

House Bill 4131

Sponsored by Representative TAYLOR, Senator JOHNSON, Representative NATHANSON; Representatives HOLVEY, KENY-GUYER, MCLAIN, WILLIAMSON (Presession filed.)

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**.

Requires financial institutions to develop data match agreements with Department of Revenue to identify assets held at financial institutions by delinquent debtors.

Creates crime of misusing information shared pursuant to data match agreements. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both.

Authorizes Division of Child Support of Department of Justice to enter agreements to share information relating to hiring of individuals in this state with other divisions of department or with Department of Revenue.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to collection of debts by state agencies; creating new provisions; amending ORS 18.655 and
3 192.586; and declaring an emergency.

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

5 **SECTION 1. As used in this section and sections 2, 3, 4, 5 and 6 of this 2016 Act:**

6 (1) "Account" means a demand deposit account, checking or negotiable withdrawal order
7 account, savings account, safe deposit box, share draft account, time deposit account or
8 money-market mutual fund account.

9 (2) "Data match agreement" means an agreement between a financial institution and the
10 Department of Revenue required under section 2 (1) of this 2016 Act.

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

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

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

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

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

20 **SECTION 2. (1) Financial institutions shall enter into data match agreements with the**
21 **Department of Revenue to develop and operate a data match system using automated data**
22 **exchanges to the maximum extent feasible. Each financial institution shall execute such an**
23 **agreement within six months of the date that the financial institution first receives a pro-**
24 **posed agreement from the department.**

25 (2) Data match agreements must establish a data match system that includes the fol-
26 lowing requirements:

27 (a) The department may, not more than once per calendar quarter, provide to each fi-

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 nancial institution a list containing the names and Social Security numbers or other tax-
 2 payer identification numbers of delinquent debtors.

3 (b) Each financial institution shall, within 15 business days after receiving the list de-
 4 scribed in paragraph (a) of this subsection, report to the department which, if any, delin-
 5 quent debtors identified in the list hold accounts with the financial institution and the
 6 balance of each account held by each delinquent debtor.

7 (3) Notwithstanding subsection (2) of this section, a financial institution may satisfy the
 8 requirement imposed by subsection (1) of this section if it enters into any agreement with
 9 the department under which, at least once per calendar quarter:

10 (a) The department is able to identify which, if any, delinquent debtors hold accounts at
 11 the financial institution; and

12 (b) The department is able to obtain the balances of all accounts held by delinquent
 13 debtors at the financial institution.

14 (4) Nothing in this section limits the types of information regarding a delinquent debtor
 15 that a data match agreement may require a financial institution to report to the department.

16 (5) The department shall pay a fee to each financial institution for conducting the data
 17 match provided for in this section in an amount equal to the lesser of:

18 (a) The actual costs incurred by the financial institution in conducting the data match;
 19 or

20 (b) \$150 per calendar quarter.

21 (6)(a) If the department, through information obtained pursuant to a data match agree-
 22 ment, identifies one or more accounts held at a financial institution by a delinquent debtor,
 23 the department may add a fee to the amount of the liquidated and delinquent debt of the
 24 delinquent debtor.

25 (b) A fee may not be added under this subsection unless the department has provided
 26 notice to the delinquent debtor of the existence of the debt and of the amount of the fee that
 27 may be added to the debt under this subsection.

28 (c) A fee added under this subsection may not exceed the total amount paid to financial
 29 institutions by the department under subsection (5) of this section in the calendar quarter
 30 in which the fee is assessed divided by the total number of delinquent debtors whose names
 31 were provided to financial institutions pursuant to data match agreements in that calendar
 32 quarter.

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

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

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

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

42 **SECTION 3.** (1) If, pursuant to a data match agreement, a financial institution reports
 43 to the Department of Revenue that a delinquent debtor holds one or more accounts at the
 44 financial institution, and the delinquent debtor is a delinquent child support obligor, the de-
 45 partment may not issue or cause to be issued a notice of garnishment to the financial in-

stitution under ORS 18.600 to 18.850 against the delinquent debtor within 30 days after the date that the department received the report from the financial institution.

