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DOCKETING; RECORD; LIEN; SATISFACTION

18.315 Application to circuit, justice and municipal courts. Except as otherwise specifically provided in ORS 18.315 to 18.420 and 221.344, the provisions of ORS 18.315 to 18.420 apply to circuit courts, justice courts and municipal courts. [1999 c.788 §15]

Note: Section 62 (2) and (7), chapter 788, Oregon Laws 1999, provides:

Sec. 62. (2) Any judgment rendered by a justice court before the effective date of this 1999 Act [October 23, 1999] that was not docketed in the circuit court under the provisions of ORS 52.630 (1997 Edition) before the effective date of this 1999 Act may become a lien on real property only in the manner provided by section 4 of this 1999 Act [52.635]. Any judgment rendered in a justice court on or after the effective date of this 1999 Act may become a lien on real property only in the manner provided by section 4 of this 1999 Act.

(7) Except as provided in subsection (2) of this section, sections 15, 16 and 17 of this 1999 Act [18.315, 18.355 and 18.365] apply to all judgments of justice and municipal courts, whether those judgments were rendered before, on or after the effective date of this 1999 Act. [1999 c.788 §62(2),(7)]

18.320 Docketing of judgment or lien record abstract. (1) Except as provided in ORS 46.488, immediately after the entry in the register of judgment for the payment of money in any action in circuit court, the clerk shall docket the judgment in the judgment docket, noting thereon the day, hour and minute of such docketing. The clerk shall rely on the existence of a separate section within the judgment for those judgments subject to ORCP 70 A(2) in determining whether the judgment is a judgment for the payment of money and shall only docket therefrom.

(2) With respect to any judgment docketed in a circuit court judgment docket, or a judgment for unpaid child or spousal support recognized in another state, the following apply:

(a) At any time thereafter, so long as the original judgment remains in force under ORS 18.360, or if a judgment for unpaid

child or spousal support recognized in another state remains in force under that state's law, and is unsatisfied in whole or part, the judgment creditor, or the agent of the judgment creditor, may have recorded a certified copy of the judgment or a lien record abstract in the County Clerk Lien Record for any county in this state.

(b) A certified copy or a lien record abstract of any judgment renewed pursuant to ORS 18.360 or a judgment for unpaid child or spousal support recognized in another state and in force under that state's law may likewise be recorded in the County Clerk Lien Record in any county.

(c) A certified copy of the judgment, or a certified copy of any renewed judgment under ORS 18.360 or a judgment for unpaid child or spousal support recognized in another state and in force under that state's law, or lien record abstract of either, shall be recorded in any county other than in the county where a judgment is originally docketed in order for that judgment to be a lien upon the real property and, if the judgment is for unpaid child or spousal support, the personal property of the judgment debtor in that county.

(3) Liens arising by operation of law in another state against real property for amounts of overdue payments under a support order, as defined in ORS 110.303, shall be accorded full faith and credit if the state agency, party or other entity seeking to enforce the lien follows the applicable procedures for recording and service of notice of claim of lien as required by this section and ORS 18.325. A state agency, party or other entity may not file an action to enforce a lien described in this section until the underlying judgment has been filed in Oregon as provided in ORS chapter 110.

(4) This section does not apply to justice and municipal court judgments. [Amended by 1961 c.151 §1; 1983 c.405 §1; 1983 c.696 §3; 1985 c.343 §1; 1987 c.586 §3; 1989 c.768 §5; 1993 c.223 §2; 1997 c.801 §59; 1999 c.80 §31; 1999 c.788 §18]

Note: See second note following 18.360.

18.325 Form for lien record abstract. (1) Unless otherwise prescribed by law, a person recording a lien record abstract shall use substantially the following form:

LIEN RECORD ABSTRACT

The undersigned states:

A. Creditor/Prevailing Party Information:

___ 1. The creditor/prevailing party is:

_____ and the address of the creditor is:

_____ under judgment, decree, order or petition entered on _____ (date) in the _____ Court for _____ (County) of _____ (State) under Case No. _____.

___ 2. The Creditor's attorney's name is

_____ Attorney's Address is:

_____ Attorney's Phone No. is: _____

B. Debtor/Losing Party Information:

___ 1. The Debtor/losing party is:

___ 2. Debtor's address (if known):

___ 3. Debtor's Social Security No. or Taxpayer Identification No. (if known):

___ 4. Debtor's driver license no. and state of issuance for the license (if known):

___ 5. Name of debtor's attorney (if known):

C. Judgment Information:

___ 1. The amount of the judgment is:

___ 2. The amount of the costs is:

___ 3. The amount of attorney fees, if any is:

D. The Real or Personal Property to Be Affected

(Check appropriate box):

___ All real property of the debtor/losing party, now or hereafter acquired, in _____ County as provided under ORS 18.320 and 18.350.

___ The following described real or personal property of debtor (legal description as set forth or on attached Exhibit):

IN WITNESS WHEREOF, the undersigned person or persons have executed this abstract this ___ day of _____, 2___.

State of Oregon)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2___, by _____.

Notary Public for Oregon
My commission expires: _____

State of Oregon)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ___ day of ___, 2___, by _____ and by _____ of _____, a corporation on behalf of the corporation.

Notary Public for Oregon
My commission expires: _____

(2) A lien record abstract that is the result of a judgment for unpaid child or spousal support entered in another state shall be on the form prescribed by rules adopted by the Department of Human Services in lieu of the form required by subsection (1) of this section. [1987 c.586 §2b; 1989 c.171 §2; 1999 c.59 §6; 1999 c.80 §32; 1999 c.195 §5]

Note: 18.325 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 18 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

18.330 [Repealed by 1959 c.558 §29 (18.335 enacted in lieu of 18.330)]

18.335 Trial court file; authority to issue post-judgment process against personal property. (1) In every proceeding, the clerk shall attach together, file and maintain in the office of the clerk the following documents in the order in which they are filed until all actions in such proceeding have been completed and thereafter for such period of time as may be required under the minimum retention schedule prescribed by the State Court Administrator pursuant to ORS 8.125:

(a) The original papers filed in the court, whether before or after judgment, including but not limited to the summons and proof of service, pleadings, motions, affidavits, depositions, stipulations and orders.

(b) The judgment.

(c) The notice of appeal and the undertaking on appeal, if any.

(2) Except as provided in ORS 23.030, the court in which the judgment was originally entered is the only court with authority to issue post-judgment process under ORS 18.600 to 18.850 or ORS chapter 23 against personal property involving that judgment. Except as provided in ORS 23.030, the court in this state where a foreign judgment is first filed is the only court with authority to issue post-judgment process against personal property involving that judgment.

(3) Subsection (2) of this section does not apply to justice courts. [1959 c.558 §30 (enacted in lieu of 18.330); 1979 c.284 §54; 1983 c.405 §2; 1987 c.873 §21; 1997 c.340 §5; 1997 c.872 §16; 2001 c.249 §67]

18.340 [Repealed by 1959 c.558 §51]

18.350 Judgment lien; undertaking in lieu of lien; filing satisfaction of judgment. (1) Subject to the requirements of this section, from the time of docketing an original or renewed circuit court judgment as provided in ORS 18.320, such judgment shall be a lien upon all the real property of the judgment debtor within the county where the same is docketed, or which the judgment debtor may afterwards acquire therein, during the time prescribed in ORS 18.360. Such judgment shall not be a lien upon any real property of the judgment debtor acquired after the effective date of the discharge of the judgment under federal bankruptcy laws. All docketed judgments shall be presumed to have not been discharged until the judgment debtor establishes that the judgment has been discharged.

(2) A judgment lien expires if an appeal is taken from any circuit court judgment and a supersedeas undertaking, as defined in ORS 19.005, is filed by the judgment debtor. The clerk shall note the expiration of the lien in the judgment docket. The lien expires when the time expires for the filing of objections to the undertaking, or upon approval of the undertaking by the court, whichever is later.

(3) When the lien of a circuit court judgment ceases in the county in which the judgment was originally docketed, it shall cease in every other county in which a certified copy of the judgment or a lien record abstract has been recorded. When such judgment has been fully satisfied, it shall be the responsibility of the judgment creditor to file a full satisfaction in the county in which the judgment was originally docketed. The clerk of the circuit court shall not charge a fee for filing a satisfaction of judgment. Upon satisfaction in full of the judgment, the judgment creditor shall deliver to the judgment debtor an executed satisfaction of the judgment for every county where a certified copy of the judgment or a lien record abstract has been recorded.

(4) A judgment entered in the small claims department of a circuit court in an amount of less than \$3,000, exclusive of costs, may become a lien on the real property of the judgment debtor only as provided in ORS 46.488.

(5) The provisions of this section apply only to circuit court judgments. [Amended by 1961 c.151 §2; 1983 c.405 §3; 1983 c.696 §3a; 1985 c.343 §2; 1987 c.586 §4; 1993 c.523 §1; 1997 c. 71 §13; 1997 c.801 §66; 1999 c.195 §1; 1999 c.788 §21a]

Note: Section 8 (1) and (2), chapter 195, Oregon Laws 1999, provides:

Sec. 8. (1) The amendments to ORS 18.350 by section 1 of this 1999 Act, and the amendments to ORS 46.488 by section 58, chapter 801, Oregon Laws 1997, and by section 3 of this 1999 Act, do not affect any judgment docketed in the circuit court under the provisions of ORS 46.488 (1997 Edition) before the effective date of this 1999 Act [October 23, 1999]. Notwithstanding the amendments to ORS 46.488 by section 58, chapter 801, Oregon Laws 1997, and by section 3 of this 1999 Act, any judgment entered in the small claims department of a circuit court before the effective date of this 1999 Act that was not docketed in the circuit court under the provisions of ORS 46.488 (1997 Edition) before the effective date of this 1999 Act may become a lien on real property only in the manner provided by ORS 46.488 (1997 Edition).

(2) Any judgment docketed before the effective date of this 1999 Act, including judgments docketed under the provisions of ORS 46.488 (1997 Edition), that did not become a lien on real property by reason of failure of the judgment creditor to file a lien certificate with the court in the manner required by ORS 18.350 (4) to (9) (1997 Edition) shall automatically become a lien on real property to the extent described in ORS 18.350, as amended by section 1 of this 1999 Act, on January 1, 2000, and shall be considered in all respects as though the judgment had been docketed on January 1, 2000. [1999 c.195 §8(1),(2); 1999 c.195 §8a(1),(2)]

18.355 Liens based on justice and municipal court judgments. (1) Subject to the requirements of this section and ORS 221.344, from the time that an original or renewed judgment of a justice or municipal court is transcribed or recorded as provided in ORS 52.635 or 221.351, the judgment is a lien upon all the real property of the judgment debtor within the county where the judgment is transcribed or recorded, and upon any real property that the judgment debtor may thereafter acquire in that county during the time prescribed in ORS 18.365. The judgment is not a lien upon any real property of the judgment debtor acquired after the effective date of the discharge of the judgment under federal bankruptcy laws. All transcribed or recorded judgments of justice and municipal courts are presumed to be in force until the judgment debtor has established that the judgment has been discharged.

(2) A judgment lien based on a justice or municipal court judgment expires if an appeal is taken from any judgment and a supersedeas undertaking, as defined in ORS 19.005, is filed by the judgment debtor. The clerk of the justice or municipal court

shall note the expiration of the lien in the judgment docket. The lien expires when the time expires for the filing of objections to the undertaking, or upon approval of the undertaking by the court, whichever is later.

(3) When the lien of a justice or municipal court judgment ceases in the county in which the judgment was originally recorded, the lien shall cease in every other county in which a certified copy of the judgment or a lien record abstract has been recorded. When the judgment has been fully satisfied, it is the responsibility of the judgment creditor to file a full satisfaction in any circuit court to which the judgment has been transcribed under ORS 52.635, and to record the satisfaction in the County Clerk Lien Record for the county in which the court is located if a certified copy of the judgment or a lien record abstract for the judgment was recorded in that County Clerk Lien Record. Upon satisfaction in full of the judgment, the judgment creditor shall deliver to the judgment debtor an executed satisfaction of the judgment for any other county where a certified copy of the judgment or a lien record abstract has been recorded. The county clerk shall charge a fee as provided in ORS 205.320 for filing a satisfaction of judgment. [1999 c.788 §16]

Note: See note under 18.315.

18.360 Expiration of judgment and lien; renewal; judgment in criminal action; judgments for property division. (1)

Except as provided in this section and ORS 25.700, whenever a period of 10 years elapses after the entry of a judgment in a circuit court, the judgment and any docketed or recorded lien thereof shall expire. However, before the expiration of 10 years the circuit court for the county in which the judgment originally was entered, on motion, may renew the judgment and cause a notation in the register and the judgment docket indicating the renewal of the judgment to be made. The renewed judgment and any lien thereof expire 10 years after entry of the renewed judgment. If the judgment is renewed, the judgment creditor or the agent of the judgment creditor may cause to be recorded in the County Clerk Lien Record of any other county in this state a certified copy of the renewed judgment or a lien record abstract. Execution may issue upon the renewed judgment until the judgment expires or is fully satisfied.

(2) Notwithstanding subsection (1) of this section, a judgment in a criminal action, as defined in ORS 131.005, and any lien created by the docketing or recording of the judgment expire 20 years after entry of the judgment, and may not be renewed.

