HB 4131 -5 amendments

On page 1 of the printed bill, line 2, after <<18.655> insert <<, 18.999>>.
Delete lines 5 through 27 and delete pages 2 through 7 and insert:

SECTION 1. As used in this sections 1 through 6 of this 2016 Act:

(1) <<Account>> means a demand deposit account, checking or negotiable withdrawal order account, savings account, share draft account, time deposit account or money-market mutual fund account.

(2) <<Data match system>> means the system for exchange of information between financial institutions and the Department of Revenue described in section 2 of this 2016 Act.

(3) <<Delinquent debtor>> means any person for whom a warrant has been issued by the Department of Revenue.

(4) <<Financial institution>> means any of the following doing business in this state:

(a) A depository institution, as defined in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c));

(b) Any federal credit union or state credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752); and

(c) Any benefit association, insurance company, safe deposit company, money-market mutual fund or similar entity.

SECTION 2. (1) Financial institutions shall participate in a data match system established by the Department of Revenue, utilizing automated data exchanges to the maximum extent possible.

(2) Pursuant to the data match system, at least once per calendar quarter, each financial institution shall conduct a data match with the department through which a list of delinquent debtors, identified by name and Social Security or other taxpayer identification number, is compared against a list of persons who hold accounts at the financial institution, such that the department is able to identify which, if any, delinquent debtors hold accounts at the financial institution and the balance of each account held by each delinquent debtor.

(3) Each calendar quarter, the department shall pay a fee to each financial institution for conducting the data match provided for in this section. In the first quarter that the department pays a fee under this subsection to a financial institution, the fee may not exceed the lesser of $2,500 or the actual costs incurred by the financial institution in that calendar quarter for conducting the data match. In subsequent quarters, the fee may not exceed the lesser of $150 or the actual costs incurred by the financial institution in that calendar quarter for conducting the data match.

(4)(a) The department may add a fee as described in this subsection to the amount of the liquidated and delinquent debt of any delinquent debtor.

(b) A fee may not be added under this subsection unless the department has provided notice to the delinquent debtor of the existence of

the debt and of the maximum amount of the fee that may be added to the debt under this subsection.

(c) A fee added under this subsection may not exceed the total data match costs incurred by the department in the calendar quarter in which the fee is assessed, divided by the average number of delinquent debtors as calculated over the preceding four calendar quarters.

(d) As used in this subsection, <<data match costs>> means the sum of:

(A) Amounts payable to financial institutions under subsection (3) of this section; and

(B) Amounts payable to vendors or contractors pursuant to agreements that are reasonably necessary for the functioning of the data match system.

(5) The department may:

(a) Exempt a financial institution from the requirements of this section if the department determines that the participation of the financial institution in the data match system would not be cost effective for the department.

(b) Temporarily exempt a financial institution from the requirements of this section if the financial institution provides the department with written notice from its supervisory banking authority that it is determined to be undercapitalized, significantly undercapitalized, or critically undercapitalized as defined under 12 CFR 325.103 or 12 CFR 702.102.

(6) Financial institutions, institution-affiliated parties as defined in section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u)) and institution-affiliated parties as defined in section 206(r) of the Federal Credit Union Act (12 U.S.C. 1786(r)) are not liable under any state law to any person:

(a) For any disclosure of information to the department under this section;

(b) For encumbering or surrendering any assets held by the financial institution in response to a notice of lien or levy issued by the department; or

(c) For any other action taken in good faith to comply with the requirements of this section.

<u>SECTION 3.</u> (1) If, pursuant to the data match system, the Department of Revenue ascertains that a delinquent debtor holds an account at a financial institution, and the delinquent debtor is a delinquent child support obligor, the department may not issue or cause to be issued a notice of garnishment to the financial institution under ORS 18.600 to 18.850 against the delinquent debtor within 30 days after the date that the department so ascertained.

(2) As used in this section:

(a) <<Delinquent child support obligor>> means any person who owes a debt for past due support that is enforced by the Division of Child Support of the Department of Justice and that has been assigned to the Department of Revenue for collection under ORS 25.610 or ORS 293.250.

(b) <<Past due support>> has the meaning given that term in ORS

18.600.

SECTION 4. (1) A person may not disclose to a delinquent debtor:

(a) That information relating to the delinquent debtor was transmitted to or from the Department of Revenue pursuant to the data match system; or

(b) That information relating to the delinquent debtor was transmitted to or from a financial institution pursuant to the data match system.