(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 by the Department of Revenue to a financial institution pursuant to a data match agreement; or

(b) That information relating to the delinquent debtor was transmitted by a financial institution to the department pursuant to a data match agreement.

(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 compliance with, a data match agreement.

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 a data match agreement for any purpose except:

(a) The collection of debts by a state agency; or

(b) Compliance with the terms of a data match agreement.

(2) This section does not apply to financial institutions.

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

(a) Of \$1,000 on a financial institution for noncompliance with a data match agreement if:

(A) The noncompliance causes the Department of Revenue 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 noncompliance within 30 days after the department provides notice of noncompliance to the financial institution.

(b) If the department has imposed a penalty on a financial institution for noncompliance with a data match agreement under paragraph (a) of this subsection, of \$1,000 on the financial institution for each month that the financial institution does not remedy the noncompliance.

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

(d) Of \$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 is a Class C felony. If the violator is an officer or employee of this state, the

1 **violation shall be dismissed from office and may not hold any public office with this state for**
2 **a period of five years thereafter.**

3 **SECTION 7.** ORS 192.586 is amended to read:

4 192.586. (1) Except as provided in ORS 192.588, 192.589, 192.591, 192.593, 192.596, 192.597, 192.598
5 and 192.603 or as required by ORS 25.643 and 25.646 and the Uniform Disposition of Unclaimed
6 Property Act, ORS 98.302 to 98.436 and 98.992 **and section 2 of this 2016 Act:**

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

9 (b) A state or local agency may not request or receive from a financial institution financial re-
10 cords of customers.

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

14 (a) Appropriate state or local agencies concerning a suspected violation of the law.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ORS 9.685.

2 **SECTION 8.** The Department of Revenue may adopt rules necessary for the adminis-
 3 tration of sections 1, 2, 3 and 6 of this 2016 Act.

4 **SECTION 9.** Section 10 of this 2016 Act is added to and made a part of ORS chapter 25.

5 **SECTION 10.** (1) Subject to the limitations contained in subsection (2) of this section, the
 6 Division of Child Support of the Department of Justice may enter into agreements with other
 7 divisions of the Department of Justice or with the Department of Revenue for the provision
 8 of information reported to the Division of Child Support by an employer pursuant to ORS
 9 25.790 regarding hiring or rehiring of individuals in this state. Such information may be used
 10 for purposes other than paternity establishment or child support enforcement, including but
 11 not limited to debt collection.

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

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

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

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

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

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

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

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

26 (4) An agreement entered into under this section is subject to the approval of the De-
 27 partment of Justice.

28 **SECTION 11.** ORS 18.655 is amended to read:

29 18.655. (1) Except as otherwise provided in this section, a writ of garnishment may be delivered
 30 to any of the following persons:

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

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

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

45 (d) If the property of the debtor is in the possession, control or custody of a limited liability

1 company, the writ may be delivered to any member of the company or to any person designated by
 2 the company to accept service.

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

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

14 (2) Notwithstanding ORS 78.1120 (2), if the property of the debtor is money that is owed to the
 15 debtor that is not evidenced by a negotiable instrument, certificate, document or similar instrument,
 16 the writ of garnishment must be delivered to the person who owes the money in the manner pro-
 17 vided by subsection (1) of this section.

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

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

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

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

40 **SECTION 12. Sections 1 to 6 of this 2016 Act become operative on January 1, 2017.**

41 **SECTION 13. The Department of Revenue may take any action before the operative date**
 42 **specified in section 12 of this 2016 Act that is necessary to enable the department to exercise,**
 43 **on and after the operative date specified in section 12 of this 2016 Act, all the duties, func-**
 44 **tions and powers conferred on the department by sections 1, 2 and 3 of this 2016 Act.**

45 **SECTION 14. This 2016 Act being necessary for the immediate preservation of the public**

1 **peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect**
2 **on its passage.**

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