(3) Notwithstanding subsection (1) of this section, whenever a judgment under ORS 107.105 (1)(f) provides for the future payment of money in gross or in installments and when the future gross payment or any installment does not become due for 10 or more years from the date of entry of the judgment, that part of the judgment and the lien thereof shall not expire until 10 years after the date on which the future gross payment or installment becomes due. However, before the expiration of 10 years after the date on which the future gross payment or installment becomes due, the circuit court for the county in which the judgment was entered, may renew, on motion, that part of the judgment that has become due within the preceding 10 years and cause a new entry and docketing of that part of the judgment to be made. A judgment renewed under this subsection and any lien thereof expire 10 years after entry of the renewed judgment. If the judgment is renewed, the judgment creditor or the agent of the judgment creditor may cause to be recorded in the County Clerk Lien Record of any other county of the state a certified copy of the renewed judgment or a lien record abstract. Execution may issue upon the renewed judgment until the judgment expires or is fully satisfied.

(4) The provisions of this section do not apply to justice and municipal courts. [Amended by 1983 c.405 §4; 1983 c.696 §32a; 1985 c.343 §3; 1987 c.586 §5; 1993 c.716 §1; 1993 c.763 §6; 1995 c.79 §5; 1997 c.801 §103; 1999 c.788 §22]

Note: Section 104, chapter 801, Oregon Laws 1997, provides:

Sec. 104. (1) ORS 18.360, as amended by section 103 of this Act, applies to:

(a) All judgments in criminal actions, as defined in ORS 131.005, entered on or after January 15, 1998, and all judgment liens on real property created by those judgments; and

(b) All judgments in criminal actions, as defined in ORS 131.005, entered before January 15, 1998, and all judgment liens on real property created by those judgments, that have not expired under the provisions of ORS 18.360 (1995 Edition) before January 15, 1998.

(2) If a judgment in a criminal action, as defined in ORS 131.005, is renewed pursuant to the provisions of ORS 18.360 (1995 Edition) before January 15, 1998, and the renewed judgment is unexpired on January 15, 1998, the judgment and any lien created by the judgment expire on the date specified by ORS 18.360, as amended by section 103 of this Act, and do not expire on the date specified by ORS 18.360 (1995 Edition).

(3) The amendments to ORS 18.360 by section 103 of this Act do not revive any judgment or lien that expires under the operation of ORS 18.360 (1995 Edition) before January 15, 1998. [1997 c.801 §104]

Note: Sections 11 and 12, chapter 343, Oregon Laws 1985, provide:

Sec. 11. (1) Notwithstanding the changes made to ORS 18.320 and 18.360 by sections 1 and 3 of this Act, when a certified transcript of the original docket entry of a judgment or the new record entry of a judgment renewed under ORS 18.360 was recorded in a County Clerk Lien Record between October 1, 1983, and October 1, 1985, under chapter 696, Oregon Laws 1983, the judgment is a lien upon all the real property of the judgment debtor within the county for which the County Clerk Lien Record is maintained, or which the judgment debtor may afterwards acquire in that county, during the time prescribed in ORS 18.360. If a court of competent jurisdiction rules that a judgment so recorded is not a lien as of the time it was recorded, the judgment shall be a lien as described in this subsection from the effective date of this Act [July 3, 1985].

(2) Notwithstanding chapter 696, Oregon Laws 1983, when a certified transcript of the original docket entry of a judgment or the new record entry of a judgment renewed under ORS 18.360 was docketed in a judgment docket between October 1, 1983, and October 1, 1985, the judgment is a lien upon all the real property of the judgment debtor within the county, or which the judgment debtor may afterwards acquire in that county, during the time prescribed in ORS 18.360. If a court of competent jurisdiction rules that a judgment so docketed is not a lien as of the time it was docketed, the judgment shall be a lien as described in this subsection from the effective date of this Act. [1985 c.343 §11]

Sec. 12. (1) When a certified transcript of the original docket entry of a judgment was recorded in a County Clerk Lien Record between October 1, 1983, and October 1, 1985, if the judgment creditor renews the judgment under ORS 18.360, the certified transcript of the new docket entry of the renewed judgment shall be filed and docketed in the judgment docket of the county.

(2) When a certified transcript of the original docket entry of a judgment was recorded in a County Clerk Lien Record between October 1, 1983, and October 1, 1985, a certificate obtained under ORS 18.400 showing the fact of satisfaction of the judgment shall be entered upon the same County Clerk Lien Record. [1985 c.343 §12]

Note: Section 6, chapter 716, Oregon Laws 1993, provides:

Sec. 6. The amendments to ORS 18.360 by section 1, chapter 716, Oregon Laws 1993, apply to all judgments entered on or after November 4, 1983, that provide for the future payment of money in gross or in installments. [1993 c.716 §6; 1995 c.236 §1]

18.365 Expiration of justice and municipal court judgments and liens. (1) Except as provided in this section, whenever a period of 10 years elapses after the entry of a judgment by a justice or municipal court, the judgment and any lien arising out of recording the judgment expires.

(2) Upon motion of the judgment creditor, the justice or municipal court that rendered the judgment may renew the judgment. The motion must be made before the expiration of the judgment under subsection (1) of this section. The clerk of the court that rendered the judgment must note in the judgment docket for the court that the judgment has been renewed. The renewed judgment and any lien created by the judgment expire 10 years after the docketing of the renewed judgment. If the judgment is renewed, the judgment creditor or the agent of the judgment creditor may cause to be recorded in the County Clerk Lien Record a certified copy of the renewed judgment, or a lien record abstract in the form provided by ORS 18.325, in the same manner as provided in ORS 52.635 and 221.351 for original judgments. If the judgment is a civil judgment entered by a justice court, the renewed judgment may be transcribed to the circuit court for the county in which the justice court is located in the same manner as provided in ORS 52.635 for original judgments. Execution may issue upon the renewed judgment until the judgment expires or is fully satisfied.

(3) Notwithstanding subsection (1) of this section, a judgment in a criminal action, as defined in ORS 131.005, and any lien created by the recording of the judgment expire 20 years after entry of the judgment and may not be renewed. [1999 c.788 §17]

Note: See note under 18.315.

18.370 Priority of lien over unrecorded conveyance. A conveyance of real property, or any portion thereof, or interest therein, shall be void as against the lien of a judgment, unless such conveyance be recorded at the time of docketing such judgment or the recording of a certified copy of the judgment or a lien record abstract as the case may be. [Amended by 1987 c.586 §6]

18.380 [Repealed by 1985 c.343 §14]

18.390 [Amended by 1961 c.151 §3; 1983 c.696 §4; repealed by 1985 c.343 §14]

18.400 Record of satisfaction or assignment of judgment; support orders. (1) Subject to subsection (5) of this section, when any judgment is paid or satisfied, that fact may be noted upon the judgment docket of original entry over the signature of the officer having the official custody of such docket, or of the party entitled to receive and receiving payment or satisfaction, or of the attorney or attorneys representing the judgment creditor in the suit, action or proceeding in which the judgment was rendered; provided, such satisfaction shall not be made by an attorney whose authority over the judgment has expired. Upon annulment or payment or satisfaction and entry thereof being so made, the officer having the official custody of the judgment docket of original entry shall, upon request of any person and payment of the applicable fee, issue a certificate showing the fact of satisfaction of such judgment, or annulment of the lien thereof, describing the same sufficiently for identification; and such certificate shall, upon presentation to the officer having official custody of the judgment docket or the clerk in any county in which a certified copy of the judgment or lien record abstract may have been docketed or recorded, be entered upon such docket or recorded in the County Clerk Lien Record where a certified copy of the judgment or a lien record abstract has been recorded for the purpose of making the satisfaction of judgment a matter of record in such county.

(2) Evidence of the satisfaction of any judgment may also be perpetuated by the execution and acknowledgment by the judgment creditor, or the assignee or personal representative of the judgment creditor, of a certificate describing the judgment with convenient certainty, and specifying that the judgment has been paid or otherwise satisfied or discharged. Such certificate

shall be acknowledged or proved and certified in the manner provided by law for conveyances of real property, and may be recorded in the County Clerk Lien Record of any county or counties. In case such judgment has been docketed in the judgment docket of a court of any such county, the official custodian of such docket shall, upon filing of such certificate of annulment or satisfaction, make notation thereof in the judgment docket. The procedures authorized by this subsection may be used only when the judgment does not arise pursuant to a support order entered under ORS 108.010 to 108.550, 416.310 to 416.340 and 416.510 to 416.990 and ORS chapter 110 or ORS 419B.400 or 419C.590 or ORS chapter 25, 107 or 109 which directs that payments are to be made to the Department of Justice.

(3) An assignment of any judgment, executed in like manner, may be:

(a) Filed with the official custodian of the judgment docket of any county in which the judgment has been docketed, and upon such filing shall be docketed therein; or

(b) Recorded in the office of the county clerk of any county in which the judgment was recorded in the County Clerk Lien Record.

(4) In any case in which a state agency is assigned or subrogated to the support rights of a person under ORS 418.032, 418.042, 419B.406 or 419C.597 or similar statutes of another state, a notice of assignment of judgment bearing the signature of the Administrator of the Division of Child Support or the authorized representative of the administrator shall be entitled to record, and with like effect, as an assignment of judgment under subsection (3) of this section.

(5)(a) In cases where support payments ordered under ORS 416.310 to 416.340 and 416.510 to 416.990 and ORS chapter 110 or ORS 419B.400 or 419C.590 or ORS chapter 25, 107, 108 or 109 are to be paid to the Department of Justice, any full or partial satisfaction of a support payment judgment signed by an obligee or an attorney representing the obligee must be mailed to or delivered to the Department of Justice, and not to the clerk of the court. The Department of Justice may provide support satisfaction forms, along with specific instructions. No credit shall be given for such support satisfaction except as provided by this subsection. The department shall credit such support satisfaction to the support judgment pay records maintained by the department, except to the extent that the judgment is assigned to the Department of Human Services or subrogated to a state agency under ORS 418.032, 418.042, 419B.406 or 419C.597. The department shall then promptly forward the satisfaction instrument to the appropriate clerk of the court together with a Department of Justice certificate stating the amount of support satisfaction entered on the pay records of the department. The clerk of the court shall enter on the judgment docket only the amount of the support satisfaction shown on the Department of Justice certificate, and not the amount shown on the satisfaction instrument.

(b) In addition to or in lieu of a certificate and satisfaction instrument provided for in paragraph (a) of this subsection, the Department of Justice may execute and file satisfactions for judgments based on support orders subject to paragraph (a) of this subsection if the obligor provides a sworn affidavit that indicates that the judgment has been paid in full and the department certifies that the department has a complete pay record for the support payment judgment and further certifies that there are no arrearages. The department shall be considered to have a complete pay record if the department has kept the pay record for the support payment judgment from the date of the first support payment required under the judgment, or if the obligee or an entity providing enforcement services under ORS 25.080 establishes arrearages for the time period the pay record was not kept by the department. A satisfaction of judgment under this paragraph need not be notarized. If the satisfaction of judgment is for any payment made to the Department of Justice for amounts that have not been assigned by the obligee to the state, the department shall give notice to the obligee in the manner provided by ORS 25.085. The notice must inform the obligee that the Department of Justice will execute and file the satisfaction of judgment unless the department receives a request for a hearing within 30 days after the date of the mailing of the notice. If an obligee requests a hearing, the Department of Justice shall conduct the hearing as a contested case under ORS 183.310 to 183.550 before a hearings officer appointed by the Department of Justice.

(c) Satisfactions of support payment judgments in cases where support payments are not ordered to be paid to the Department of Justice or where enforcement services are not provided pursuant to ORS 25.080 must be filed with the clerk of the court.

(6) The Department of Human Services, the Oregon Youth Authority, assistant attorneys general representing these agencies, the administrator of the Division of Child Support and the administrator's designees may, in their discretion, sign and mail or deliver to the Department of Justice a full or partial satisfaction of a support payment judgment to the extent that such judgment is assigned to the Department of Human Services or Oregon Youth Authority. Notwithstanding subsection (5) of this section, the Department of Justice may give credit for such satisfaction and shall forward to the clerk of the court the satisfaction instrument together with a Department of Justice certificate stating the amount of support satisfaction entered on the pay records of the department for entry on the judgment docket of the amount of satisfaction shown on the certificate and not the amount shown on the satisfaction instrument. [Amended by 1965 c.619 §7; 1979 c.694 §1; 1983 c.696 §5; 1985 c.343 §4; 1985 c.496 §18; 1985 c.610 §2; 1987 c.586 §7; 1993 c.33 §275; 1995 c.608 §20; 1997 c.123 §1; 1997 c.704 §12; 1999 c.788 §23; 2001 c.900 §235]

18.405 Notice of satisfaction of support judgment. At least five days prior to any application to the circuit court for an order fully or partially satisfying a support judgment, if child support rights, as defined in ORS 25.010, have been assigned to the state, then a true copy of all papers to be submitted as part of such application shall be served by personal delivery or first-class mail on the Administrator of the Division of Child Support of the Department of Justice or on the branch office providing support services to the county in which the application will be made. [1979 c.694 §3; 2001 c.334 §1]

18.410 Procedure to satisfy judgment; hearing; judgments docketed in another county; disposition of money. (1) This section establishes a procedure to obtain a satisfaction for a judgment for the payment of money when any person, against whom exists a judgment for the payment of money or who is interested in any property upon which any such judgment is a lien, is unable to obtain a satisfaction from a judgment creditor for any reason. The following apply to a procedure under this section:

(a) The procedure and all filings, entries and other actions relating to the procedure are to be considered as a continuation of the original action in which the judgment was entered.