(2) A person commits a separate violation of this section for each delinquent debtor to whom the person discloses information described in subsection (1) of this section during a calendar quarter.

(3) Nothing in this section prohibits a financial institution from disclosing the existence of, or the financial institution's participation in, the data match system.

SECTION 5. (1) A person may not use or disclose information relating to a delinquent debtor that is transmitted to or from the Department of Revenue pursuant to the data match system for any purpose except:

(a) The collection of debts by the department; or

(b) Compliance with the requirements of the data match system, including compliance with an agreement that is reasonably necessary for the functioning of the data match system.

(2) This section does not apply to the use or disclosure of information:

(a) That is in a person's control or possession prior to transmission to or from the department; or

(b) That enters a person's control or possession through means that are unrelated to the data match system.

SECTION 6. (1) In addition to any other liability or penalty provided by law, the Department of Revenue may impose a civil penalty:

(a) Of up to $1,000 on a financial institution for failure to participate in the data match system or noncompliance with rules adopted by the department to administer the data match system if:

(A) The failure or noncompliance causes the department to be unable to identify which delinquent debtors hold accounts at the financial institution or to be unable to obtain the balances of all accounts held by delinquent debtors at the financial institution; and

(B) The financial institution does not remedy the failure or noncompliance within 30 days after the department provides notice of failure or noncompliance to the financial institution.

(b) If the department has imposed a penalty on a financial institution for failure or noncompliance under paragraph (a) of this subsection, of up to $1,000 on the financial institution for each month that the financial institution does not remedy the failure or noncompliance.

(c) Of up to $2,500 on any person for violation of section 4 of this 2016 Act.

(d) Of up to $1,000 on any person for violation of section 5 of this 2016

Act.

(2) Civil penalties under this section shall be imposed in the manner provided by ORS 183.745.

(3) All civil penalties recovered under this section shall be paid into the State Treasury and credited to the General Fund and are available for general governmental expenses.

(4) In addition to any other liability or penalty provided by law, violation of section 5 of this 2016 Act by an officer or employee of this state is a Class C felony. An officer or employee of this state who violates section 5 of this 2016 Act shall be dismissed from office and may not hold any public office with this state for a period of five years thereafter.

SECTION 7. ORS 18.999 is amended to read:

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

(1) When a plaintiff receives moneys under a garnishment, attachment or payment, the plaintiff may proceed as follows:

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

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

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

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

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

(a) Statutorily established moneys that meet the requirements under subsection (3) of this section, as follows:

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

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

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

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

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

(F) Actual fees or disbursements made under ORS 21.300.
(G) Costs of execution as provided in ORS 105.112.
(H) Fees paid to an attorney for issuing a garnishment in an amount not to exceed $37 for each garnishment.
(I) Costs of an execution sale as described in ORS 18.950 (2).
(J) Fees paid under ORS 21.200 for motions and responses to motions filed after entry of a judgment.
(K) Amounts paid to a sheriff for the fees and expenses of executing a warrant under ORS 105.510.
(L) Fees added to liquidated and delinquent debts under section 2 (4) of this 2016 Act.
(b) Interest on the amounts specified in paragraph (a) of this subsection at the rate provided for judgments in ORS 82.010 for the period of time beginning with the expenditure of the amount and ending upon recovery of the amount under this section.
(5) The plaintiff shall be responsible for doing all of the following:
(a) Maintaining a precise accounting of moneys recovered under subsection (1)(a) of this section and making the accounting available for any proceeding relating to that judgment or debt.
(b) Providing reasonable notice to the defendant of moneys the plaintiff recovers under subsection (1)(a) of this section.
(6) Moneys recovered under subsection (1)(a) of this section remain subject to all other provisions of law relating to payments, or garnished or attached moneys including, but not limited to, those relating to exemption, claim of exemption, overpayment and holding periods.
(7) Nothing in this section limits the right of a plaintiff to recover moneys described in this section or other moneys in any manner otherwise allowed by law.
(8) A writ of garnishment or attachment is not valid if issued solely to recover moneys recoverable under subsection (1)(a) of this section unless the right to collect the moneys is first reduced to a judgment or to a debt enforceable under ORS 18.854.

