

Senate Bill 254

Sponsored by Senators TAYLOR, JOHNSON, Representative NATHANSON (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 participate in data match system established by Department of Revenue to identify assets held at financial institutions by delinquent debtors.

Creates crime of misuse by state employee of information shared pursuant to data match system. 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 owed to state; creating new provisions; amending ORS 18.999 and
3 192.586; and declaring an emergency.

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

SECTION 1. As used in sections 1 to 6 of this 2017 Act:

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

9 (2) **"Data match system" means the system for exchange of information between finan-
10 cial institutions and the Department of Revenue described in section 2 of this 2017 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 the Federal Deposit Insurance Act (12 U.S.C.
15 1813(c)).**

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

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

21 (2) **Using the data match system, not more than once per calendar quarter, each financial
22 institution shall conduct a data match with the department that compares a list of delin-
23 quent debtors, identified by name and Social Security number or other taxpayer identifica-
24 tion number, against a list of persons who hold accounts at the financial institution to enable
25 the department to identify which, if any, delinquent debtors hold accounts at the financial
26 institution. A financial institution is not required to seek or obtain any information about
27 delinquent debtors beyond any information that is provided to the financial institution by the
28 department.**

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

8 (4)(a) The department may add a fee to the amount of the liquidated and delinquent debt
9 of any delinquent debtor.

10 (b) The department may not add a fee under this subsection unless the department has
11 provided notice to the delinquent debtor of the existence of the debt and of the maximum
12 amount of the fee that may be added under this subsection to the debt.

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

16 (d) As used in this subsection, “data match costs” means the sum of:

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

18 (B) Amounts payable to vendors or contractors pursuant to agreements that are rea-
19 sonably necessary for the functioning of the data match system.

20 (5) The department may temporarily exempt a financial institution from participation in
21 the data match system under this section if:

22 (a) The department determines that the participation of the financial institution in the
23 data match system would not be cost-effective for the department;

24 (b) The department determines that the financial institution’s participation in the data
25 match system would be unduly burdensome for the financial institution; or

26 (c) The financial institution provides the department with written notice from its super-
27 visory banking authority that it has been determined to be undercapitalized, significantly
28 undercapitalized, or critically undercapitalized, as those terms are defined under 12 C.F.R.
29 325.103(b) or 12 C.F.R. 702.102(a).

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

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

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

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

38 **SECTION 3.** (1) If, using the data match system, the Department of Revenue ascertains
39 that a delinquent debtor holds an account at a financial institution, and the delinquent debtor
40 is a delinquent child support obligor, the department may not issue or cause to be issued a
41 notice of garnishment to the financial institution under ORS 18.600 to 18.850 against the de-
42 linquent debtor within 30 days after the date that the department so ascertained.

43 (2) As used in this section:

44 (a) “Delinquent child support obligor” means any person who owes a debt for past due
45 support that is enforced by the Division of Child Support of the Department of Justice and

1 that has been assigned to the Department of Revenue for collection under ORS 25.610 or
2 293.250.

3 (b) "Past due support" has the meaning given that term in ORS 18.600.

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

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

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

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

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

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

18 (b) Purposes that are reasonably necessary for the functioning of the data match system,
19 including compliance with an agreement that is reasonably necessary for the functioning of
20 the data match system.

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

22 (a) That is in a person's control or possession prior to transmission to or from the de-
23 partment; or

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

26 **SECTION 6.** (1) In addition to any other liability or penalty provided by law, the Depart-
27 ment of Revenue may impose a civil penalty:

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

31 (A) The failure or noncompliance causes the department to be unable to identify whether
32 a delinquent debtor holds an account at the financial institution; and

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

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

38 (c) Of up to \$2,500 on any person for violation of section 4 of this 2017 Act.

39 (d) Of up to \$1,000 on any person for violation of section 5 of this 2017 Act.

40 (2) Civil penalties under this section shall be imposed in the manner provided by ORS
41 183.745.