(b) No appearance fee shall be charged for proceeding under this section.

(2) A person described in subsection (1) of this section may request the court which gave the judgment to determine whether the judgment has been paid in full or to determine the amount necessary to satisfy the judgment at a specific time in the future. To make such request, the person must do all of the following:

(a) File a motion with the court accompanied by an affidavit setting forth all the following, to the extent known to the person:

(A) The date of entry and principal amount of the judgment.

(B) The rate of interest and the date the rate of interest began.

(C) The date or dates and amounts of any payments on the judgment.

(D) Any amount the person believes is remaining to be paid on the judgment.

(E) Supporting mathematical calculations.

(F) Any other information necessary or helpful to the court in making its determination.

(b) Serve the motion and supporting affidavit on the judgment creditor and, if the person making the request is not the judgment debtor, on the judgment debtor. If the motion is filed within one year of the date of entry of the judgment to which the motion for satisfaction relates, service shall be made as provided in ORCP 9. If the motion is filed more than one year after the date of entry of the judgment to which the motion for satisfaction relates, service shall be made as provided in ORCP 7.

(c) File proof of service with the court.

(3) Any party served under subsection (2)(b) of this section shall have 21 days or such additional time as may be allowed by the court within which to serve and file a responding affidavit with the court setting forth those parts of the original affidavit with which the person disagrees and any supporting information or mathematical calculations necessary to support the contentions of the objecting party.

(4) Not less than seven days after notice of hearing given to the person filing the motion and to the parties served with the motion, the court shall hear and determine the issues between the parties in a summary fashion without a jury. All the following apply to the court proceeding:

(a) The court shall give the parties a reasonable opportunity to present evidence relevant to any factual issues in dispute as shown by the affidavits.

(b) If the court, based on the record and sufficient evidence, is satisfied that the person making the request is entitled to relief, the court shall issue an order stating all the following:

(A) That the judgment has been satisfied in full or, if the judgment has not been satisfied in full, the specific amount that will satisfy the judgment on a date or within a period of time specified in the order.

(B) The party or parties to whom the money is owed.

(c) If the court finds that the judgment creditor's failure to file a satisfaction of judgment pursuant to ORS 18.350 or 18.355 was willful, the court, on motion, may do either or both of the following:

(A) The court may require the judgment creditor to pay to the demanding party a sum of money determined to be reasonable as attorney fees, costs and disbursements by awarding the demanding party a separate judgment for such costs.

(B) The court's order may specify that the demanding party may satisfy the judgment by paying such amounts determined by the court to be necessary to satisfy the judgment less that sum of money the court determines to be reasonable as attorney fees, costs and disbursements.

(5) If the order provides that the judgment has been satisfied or if money is paid to the clerk in the amount and within the time specified in the order, the clerk shall thereupon satisfy the judgment upon the records of the court.

(6) If such judgment has been entered in the records or docketed in the judgment docket in any other county than the county in which it was rendered, then a certified copy of the satisfaction may be used for any of the following purposes:

(a) Entry in the register of the circuit court for such other county and the clerk of that court shall thereupon satisfy the judgment upon the records of that court.

(b) Recording in the County Clerk Lien Record in any county in which a certified copy of the judgment or lien record abstract was recorded.

(7) The clerk shall, at any time, pay the money over to the person who shall be determined to be entitled thereto by the order of the court in which the judgment was given. [Amended by 1985 c.540 §26; 1987 c.586 §8; 1989 c.768 §6; 1999 c.788 §24]

18.420 Proceedings after discharge in bankruptcy. (1) Any person discharged from debts pursuant to the federal bankruptcy laws may file in any court or tribunal in which a judgment has at any time been rendered against the person, either before or after such discharge, a motion in the suit, action or proceeding for the discharge of the judgment from the record. After notice to the judgment creditor, or to any assignee of the judgment creditor whose assignment has been filed or recorded

pursuant to ORS 18.400, the court shall enter a final order that the judgment be discharged and satisfied of record if the debtor establishes that:

(a) The debtor has been discharged from the payment of the judgment or the claim upon which the judgment was based; and

(b) Either there was no property upon which the judgment became a lien under ORS 18.350, 52.635 or 221.351, as of the date the petition for relief is filed under the federal bankruptcy laws, or if there was such property, the value of the property on the date of the filing of the petition was not more than the outstanding balance of any prior lien or liens upon the property.

(2) If the debtor fails to meet the burden of proof established by subsection (1) of this section, the court shall enter a final order denying the debtor's motion.

(3) For the purposes of this section, where notice was given in connection with bankruptcy proceedings to a creditor retaining a beneficial interest in an assigned judgment or claim, such notice shall provide the basis for the satisfaction of that portion of said judgment in which the creditor retains a beneficial interest. Where the bankrupt received notice prior to the adjudication of bankruptcy of the assignment of a judgment or claim, notice to the assignor retaining a beneficial interest shall not provide the basis for satisfaction for that portion of the judgment which represents the amount actually paid by the assignee of said judgment for said claim and actual court costs incurred by said assignee in prosecuting said claim. [Amended by 1961 c.538 §1; 1987 c.586 §9; 1991 c.696 §1; 1999 c.788 §25]

18.425 [1987 c.774 §29; 1997 c.801 §123; 1999 c.788 §26; repealed by 2001 c.779 §10]

CONTRIBUTION

18.430 Contribution among judgment debtors; subrogation of surety. When property liable to an execution against several persons is sold thereon, and more than a due proportion of the judgment is levied upon the property of one of them, or one of them pays, without a sale, more than that person's proportion, that person may compel contribution from the others; and when a judgment is against several, and is upon an obligation or contract of one of them as security for another, and the surety pays the amount, or any part thereof, either by sale of property or before sale, the surety may compel repayment from the principal. In such cases, the person so paying or contributing shall be entitled to the benefit of the judgment to enforce contribution or repayment, if within 30 days after payment the person files with the clerk of the court where the judgment was rendered, notice of payment and claim to contribution or repayment; upon filing such notice, the clerk shall make an entry thereof in the margin of the docket where the judgment is entered. In any county where the judgment was recorded the person may have the notice of payment and claim to contribution or repayment recorded in the County Clerk Lien Record. [Amended by 1987 c.586 §10]

18.440 Right of contribution among joint tortfeasors; limitations; subrogation of insurer; effect on indemnity right.

(1) Except as otherwise provided in this section, where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them. There is no right of contribution from a person who is not liable in tort to the claimant.

(2) The right of contribution exists only in favor of a tortfeasor who has paid more than a proportional share of the common liability, and the total recovery of the tortfeasor is limited to the amount paid by the tortfeasor in excess of the proportional share. No tortfeasor is compelled to make contribution beyond the proportional share of the tortfeasor of the entire liability.

(3) A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement nor in respect to any amount paid in a settlement which is in excess of what is reasonable.

(4) A liability insurer, who by payment has discharged in full or in part the liability of a tortfeasor and has thereby discharged in full its obligation as insurer, is subrogated to the tortfeasor's right of contribution to the extent of the amount it has paid in excess of the tortfeasor's proportional share of the common liability. This subsection does not limit or impair any right of subrogation arising from any other relationship.

(5) This section does not impair any right of indemnity under existing law. Where one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of the indemnity obligation.

(6) This section shall not apply to breaches of trust or of other fiduciary obligation. [1971 c.665 §1; 1975 c.269 §1]

18.445 Basis for proportional shares of tortfeasors. (1) The proportional shares of tortfeasors in the entire liability shall be based upon their relative degrees of fault or responsibility. In contribution actions arising out of liability under ORS 18.470, the proportional share of a tortfeasor in the entire liability shall be based upon the tortfeasor's percentage of the common negligence of all tortfeasors.

(2) If equity requires, the collective liability of some as a group shall constitute a single share. Principles of equity applicable to contribution generally shall apply. [1975 c.269 §2]

18.450 Enforcement of right of contribution; commencement of separate action; barring right of contribution; effect

of satisfaction of judgment. (1) Whether or not judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced by separate action.

(2) Where a judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one against other judgment defendants by motion upon notice to all parties to the action.

(3) If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution, any separate action by the tortfeasor to enforce contribution must be commenced within two years after the judgment has become final by lapse of time for appeal or after appellate review.

(4) If there is no judgment for the injury or wrongful death against the tortfeasor seeking contribution, the right of contribution of that tortfeasor is barred unless the tortfeasor has either:

(a) Discharged by payment the common liability within the statute of limitations period applicable to claimant's right of action against the tortfeasor and has commenced action for contribution within two years after payment; or

(b) Agreed while action is pending against the tortfeasor to discharge the common liability and has within two years after the agreement paid the liability and commenced action for contribution.

(5) The running of the statute of limitations applicable to a claimant's right of recovery against a tortfeasor shall not operate to bar recovery of contribution against the tortfeasor or the claimant's right of recovery against a tortfeasor specified in ORS 18.470 (2) who has been made a party by another tortfeasor.

(6) The recovery of a judgment for an injury or wrongful death against one tortfeasor does not of itself discharge the other tortfeasors from liability for the injury or wrongful death unless the judgment is satisfied. The satisfaction of the judgment does not impair any right of contribution.

(7) The judgment of the court in determining the liability of the several defendants to the claimant for an injury or wrongful death shall be binding as among such defendants in determining their right to contribution. [1975 c.269 §3; 1995 c.696 §1]

18.455 Covenant not to sue; effect; notice. (1) When a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury to person or property or the same wrongful death or claimed to be liable in tort for the same injury or the same wrongful death:

(a) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide; but the claimant's claim against all other persons specified in ORS 18.470 (2) for the injury or wrongful death is reduced by the share of the obligation of the tortfeasor who is given the covenant, as determined under ORS 18.480 and 18.485; and

(b) It discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

(2) When a covenant described in subsection (1) of this section is given, the claimant shall give notice of all of the terms of the covenant to all persons against whom the claimant makes claims. [1975 c.269 §4; 1995 c.696 §2]

18.460 Severability. If any provision of ORS 18.440 to 18.460 or the application thereof to any person is held invalid, the invalidity shall not affect other provisions or applications of ORS 18.440 to 18.460 which can be given effect without the invalid provision or application and to this end the provisions of ORS 18.440 to 18.460 are severable. [1975 c.269 §5]

COMPARATIVE NEGLIGENCE

18.470 Contributory negligence not bar to recovery; comparative negligence standard; third party complaints. (1) Contributory negligence shall not bar recovery in an action by any person or the legal representative of the person to recover damages for death or injury to person or property if the fault attributable to the claimant was not greater than the combined fault of all persons specified in subsection (2) of this section, but any damages allowed shall be diminished in the proportion to the percentage of fault attributable to the claimant. This section is not intended to create or abolish any defense.

(2) The trier of fact shall compare the fault of the claimant with the fault of any party against whom recovery is sought, the fault of third party defendants who are liable in tort to the claimant, and the fault of any person with whom the claimant has settled. The failure of a claimant to make a direct claim against a third party defendant does not affect the requirement that the fault of the third party defendant be considered by the trier of fact under this subsection. Except for persons who have settled with the claimant, there shall be no comparison of fault with any person:

(a) Who is immune from liability to the claimant;

(b) Who is not subject to the jurisdiction of the court; or

(c) Who is not subject to action because the claim is barred by a statute of limitation or statute of ultimate repose.

(3) A defendant who files a third party complaint against a person alleged to be at fault in the matter, or who alleges that a person who has settled with the claimant is at fault in the matter, has the burden of proof in establishing:

(a) The fault of the third party defendant or the fault of the person who settled with the claimant; and

(b) That the fault of the third party defendant or the person who settled with the claimant was a contributing cause to the injury or death under the law applicable in the matter.

(4) Any party to an action may seek to establish that the fault of a person should not be considered by the trier of fact by reason that the person does not meet the criteria established by subsection (2) of this section for the consideration of fault by the trier of fact.

(5) This section does not prevent a party from alleging that the party was not at fault in the matter because the injury or death was the sole and exclusive fault of a person who is not a party in the matter. [1971 c.668 §1; 1975 c.599 §1; 1995 c.696 §3]

18.475 Doctrines of last clear chance and implied assumption of risk abolished. (1) The doctrine of last clear chance is abolished.

(2) The doctrine of implied assumption of the risk is abolished. [1975 c.599 §4]

18.480 Special questions to trier of fact; jury not to be informed of settlement. (1) When requested by any party the trier of fact shall answer special questions indicating:

(a) The amount of damages to which a party seeking recovery would be entitled, assuming that party not to be at fault.

(b) The degree of fault of each person specified in ORS 18.470 (2). The degree of each person's fault so determined shall be expressed as a percentage of the total fault attributable to all persons considered by the trier of fact pursuant to ORS 18.470.