SECTION 8. ORS 192.586 is amended to read:

192.586. (1) Except as provided in ORS 192.588, 192.589, 192.591, 192.593, 192.596, 192.597, 192.598 and 192.603 or as required by ORS 25.643 and 25.646 and the Uniform Disposition of Unclaimed Property Act, ORS 98.302 to 98.436 and 98.992 **and section 2 of this 2016 Act:**

(a) A financial institution may not provide financial records of a customer to a state or local agency.

(b) A state or local agency may not request or receive from a financial institution financial records of customers.

(2) Subsection (1) of this section does not preclude a financial institution, in the discretion of the financial institution, from initiating contact with, and thereafter communicating with and disclosing customer financial records to:

(a) Appropriate state or local agencies concerning a suspected violation of

the law.

(b) The office of the State Treasurer if the records relate to state investments in commercial mortgages involving the customer. The records and the information contained therein are public records but are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest in disclosure clearly outweighs the public interest in confidentiality. However, the following records in the office must remain open to public inspection:

(A) The contract or promissory note establishing a directly held residential or commercial mortgage and information identifying collateral;

(B) Any copy the office retains of the underlying mortgage note in which the office purchases a participation interest; and

(C) Information showing that a directly held loan is in default.

(c) An appropriate state or local agency in connection with any business relationship or transaction between the financial institution and the customer, if the disclosure is made in the ordinary course of business of the financial institution and will further the legitimate business interests of the customer or the financial institution.

(3) ORS 192.583 to 192.607 do not prohibit any of the following:

(a) The dissemination of any financial information that is not identified with, or identifiable as being derived from, the financial records of a particular customer.

(b) The examination by, or disclosure to, the Department of Consumer and Business Services of financial records that relate solely to the exercise of the department's supervisory function. The scope of the department's supervisory function shall be determined by reference to statutes that grant authority to examine, audit, or require reports of financial records or financial institutions.

(c) The furnishing to the Department of Revenue of information by the financial institution, whether acting as principal or agent, as required by ORS 314.360.

(d) Compliance with the provisions of ORS 708A.655 or 723.844.

(4) Notwithstanding subsection (1) of this section, a financial institution may:

(a) Enter into an agreement with the Oregon State Bar that requires the financial institution to make reports to the Oregon State Bar whenever a properly payable instrument is presented for payment out of an attorney trust account that contains insufficient funds, whether or not the instrument is honored by the financial institution; and

(b) Submit reports to the Oregon State Bar concerning instruments presented for payment out of an attorney trust account under a trust account overdraft notification program established under ORS 9.685.

SECTION 9. (1) The Department of Revenue shall adopt rules necessary for the administration of sections 1, 2, 3 and 6 of this 2016 Act. Before adopting rules under this section, the department shall consult with or seek the participation of:

(a) A representative from an association representing banks in the

State of Oregon;

(b) A representative from an association representing credit unions in the State of Oregon;

(c) A representative from the Division of Financial Regulation of the Department of Consumer and Business Services.

(2) Rules adopted under this section must include:

(a) A procedure by which financial institutions and the department are able to transmit and compare data as required by section 2 (2) of this 2016 Act.

(b) An option for financial institutions without the technical ability to participate in the data match system required by section 2 of this 2016 Act through which the financial institution may transmit to the department a list of the names and Social Security numbers or other taxpayer identification numbers of all accountholders.

(c) A method for financial institutions to verify their actual costs of participating in the data match system required under section 2 of this 2016 Act.

(3) The department shall adopt rules under this section no later than July 1, 2017.

SECTION 10. Section 11 of this 2016 Act is added to and made a part of ORS chapter 25.

SECTION 11. (1) Subject to the limitations contained in subsection (2) of this section, the Division of Child Support of the Department of Justice may enter into agreements with other divisions of the Department of Justice or with the Department of Revenue for the provision of information reported to the Division of Child Support by an employer pursuant to ORS 25.790 regarding hiring or rehiring of individuals in this state. Such information may be used for purposes other than paternity establishment or child support enforcement, including but not limited to debt collection.

(2) Information provided by the division under this section is limited to information reported pursuant to ORS 25.790 that has not yet been entered into either:

(a) The statewide automated data processing and information retrieval system required to be established and operated by the division under 42 U.S.C. 654a; or

(b) The automated state directory of new hires required to be established by the division under 42 U.S.C. 653a.

