

## Background

As drafted, House Bill 2008 updates the property and funds of a debtor that are exempt from garnishment, modernizes the list of exempt items, increases some thresholds, and annually indexes thresholds to inflation. The measure also allows a person to bring legal action, including class action, for an unlawful debt collection practice.

## Implementation

The Department of Revenue collects debts owed to the State of Oregon on behalf of itself and other government entities that have assigned debt to the department.

The department has identified several issues that should be clarified as conversations continue.

- Clarify the exemptions for motor vehicles – Page 2, line 14 appears to exempt motor vehicles entirely from execution if they are used to engage in or search for employment. Continuing on page 2, lines 20-22 provide for the value of a motor vehicle that is exempt from garnishment to be \$15,000 (or \$25,000 if modified to assist with a disability). These provisions seem to contradict each other, and it is unclear how they would work together.
- Clarify the personal property exemption – Page 2, line 10 exempts all “personal possessions” whereas page 2, line 44 exempts “personal property” up to \$1,500 in value. It is also unclear with the deletion of line 45 in page 2, whether this \$1,500 personal property exemption is in addition to other exemptions. It is unclear how these provisions would work together.
- Clarify the amount in a financial institution account that is not subject to the garnishment. ORS 18.784 provides for financial institutions to identify amounts that are exempt from garnishment such as federal benefit payments, public assistance, or unemployment benefits, for example. These items are not “subject to garnishment” under 18.784(1) and the financial institution may not place a hold on those funds, but instead must make them accessible to the debtor/account holder.

Current Law Example: Garnishment received by Financial Institution on March 2<sup>nd</sup> for debt of \$2,000. Individual Checking Account balance at date of garnishment (March 2), \$8,750  
Transactions during lookback period (March 2 looking back to January 2):

- Social Security direct deposit \$800 a month (February and March deposits) [\$1,600]
- Unemployment benefits direct deposit \$400 week for five weeks [\$2,000]
- Non-electronic or direct deposits during lookback period totaling \$5,150

Amount not subject to garnishment \$3,600

Amount subject to garnishment \$5,150

Using this example, under current law, the financial institution would place a hold on \$2,000 of the \$5,150 that is subject to garnishment because that is the amount shown on the

garnishment. The financial institution would be required to remit \$2,000 to the garnishor and make available to the debtor the remaining \$6,750 balance in the account.

Page 7 of the introduced version of the bill, section 7 amends ORS 18.785 which is a companion statute to ORS 18.784. In line 33, the bill appears to introduce a minimum limit on what is “subject to garnishment” in the account under ORS 18.874 that is made fully accessible to the debtor. It is unclear whether the sum of the electronic or direct deposits to the account are less than \$12,000 what amount the financial institution will be required to remit to the garnishee. Using the example above, it is unclear whether the garnishment would be honored at all despite the account having \$5,150 that is attributable to sources that are not protected from garnishment.

It is unclear if the intent is to create a minimum amount of \$12,000 in any account that would be exempt from garnishment, regardless of whether any of the \$12,000 is sourced to an item that is specifically exempted from garnishment elsewhere as is the case under current law. Additionally, in lines 36-28 of page 7, it is unclear whether the amount that is “exempt from garnishment” is added to the amount that is not “subject to garnishment” when determining the balance to which is subject to the garnishment. To understand how to process garnishment challenges we may receive, we would prefer some clarity on how these amounts are calculated.

- Model Rules. Update statutory content for model garnishment forms as directed in the measure.
- Applicability date. A review of whether the provisions in Section 16 related to garnishment should be applicable to “debts incurred on or after the effective date” or whether it should apply to garnishments issued on or after the effective date of the bill. We believe the garnishment provisions should likely be tied to the issuance of a garnishment rather than the age of the debt otherwise there will be two sets of rules that will need to be followed depending on when the debt was incurred.

We will continue to work with partners on these clarifications.

## Agency Contact

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