

Senate Bill 185

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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**.

Creates specific provisions relating to garnishment by Department of Revenue. Makes new provisions operative on January 1, 2014.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to garnishment by the Department of Revenue; creating new provisions; amending ORS
3 18.790, 18.792, 18.854, 18.855 and 18.999; and declaring an emergency.

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

5 **SECTION 1. (1) The Department of Revenue, in order to collect taxes and debts owed to**
6 **the State of Oregon, may garnish property of a debtor in the possession, control or custody**
7 **of a person other than the debtor by delivering to the person all of the following:**

8 (a) **A notice of garnishment;**

9 (b) **A garnishee response form in substantially the form provided by ORS 18.835;**

10 (c) **An instructions to garnishee form in substantially the form provided by ORS 18.838;**

11 (d) **A wage exemption calculation form in substantially the form provided by ORS 18.840;**

12 **and**

13 (e) **Any search fee required by ORS 18.790.**

14 (2) **The department may not seek sanctions against a noncomplying garnishee under ORS**
15 **18.775 unless all of the items required by subsection (1) of this section have been delivered**
16 **in person or by certified mail to the garnishee.**

17 (3) **A notice of garnishment may be issued by any person designated by the department.**
18 **The department is not required to record a warrant or an agency order in the County Clerk**
19 **Lien Record before issuing a notice of garnishment under this section. The provisions of**
20 **ORS 18.800 do not apply to a notice of garnishment issued under this section.**

21 (4) **If any of the items required by subsection (1) of this section are not delivered to the**
22 **garnishee, a notice of garnishment is not effective to garnish any property of the debtor, and**
23 **the garnishee is not required to respond to the garnishment and may proceed to deal with**
24 **any property of the debtor as though the notice of garnishment had not been issued.**

25 (5) **Notwithstanding ORS 18.652 (2), a notice of garnishment and the other items required**
26 **by subsection (1) of this section may be delivered in person by any employee of the depart-**
27 **ment authorized by the department to deliver the notice of garnishment. The employee need**
28 **not be covered by the errors and omissions insurance required by ORS 18.652.**

29 (6) **Notwithstanding any provision of ORS 18.600 to 18.850, a debt calculation form need**
30 **not be prepared or delivered for any notice of garnishment issued under this section.**

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 (7) Notwithstanding ORS 18.607 (4), the notice of garnishment must contain the name of
2 the person issuing the notice on behalf of the department but need not be signed by that
3 person.

4 (8) Notwithstanding ORS 18.792, the duty of a garnishee to deliver any property of the
5 debtor that may be contained in a safe deposit box that is in the garnishee's possession,
6 control or custody at the time of delivery of the notice of garnishment to the garnishee is
7 conditioned upon the department first paying to the garnishee, in addition to the search fee
8 required by ORS 18.790, all reasonable costs incurred by the garnishee in gaining entry to the
9 safe deposit box. The costs shall be paid to the garnishee by the department at least five days
10 before the date the department takes possession of the property in the safe deposit box. If
11 the department fails to pay such costs to the garnishee within 20 days after the delivery of
12 the garnishee response, the garnishment is not effective to garnish any property of the
13 debtor that may be contained in the safe deposit box and the garnishee may proceed to deal
14 with the safe deposit box and its contents as though the notice of garnishment had not been
15 issued. Nothing in this subsection limits the rights of the department to reach the contents
16 of any safe deposit box in any manner otherwise provided by law.

17 (9) Except as provided in this section and ORS 18.855, all provisions of ORS 18.600 to
18 18.850 apply to notices of garnishment issued by the department. The department shall
19 modify the forms provided in ORS 18.600 to 18.850 as necessary to allow use of those forms
20 for notices of garnishment. The form of the notice of garnishment must clearly indicate that
21 the document is a notice of garnishment and must reflect the date of all warrants on which
22 the notice of garnishment is based.

23 (10) The Attorney General may adopt model forms for notices of garnishment and other
24 documents issued by the department under this section and ORS 18.855. There is a
25 presumption, as described in ORS 40.120, that if the department uses a model form adopted
26 by the Attorney General under this subsection, the department has complied with the re-
27 quirements of ORS 18.600 to 18.850, and with the provisions of this section and ORS 18.855,
28 with respect to the form of notices of garnishment.

29 **SECTION 2.** ORS 18.790 is amended to read:

30 18.790. (1) Except as provided in subsection (4) of this section, at the time of delivery of any
31 writ of garnishment on a financial institution or at the time a notice of garnishment is delivered to
32 the financial institution under ORS 18.854 **or section 1 of this 2013 Act:**

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

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

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

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

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

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

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

44 (5) Notwithstanding subsection (1) of this section, a financial institution may enter into an
45 agreement with any state agency authorized to garnish pursuant to ORS 18.645 or 18.854 **or section**

1 **1 of this 2013 Act** for periodic billing and payment of garnishee search fees required under this
2 section.