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

44 (4) In addition to any other liability or penalty provided by law, violation of section 5 of
45 this 2017 Act by an officer or employee of the State of Oregon is a Class C felony. An officer

1 or employee of the State of Oregon who violates section 5 of this 2017 Act shall be dismissed
 2 from office and may not hold any public office with the State of Oregon for a period of five
 3 years from the date of dismissal.

4 **SECTION 7. (1) The Department of Revenue shall adopt rules necessary for the admin-**
 5 **istration of sections 1 to 6 of this 2017 Act. Before adopting rules under this section, the**
 6 **department shall consult with or seek the participation of:**

7 (a) A representative from an association representing banks in this state;

8 (b) A representative from an association representing credit unions in this state; and

9 (c) A representative from the division of the Department of Consumer and Business
 10 Services that is charged with financial regulation functions.

11 (2) Rules adopted under this section must include:

12 (a) A procedure by which financial institutions and the Department of Revenue are able
 13 to compare data as required by section 2 (2) of this 2017 Act.

14 (b) Information security standards or protocols designed to prevent, to the maximum
 15 extent feasible, unauthorized or unintentional disclosure of data transmitted to and from the
 16 department pursuant to the data match system.

17 (c) A procedure by which financial institutions that lack the technical ability to partic-
 18 ipate in the data match system required by section 2 of this 2017 Act may transmit to the
 19 department a list of the names and Social Security numbers or other taxpayer identification
 20 numbers of all account holders.

21 (d) A method for verifying the actual costs to a financial institution of participating in
 22 the data match system required under section 2 of this 2017 Act.

23 (3) The department shall adopt rules under this section not later than January 1, 2018.

24 **SECTION 8.** ORS 18.999 is amended to read:

25 18.999. This section establishes the right of a plaintiff to recover certain moneys the plaintiff
 26 has expended to recover a debt under ORS 18.854 or to enforce a judgment and establishes proce-
 27 dures for that recovery. The following apply to this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (H) Fees paid to an attorney for issuing a garnishment in an amount not to exceed \$37 for each
11 garnishment.

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

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

15 (K) Amounts paid to a sheriff for the fees and expenses of executing a warrant under ORS
16 105.510.

17 **(L) Fees added to liquidated and delinquent debts under section 2 (4) of this 2017 Act.**

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

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

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

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

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

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

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

34 **SECTION 9.** ORS 192.586 is amended to read:

35 192.586. (1) Except as provided in ORS 192.588, 192.589, 192.591, 192.593, 192.596, 192.597, 192.598
36 and 192.603 or as required by ORS 25.643 and 25.646 and the Uniform Disposition of Unclaimed
37 Property Act, ORS 98.302 to 98.436 and 98.992 **and section 2 of this 2017 Act:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 **SECTION 10. Section 11 of this 2017 Act is added to and made a part of ORS chapter 25.**

34 **SECTION 11. (1) Subject to the limitations provided in subsection (2) of this section, the**
 35 **Division of Child Support of the Department of Justice may enter into agreements with other**
 36 **divisions of the Department of Justice or with the Department of Revenue for the provision**
 37 **of information reported to the Division of Child Support by an employer pursuant to ORS**
 38 **25.790 regarding hiring or rehiring of individuals in this state. The information may be used**
 39 **for purposes other than paternity establishment or child support enforcement, including but**
 40 **not limited to debt collection.**

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

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

45 **(b) The automated state directory of new hires required to be established by the division**

1 under 42 U.S.C. 653a.

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

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

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

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

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

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

12 SECTION 12. Sections 1 to 6 of this 2017 Act and the amendments to ORS 18.999 and
13 192.586 by sections 8 and 9 of this 2017 Act become operative on July 1, 2018.

14 SECTION 13. The Department of Revenue may take any action before the operative date
15 specified in section 12 of this 2017 Act that is necessary to enable the department to exercise,
16 on and after the operative date specified in section 12 of this 2017 Act, all the duties, func-
17 tions and powers conferred on the department by sections 1 to 6 of this 2017 Act.

18 SECTION 14. This 2017 Act being necessary for the immediate preservation of the public
19 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect
20 on its passage.

21 _____