

Requested by Representative TAYLOR

**PROPOSED AMENDMENTS TO  
HOUSE BILL 4131**

1 On page 1 of the printed bill, line 2, after “18.655” insert “, 18.999”.

2 Delete lines 5 through 27 and delete pages 2 through 7 and insert:

3 **“SECTION 1. As used in sections 1 to 6 of this 2016 Act:**

4 **“(1) ‘Account’ means a demand deposit account, checking or nego-**  
5 **table withdrawal order account, savings account, share draft account,**  
6 **time deposit account or money-market mutual fund account.**

7 **“(2) ‘Data match system’ means the system for exchange of infor-**  
8 **mation between financial institutions and the Department of Revenue**  
9 **described in section 2 of this 2016 Act.**

10 **“(3) ‘Delinquent debtor’ means any person for which a warrant has**  
11 **been issued by the Department of Revenue.**

12 **“(4) ‘Financial institution’ means any of the following doing busi-**  
13 **ness in this state:**

14 **“(a) A depository institution, as defined in the Federal Deposit In-**  
15 **surance Act (12 U.S.C. 1813(c)).**

16 **“(b) A federal credit union or state credit union, as defined in the**  
17 **Federal Credit Union Act (12 U.S.C. 1752(1)).**

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

21 **“(2) Using the data match system, at least once per calendar quar-**

1 ter, each financial institution shall conduct a data match with the  
2 department which compares a list of delinquent debtors, identified by  
3 name and Social Security number or other taxpayer identification  
4 number, against a list of persons who hold accounts at the financial  
5 institution to enable the department to identify which, if any, delin-  
6 quent debtors hold accounts at the financial institution and the bal-  
7 ance of each account held by each delinquent debtor.

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

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

20 “(b) The fee may not be added under this subsection unless the de-  
21 partment has provided notice to the delinquent debtor of the existence  
22 of the debt and of the maximum amount of the fee that may be added  
23 under this subsection to the debt.

24 “(c) The fee added under this subsection may not exceed the total  
25 data match costs incurred by the department in the calendar quarter  
26 in which the fee is assessed, divided by the average number of delin-  
27 quent debtors as calculated over the preceding four calendar quarters.

28 “(d) As used in this subsection, ‘data match costs’ means the sum  
29 of:

30 “(A) Amounts payable to financial institutions under subsection (3)

1 of this section; and

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

5 “(5) The department may:

6 “(a) Exempt a financial institution from participation in the data  
7 match system under this section if the department determines that the  
8 participation of the financial institution in the data match system  
9 would not be cost effective for the department.

10 “(b) Temporarily exempt a financial institution from participation  
11 in the data match system under this section if the financial institution  
12 provides the department with written notice from its supervisory  
13 banking authority that it has been determined to be undercapitalized,  
14 significantly undercapitalized, or critically undercapitalized, as those  
15 terms are defined under 12 C.F.R. 325.103(b) or 12 C.F.R. 702.102(a).

16 “(6) Financial institutions, institution-affiliated parties as defined  
17 in the Federal Deposit Insurance Act (12 U.S.C. 1813(u)) and  
18 institution-affiliated parties as defined in the Federal Credit Union Act  
19 (12 U.S.C. 1786(r)) are not liable under state law to any person:

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

22 “(b) For encumbering or surrendering any assets held by the fi-  
23 nancial institution in response to a notice of lien or levy issued by the  
24 department; or

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

27 **“SECTION 3. (1) If, using the data match system, the Department**  
28 **of Revenue ascertains that a delinquent debtor holds an account at a**  
29 **financial institution, and the delinquent debtor is a delinquent child**  
30 **support obligor, the department may not issue or cause to be issued**

1 a notice of garnishment to the financial institution under ORS 18.600  
2 to 18.850 against the delinquent debtor within 30 days after the date  
3 that the department so ascertained.

4 “(2) As used in this section:

5 “(a) ‘Delinquent child support obligor’ means any person who owes  
6 a debt for past due support that is enforced by the Division of Child  
7 Support of the Department of Justice and that has been assigned to  
8 the Department of Revenue for collection under ORS 25.610 or ORS  
9 293.250.