(2) A jury shall be informed of the legal effect of its answer to the questions listed in subsection (1) of this section.

(3) The jury shall not be informed of any settlement made by the claimant for damages arising out of the injury or death that is the subject of the action.

(4) For the purposes of subsection (1) of this section, the court may order that two or more persons be considered a single person for the purpose of determining the degree of fault of the persons specified in ORS 18.470 (2). [1975 c.599 §2; 1995 c.79 §6; 1995 c.696 §4]

18.485 Liability of defendants several only; determination of defendants' shares of monetary obligation; reallocation of uncollectible obligation; parties exempt from reallocation. (1) Except as otherwise provided in this section, in any civil action arising out of bodily injury, death or property damage, including claims for emotional injury or distress, loss of care, comfort, companionship and society, and loss of consortium, the liability of each defendant for damages awarded to plaintiff shall be several only and shall not be joint.

(2) In any action described in subsection (1) of this section, the court shall determine the award of damages to each claimant in accordance with the percentages of fault determined by the trier of fact under ORS 18.480 and shall enter judgment against each party determined to be liable. The court shall enter a judgment in favor of the plaintiff against any third party defendant who is found to be liable in any degree, even if the plaintiff did not make a direct claim against the third party defendant. The several liability of each defendant and third party defendant shall be set out separately in the judgment, based on the percentages of fault determined by the trier of fact under ORS 18.480. The court shall calculate and state in the judgment a monetary amount reflecting the share of the obligation of each person specified in ORS 18.470 (2). Each person's share of the obligation shall be equal to the total amount of the damages found by the trier of fact, with no reduction for amounts paid in settlement of the claim or by way of contribution, multiplied by the percentage of fault determined for the person by the trier of fact under ORS 18.480.

(3) Upon motion made not later than one year after judgment has become final by lapse of time for appeal or after appellate review, the court shall determine whether all or part of a party's share of the obligation determined under subsection (2) of this section is uncollectible. If the court determines that all or part of any party's share of the obligation is uncollectible, the court shall reallocate any uncollectible share among the other parties. The reallocation shall be made on the basis of each party's respective percentage of fault determined by the trier of fact under ORS 18.480. The claimant's share of the reallocation shall be based on any percentage of fault determined to be attributable to the claimant by the trier of fact under ORS 18.480, plus any percentage of fault attributable to a person who has settled with the claimant. Reallocation of obligations under this subsection does not affect any right to contribution from the party whose share of the obligation is determined to be uncollectible. Unless the party has entered into a covenant not to sue or not to enforce a judgment with the claimant, reallocation under this subsection does not affect continuing liability on the judgment to the claimant by the party whose share of the obligation is determined to be uncollectible.

(4) Notwithstanding subsection (3) of this section, a party's share of the obligation to a claimant may not be increased by reason of reallocation under subsection (3) of this section if:

(a) The percentage of fault of the claimant is equal to or greater than the percentage of fault of the party as determined by the trier of fact under ORS 18.480; or

(b) The percentage of fault of the party is 25 percent or less as determined by the trier of fact under ORS 18.480.

(5) If any party's share of the obligation to a claimant is not increased by reason of the application of subsection (4) of this section, the amount of that party's share of the reallocation shall be considered uncollectible and shall be reallocated among all other parties who are not subject to subsection (4) of this section, including the claimant, in the same manner as otherwise provided for reallocation under subsection (3) of this section.

(6) This section does not apply to:

(a) A civil action resulting from the violation of a standard established by Oregon or federal statute, rule or regulation for the spill, release or disposal of any hazardous waste, as defined in ORS 466.005, hazardous substance, as defined in ORS 453.005 or radioactive waste, as defined in ORS 469.300.

(b) A civil action resulting from the violation of Oregon or federal standards for air pollution, as defined in ORS 468A.005 or water pollution, as defined in ORS 468B.005. [1975 c.599 §3; 1987 c.774 §7; 1995 c.696 §5]

18.490 Setoff of damages not allowed. Setoff of damages shall not be granted in actions subject to ORS 18.470 to 18.490. [1975 c.599 §5]

ADVANCE PAYMENTS

18.500 “Advance payment” defined. As used in ORS 12.155 and 18.500 to 18.530, “advance payment” means compensation for the injury or death of a person or the injury or destruction of property prior to the determination of legal liability therefor. [Formerly 41.950]

18.510 Effect of advance payment; payment as satisfaction of judgment. (1) If judgment is entered against a party on whose behalf an advance payment referred to in ORS 18.520 or 18.530 has been made and in favor of a party for whose benefit any such advance payment has been received, the amount of the judgment shall be reduced by the amount of any such payments in the manner provided in subsection (3) of this section. However, nothing in ORS 12.155, 18.520, 18.530 and this section authorizes the person making such payments to recover such advance payment if no damages are awarded or to recover any amount by which the advance payment exceeds the award of damages.

(2) If judgment is entered against a party who is insured under a policy of liability insurance against such judgment and in favor of a party who has received benefits that have been the basis for a reimbursement payment by such insurer under ORS 742.534, the amount of the judgment shall be reduced by reason of such benefits in the manner provided in subsection (3) of this section.

(3)(a) The amount of any advance payment referred to in subsection (1) of this section may be submitted by the party making the payment, in the manner provided in ORCP 68 C(4) for the submission of disbursements.

(b) The amount of any benefits referred to in subsection (2) of this section, diminished in proportion to the amount of negligence attributable to the party in favor of whom the judgment was entered and diminished to an amount no greater than the reimbursement payment made by the insurer under ORS 742.534, may be submitted by the insurer which has made the reimbursement payment, in the manner provided in ORCP 68 C(4) for the submission of disbursements.

(c) Unless timely objections are filed as provided in ORCP 68 C(4), the court clerk shall apply the amounts claimed pursuant to this subsection in partial satisfaction of the judgment. Such partial satisfaction shall be allowed without regard to whether the party claiming the reduction is otherwise entitled to costs and disbursements in the action. [1971 c.331 §6; 1975 c.784 §14; 1981 c.892 §85c; 1981 c.898 §17]

18.520 Advance payment for death or personal injury not admission of liability; when advance payment made. (1) Advance payment made for damages arising from the death or injury of a person is not an admission of liability for the death or injury by the person making the payment unless the parties to the payment agree to the contrary in writing.

(2) For the purpose of subsection (1) of this section, advance payment is made when payment is made with or to:

(a) The injured person;

(b) A person acting on behalf of the injured person with the consent of the injured person; or

(c) Any other person entitled to recover damages on account of the injury or death of the injured or deceased person.

[Formerly 41.960]

18.530 Advance payment for property damage not admission of liability. Any advance payment made for damages arising from injury or destruction of property is not an admission of liability for the injury or destruction by the person making the payment unless the parties to the payment agree to the contrary in writing. [Formerly 41.970]

DAMAGES

18.535 Pleading punitive damages; motion to amend pleading to assert claim for punitive damages; hearing. (1) A pleading in a civil action may not contain a request for an award of punitive damages except as provided in this section.

(2) At the time of filing a pleading with the court, the pleading may not contain a request for an award of punitive damages. At any time after the pleading is filed, a party may move the court to allow the party to amend the pleading to assert a claim for punitive damages. The party making the motion may submit affidavits and documentation supporting the claim for punitive damages. The party or parties opposing the motion may submit opposing affidavits and documentation.

(3) The court shall deny a motion to amend a pleading made under the provisions of this section if the court determines that the affidavits and supporting documentation submitted by the party seeking punitive damages fail to set forth specific facts supported by admissible evidence adequate to avoid the granting of a motion for a directed verdict to the party opposing the motion on the issue of punitive damages in a trial of the matter.

(4) The court shall conduct a hearing on a motion filed under this section not more than 30 days after the motion is filed and served. The court shall issue a decision within 10 days after the hearing. If no decision is issued within 10 days, the motion shall be considered denied.

(5) Discovery of evidence of a defendant’s ability to pay shall not be allowed by a court unless and until the court grants a motion to amend a pleading under this section. [1995 c.688 §3]

18.537 Standards for award of punitive damages; required review of award by court; additional reduction of award for remedial measures. (1) Punitive damages are not recoverable in a civil action unless it is proven by clear and convincing evidence that the party against whom punitive damages are sought has acted with malice or has shown a reckless and outrageous indifference to a highly unreasonable risk of harm and has acted with a conscious indifference to the health, safety and welfare of others.

(2) If an award of punitive damages is made by a jury, the court shall review the award to determine whether the award is within the range of damages that a rational juror would be entitled to award based on the record as a whole, viewing the statutory and common-law factors that allow an award of punitive damages for the specific type of claim at issue in the proceeding.

(3) In addition to any reduction that may be made under subsection (2) of this section, upon the motion of a defendant the court may reduce the amount of any judgment requiring the payment of punitive damages entered against the defendant if the defendant establishes that the defendant has taken remedial measures that are reasonable under the circumstances to prevent reoccurrence of the conduct that gave rise to the claim for punitive damages. In reducing awards of punitive damages under the provisions of this subsection, the court shall consider the amount of any previous judgment for punitive damages entered against the same defendant for the same conduct giving rise to a claim for punitive damages. [1995 c.688 §2]

18.540 Distribution of punitive damages; notice to Department of Justice; order of application. (1) Upon the entry of a verdict including an award of punitive damages, the Department of Justice shall become a judgment creditor as to the punitive damages portion of the award to which the Criminal Injuries Compensation Account is entitled pursuant to paragraph (b) of this subsection, and the punitive damage portion of an award shall be allocated as follows:

(a) Forty percent shall be paid to the prevailing party. The attorney for the prevailing party shall be paid out of the amount allocated under this paragraph, in the amount agreed upon between the attorney and the prevailing party. However, in no event may more than 20 percent of the amount awarded as punitive damages be paid to the attorney for the prevailing party.

(b) Sixty percent shall be paid to the Criminal Injuries Compensation Account of the Department of Justice Crime Victims' Assistance Section to be used for the purposes set forth in ORS chapter 147. However, if the prevailing party is a public entity, the amount otherwise payable to the Criminal Injuries Compensation Account shall be paid to the general fund of the public entity.

(2) The party preparing the proposed judgment shall assure that the judgment identifies the judgment creditors specified in subsection (1) of this section.

(3) Upon the entry of a verdict including an award of punitive damages, the prevailing party shall provide notice of the verdict to the Department of Justice. In addition, upon entry of a judgment based on a verdict that includes an award of punitive damages, the prevailing party shall provide notice of the judgment to the Department of Justice. The notices required under this subsection must be in writing and must be delivered to the Department of Justice Crime Victims' Assistance Section in Salem, Oregon within five days after the entry of the verdict or judgment.

(4) Whenever a judgment includes both compensatory and punitive damages, any payment on the judgment by or on behalf of any defendant, whether voluntary or by execution or otherwise, shall be applied first to compensatory damages, costs and court-awarded attorney fees awarded against that defendant and then to punitive damages awarded against that defendant unless all affected parties, including the Department of Justice, expressly agree otherwise, or unless that application is contrary to the express terms of the judgment.

(5) Whenever any judgment creditor of a judgment which includes punitive damages governed by this section receives any payment on the judgment by or on behalf of any defendant, the judgment creditor receiving the payment shall notify the attorney for the other judgment creditors and all sums collected shall be applied as required by subsections (1) and (4) of this section, unless all affected parties, including the Department of Justice, expressly agree otherwise, or unless that application is contrary to the express terms of the judgment. [1987 c.774 §3; 1991 c.862 §1; 1995 c.688 §1; 1997 c.73 §1]

18.550 Award of punitive damages against health practitioner prohibited; conditions. Punitive damages shall not be awarded against a health practitioner if:

(1) The health practitioner is licensed, registered or certified as:

(a) A psychologist under ORS 675.030 to 675.070, 675.085 and 675.090;

(b) An occupational therapist under ORS 675.230 to 675.300;

(c) A licensed clinical social worker under ORS 675.530, 675.540 to 675.560, 675.580 and 675.585;

(d) A physician under ORS 677.100 to 677.228;

(e) An emergency medical technician under ORS chapter 682;

(f) A podiatric physician and surgeon under ORS 677.820 to 677.840;

(g) A nurse under ORS 678.040 to 678.101;

(h) A nurse practitioner under ORS 678.375 to 678.390;

(i) A dentist under ORS 679.060 to 679.180;

(j) A dental hygienist under ORS 680.040 to 680.100;

(k) A denturist under ORS 680.515 to 680.535;

(L) An audiologist or speech-language pathologist under ORS 681.250 to 681.350;

- (m) An optometrist under ORS 683.040 to 683.155 and 683.170 to 683.220;
- (n) A chiropractor under ORS 684.040 to 684.105;
- (o) A naturopath under ORS 685.060 to 685.110, 685.125 and 685.135;
- (p) A massage therapist under ORS 687.021 to 687.086;
- (q) A physical therapist under ORS 688.040 to 688.145;
- (r) A radiologic technician under ORS 688.445 to 688.525; or
- (s) A pharmacist under ORS 689.151 and 689.225 to 689.285; and

(2) The health practitioner was engaged in conduct regulated by the license, registration or certificate issued by the appropriate governing body and was acting within the scope of practice for which the license, registration or certificate was issued and without malice. [1987 c.774 §4; 1989 c.721 §45; 1989 c.782 §34; 1995 c.280 §28; 1999 c.537 §1]

18.560 Noneconomic damages; award; limit; “economic damages” and “noneconomic damages” defined. (1) Except for claims subject to ORS 30.260 to 30.300 and ORS chapter 656, in any civil action seeking damages arising out of bodily injury, including emotional injury or distress, death or property damage of any one person including claims for loss of care, comfort, companionship and society and loss of consortium, the amount awarded for noneconomic damages shall not exceed \$500,000.

