. In your response to the second writ, you must put a check
39 by the appropriate statement in Part II and indicate the date on which the first writ will expire (90
40 days after the date you received the writ). You should make no payments under the second writ
41 until expiration of the first writ. The expiration date of the second writ is 90 days after the date
42 you received the second writ; the expiration date is not affected by any delay in payment attribut-
43 able to the priority of the first writ.

44
45 STEP 2. DELIVER THE GARNISHEE RESPONSE.

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

3
 4 You must complete and deliver the Garnishee Response within seven calendar days after you
 5 receive the writ of garnishment. If the seventh calendar day is a Saturday, Sunday or legal holiday,
 6 you must deliver your response on or before the next following day that is not a Saturday, Sunday
 7 or legal holiday.

8
 9 If you are required to hold any property under the writ or make any payment under the writ,
 10 either at the time of making your response or later, you must:

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

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

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

17
 18 If you are not required to hold any property under the writ or make any payment under the
 19 writ, either at the time of making your response or later, you must:

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

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

24
 25 STEP 3. DELIVER THE FUNDS OR OTHER PROPERTY.

26
 27 As long as the writ is in effect, you may be liable to the Creditor if you pay any debt or turn
 28 over any property to the Debtor except as specifically allowed by law. If you have any money or
 29 property of the Debtor in your possession, control or custody at the time of delivery of the writ, or
 30 owe any debt to the Debtor, you must pay the money or hold the property as required by this step.
 31 Exceptions to this requirement are listed below.

32
 33 IF YOU ARE HOLDING MONEY FOR THE DEBTOR OR OWE A DEBT THAT IS CUR-
 34 RRENTLY DUE, you must pay the money to the Garnishor with your response. You must send your
 35 payment to the Garnishor at the address indicated on the writ under Important Addresses. Make
 36 your check payable to the Garnishor.

37
 38 IF YOU OWE A DEBT TO THE DEBTOR THAT WILL BECOME DUE WITHIN 45 DAYS
 39 AFTER THE DATE YOU RECEIVED THE WRIT, you must send your payment directly to the
 40 Garnishor at the address provided in the writ when the debt becomes due. Make your check payable
 41 to the Garnishor.

42
 43 IF YOU ARE HOLDING PROPERTY THAT BELONGS TO THE DEBTOR, OR OWE A DEBT
 44 TO THE DEBTOR THAT WILL NOT BECOME DUE WITHIN 45 DAYS AFTER THE DATE YOU
 45 RECEIVED THE WRIT, you must keep the property or debt in your possession, control or custody

1 until you receive written notice from the Sheriff. The Sheriff's notice will tell you what to do with
2 the property or debt. If you have followed all of the instructions in the writ and you receive no
3 notice from the Sheriff within 30 days after the date on which you delivered your Garnishee Re-
4 sponse, you may treat the writ as being of no further force or effect.

5
6 **EXCEPTIONS:**

7
8 1. Challenge to garnishment or specific directions from court. If you are making any payments
9 under the garnishment and before making a payment you receive notice of a challenge to the
10 garnishment from the court, or receive a specific direction from the court to make payments to the
11 court, you must send or deliver the payment directly to the court administrator. If the money is
12 currently due when you receive the notice, send the payment promptly to the court. If the payment
13 is for a debt that is payable within 45 days after you receive the writ, make the payment to the
14 court promptly when it becomes due. If you make payment by check, make the check payable to the
15 State of Oregon. Because you may be liable for any payment that does not reach the court, it is
16 better not to send cash by mail.

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

20
21 2. Previous writ of garnishment. If you receive a second writ of garnishment for the same Debtor
22 from another Garnishor, the first writ will have priority and you need not make payments or deliver
23 property under the second writ to the extent that compliance with the first writ will reduce or
24 eliminate the payment of money or delivery of property that you would otherwise make under the
25 garnishment. You must still deliver a Garnishee Response to the second writ, and must commence
26 payment under the second writ as soon as the first writ is satisfied or expires.

27
28 3. Offset for payment of underlying lien. If you owe a debt to the Debtor and the Debtor owes
29 a debt to the holder of an underlying lien on your property, you may be able to offset the amount
30 payable to the underlying lienholder. See ORS 18.620.

31
32 4. Subsequent events:

33
34 (a) Bankruptcy. If you make your response and then discover that a voluntary or involuntary
35 bankruptcy petition has been filed by or on behalf of the Debtor after the judgment was entered
36 against the Debtor or after the debt otherwise became subject to garnishment (see date in writ), you
37 may not make any further payments or delivery of property under the writ unless the court orders
38 otherwise. If you have not delivered all property that is subject to garnishment under this writ when
39 you discover that a bankruptcy petition has been filed, you must mail the following notice to the
40 Garnishor and to the Debtor.