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

10 (7) If a garnishment account review reveals that a payment was made by direct deposit or
11 electronic payment to the debtor's account during the lookback period described in ORS 18.784 (2),
12 the financial institution may not charge or collect a garnishment processing fee under subsection
13 (6) of this section against the amount that is not subject to garnishment, and may not charge or
14 collect a garnishment processing fee under subsection (6) of this section against any amounts in the
15 account after the date of the garnishment account review.

16 **SECTION 3.** ORS 18.792 is amended to read:

17 18.792. (1) Notwithstanding any other provision of ORS 18.600 to 18.850, but subject to the pro-
18 visions of ORS 18.854 **and section 1 of this 2013 Act**, the duty of a financial institution that is a
19 garnishee to deliver any property of the debtor that may be contained in a safe deposit box that is
20 in the garnishee's possession, control or custody at the time the writ of garnishment is delivered is
21 conditioned upon the garnishor first paying to the garnishee, in addition to the search fee provided
22 for in ORS 18.790, all reasonable costs incurred by the garnishee in gaining entry to the safe deposit
23 box. The costs must be paid to the garnishee by the garnishor before access to the safe deposit box
24 is granted. If the garnishor fails to pay such costs to the garnishee within 20 days after the delivery
25 of the garnishee response, the garnishment shall not be effective to garnish any property of the
26 debtor that may be contained in the safe deposit box and the garnishee may proceed to deal with
27 the safe deposit box and its contents as though the writ of garnishment had not been issued. Nothing
28 in this section limits the right of a garnishor to reach the contents of any safe deposit box in any
29 manner otherwise provided by law.

30 (2) If a sheriff is instructed to seize and sell the contents of a safe deposit box, and the box is
31 found to contain an identification document, such as a driver license, passport, birth certificate or
32 Social Security card, the sheriff shall take possession of the identification document, but the docu-
33 ment may not be sold to satisfy the debt.

34 **SECTION 4.** ORS 18.854 is amended to read:

35 18.854. (1) **Except as provided in subsection (9) of this section**, any state agency authorized
36 to issue warrants to collect taxes and debts owed to the State of Oregon, including but not limited
37 to warrants issued pursuant to ORS 179.655, 184.644, [267.385, 293.250, 314.430, 316.207, 320.080,
38 321.570, 323.390,] 411.703, 657.396, 657.642, 657.646, 705.175 and 825.504, or any county tax collector
39 authorized to issue warrants to collect taxes and debts owed to the county pursuant to ORS 311.625,
40 may garnish property of a debtor in the possession, control or custody of a person other than the
41 debtor by delivering to the person all of the following:

- 42 (a) A notice of garnishment;
43 (b) A warrant, or a true copy of a warrant;
44 (c) The items specified in ORS 18.650 (1)(b) to (d); and
45 (d) Any garnishee's search fee payable as provided in ORS 18.790.

1 (2) A notice of garnishment may be issued by any person designated by the state agency or by
2 the county tax collector. A warrant need not be recorded in the County Clerk Lien Record as a
3 condition of issuing a notice of garnishment under the provisions of this section. The provisions of
4 ORS 18.800 do not apply to a notice of garnishment.

5 (3) If any of the items described in subsection (1) of this section are not delivered to the
6 garnishee, a notice of garnishment shall not be effective to garnish any property of the debtor, and
7 the garnishee shall not be required to respond to the garnishment and may proceed to deal with any
8 property of the debtor as though the notice of garnishment had not been issued.

9 (4) Notwithstanding ORS 18.652, a notice of garnishment and the other items required by sub-
10 section (1) of this section may be delivered in person by any employee of the state agency or of the
11 county tax collector authorized by the agency or the county to deliver the notice of garnishment,
12 or by certified mail, return receipt requested. The employee need not be covered by the errors and
13 omissions insurance required in ORS 18.652.

14 (5) Notwithstanding any provision of ORS 18.600 to 18.850, a debt calculation form need not be
15 prepared or delivered for any notice of garnishment.

16 (6) Notwithstanding ORS 18.792, the duty of a garnishee to deliver any property of the debtor
17 that may be contained in a safe deposit box that is in the garnishee's possession, control or custody
18 at the time of delivery of the notice of garnishment to the garnishee is conditioned upon the state
19 agency or the county tax collector first paying to the garnishee, in addition to the search fee pro-
20 vided for in ORS 18.790, all reasonable costs incurred by the garnishee in gaining entry to the safe
21 deposit box. The costs shall be paid to the garnishee by the state agency or the county tax collector
22 at least five days before the date the state agency or the county tax collector takes possession of
23 the property in the safe deposit box. If the state agency or the county tax collector fails to pay such
24 costs to the garnishee within 20 days after the delivery of the garnishee response, the garnishment
25 shall not be effective to garnish any property of the debtor that may be contained in the safe deposit
26 box and the garnishee may proceed to deal with the safe deposit box and its contents as though the
27 notice of garnishment had not been issued. Nothing in this subsection limits the rights of a state
28 agency or county tax collector to reach the contents of any safe deposit box in any manner other-
29 wise provided by law.