(2) As used in this section:

(a) “Economic damages” means objectively verifiable monetary losses including but not limited to reasonable charges necessarily incurred for medical, hospital, nursing and rehabilitative services and other health care services, burial and memorial expenses, loss of income and past and future impairment of earning capacity, reasonable and necessary expenses incurred for substitute domestic services, recurring loss to an estate, damage to reputation that is economically verifiable, reasonable and necessarily incurred costs due to loss of use of property and reasonable costs incurred for repair or for replacement of damaged property, whichever is less.

(b) “Noneconomic damages” means subjective, nonmonetary losses, including but not limited to pain, mental suffering, emotional distress, humiliation, injury to reputation, loss of care, comfort, companionship and society, loss of consortium, inconvenience and interference with normal and usual activities apart from gainful employment.

(3) This section does not apply to punitive damages.

(4) The jury shall not be advised of the limitation set forth in this section. [1987 c.774 §6]

18.570 Economic and noneconomic damages separately set forth in verdict. A verdict shall set forth separately economic damages and noneconomic damages, if any, as defined in ORS 18.560. [1987 c.774 §7a; 1995 c.696 §6]

18.580 Effect of collateral benefits. (1) In a civil action, when a party is awarded damages for bodily injury or death of a person which are to be paid by another party to the action, and the party awarded damages or person injured or deceased received benefits for the injury or death other than from the party who is to pay the damages, the court may deduct from the amount of damages awarded, before the entry of final judgment, the total amount of those collateral benefits other than:

- (a) Benefits which the party awarded damages, the person injured or that person’s estate is obligated to repay;
- (b) Life insurance or other death benefits;
- (c) Insurance benefits for which the person injured or deceased or members of that person’s family paid premiums; and
- (d) Retirement, disability and pension plan benefits, and federal social security benefits.

(2) Evidence of the benefit described in subsection (1) of this section and the cost of obtaining it is not admissible at trial, but shall be received by the court by affidavit submitted after the verdict by any party to the action. [1987 c.774 §9]

18.590 Evidence of nonuse of safety belt or harness to mitigate damages. (1) In an action brought to recover damages for personal injuries arising out of a motor vehicle accident, evidence of the nonuse of a safety belt or harness may be admitted only to mitigate the injured party’s damages. The mitigation shall not exceed five percent of the amount to which the injured party would otherwise be entitled.

(2) Subsection (1) of this section shall not apply to:

(a) Actions brought under ORS 30.900 to 30.920; or

(b) Actions to recover damages for personal injuries arising out of a motor vehicle accident when nonuse of a safety belt or harness is a substantial contributing cause of the accident itself. [1989 c.1074 §1]

18.592 Limitation on recovery of noneconomic damages arising out of operation of motor vehicle; uninsured plaintiff; plaintiff driving under influence of intoxicants. (1) Except as provided in this section, a plaintiff may not recover noneconomic damages, as defined in ORS 18.560, in any action for injury or death arising out of the operation of a motor vehicle if the plaintiff was in violation of ORS 806.010 or 813.010 at the time the act or omission causing the death or injury occurred. A claim for noneconomic damages shall not be considered by the jury if the jury determines that the limitation on liability established by this section applies to the claim for noneconomic damages.

(2) For the purpose of the limitation on liability established by this section, a person is conclusively presumed to have been in violation of ORS 806.010 or 813.010 if the person is convicted in a criminal proceeding of one or both of those offenses. If the person has not been convicted of violating ORS 806.010 or 813.010, the defendant in the civil action may establish in the

civil action, by a preponderance of the evidence, that the plaintiff was in violation of ORS 806.010 or 813.010 at the time the act or omission causing the death or injury occurred.

(3) The court shall abate a civil action upon the motion of any defendant in the civil action against whom a plaintiff has asserted a claim for noneconomic damages if the defendant alleges that the claim of the plaintiff is subject to the limitation on liability established by this section and:

(a) A criminal proceeding for a violation of ORS 813.010 has been commenced against the plaintiff in the civil action at the time the motion is made; or

(b) The district attorney for the county in which the conduct occurred informs the court at the time the motion is made that criminal proceedings for a violation of ORS 813.010 will be commenced against the plaintiff in the civil action.

(4) The court may order that only the claim that is subject to the limitation on liability established by this section be abated under subsection (3) of this section. An abatement under subsection (3) of this section shall remain in effect until the conclusion of the criminal proceedings.

(5) The limitation on liability established by this section does not apply if:

(a) The defendant in the civil action was also in violation of ORS 806.010 or 813.010 at the time the act or omission causing the death or injury occurred;

(b) The death or injury resulted from acts or omissions of the defendant that constituted an intentional tort;

(c) The defendant was engaged in conduct that would constitute a violation of ORS 811.140 at the time the act or omission causing the death or injury occurred; or

(d) The defendant was engaged in conduct that would constitute a felony at the time the act or omission causing the death or injury occurred.

(6) The limitation on liability established by this section based on a violation of ORS 806.010 does not apply if the plaintiff in the civil action was insured under a motor vehicle liability insurance policy within 180 days before the act or omission occurred, and the plaintiff has not operated a motor vehicle in violation of ORS 806.010 within the one-year period immediately preceding the date on which coverage under the motor vehicle liability insurance policy lapsed. [1999 c.1065 §1]

WRITS OF GARNISHMENT

(Definitions)

18.600 Definitions. As used in ORS 18.600 to 18.850:

(1) "Check" has the meaning given that term in ORS 73.0104.

(2) "Creditor" means a person to whom a debt is owed by a debtor.

(3) "Debt" means any monetary obligation for which a garnishment may be issued under ORS 18.605.

(4) "Debtor" means a person whose property is being garnished for the purpose of paying a debt owed to a creditor.

(5) "Financial institution" means a financial institution or trust company as those terms are defined in ORS 706.008.

(6) "Garnishable property" means all property described in ORS 18.615, but does not include:

(a) Any property that is not subject to garnishment under ORS 18.618; and

(b) Any property that is applied as a setoff under ORS 18.620 or 18.795.

(7) "Garnishee" means a person to whom a writ of garnishment has been delivered.

(8) "Garnishor" means:

(a) The creditor, if the writ is issued by the clerk of the court on behalf of the creditor under ORS 18.635 (2); or

(b) The issuer, if the writ is issued under ORS 18.635 by any person other than the clerk of the court.

(9) "Past due support" means the amount of child or spousal support, or both, determined under a court or administrative order in a proceeding under ORS chapter 107, 108, 109, 110, 416, 419B or 419C that has not been paid or is certified to be owed by another state under ORS 25.083.

(10) "Person" includes any public body, as defined in ORS 192.410.

(11) "Wages" includes all amounts paid for the services of an employee by an employer, including amounts paid as a commission or bonus.

(12) "Writ" means a writ of garnishment. [2001 c.249 §1]

(Garnishment Generally)

18.602 Garnishment described. For the purposes of ORS 18.600 to 18.850, garnishment is the procedure by which a creditor invokes the authority of a circuit court, justice court or municipal court to acquire garnishable property of a debtor that is in the possession, control or custody of a person other than the debtor. [2001 c.249 §2]

18.605 Debts subject to garnishment; when writ may be issued on debt. (1) Garnishment may be used to acquire garnishable property for application against the following debts:

(a) A judgment requiring the payment of money that has been entered in the register of a court or docketed in the docket of a court.

(b) If the writ of garnishment is issued pursuant to provisional process under ORCP 83 and 84, a claim of one party against

another party in a civil action.

(c) Support arrearage shown on the support records of the Department of Justice pursuant to ORS 25.020 and 25.167, even though such records may not constitute a full record of the support arrearage owed.

(d) Monetary obligations imposed under agency orders or warrants recorded pursuant to law in the County Clerk Lien Record.

(2) For the purposes of ORS 18.600 to 18.850:

(a) A writ may be issued for a monetary obligation based on a judgment other than a judgment for support after the judgment is entered in the register of the court or, if the court does not have a register, after the judgment is docketed in the docket of the court.

(b) A writ may be issued for a monetary obligation based on a judgment for support after the underlying judgment, decree, court order or administrative order that creates the support obligation is entered in the register of the court or after a request for administrative enforcement services is received under ORS 25.083.

(c) A writ may be issued pursuant to provisional process under ORCP 83 and 84 after the court order for provisional process is entered in the register of the court.

(d) A writ may be issued for a monetary obligation based on an agency order or warrant after the order or warrant is recorded in the County Clerk Lien Record. [2001 c.249 §3]

18.607 Form of writ. (1) Except as otherwise provided by law, a writ of garnishment must be in substantially the form provided by ORS 18.830. Notation on the writ of additional information for purposes of identifying the debtor or the garnishable property believed to be held by the garnishee does not affect the validity or operation of the writ. A debt calculation form, in substantially the form provided by ORS 18.832, must be prepared for each writ of garnishment issued.

(2) A writ of garnishment must contain all of the following information:

(a) The name of the court whose authority is invoked.

(b) The names of the creditor and debtor.

(c) The name of the garnishor.

(d) The date on which judgment was entered against the debtor or the debt otherwise became subject to garnishment under ORS 18.605.

(e) The debtor's Social Security number or employer identification number, if those numbers are known by the garnishor. A public body, as defined in ORS 192.410, shall not include the Social Security number of the debtor if the disclosure of the Social Security number would violate federal law or any law of this state.

(f) The amount subject to garnishment under the writ, as determined by completing the debt calculation form provided in ORS 18.832.

(g) The date on which the writ is issued.

(h) All addresses required in the writ of garnishment form provided by ORS 18.830.

(3) If a writ of garnishment is issued by the clerk of the court, the creditor must sign the certification in the writ indicating that the creditor has read the writ and that to the best of the knowledge, information and belief of the creditor there is good ground to support issuance of the writ and the amount indicated in the writ as subject to garnishment.

(4) If a writ is issued by any person other than the clerk of the court, the person issuing the writ must sign the certification described in subsection (3) of this section. [2001 c.249 §4]

18.609 Validity of writ after issuance. (1) A writ of garnishment is valid only if the writ is delivered not more than 60 days after the writ is issued. If the writ is delivered within the time specified in this section, the writ acts to garnish property for the period of time specified by ORS 18.625.

(2) If the clerk of the court is issuing a writ of garnishment, the date of issuance for the writ is the date the clerk stamps and signs the writ. If the writ is issued by any other person, the date of issuance for the writ is the date on which the issuer signs the certification described in ORS 18.607 (4). [2001 c.249 §5]

18.610 Court with authority over writ. (1) Only the following courts have authority over a writ of garnishment issued for the enforcement of a judgment:

(a) The court in which the judgment to be enforced was originally entered or first registered or docketed;

(b) The circuit court for the county in which a judgment debtor resides if the requirements of ORS 23.030 have been met; and

(c) The circuit court for the county in which a debtor has filed a challenge to the garnishment under ORS 18.718.

(2) Only the following courts have authority over a writ of garnishment issued for the enforcement of an agency order or warrant:

(a) The circuit court for the county in which the order or warrant was first recorded; and

(b) The circuit court for the county in which the debtor resides if the order or warrant has also been recorded in that county.

(3) The circuit court for the county in which the order for provisional process is entered has sole authority for issuance of a writ of garnishment issued pursuant to an order for provisional process. [2001 c.249 §6]

(Garnishable Property)

18.615 Garnishable property generally. Except as specifically provided in ORS 18.600 to 18.850, a writ of garnishment delivered to a garnishee garnishes all personal property of the debtor, including but not limited to property in safe deposit boxes, stocks, wages, monetary obligations owing to the debtor that are then in existence whether due or to become due, property held on expired and unexpired bailments and leases, and property held by the garnishee pursuant to a security interest granted by the debtor to the garnishee. A writ of garnishment acts to garnish all property of the debtor possessed by the garnishee, all property of the debtor over which the garnishee has control and all property of the debtor that is in the custody of the garnishee. If a person other than the debtor has an interest in the garnished property, the writ of garnishment acts only to garnish the interest of the debtor in the property. [2001 c.249 §7]

18.618 Property not subject to garnishment. (1) Notwithstanding ORS 18.615, the following are not garnishable property:

- (a) Equitable interests.
- (b) Property in the custody of the law.
- (c) Property in the possession of a conservator.
- (d) Property in the possession of a personal representative that constitutes the subject matter of a trust contained in a duly probated will of a decedent.