10 “(b) ‘Past due support’ has the meaning given that term in ORS  
11 18.600.

12 “SECTION 4. (1) Except as otherwise permitted by law, a person  
13 may not disclose to a delinquent debtor that information relating to  
14 the delinquent debtor was transmitted using the data match system.

15 “(2) This section applies only to disclosures regarding information  
16 that was transmitted using the data match system within 45 days prior  
17 to the disclosure.

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

21 “(4) Nothing in this section prohibits a financial institution from  
22 disclosing the existence of, or the financial institution’s participation  
23 in, the data match system.

24 “SECTION 5. (1) Except as otherwise permitted by law, a person  
25 may not knowingly use or disclose information relating to a delinquent  
26 debtor that is transmitted to or from the Department of Revenue  
27 through the data match system for any purpose except:

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

29 “(b) Purposes that are reasonably necessary for the functioning of  
30 the data match system, including compliance with an agreement that

1 is reasonably necessary for the functioning of the data match system.

2 “(2) This section does not apply to the use or disclosure of infor-  
3 mation:

4 “(a) That is in a person’s control or possession prior to transmission  
5 to or from the department; or

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

8 **“SECTION 6. (1) In addition to any other liability or penalty pro-  
9 vided by law, the Department of Revenue may impose a civil penalty:**

10 “(a) Of up to \$1,000 on a financial institution for failure to partic-  
11 ipate in the data match system, or for noncompliance with rules  
12 adopted by the department to administer the data match system, if:

13 “(A) The failure or noncompliance causes the department to be  
14 unable to identify whether a delinquent debtor holds an account at the  
15 financial institution or to be unable to obtain the balances of all ac-  
16 counts held by a delinquent debtor at the financial institution; and

17 “(B) The financial institution does not remedy the failure or non-  
18 compliance within 30 days after the department provides notice of  
19 failure or noncompliance to the financial institution.

20 “(b) If the department has imposed a penalty on a financial insti-  
21 tution for failure or noncompliance under paragraph (a) of this sub-  
22 section, of up to \$1,000 on the financial institution for each month that  
23 the financial institution does not remedy the failure or noncompliance.

24 “(c) Of up to \$2,500 on any person for violation of section 4 of this  
25 2016 Act.

26 “(d) Of up to \$1,000 on any person for violation of section 5 of this  
27 2016 Act.

28 “(2) Civil penalties under this section shall be imposed in the man-  
29 ner provided by ORS 183.745.

30 “(3) All civil penalties recovered under this section shall be paid

1 into the State Treasury and credited to the General Fund and are  
2 available for general governmental expenses.

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

9 **“SECTION 7. (1) The Department of Revenue shall adopt rules**  
10 **necessary for the administration of sections 1 to 6 of this 2016 Act.**  
11 **Before adopting rules under this section, the department shall consult**  
12 **with or seek the participation of:**

13 “(a) A representative from an association representing banks in this  
14 state;

15 “(b) A representative from an association representing credit un-  
16 ions in this state; and

17 “(c) A representative from the division of the Department of Con-  
18 sumer and Business Services that is charged with financial regulation  
19 functions.

20 “(2) Rules adopted under this section must include:

21 “(a) A procedure by which financial institutions and the Depart-  
22 ment of Revenue are able to compare data as required by section 2 (2)  
23 of this 2016 Act.

24 “(b) A procedure by which financial institutions that lack the  
25 technical ability to participate in the data match system required by  
26 section 2 of this 2016 Act may transmit to the department a list of the  
27 names and Social Security numbers or other taxpayer identification  
28 numbers of all account holders.

29 “(c) A method for verification of the actual costs to a financial in-  
30 stitution of participating in the data match system required under

1 **section 2 of this 2016 Act.**

2 **“(3) The department shall adopt rules under this section not later**  
3 **than July 1, 2017.**

4 **“SECTION 8.** ORS 18.999 is amended to read:

5 “18.999. This section establishes the right of a plaintiff to recover certain  
6 moneys the plaintiff has expended to recover a debt under ORS 18.854 or to  
7 enforce a judgment and establishes procedures for that recovery. The fol-  
8 lowing apply to this section:

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

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

15 “(b) After recovering moneys as allowed under paragraph (a) of this sub-  
16 section, the plaintiff shall credit the remainder of the moneys received  
17 against the judgment or debt as provided by law.