30 (7) Except as provided in this section and ORS 18.855 and 18.857, all provisions of ORS 18.600
31 to 18.850 apply to notices of garnishment. The state agency or county tax collector shall modify the
32 forms provided in ORS 18.600 to 18.850 as necessary to allow use of those forms for notices of
33 garnishment. The form of the notice of garnishment must clearly indicate that the document is a
34 notice of garnishment and must reflect the date of all warrants on which the notice of garnishment
35 is based.

36 (8) The Attorney General may adopt model forms for notices of garnishment and other docu-
37 ments issued by state agencies and county tax collectors under this section and ORS 18.855 and
38 18.857. There is a presumption, as described in ORS 40.120, that any state agency or county tax
39 collector that uses a model form adopted by the Attorney General under this subsection has com-
40 plied with the requirements of ORS 18.600 to 18.850, and with the provisions of this section and ORS
41 18.855 and 18.857, with respect to the form of notices of garnishment.

42 **(9) This section does not apply to notices of garnishment issued by the Department of**
43 **Revenue under section 1 of this 2013 Act.**

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

45 18.855. (1) Notwithstanding ORS 18.607, a notice of garnishment issued by a state agency need

1 not contain the name of a court whose authority is invoked.

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

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

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

13 (5) Notwithstanding ORS 18.700, a challenge to a notice of garnishment issued by a state agency
14 must be delivered in person or by first class mail to the state agency within the time specified by
15 ORS 18.700 (2). Upon receiving a challenge, the state agency shall provide notice of the challenge
16 in the manner provided by ORS 18.702. Upon a sheriff receiving notice under ORS 18.702, the sheriff
17 shall proceed as provided by ORS 18.760, except that upon determination of the challenge by an
18 administrative law judge, the sheriff shall proceed as directed by the judge. Within 14 days after
19 receiving the challenge, the state agency must either concede the challenge or give the person
20 making the challenge opportunity for hearing. If the person making the challenge requests a hearing,
21 the agency shall immediately refer the challenge to the Office of Administrative Hearings estab-
22 lished under ORS 183.605. The hearing shall be conducted as soon as possible. Notwithstanding ORS
23 183.315, the hearing shall be conducted as a contested case hearing. An issue that was decided in
24 a previous hearing, or for which the debtor was previously afforded an opportunity for hearing, may
25 not be reconsidered.

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

36 (7) A special notice of garnishment issued under subsection (6) of this section shall contain a
37 statement indicating that it is a special notice of garnishment under subsection (6) of this section
38 and a statement reflecting the provisions of subsection (6) of this section. Notwithstanding ORS
39 18.854 (1) **and section 1 (1) of this 2013 Act**, a wage exemption calculation form shall not be de-
40 livered to the garnishee with a special notice of garnishment.

41 **SECTION 6.** ORS 18.999 is amended to read:

42 18.999. This section establishes the right of a plaintiff to recover certain moneys the plaintiff
43 has expended to recover a debt under ORS 18.854 **or section 1 of this 2013 Act** or to enforce a
44 judgment and establishes procedures for that recovery. The following apply to this section:

45 (1) When a plaintiff receives moneys under a garnishment, attachment or payment, the plaintiff

1 may proceed as follows:

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

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

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

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

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

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

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

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

22 (C) Circuit court fees as provided under ORS 21.235 and 21.258.

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

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

25 (F) Actual fees or disbursements made under ORS 21.300.

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

27 (H) Fees paid to an attorney for issuing a garnishment in an amount not to exceed \$35 for each
28 garnishment.

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

30 (J) Fees paid under ORS 21.200 for motions and responses to motions filed after entry of a
31 judgment.

32 (K) Amounts paid to a sheriff for the fees and expenses of executing a warrant under ORS
33 105.510.

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

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

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

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

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

45 (7) Nothing in this section limits the right of a plaintiff to recover moneys described in this

1 section or other moneys in any manner otherwise allowed by law.

2 (8) A writ of garnishment or attachment is not valid if issued solely to recover moneys recov-
3 erable under subsection (1)(a) of this section unless the right to collect the moneys is first reduced
4 to a judgment or to a debt enforceable under ORS 18.854 or section 1 of this 2013 Act.

5 **SECTION 7.** (1) Section 1 of this 2013 Act and the amendments to ORS 18.790, 18.792,
6 18.854, 18.855 and 18.999 by sections 2 to 6 of this 2013 Act become operative on January 1,
7 2014.

8 (2) The Department of Revenue may take any action before the operative date specified
9 in subsection (1) of this section that is necessary to enable the department to exercise, on
10 and after the operative date specified in subsection (1) of this section, the duties, functions
11 and powers conferred on the department by section 1 of this 2013 Act and the amendments
12 to ORS 18.790, 18.792, 18.854, 18.855 and 18.999 by sections 2 to 6 of this 2013 Act.

13 **SECTION 8.** This 2013 Act being necessary for the immediate preservation of the public
14 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect
15 on its passage.

16 _____