(2) Notwithstanding any other provision of law, if a voluntary or involuntary bankruptcy petition has been filed by or on behalf of the debtor after a writ of garnishment could be issued under ORS 18.605, the garnishment of any property of the debtor in the garnishee's possession, control or custody is stayed pursuant to section 362 of the United States Bankruptcy Code (11 U.S.C. 101 to 1330). [2001 c.249 §8]

18.620 Setoff for certain amounts payable to underlying lienholders. (1) Notwithstanding ORS 18.615, a garnishee may apply a setoff against amounts owing to the debtor under the terms of a land sale contract, under the terms of a promissory note or other evidence of indebtedness that is secured by a mortgage or trust deed, or under the terms of a security agreement as defined in ORS 79.0102, to the extent that those amounts are actually paid to another person:

(a) Who is entitled to receive the amounts under the terms of the land sale contract, mortgage, trust deed or security agreement, or under the terms of any other land sale contract, mortgage, trust deed or security agreement that is secured by the same property that is the subject of the land sale contract, mortgage, trust deed or security agreement; and

(b) Who has an interest in the property that is the subject of the land sale contract, mortgage, trust deed or security agreement that is superior to the interest of the creditor under the laws that would govern a foreclosure, trust deed sale, repossession or other action against the property that is the subject of the land sale contract, mortgage, trust deed or security agreement.

(2) A garnishee must deliver in the manner required by ORS 18.600 to 18.850 all amounts in the garnishee's possession, control or custody at the time of delivery of the writ of garnishment that are not actually paid by the garnishee to another person as described in subsection (1) of this section, unless those amounts are exempt from execution under other law.

(3) A garnishee who applies a setoff under this section must disclose that the setoff has been applied, and the amount of the setoff, in the garnishee response required by ORS 18.680. The garnishee must certify in the garnishee response that the amounts specified in the certificate were actually paid by the garnishee to another person entitled to receive those amounts under subsection (1) of this section. [2001 c.249 §9; 2001 c.445 §159a]

(Duration of Writ's Effect)

18.625 Duration of writ's effect. (1) For any property other than wages, a writ of garnishment acts to garnish only garnishable property of the debtor that is in the garnishee's possession, control or custody at the time the writ is delivered, including money that is owed but not yet due.

(2) A writ of garnishment acts to garnish all wages owed by the garnishee to the debtor at the time the writ is delivered. Except as provided in subsection (3) of this section, a writ also acts to garnish all wages earned by the debtor by reason of services to the garnishee during the period commencing with the date the writ is delivered and ending on the earlier of:

- (a) The expiration of 90 days after the date the writ is delivered; or
- (b) The date on which the garnishment is released or satisfied in full.

(3) If a writ of garnishment is issued on behalf of a county or county agency, the writ acts to garnish all wages earned by the debtor by reason of services to the garnishee until the full amount owed to the county or county agency is paid or until the writ of garnishment is released by the county or county agency or by a court order. A writ of garnishment issued on behalf of a county or county agency shall contain language reasonably designed to notify the garnishee of the provisions of this subsection. [2001 c.249 §10]

18.627 Multiple writs. (1) Except as otherwise provided by law, the first writ of garnishment delivered to a garnishee has priority over all other writs delivered to the garnishee for the same debtor. A garnishee shall make payments or deliver property under a subsequently delivered writ only if there is garnishable property of the debtor remaining in the garnishee's possession, control or custody after complying with the first writ delivered to the garnishee.

(2) If a debtor earns wages from a garnishee during the period that a writ of garnishment is in effect under ORS 18.625, the garnishee shall make payments under the first writ delivered to the garnishee until the expiration of the period of time specified in ORS 18.625, and shall thereafter make payments on subsequently delivered writs in the order in which they were delivered to the garnishee as long as each writ continues to be effective under ORS 18.625. Any delay in payment under a writ by reason of this subsection does not affect the expiration of the writ's effect at the time specified in ORS 18.625. If the first writ does not garnish all wages of the debtor that are not exempt from execution, the garnishee shall make concurrent payment on a subsequently delivered writ of the balance of the wages that are not exempt from execution.

(3) If a garnishee pays wages to a debtor and the garnishee receives another writ of garnishment during the period that a writ is in effect under ORS 18.625, the garnishee shall note those facts on the garnishee response and indicate the date on which the previous writ will expire.

(4) A subsequent writ of garnishment issued on behalf of the same creditor against the same debtor and delivered to the same garnishee during the period that a previous writ is effective under ORS 18.625 acts only to garnish property of the debtor other than wages. [2001 c.249 §11]

(Persons Authorized to Issue Writs)

18.635 Who may issue writs. (1) A writ of garnishment may be issued only by a person specified in this section.

(2) The clerk of a court may issue a writ pursuant to ORS 18.638 and 18.640 only:

(a) For the enforcement of a judgment that requires the payment of money and that has been entered in the register of the court or docketed in the docket of the court;

(b) Pursuant to an order for provisional process under ORCP 83 and 84; or

(c) On behalf of a claimant under an order recorded pursuant to ORS 671.707 or 701.150, if the claimant has complied with the requirements of ORS 205.126.

(3) An attorney who is an active member of the Oregon State Bar may issue a writ for the purpose of enforcing:

(a) A judgment that requires payment of money and that has been entered in the register of a court of this state or docketed in the docket of a court of this state; and

(b) An order or warrant that an agency has recorded in the County Clerk Lien Record as authorized by law, including any order that has been recorded pursuant to ORS 671.707 or 701.150.

(4) The administrator, as defined in ORS 25.010, may issue writs of garnishment only for the collection of past due support. Writs issued under this subsection are subject to the provisions of ORS 18.645. [2001 c.249 §12]

(Writs Issued by Clerk of Court)

18.638 Writs issued by clerks generally. (1) Unless there are grounds for denying issuance of a writ of garnishment under ORS 18.640, the clerk of the court shall issue writs of garnishment upon proper application and payment of all required fees. A writ of garnishment issued by the clerk must be signed by the creditor. The signature constitutes a certificate by the person under ORCP 17 and is subject to the sanctions provided by ORCP 17.

(2) The clerk of the court may not fill in or complete a writ of garnishment on behalf of a creditor.

(3) The clerk of the court is not responsible for verifying the amounts set forth in a writ issued by the clerk, and is not liable for errors in the writ made by the creditor. [2001 c.249 §13]

18.640 Grounds for denying issuance of writ. (1) The clerk of the court shall refuse to issue a writ of garnishment that is not substantially in the form required by ORS 18.830.

(2) The clerk of the court shall refuse to issue a writ of garnishment that is incomplete or contains improper instructions. Grounds for refusing issuance of a writ under this subsection include:

(a) The clerk's inability to verify the existence of the debt claimed as the basis for the writ by a review of the register of the court.

(b) A determination by the clerk, based on a review of the register of the court, that a satisfaction of judgment has been filed with the court.

(3) The clerk of the court shall refuse to issue a writ of garnishment pursuant to an order for provisional process under ORCP 83 and 84 if the party seeking issuance of the writ has not complied with all requirements of ORCP 82 A(3), A(5) and A(6) and B to G, 83 and 84. [2001 c.249 §14]

(Writs Issued by Division of Child Support or District Attorney)

18.645 Writs issued by Division of Child Support or district attorney. (1) The administrator, as defined in ORS 25.010, may issue writs of garnishment for the collection of past due support in the manner provided by this section. Except as otherwise specifically provided in ORS 18.600 to 18.850, the provisions of ORS 18.600 to 18.850 apply to all writs issued under this section.

(2) Notwithstanding ORS 18.607, a writ of garnishment issued under this section need not contain the name of the court whose authority is invoked.

(3) Notwithstanding ORS 18.690, a garnishee who receives a writ of garnishment issued under this section need not deliver a copy of the garnishee response to the clerk of the court.

(4) Notwithstanding ORS 18.730, the issuer of a writ under this section must hold any payments received from the garnishee:

- (a) For a period of 120 days after delivery of the writ, if the garnishee is making a payment of wages; and
- (b) For a period of 30 days after delivery of the writ, if the garnishee is making a payment other than wages.

(5) When issuing writs under this section, the Administrator of the Division of Child Support of the Department of Justice shall modify the forms provided in ORS 18.600 to 18.850 to reflect the provisions of this section. [2001 c.249 §15]

(Delivery of Writ)

18.650 Items required to be delivered to garnishee. (1) All of the following items must be delivered to a garnishee:

- (a) The original writ of garnishment in substantially the form provided by ORS 18.830 and a copy of the writ certified to be true by the garnishor, or two copies of the original writ certified to be true by the garnishor.
- (b) A garnishee response form in substantially the form provided by ORS 18.835.
- (c) An instructions to garnishee form in substantially the form provided by ORS 18.838.
- (d) A wage exemption calculation form in substantially the form provided by ORS 18.840.
- (e) Any search fee required by ORS 18.790.

(2) If any of the items described in subsection (1) of this section is not delivered to the garnishee, the garnishment is not effective to garnish any property of the debtor, the garnishee is not required to respond to the garnishment and the garnishee may proceed to deal with any property of the debtor as though the writ of garnishment had not been issued. [2001 c.249 §16]

18.652 Manner of delivery. (1) A writ of garnishment may be delivered to the garnishee personally or by certified mail, return receipt requested. Delivery is effective upon receipt of the writ by the garnishee. If the garnishee refuses to accept delivery by certified mail, the garnishor may attempt personal delivery, but the garnishor must have a new writ issued in order to claim additional delivery fees.

(2) Personal delivery of a writ of garnishment may be made only by:

- (a) The sheriff of the county where the writ of garnishment is to be delivered; or
- (b) A competent person 18 years of age or older who is a resident of the State of Oregon and who is not a party or attorney in the action.

(3) If personal delivery is made under this section, the person serving the writ of garnishment must note the date of delivery upon the writ delivered to the garnishee or upon a true copy delivered to the garnishee.

(4) Notwithstanding subsection (2) of this section, a person other than a sheriff may not deliver a writ of garnishment unless the person has errors and omissions insurance with limits of not less than \$100,000 per occurrence from a company authorized to do business in this state.

(5) The delivery fee for a writ of garnishment by a person other than a sheriff shall be in an amount agreed to between the person making the delivery and the garnishor. The delivery fee for a writ of garnishment by a sheriff under this section shall be no more than the following, based upon population as determined by the most recent federal decennial census:

- (a) \$12.50 if the writ is delivered in a county with a population of fewer than 400,000 persons.
- (b) \$9.50 if the writ is delivered in a county with a population of 400,000 persons or more. [2001 c.249 §17]

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

(a) If the property of the debtor is in the possession, control or custody of an individual, the writ may be delivered to the individual. If the individual maintains an office for the conduct of business, office delivery may be made by leaving all of the items required by ORS 18.650 (1) at the office during normal working hours with the person who is apparently in charge. If office delivery is used, the person delivering the writ, as soon as reasonably possible, shall cause to be mailed by first class mail all of the items required by ORS 18.650 (1) to the garnishee at the garnishee's place of business or such other place under the circumstances that is most reasonably calculated to apprise the garnishee of the garnishment, together with a statement of the date, time and place at which office delivery was made. Delivery under this paragraph is effective upon the receipt of the writ by the person who is apparently in charge of the office.

(b) If the property of the debtor is in the possession, control or custody of a partnership, the writ may be delivered to any partner or to any person designated by the partnership to accept service of a writ of garnishment. However, if the partnership is a limited partnership, the writ of garnishment may be delivered only to a general partner or to a person designated by the partnership to accept service.

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

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

(e) If the property of the debtor is in the possession, control or custody of a financial institution, the writ may be delivered to the manager, assistant manager or other designated person at any office or branch of the financial institution where deposits

are received or that has been designated by the institution as a place for receiving writs of garnishment. Delivery of a writ in the manner prescribed in this paragraph is effective to garnish all property of the debtor held at all offices and branches of the financial institution located in this state.

(f) If the property of the debtor is in the possession, control or custody of a public body, as defined in ORS 192.410, the writ may be delivered to the board, department, institution, commission or officer charged with approving a claim for the property.

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

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

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

(5) If the property of the debtor is an interest of an heir or legatee in an estate of a decedent, the writ of garnishment must be delivered to the personal representative of the estate in the manner provided by subsection (1) of this section. [2001 c.249 §18]

18.658 Documents to be delivered to debtor. (1) Following delivery of a writ of garnishment to a garnishee, the person who delivered the writ must mail or deliver promptly the following documents to the debtor whose property is being garnished by the writ:

- (a) A copy of the writ of garnishment.
- (b) The original of the debt calculation form.
- (c) A notice of exemptions form in substantially the form provided by ORS 18.845.
- (d) A challenge to garnishment form in substantially the form provided by ORS 18.850.

(2) A person serving a writ of garnishment may meet the requirements of subsection (1) of this section by mailing the documents to the address of the debtor that appears in the writ of garnishment. If an address for the debtor does not appear in the writ, the person serving the writ need not comply with subsection (1) of this section. [2001 c.249 §19]

(Duties of Garnishee Generally)

18.665 Duties generally. (1) Upon receiving a writ of garnishment, the garnishee shall determine whether a garnishee response is required under ORS 18.680 and 18.682. The garnishee has no duty to determine whether the garnishor, sheriff or other person has complied with the requirements of ORS 18.600 to 18.850, or to otherwise determine whether the writ of garnishment is valid. If a garnishee response is required, the garnishee must make a diligent effort to determine whether the garnishee is the employer of the debtor and whether the garnishee has possession, control or custody of any property of the debtor as described in ORS 18.615. If the garnishee has possession, control or custody of such property, the garnishee must hold the property, or as much of the property as is necessary to satisfy the garnishment, as required by ORS 18.600 to 18.850, and thereafter make delivery of the property in the manner required by ORS 18.600 to 18.850.

