

DRAFT

SUMMARY

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

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

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

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

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

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

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

1 (4) “Financial institution” means any of the following doing busi-
2 ness in this state:

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

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

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

9 SECTION 2. (1) Financial institutions shall enter into data match
10 agreements with the Department of Revenue to develop and operate a
11 data match system using automated data exchanges to the maximum
12 extent feasible. Each financial institution shall execute such an
13 agreement within six months of the date that the financial institution
14 first receives a proposed agreement from the department.

15 (2) Data match agreements must establish a data match system
16 that includes the following requirements:

17 (a) The department may, not more than once per calendar quarter,
18 provide to each financial institution a list containing the names and
19 Social Security numbers or other taxpayer identification numbers of
20 delinquent debtors.

21 (b) Each financial institution shall, within 15 business days after
22 receiving the list described in paragraph (a) of this subsection, report
23 to the department which, if any, delinquent debtors identified in the
24 list hold accounts with the financial institution and the balance of
25 each account held by each delinquent debtor.

26 (3) Notwithstanding subsection (2) of this section, a financial insti-
27 tution may satisfy the requirement imposed by subsection (1) of this
28 section if it enters into any agreement with the department under
29 which, at least once per calendar quarter:

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

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

3 (4) Nothing in this section limits the types of information regarding
4 a delinquent debtor that a data match agreement may require a fi-
5 nancial institution to report to the department.

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

9 (a) The actual costs incurred by the financial institution in con-
10 ducting the data match; or

11 (b) \$150 per calendar quarter.

12 (6)(a) If the department, through information obtained pursuant to
13 a data match agreement, identifies one or more accounts held at a fi-
14 nancial institution by a delinquent debtor, the department may add a
15 fee to the amount of the liquidated and delinquent debt of the delin-
16 quent debtor.

17 (b) A fee may not be added under this subsection unless the de-
18 partment has provided notice to the delinquent debtor of the existence
19 of the debt and of the amount of the fee that may be added to the debt
20 under this subsection.

21 (c) A fee added under this subsection may not exceed the total
22 amount paid to financial institutions by the department under sub-
23 section (5) of this section in the calendar quarter in which the fee is
24 assessed divided by the total number of delinquent debtors whose
25 names were provided to financial institutions pursuant to data match
26 agreements in that calendar quarter.

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

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

3 (b) For encumbering or surrendering any assets held by the finan-
4 cial institution in response to a notice of lien or levy issued by the
5 department; or

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

8 **SECTION 3.** (1) If, pursuant to a data match agreement, a financial
9 institution reports to the Department of Revenue that a delinquent
10 debtor holds one or more accounts at the financial institution, and the
11 delinquent debtor is a delinquent child support obligor, the department
12 may not issue or cause to be issued a notice of garnishment to the
13 financial institution under ORS 18.600 to 18.850 against the delinquent
14 debtor within 30 days after the date that the department received the
15 report from the financial institution.

16 (2) As used in this section:

17 (a) “Delinquent child support obligor” means any person who owes
18 a debt for past due support that is enforced by the Division of Child
19 Support of the Department of Justice and that has been assigned to
20 the Department of Revenue for collection under ORS 25.610 or ORS
21 293.250.

22 (b) “Past due support” has the meaning given that term in ORS
23 18.600.

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

25 (a) That information relating to the delinquent debtor was trans-
26 mitted by the Department of Revenue to a financial institution pur-
27 suant to a data match agreement; or

28 (b) That information relating to the delinquent debtor was trans-
29 mitted by a financial institution to the department pursuant to a data
30 match agreement.

31 (2) A person commits a separate violation of this section for each

1 delinquent debtor to whom the person discloses information described
2 in subsection (1) of this section during a calendar quarter.

3 (3) Nothing in this section prohibits a financial institution from
4 disclosing the existence of, or the financial institution's compliance
5 with, a data match agreement.

6 SECTION 5. (1) A person may not use or disclose information re-
7 lating to a delinquent debtor that is transmitted to or from the De-
8 partment of Revenue pursuant to a data match agreement for any
9 purpose except:

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

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

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

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

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

18 (A) The noncompliance causes the Department of Revenue to be
19 unable to identify which delinquent debtors hold accounts at the fi-
20 nancial institution or to be unable to obtain the balances of all ac-
21 counts held by delinquent debtors at the financial institution; and

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

25 (b) If the department has imposed a penalty on a financial institu-
26 tion for noncompliance with a data match agreement under paragraph
27 (a) of this subsection, of \$1,000 on the financial institution for each
28 month that the financial institution does not remedy the noncompli-
29 ance.

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

31 (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 violator 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 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:

1 (A) The contract or promissory note establishing a directly held residen-
2 tial or commercial mortgage and information identifying collateral;

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

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

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

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

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

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

21 (c) The furnishing to the Department of Revenue of information by the
22 financial institution, whether acting as principal or agent, as required by
23 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
26 may:

27 (a) Enter into an agreement with the Oregon State Bar that requires the
28 financial institution to make reports to the Oregon State Bar whenever a
29 properly payable instrument is presented for payment out of an attorney
30 trust account that contains insufficient funds, whether or not the instrument
31 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 8. The Department of Revenue may adopt rules necessary for the administration of sections 1, 2, 3 and 6 of this 2016 Act.

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

SECTION 10. (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;

1 (c) Coordination of data systems to facilitate the sharing of the in-
2 formation; and

3 (d) Such other terms and requirements as are necessary to accom-
4 plish the objectives of the agreement.

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

7 SECTION 11. ORS 18.655 is amended to read:

8 18.655. (1) Except as otherwise provided in this section, a writ of
9 garnishment may be delivered to any of the following persons:

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

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

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

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

31 (e) If the property of the debtor is in the possession, control or custody

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

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

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

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

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

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

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

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

18 **SECTION 13. The Department of Revenue may take any action be-**
19 **fore the operative date specified in section 12 of this 2016 Act that is**
20 **necessary to enable the department to exercise, on and after the op-**
21 **erative date specified in section 12 of this 2016 Act, all the duties,**
22 **functions and powers conferred on the department by sections 1, 2 and**
23 **3 of this 2016 Act.**

24 **SECTION 14. This 2016 Act being necessary for the immediate**
25 **preservation of the public peace, health and safety, an emergency is**
26 **declared to exist, and this 2016 Act takes effect on its passage.**