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

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

1       “(4) This section allows the recovery only of the following:  
2       “(a) Statutorily established moneys that meet the requirements under  
3 subsection (3) of this section, as follows:  
4       “(A) Garnishee’s search fees under ORS 18.790.  
5       “(B) Fees for delivery of writs of garnishment under ORS 18.652.  
6       “(C) Circuit court fees as provided under ORS 21.235 and 21.258.  
7       “(D) County court fees as provided under ORS 5.125.  
8       “(E) County clerk recording fees as provided in ORS 205.320.  
9       “(F) Actual fees or disbursements made under ORS 21.300.  
10       “(G) Costs of execution as provided in ORS 105.112.  
11       “(H) Fees paid to an attorney for issuing a garnishment in an amount not  
12 to exceed \$37 for each garnishment.  
13       “(I) Costs of an execution sale as described in ORS 18.950 (2).  
14       “(J) Fees paid under ORS 21.200 for motions and responses to motions  
15 filed after entry of a judgment.  
16       “(K) Amounts paid to a sheriff for the fees and expenses of executing a  
17 warrant under ORS 105.510.  
18       **“(L) Fees added to liquidated and delinquent debts under section 2**  
19 **(4) of this 2016 Act.**  
20       “(b) Interest on the amounts specified in paragraph (a) of this subsection  
21 at the rate provided for judgments in ORS 82.010 for the period of time be-  
22 ginning with the expenditure of the amount and ending upon recovery of the  
23 amount under this section.  
24       “(5) The plaintiff shall be responsible for doing all of the following:  
25       “(a) Maintaining a precise accounting of moneys recovered under sub-  
26 section (1)(a) of this section and making the accounting available for any  
27 proceeding relating to that judgment or debt.  
28       “(b) Providing reasonable notice to the defendant of moneys the plaintiff  
29 recovers under subsection (1)(a) of this section.  
30       “(6) Moneys recovered under subsection (1)(a) of this section remain sub-



1 ject to all other provisions of law relating to payments, or garnished or at-  
2 tached moneys including, but not limited to, those relating to exemption,  
3 claim of exemption, overpayment and holding periods.

4 “(7) Nothing in this section limits the right of a plaintiff to recover  
5 moneys described in this section or other moneys in any manner otherwise  
6 allowed by law.

7 “(8) A writ of garnishment or attachment is not valid if issued solely to  
8 recover moneys recoverable under subsection (1)(a) of this section unless the  
9 right to collect the moneys is first reduced to a judgment or to a debt en-  
10 forceable under ORS 18.854.

11 **“SECTION 9.** ORS 192.586 is amended to read:

12 “192.586. (1) Except as provided in ORS 192.588, 192.589, 192.591, 192.593,  
13 192.596, 192.597, 192.598 and 192.603 or as required by ORS 25.643 and 25.646  
14 and the Uniform Disposition of Unclaimed Property Act, ORS 98.302 to 98.436  
15 and 98.992 **and section 2 of this 2016 Act:**

16 “(a) A financial institution may not provide financial records of a cus-  
17 tomer to a state or local agency.

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

20 “(2) Subsection (1) of this section does not preclude a financial institu-  
21 tion, in the discretion of the financial institution, from initiating contact  
22 with, and thereafter communicating with and disclosing customer financial  
23 records to:

24 “(a) Appropriate state or local agencies concerning a suspected violation  
25 of the law.

26 “(b) The office of the State Treasurer if the records relate to state in-  
27 vestments in commercial mortgages involving the customer. The records and  
28 the information contained therein are public records but are exempt from  
29 disclosure under ORS 192.410 to 192.505 unless the public interest in disclo-  
30 sure clearly outweighs the public interest in confidentiality. However, the

1 following records in the office must remain open to public inspection:

2 “(A) The contract or promissory note establishing a directly held resi-  
3 dential or commercial mortgage and information identifying collateral;

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

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

7 “(c) An appropriate state or local agency in connection with any business  
8 relationship or transaction between the financial institution and the cus-  
9 tomer, if the disclosure is made in the ordinary course of business of the fi-  
10 nancial institution and will further the legitimate business interests of the  
11 customer or the financial institution.