41
42 (b) Order to withhold income. If you make your response and then receive an order to withhold
43 income that has priority over the writ, you may make payments or deliver property under the writ
44 only after payment of the amounts required under the order to withhold income. If you have not
45 delivered all property that is subject to garnishment under this writ when you receive an order to

1 withhold income that has priority, you must mail the following notice to the Garnishor and to the
2 Debtor.

3 _____
4
5 SUPPLEMENTAL GARNISHEE
6 RESPONSE
7

8 TO: The Garnishor and the Debtor
9

10 RE: Writ of garnishment received _____, 2__ (date), in the case of _____ (Plaintiff)
11 vs. _____ (Defendant), Circuit Court of _____ County, Oregon, Case No. _____.
12

13 The undersigned Garnishee furnished a Garnishee Response to this writ of garnishment on
14 _____, 2__ (date). Since that time (check appropriate statement):
15

16 — I have discovered that a voluntary or involuntary bankruptcy petition has been filed by or
17 on behalf of the Debtor after the judgment was entered against the Debtor or after the debt
18 otherwise became subject to garnishment.
19

20 — I have received an order to withhold income of the Debtor by reason of a support obligation.
21 Under ORS 25.375, the order to withhold income has priority over any other legal process
22 under Oregon law against the same income. The withholding of income pursuant to the or-
23 der to withhold income might reduce or eliminate subsequent payments under the
24 garnishment. (Provide details, including the name of the agency serving the order to with-
25 hold, the date the order was served on you and the amounts to be withheld.)
26

27 Dated _____, 2__
28

29 _____
30 Name of Garnishee
31

32 _____
33 Signature
34

35 _____
36 Address
37 _____

38
39 SPECIAL INSTRUCTIONS FOR BANKS
40 AND OTHER FINANCIAL INSTITUTIONS
41

42 Unless a Notice of Right to Garnish Federal Benefits from the United States Government or
43 from a state child support enforcement agency is attached to or included in the garnishment, you
44 must conduct a garnishment account review for each account that you hold for the debtor. If a
45 Notice of Right to Garnish Federal Benefits from the United States Government or from a state

1 child support enforcement agency is attached to or included in the garnishment, you should not
 2 conduct a garnishment account review, and should proceed upon the garnishment in the normal
 3 manner.

4 If you hold an account for the debtor, [and] **at least \$400 is not subject to garnishment, and**
 5 **you may not deliver that amount to the garnishor. If** any of the payments listed below has been
 6 deposited in the account by direct deposit or electronic payment during the lookback period de-
 7 scribed in ORS 18.784 [(2)] **(3)** (the period that begins on the date preceding the date of your
 8 garnishment account review and that ends on the corresponding date of the month two months
 9 earlier, or on the last day of the month two months earlier if the corresponding date does not exist)
 10 **and the sum of those payments is greater than \$400**, an amount equal to the lesser of the sum
 11 of those payments or the total balance in the debtor’s account is not subject to garnishment, and
 12 you may not deliver that amount to the garnishor:

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

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

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

18 (d) Unemployment compensation payments from the State of Oregon or an agency of the State
 19 of Oregon;

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

21 (f) Workers’ compensation payments from a workers’ compensation carrier[.];

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

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

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

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

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

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

43
 44 If you are required to conduct a garnishment account review and you determine from the review
 45 that one or more of the payments listed in ORS 18.784 [(3)] **(4)** have been deposited into the debtor’s

1 account by direct deposit or electronic payment during the lookback period described in ORS 18.784
2 [(2)] (3), and that there is a positive balance in the account, you must issue a notice to the account
3 holder in substantially the form set forth in ORS 18.847. The notice must be issued directly to the
4 account holder or to a fiduciary who administers the account and receives communications on behalf
5 of the account holder. The notice must be sent separately to the account holder and may not be
6 included with other materials being provided to the account holder that do not relate to the
7 garnishment. You must send the notice to the account holder within three business days after you
8 complete the garnishment account review. You may issue one notice with information related to
9 multiple accounts of a single account holder.

10 _____
11
12 **SECTION 4.** ORS 18.847 is amended to read:

13 18.847. The notice given by a financial institution to a debtor under ORS 18.785 (1) must be in
14 substantially the following form:
15 _____

16
17 _____
18 _____
19 _____
20 (Name, address of financial institution)

21
22 **IMPORTANT INFORMATION ABOUT**
23 **YOUR ACCOUNT**

24 Date: _____
25 Notice to: _____
26 Account Number: _____
27
28

29 Why am I receiving this notice?

30
31 On _____ [date on which garnishment order was served], _____ [name of financial
32 institution] received a garnishment order from a court to garnish funds in your account. The amount
33 of the garnishment order was for \$_____ [amount of garnishment order]. We are sending you this
34 notice to let you know what we have done in response to the garnishment order.
35

36 What is garnishment?

37
38 Garnishment is a legal process that allows a creditor to remove funds from your bank/credit
39 union account to satisfy a debt that you have not paid. In other words, if you owe money to a person
40 or company, they can obtain a court order directing your bank/credit union to take money out of
41 your account to pay off your debt. If this happens, you cannot use that money in your account.
42

43 What has happened to my account?

44
45 On _____ [date of account review], we researched your account and identified that

1 **some of the funds in the account are protected from garnishment or** one or more payments
2 identified by ORS 18.784 [(1)] (2) have been deposited in the last two months (see below for a list
3 of qualifying payments). In most cases, these payments are protected from garnishment. As required
4 by state and federal regulations, therefore, we have established a “protected amount” of funds that
5 will remain available to you and that will not be frozen or removed from your account in response
6 to the garnishment order.