(3) An agreement entered into under this section shall include, but is not limited to, provisions describing:

(a) How the information is to be reported or transferred from the division;

(b) Fees, reimbursements and other financial responsibilities of the recipient in exchange for receipt of the information from the division, not to exceed actual expenses;

(c) Coordination of data systems to facilitate the sharing of the information; and

(d) Such other terms and requirements as are necessary to accomplish the objectives of the agreement.

(4) An agreement entered into under this section is subject to the approval of the Department of Justice.

SECTION 12. ORS 18.655 is amended to read:

18.655. (1) Except as otherwise provided in this section, a writ of garnishment may be delivered to any of the following persons:

(a) If the property of the debtor is in the possession, control or custody of an individual, the writ may be delivered to the individual. If the individual is the sole proprietor of a business, the writ may also be delivered to any person designated by the individual to accept service of a writ of garnishment. If the individual maintains an office for the conduct of business, office delivery may be made under subsection (6) of this section.

(b) If the property of the debtor is in the possession, control or custody of a partnership other than a limited partnership, the writ may be delivered to any partner or to any person designated by the partnership to accept service of a writ of garnishment. If the partnership is a limited partnership, the writ of garnishment may be delivered only to a general partner or to a person designated by the partnership to accept service. If the partnership maintains an office for the conduct of business, office delivery may be made under subsection (6) of this section.

(c) If the property of the debtor is in the possession, control or custody of a corporation, the writ may be delivered to any officer or managing agent of the corporation or to any person designated by the corporation to accept service.

(d) If the property of the debtor is in the possession, control or custody of a limited liability company, the writ may be delivered to any member of the company or to any person designated by the company to accept service.

(e) If the property of the debtor is in the possession, control or custody of a financial institution, the writ may be delivered to the manager, assistant manager or other designated person at any office or branch of the financial institution where deposits are received or that has been designated by the institution as a place for receiving writs of garnishment. Delivery of a writ in the manner prescribed in this paragraph is effective to garnish all property of the debtor held at all offices and branches of the financial institution located in this state**, regardless of whether the property is held in an account that was opened in this state**.

(f) If the property of the debtor is in the possession, control or custody of a public body, as defined in ORS 174.109, the writ may be delivered to the board, department, institution, commission or officer charged with approving a claim for the property, or to such person or place as may be designated by the public body.

(2) Notwithstanding ORS 78.1120 (2), if the property of the debtor is money that is owed to the debtor that is not evidenced by a negotiable instrument, certificate, document or similar instrument, the writ of garnishment must be

delivered to the person who owes the money in the manner provided by subsection (1) of this section.

(3) Notwithstanding ORS 78.1120 (2), if the property of the debtor is stock in a corporation, other than stock represented by a negotiable certificate or similar instrument, the writ of garnishment must be delivered to the corporation in the manner provided by subsection (1) of this section.

(4) Notwithstanding ORS 77.6020 and 78.1120, if the property of the debtor is a negotiable instrument, certificate, document or similar instrument, the writ of garnishment must be delivered to the person having possession of the instrument in the manner provided by subsection (1) of this section. The garnishment does not limit the rights of a holder in due course of a negotiable instrument under ORS 73.0302, a holder to whom a negotiable document has been duly negotiated under ORS 77.5010 or a protected purchaser of a security under ORS 78.3030.

(5) If the property of the debtor is an interest of an heir or legatee in an estate of a decedent, the writ of garnishment must be delivered to the personal representative of the estate in the manner provided by subsection (1) of this section.

(6) For the purposes of subsection (1)(a) and (b) of this section, office delivery may be made by leaving all of the items required by ORS 18.650 (1) at the office during normal working hours with the person who is apparently in charge. If office delivery is used, the person delivering the writ, as soon as reasonably possible, shall cause to be mailed by first class mail all of the items required by ORS 18.650 (1) to the garnishee at the garnishee's place of business or such other place under the circumstances that is most reasonably calculated to apprise the garnishee of the garnishment, together with a statement of the date, time and place at which office delivery was made. Office delivery under this subsection is effective upon the receipt of the writ by the person who is apparently in charge of the office.

SECTION 13. Sections 1 to 6 of this 2016 Act become operative on July 1, 2017.

SECTION 14. The Department of Revenue may take any action before the operative date specified in section 13 of this 2016 Act that is necessary to enable the department to exercise, on and after the operative date specified in section 13 of this 2016 Act, all the duties, functions and powers conferred on the department by sections 1, 2 and 3 of this 2016 Act.

SECTION 15. This 2016 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect on its passage.