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

13 “(a) The dissemination of any financial information that is not identified  
14 with, or identifiable as being derived from, the financial records of a par-  
15 ticular customer.

16 “(b) The examination by, or disclosure to, the Department of Consumer  
17 and Business Services of financial records that relate solely to the exercise  
18 of the department’s supervisory function. The scope of the department’s su-  
19 pervisory function shall be determined by reference to statutes that grant  
20 authority to examine, audit, or require reports of financial records or finan-  
21 cial institutions.

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

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

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

28 “(a) Enter into an agreement with the Oregon State Bar that requires the  
29 financial institution to make reports to the Oregon State Bar whenever a  
30 properly payable instrument is presented for payment out of an attorney

1 trust account that contains insufficient funds, whether or not the instrument  
2 is honored by the financial institution; and

3 “(b) Submit reports to the Oregon State Bar concerning instruments pre-  
4 sented for payment out of an attorney trust account under a trust account  
5 overdraft notification program established under ORS 9.685.

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

8 **“SECTION 11. (1) Subject to the limitations contained in subsection  
9 (2) of this section, the Division of Child Support of the Department of  
10 Justice may enter into agreements with other divisions of the De-  
11 partment of Justice or with the Department of Revenue for the pro-  
12 vision of information reported to the Division of Child Support by an  
13 employer pursuant to ORS 25.790 regarding hiring or rehiring of indi-  
14 viduals in this state. The information may be used for purposes other  
15 than paternity establishment or child support enforcement, including  
16 but not limited to debt collection.**

17 **“(2) Information provided by the division under this section is lim-  
18 ited to information reported pursuant to ORS 25.790 that has not yet  
19 been entered into either:**

20 **“(a) The statewide automated data processing and information re-  
21 trieval system required to be established and operated by the division  
22 under 42 U.S.C. 654a; or**

23 **“(b) The automated state directory of new hires required to be es-  
24 tablished by the division under 42 U.S.C. 653a.**

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

27 **“(a) How the information is to be reported or transferred from the  
28 division;**

29 **“(b) Fees, reimbursements and other financial responsibilities of the  
30 recipient in exchange for receipt of the information from the division,**

1 **not to exceed actual expenses;**

2 **“(c) Coordination of data systems to facilitate the sharing of the**  
3 **information; and**

4 **“(d) Such other terms and requirements as are necessary to ac-**  
5 **complish the objectives of the agreement.**

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

8 **“SECTION 12.** ORS 18.655 is amended to read:

9 “18.655. (1) Except as otherwise provided in this section, a writ of  
10 garnishment may be delivered to any of the following persons:

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

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

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

29 “(d) If the property of the debtor is in the possession, control or custody  
30 of a limited liability company, the writ may be delivered to any member of

1 the company or to any person designated by the company to accept service.

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

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

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

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

25 “(4) Notwithstanding ORS 77.6020 and 78.1120, if the property of the  
26 debtor is a negotiable instrument, certificate, document or similar instru-  
27 ment, the writ of garnishment must be delivered to the person having pos-  
28 session of the instrument in the manner provided by subsection (1) of this  
29 section. The garnishment does not limit the rights of a holder in due course  
30 of a negotiable instrument under ORS 73.0302, a holder to whom a negotiable

1 document has been duly negotiated under ORS 77.5010 or a protected pur-  
2 chaser of a security under ORS 78.3030.

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

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

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

20 **“SECTION 14. The Department of Revenue may take any action**  
21 **before the operative date specified in section 13 of this 2016 Act that**  
22 **is necessary to enable the department to exercise, on and after the**  
23 **operative date specified in section 13 of this 2016 Act, all the duties,**  
24 **functions and powers conferred on the department by sections 1 to 6**  
25 **of this 2016 Act.**

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

29