(2) The duty of a garnishee to hold and deliver property is not affected by joint ownership of the property. If a garnishee holds property that is owned, or appears to be owned, by the debtor and one or more other persons, the garnishee must still hold and deliver all of the property, or as much of the property as is necessary to satisfy the garnishment. [2001 c.249 §20]

18.668 Immunity by payment to clerk or delivery to sheriff. (1) Notwithstanding any provision of ORS 18.600 to 18.850, a garnishee may pay to the garnishor or to the clerk of the court any money that the garnishee reasonably believes may have been garnished and may deliver to the sheriff in the manner provided by ORS 18.600 to 18.850 any property that the garnishee reasonably believes to have been garnished. The garnishee has no duty to determine whether money or property held by the garnishee is exempt from garnishment or to determine whether the money or property is garnishable property.

(2) If the garnishee makes payment of garnished money to the garnishor or to the clerk of the court under subsection (1) of this section, or delivers garnished property to the sheriff in the manner provided by ORS 18.600 to 18.850, the garnishee is discharged from liability to the creditor for the value of the money paid or property delivered.

(3) If the garnishee requests a receipt, the sheriff or clerk of the court shall provide the garnishee with a receipt for any property delivered to the sheriff or payment made to the clerk. [2001 c.249 §21]

18.670 Exceptions to garnishee's duties. (1) A garnishee has no duty to hold or deliver any property under a writ of garnishment if the property has been released by a court order or a release of garnishment has been delivered to the garnishee under ORS 18.770.

(2) The duty of a garnishee to hold or deliver any property under a writ of garnishment is not breached if the property is

removed from the possession, control or custody of the garnishee before the garnishee can act to stop that removal through the exercise of reasonable care. [2001 c.249 §22]

18.672 Duties of personal representative who is garnished. Garnishment does not impair the powers of a personal representative over estate property for the purposes of administration. If a personal representative receives a writ of garnishment, the personal representative must prepare and deliver a garnishee response in the manner provided by ORS 18.600 to 18.850, but no payment of money or delivery of property need be made by the personal representative until such time as specified in this section. The personal representative must note on the response that the property is estate property subject to administration. The personal representative must also file a copy of the writ of garnishment and the garnishee response in the office of the clerk of the court in which the estate is being administered, and must report the garnishment to the court in any petition for distribution. In a decree made upon such petition, distribution shall be ordered to the heir or legatee, but delivery shall be ordered to the sheriff or to the garnishor, as required by ORS 18.600 to 18.850. [2001 c.249 §23]

(Garnishee Response)

18.680 Response required; time. (1) Except as specifically provided under ORS 18.682, a garnishee must prepare a garnishee response in substantially the form provided by ORS 18.835 and must deliver the response in the manner provided in ORS 18.690.

(2) Except as provided in subsection (3) of this section, a garnishee response must be delivered by the garnishee not later than seven calendar days after the date on which the writ of garnishment was delivered to the garnishee.

(3) If the seventh calendar day after delivery of a writ of garnishment is a Saturday, Sunday or legal holiday, a garnishee response must be delivered by the garnishee on or before the next following day that is not a Saturday, Sunday or legal holiday. [2001 c.249 §24]

18.682 When response not required. A garnishee has no duty to prepare and deliver a garnishee response if:

(1) The writ of garnishment is not delivered to the garnishee within the time provided under ORS 18.609;

(2) The garnishor fails to serve the garnishee with all items required under ORS 18.650;

(3) The garnishee receives a release of garnishment issued under ORS 18.770; or

(4) Any other law or court order directs that the response not be made. [2001 c.249 §25]

18.685 Contents of response. A garnishee must note upon a garnishee response the date on which the garnishee received the writ of garnishment. The garnishee must also note upon the response the following information and deliver the response in the manner provided by ORS 18.690:

(1) If the garnishee discovers that a voluntary or involuntary bankruptcy petition has been filed by or on behalf of the debtor and the petition was filed after the date shown on the face of the writ as the date on which the judgment was entered or otherwise first became subject to garnishment.

(2) If the garnishee does not employ the debtor and the garnishee does not have any garnishable property of the debtor in the possession, control or custody of the garnishee, the garnishee must so note on the response.

(3) If the garnishee employs the debtor, the garnishee must so state on the response and make all other responses required by this section or ORS 18.688. The garnishee must thereafter make payment under the writ in the manner provided by ORS 18.735.

(4) If the garnishee has any cash belonging to the debtor, or the garnishee owes any money to the debtor other than wages that is due as of the time the response is made, the garnishee must so note on the response. The garnishee must make payment with the response in the manner provided by ORS 18.730 of the amount subject to the garnishment, or of such amount as will satisfy the garnishment, whichever amount is less.

(5) If the garnishee owes any money to the debtor other than wages that is not due as of the time the response is made but that will become due within 45 days after the time the response is made, the garnishee must so note on the response. When the money becomes due, the garnishee must make payment in the manner provided by ORS 18.732 of the amount subject to the garnishment, or of such amount as will satisfy the garnishment, whichever amount is less.

(6) If the garnishee owes any money to the debtor other than wages that is not due as of the time the response is made and the money will not become due within 45 days after the time the response is made, the garnishee must so note on the response. The garnishee must thereafter comply with ORS 18.750 to 18.760.

(7) If the garnishee has any garnishable property of the debtor in the possession, control or custody of the garnishee that is not cash or owed money, the garnishee must so note on the response. The garnishee must thereafter comply with ORS 18.750 to 18.760.

(8) If the garnishee can determine from the writ that the garnishee may owe money to or hold garnishable property of the debtor, but is not sure what or how much, the garnishee must so state on the response and must state that the garnishee will file an amended response when the garnishee determines what or how much money or property the garnishee owes or holds.

(9) If the garnishee determines that the writ of garnishment does not comply on its face with ORS 18.600 to 18.850, or if the garnishee is unable to determine the identity of the debtor from the information contained in the writ, the writ of garnishment is ineffective to garnish the property of the debtor. The garnishee must so note on the response and provide an

explanation.

(10) If, before delivering the garnishee response, the garnishee receives an order to withhold income issued under ORS chapter 25 that applies to the income of the debtor, the garnishee must so note on the response. The garnishee must provide details of the order to withhold income, including the name of the agency serving the order, the date the order was served on the garnishee and the amount to be withheld. If the garnishee employs the debtor, the garnishee must make the responses required under ORS 18.688.

(11) If the garnishee receives notice of a challenge to the garnishment before delivering the response, the garnishee must so note on the response. The garnishee must thereafter comply with ORS 18.708. [2001 c.249 §26]

18.688 Response of garnishee who is employer of debtor. In addition to the requirements of ORS 18.685, if a garnishee employs the debtor, the garnishee must so note on the garnishee response and indicate the pay period and the next payday for the debtor. [2001 c.249 §27]

18.690 Delivery of garnishee response. (1) Except as provided in subsection (2) of this section, a garnishee who is required to deliver a garnishee response must mail or personally deliver:

- (a) The original of the response to the garnishor;
- (b) A copy of the response to the debtor; and
- (c) A copy of the writ of garnishment and a copy of the response to the clerk of the court specified in the writ as having authority over the writ.

(2) The garnishee shall not mail or personally deliver a copy of the writ and a copy of the garnishee response to the clerk of the court if:

- (a) The garnishee discovers that a voluntary or involuntary bankruptcy petition has been filed by or on behalf of the debtor after the debt was adjudicated as provided in ORS 18.605, and the garnishee will not make payments or deliver property under the writ pursuant to ORS 18.618 (2); or
- (b) The garnishee does not employ the debtor and the garnishee has no property of the debtor in the garnishee's possession, control or custody that is garnishable property.

(3) For the purpose of compliance with ORS 18.680, delivery of a garnishee response under this section is accomplished upon mailing or upon personal delivery of the response. [2001 c.249 §28]

18.692 Supplemental garnishee response. (1) The garnishee shall prepare a supplemental garnishee response in substantially the form provided by subsection (2) of this section, and deliver the supplemental response to the garnishor and to the debtor, if either of the following occurs after the garnishee has delivered an initial garnishee response and before the garnishee delivers all property that is subject to garnishment under the writ of garnishment:

- (a) The garnishee discovers that a voluntary or involuntary bankruptcy petition has been filed by or on behalf of the debtor under section 301, 302 or 303 of the United States Bankruptcy Code (11 U.S.C. 101 to 1330) after the debt was adjudicated as provided in ORS 18.605; or
- (b) The garnishee receives an order to withhold income that is entitled to priority under ORS 25.375.

(2) The supplemental response required under subsection (1) of this section must be in substantially the following form:

SUPPLEMENTAL GARNISHEE RESPONSE

To: The Garnishor and the Debtor

Re: Writ of garnishment delivered _____, 2____ (date), in the case of _____ (Plaintiff) vs. _____ (Defendant),
Circuit Court of _____ County, Oregon, Case No. _____.

The undersigned garnishee furnished a garnishee response to this garnishment on _____, 2____ (date). Since that time (check appropriate box):

I have discovered that a voluntary or involuntary bankruptcy petition has been filed by or on behalf of the Debtor after the judgment was entered against the Debtor.

I have received an order to withhold income of the Debtor by reason of a support obligation. Under ORS 25.375, the order to withhold income has priority over any other legal process under Oregon law against the same income. The withholding of income pursuant to the order to withhold income might reduce or eliminate subsequent payments under the garnishment. (Provide details, including the name of the agency serving the order to withhold, the date the order was served on you and the amount to be withheld.)

Dated: _____, 2____

Name of Garnishee

Signature

Address

[2001 c.249 §29]

(Challenge to Garnishment)

18.700 Manner of making challenge to garnishment. (1) A debtor may use a challenge to a garnishment to claim such exemptions from garnishment as are permitted by law. A challenge to a garnishment may also be used by a debtor:

(a) To assert that the amount specified in the writ of garnishment as being subject to garnishment is greater than the total amount owed by the debtor to the creditor; or

(b) To assert that property is not garnishable property.

(2) A debtor may make a challenge to a garnishment by completing the challenge to garnishment form provided by ORS 18.850, or a substantially similar form, and by delivering the original of the completed form in person or by first class mail to the clerk of the court named in the writ of garnishment as the court with authority over the writ. A challenge to a garnishment must be delivered:

(a) Within 120 days after a copy of the writ of garnishment is delivered to the debtor, if the garnishee is the employer of the debtor and the challenge is based on an exemption that is claimed for wages earned by the debtor from the garnishee; or

(b) Within 30 days after a copy of the writ of garnishment is delivered to the debtor, if the challenge is made on any other basis.

(3) Upon receiving a challenge to a garnishment under subsection (2) of this section, the clerk of the court shall retain all payments sent to the clerk under ORS 18.705 and 18.708 until such time as the court enters a decision on the challenge. The clerk shall reject any payment that is received after the challenge is made and that is not payable to the court, and shall return the payment to the garnishee with instructions to reissue the payment as payable to the court.

(4) A court shall not require the payment of any fee for the filing of a challenge to a garnishment. [2001 c.249 §30]

18.702 Notice to garnishor and garnishee of challenge to garnishment. (1) Without unreasonable delay, a clerk of the court who has received a challenge to a garnishment under ORS 18.700 shall provide written notice of the challenge as provided in this section. The notice must include a statement reflecting the consequences of failure of a garnishor or garnishee to comply with the requirements of ORS 18.705 and 18.708. The notice may include the notice of hearing under ORS 18.710.

(2) The clerk of the court shall provide the notice of a challenge required by subsection (1) of this section to:

(a) The garnishor.

(b) The garnishee, unless the clerk knows that the garnishee has already delivered all garnishable property to the garnishor.

(c) The sheriff of the county identified in any notice delivered to the clerk under ORS 18.755 (5). [2001 c.249 §31]

18.705 Duties of garnishor created by challenge to garnishment. (1) Except as provided in subsection (2) of this section, upon receiving notice of a challenge to a garnishment under ORS 18.702, a garnishor must send to the court specified in the writ of garnishment all amounts received by the garnishor that the debtor has claimed to be exempt or not subject to garnishment, unless the court specifically orders otherwise. The payment to the court must be in cash or by check made payable to the court. If the payment has not reached the court by the time of the hearing under ORS 18.710, the clerk of the court shall so notify the judge presiding at the hearing. If the court determines that any of the garnished money should be disbursed to the debtor and the payment has not reached the court by the time of that determination, the court may issue an order requiring that the garnishor appear and show cause why the garnishor should not be held in contempt. In addition to contempt proceedings, the court may require the garnishor to pay attorney fees under ORS 20.105. A court's imposition of sanctions under this subsection does not limit any remedy otherwise available to the debtor.

(2) Subsection (1) of this section does not apply if the garnishor is not required by law or allowed by law to disburse the payment.