7
8 (Conditional paragraph if funds have been frozen)

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

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

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

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

Amount Subject to garnishment (now Garnishment frozen/ removed)	Amount charged
_____	_____
_____	_____

25
26
27
28
29
30
31
32
33
34
35 (If the account holder has multiple accounts, use a separate row for each account)

36
37 Please note that these amount(s) may be affected by deposits or withdrawals after the protected
38 amount was calculated on _____ (date of garnishment account review).

39
40 Do I need to do anything to access my protected funds?

41
42 You may use the protected amount of money in your account as you normally would.

43
44 There is nothing else you need to do to make sure that the protected amount is safe.

1 Who garnished my account?

2
3 The creditor who obtained a garnishment order against you is _____ (name of credi-
4 tor).

5
6 What types of benefit payments are protected from garnishment?

7
8 In most cases, **at least \$400 in your account is protected from garnishment and** you have
9 protections from garnishment if the funds in your account include one or more of the following
10 benefit payments:

- 11
- 12 • Social Security benefits
- 13 • Supplemental Security Income benefits
- 14 • Veterans' benefits
- 15 • Railroad retirement benefits
- 16 • Railroad Unemployment Insurance benefits
- 17 • Civil Service Retirement System benefits
- 18 • Federal Employees Retirement System benefits
- 19 • Payments from a public or private retirement plan as defined in ORS 18.358
- 20 • Public assistance payments from the State of Oregon or an agency of the State of Oregon
- 21 • Unemployment compensation payments from the State of Oregon or an agency of the State
- 22 of Oregon
- 23 • Black lung benefits payments from the United States Department of Labor
- 24 • Workers' compensation payments from a workers' compensation carrier
- 25 • **Payments from grants, loans or work assistance exempt from garnishment under 20**
- 26 **U.S.C. 1095a(d)**
- 27 • **Payments of child care tax credits under state or federal tax laws**
- 28

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

30
31 If you believe that funds in your account(s) should not have been frozen or removed, there are
32 several things you can do:

33
34 You can fill out a Challenge to Garnishment form and submit it to the court.

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

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

42
43 This notice contains all the information that we have about the garnishment order. However,
44 if you have a question about your account, you may contact us at _____ (telephone
45 number of financial institution).

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SECTION 5. ORS 18.600 is amended to read:

18.600. As used in ORS 18.600 to 18.850:

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

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

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

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

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

(6) "Federal benefit payment" means:

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

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

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

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

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

(8) "Garnishable property" means all property described in ORS 18.615, but does not include:

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

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

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

(10) "Garnishment account review" means the process of examining deposits to an account to determine whether benefit payments described in ORS 18.784 [(3)] (4) have been deposited in the account during the lookback period.

(11) "Garnishor" means:

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

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

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

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

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

SECTION 6. ORS 18.785 is amended to read:

18.785. (1) Except as provided in this section, if a financial institution determines from a garnishment account review conducted under ORS 18.784 [(1)] that *[one or more payments described in ORS 18.784 (3) have been deposited into the debtor's account by direct deposit or electronic payment*

1 *during the lookback period described in ORS 18.784 (2), and] there is a positive balance in the ac-*
 2 *count at the time the garnishment account review is conducted, the financial institution shall:*

3 (a) Immediately calculate and establish the amount in the debtor’s account that is not subject
 4 to garnishment and ensure that the debtor has full customary access to that amount; and

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

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

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

12 (4) The notice required by this section must be sent to the account holder within three business
 13 days after the financial institution completes the garnishment account review required by ORS
 14 18.784 [(1)] (2).

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (7) If a garnishment account review reveals that [*a payment was made by direct deposit or elec-*
2 *tronic payment to the debtor's account during the lookback period described in]* **funds in an account**
3 **are not subject to garnishment under ORS 18.784 (1) or (2)**, the financial institution may not
4 charge or collect a garnishment processing fee under subsection (6) of this section against the
5 amount that is not subject to garnishment, and may not charge or collect a garnishment processing
6 fee under subsection (6) of this section against any amounts in the account after the date of the
7 garnishment account review.

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

11 **SECTION 9. This 2013 Act being necessary for the immediate preservation of the public**
12 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
13 **on its passage.**

14 _____