(3) The receipt of a challenge to a garnishment does not affect the requirement under ORS 18.755 (1) that the garnishor mail or deliver a written request for sale of property, and pay the fees determined by the sheriff under ORS 18.755 (3), not later than 20 days after the garnishee delivers the garnishee response. The garnishor must note upon the request for sale that a

challenge to the garnishment has been made by the debtor. [2001 c.249 §32]

18.708 Duties of garnishee created by challenge to garnishment. (1) Upon receiving notice of a challenge to a garnishment under ORS 18.702, a garnishee who would otherwise be required to make a payment to the garnishor shall mail or deliver the payment, by cash or by check made payable to the court, to the clerk of the court. The garnishee must make the payment to the court within the time that the garnishee would have otherwise been required to mail or deliver the payment to the garnishor. A garnishee who fails to make payment in the manner required by this section is subject to liability under the provisions of ORS 18.775 to 18.782.

(2) Upon receiving notice of a challenge under ORS 18.702, a garnishee who holds any property described in ORS 18.750 must hold the garnished property for the period specified in ORS 18.752 (1). If the sheriff informs the garnishee before the end of the period specified in ORS 18.752 (1) that the property held by the garnishee will be sold, the garnishee shall continue to hold the property until receiving further directions from the court. [2001 c.249 §33]

18.710 Hearing on challenge to garnishment. (1) A debtor's challenge to a garnishment shall be adjudicated in a summary manner at a hearing before the court with authority over the writ of garnishment. The clerk of the court shall immediately set a hearing date and send notice of the hearing to the parties. The hearing shall be held as soon as possible.

(2) Hearings on a challenge to a garnishment may be held by telecommunication.

(3) The debtor has the burden to prove timely delivery of a challenge to a garnishment. [2001 c.249 §34]

18.712 Allowance or denial of challenge. (1) Except as provided in subsection (3) of this section, if a challenge to a garnishment is allowed by the court, the clerk of the court shall mail to the debtor from any payments made to the clerk all amounts determined to be exempt from or not subject to garnishment within 10 judicial days after the court's order allowing the challenge. If the challenge to a garnishment has been made for property described in ORS 18.750 and a request for sale of the property has been made by the garnishor under ORS 18.755, the clerk shall give notice of the court's decision to the garnishee and to the sheriff who would conduct the sale.

(2) Except as provided in subsection (3) of this section, any amount determined to be garnishable property that is not exempt after a hearing shall be mailed to the garnishor within 10 judicial days after the court's order denying the challenge as to that amount.

(3) The Judicial Department may by written policy establish time limitations different from the 10-day period provided in subsections (1) and (2) of this section for the delivery of amounts after a judicial determination on a challenge to a garnishment. The time limitations established by the department may be longer or shorter than the 10-day period. The policy may provide for a period longer than 10 days for a category of payments only if the department determines that the category is subject to special circumstances that create substantial difficulties in meeting a requirement of delivery within 10 days. The policy shall provide for delivery in less than 10 days for any category of payments that the department determines can be delivered within a shorter period of time. The department shall consider federal guidelines and rules relating to the timing of transactions in financial institutions in developing a policy under this subsection. Any policy adopted under this subsection applies to all courts of this state, except that municipal courts and justice courts are not bound by any requirement that a category of payments be delivered in less than 10 days. [2001 c.249 §35]

18.715 Sanctions. (1) A court may impose sanctions against any person who files a challenge to a garnishment in bad faith. The sanctions a court may impose under this subsection are a penalty of not more than \$100 and responsibility for attorney fees under ORS 20.105.

(2) The court shall order a creditor to return any property that is garnished under a writ of garnishment and that was exempt from garnishment or not subject to garnishment, and shall order the creditor to pay a penalty of \$200 to the debtor in addition to all costs and reasonable attorney fees incurred by the debtor in recovering the property and penalty, if:

(a) The creditor is the garnishor and fails to provide in the writ any address for the debtor that is known to the creditor; or

(b) The creditor is not the garnishor and fails to provide to the garnishor any address for the debtor that is known to the creditor.

(3) The imposition of sanctions under this section does not limit any remedy otherwise available to the creditor or debtor. [2001 c.249 §36]

18.718 Special rules for writs issued for past due support. (1) Notwithstanding ORS 18.700 (2), if a writ of garnishment is issued pursuant to ORS 25.083, the debtor may:

(a) Challenge the enforcement of the past due support in the appropriate tribunal of the state upon whose request the writ was issued as indicated in the writ of garnishment; or

(b) File a challenge to the garnishment with the clerk of the court in the county in which the property was located when the writ was delivered, if the debtor pays the filing fee required for an appearance under ORS chapter 21 and files with the clerk of the court copies of the writ of garnishment, the debt calculation form and the garnishee response delivered to the debtor under ORS 18.658.

(2) When a challenge to a garnishment is filed under this section, the clerk of the court shall enter the filing in the court register and the court shall decide the challenge in the manner provided by ORS 18.710.

(3) Immediately upon receipt of a notice of a challenge to a garnishment under this section, the issuer of the writ shall file with the clerk of the court a response to the challenge, attaching copies of the writ of garnishment and garnishee response, and any supporting documentation necessary or helpful to the court in making a determination on the challenge. [2001 c.249 §36a]

(Claim by Person Other Than Debtor)

18.725 Claim by person other than debtor for all or part of garnished property. Any person other than a debtor who has an interest in any garnished property or in any part of the garnished property may assert that interest by filing with the clerk of the court specified in the writ of garnishment an application in substantially the form set forth in ORS 18.850 for a challenge to a garnishment. The provisions of ORS 18.700 to 18.715 apply to an application made under this section. [2001 c.249 §37]

(Payment of Money Under Writ Generally)

18.730 Payment of money under writ; garnishor's duty to hold payments. (1) Unless the court has directed otherwise or the garnishee has received notice that a challenge to the garnishment has been filed by the debtor, a garnishee shall make payments of money under a writ of garnishment to the garnishor.

(2) Except as provided in ORS 18.645 and 18.745, a garnishor receiving a payment under a writ of garnishment must hold the payment for a period of 10 days after receipt. The payments must be held in this state, must be clearly identifiable and must be held separate and apart from any account used for operating a business or used to pay personal or business expenses. A payment under a writ may be commingled with other garnished money.

(3) If a garnishee receives notice of a challenge to the garnishment from the clerk of the court under ORS 18.702, the garnishee shall cease making payments to the garnishor and shall make all further payments to the clerk of the court in the manner provided by ORS 18.708. [2001 c.249 §38]

18.732 Money owed to debtor that is due within 45 days. (1) If the property garnished by a writ of garnishment is money that is owed to the debtor and that is not due to be paid at the time the writ is delivered but that will become due within 45 days after the delivery date, the garnishee is not required to deliver the money until payment is due. Within five days after the payment is due, unless the garnishment has been satisfied or released, the garnishee must mail or deliver to the garnishor the amount of the payment then due or a portion of the payment sufficient to satisfy the garnishment, whichever is less.

(2) If the garnishee receives notice of a challenge to the garnishment at any time before the garnishee mails or delivers the amount due, the garnishee shall comply with ORS 18.708. [2001 c.249 §39]

(Payment of Nonexempt Wages)

18.735 Payment of wages subject to garnishment. Upon delivery of a writ of garnishment, a garnishee that employs the debtor shall pay to the garnishor all wages that are determined to be subject to garnishment, and that are not exempt under ORS 23.186, at the following times:

(1) The garnishee must make an initial payment when the garnishee next pays any wages to the debtor. The payment must be for all wages that were owing to the debtor on the date that the writ was delivered to the garnishee, and all amounts that are being paid to the debtor for work performed after the writ was delivered and before issuance of the paycheck. The garnishee must compute the amount of wages subject to garnishment using the wage exemption calculation form provided by ORS 18.840 and must mail a copy of the completed form along with the first payment under the writ.

(2) Unless the writ of garnishment is satisfied or released, the garnishee must make subsequent payments under the writ whenever the garnishee makes any payment of wages to the debtor during the period specified in ORS 18.625. Each time there is any change in the debtor's pay period or any change in the amount paid to the debtor during the debtor's pay period, the garnishee must complete a new wage exemption calculation form and mail a copy of the completed form along with the payment.

(3) Unless the writ of garnishment is satisfied or released sooner, the garnishee must make a final payment under the writ when the garnishee next makes a payment of wages to the debtor after the writ expires under the provisions of ORS 18.625. The payment must be for all wages that were owing to the debtor on the date that the writ expires. The garnishee must complete a new wage exemption calculation form and mail a copy of the completed form along with the final payment. [2001 c.249 §40]

(Payments Made to Clerk of Court)

18.738 Acceptance or rejection of payments by clerk. (1) The clerk of the court is not liable for accepting any amount of payment under a writ of garnishment, including any payment that is sent to the clerk in error or any payment that exceeds the amount required to satisfy the garnishment.

(2) The clerk of the court may return to the garnishee any payment received from the garnishee unless the garnishee has delivered a garnishee response to the court in the manner required by ORS 18.690 or has provided a statement to the clerk that the payment is a voluntary payment on behalf of the debtor to be applied toward satisfaction of the garnishment or is a

payment under another law or court order that requires or allows the garnishee to pay money to the court. [2001 c.249 §41]

18.740 Payments erroneously sent to court. (1) If a garnishee erroneously sends a payment to the court that should have been sent to the garnishor, the clerk of the court shall immediately forward to the garnishor any cash or check made payable to the garnishor. If a garnishee erroneously sends a payment in the form of a check made payable to the court, the clerk may deposit and hold the check until the check has cleared and then forward the payment to the garnishor.

(2) The clerk of the court is not liable for interest on money erroneously sent to the court if the clerk transmits the money to the garnishor in a timely manner. [2001 c.249 §42]

(Crediting of Payments)

18.742 Crediting of payments against debt. (1) If a garnishee makes payment to the garnishor, the payment shall be credited against the debt on the date the garnishor receives the payment.

(2) If a garnishee makes payment to the court, the payment shall be credited against the debt on the date the clerk of the court disburses payment to the garnishor, unless the court otherwise orders. This subsection applies even if the garnishee makes payment to the court in error or when the clerk holds money pending a decision on a challenge to the garnishment. [2001 c.249 §43]

18.745 Excess payments. Within 10 days after receiving a payment under a writ of garnishment, a garnishor must return to the debtor any amount that exceeds the amount owing on the debt. If payment was made by check, the garnishor is not required to return the payment until 10 days after the check has cleared. [2001 c.249 §44]

(Property Subject to Sale by Sheriff)

18.750 Application of ORS 18.750 to 18.760. (1) A garnishee shall not deliver the property described in this section to the garnishor. If the garnishor seeks to apply the property described in this section against the debt of the debtor, the property must be sold by the sheriff in the manner specified in ORS 18.750 to 18.760.

(2) The provisions of ORS 18.750 to 18.760 apply to:

(a) Any money owed by a garnishee to a debtor the payment of which is not due at the time the writ of garnishment is delivered to the garnishee and the payment of which does not become due within 45 days after the date of delivery;

(b) Property of the debtor that the garnishee holds under an unexpired bailment or lease;

(c) Property of the debtor in which the garnishee has a security interest that was granted to the garnishee by the debtor before the delivery of the writ; and

(d) Any other garnishable property that is not payable in money.

(3) The property described in subsection (2)(a) to (c) of this section must be delivered by the garnishee to the purchaser in the manner provided by ORS 18.758 (3) if the interest of the debtor in the property is sold by the sheriff under ORS 18.758. Subject to the provisions of ORS 18.755, the garnishee must deliver to the sheriff any other garnishable property that is not payable in money upon receiving notice from the sheriff under ORS 18.755 (4). [2001 c.249 §45]

18.752 Garnishee duties. (1) If a garnishee indicates in the garnishee response that the garnishee holds any property described in ORS 18.750, the garnishee must hold the garnished property, or a portion of the property sufficient to satisfy the garnishment, for a period of 30 days after the garnishee delivers the garnishee response, unless the sheriff or the garnishor notifies the garnishee that the garnishment is released or terminated. If the sheriff contacts the garnishee during the 30-day period, the garnishee shall deliver the property to the sheriff or take such other action as may be specified in the notice given to the garnishee under ORS 18.755 (4).

(2) If the garnishee is not contacted by the sheriff before the end of the 30-day period provided for in subsection (1) of this section, the garnishment is of no further force or effect with respect to the property and the garnishee may deal with the garnished property as if the writ of garnishment had not been delivered to the garnishee. [2001 c.249 §46]

18.755 Request for sale; sheriff's fees. (1) If a garnishee indicates in the garnishee response that the garnishee holds any property described in ORS 18.750, the garnishor may require that the property be sold and that the proceeds of the sale be applied against the debt owed to the creditor. A sale of the property shall be conducted by the sheriff only if the garnishor mails or delivers a written request for sale of the property, and pays the fees determined by the sheriff under subsection (3) of this section, not later than 20 days after the garnishee delivers the garnishee response. A copy of the writ of garnishment and a copy of the garnishee response must be attached to the request for sale of the property.

(2) A sale of the property described in ORS 18.750 may be conducted under ORS 18.750 to 18.760 only by the sheriff of the county in which the writ was delivered or, if the property is not located within the county in which the writ was delivered, by the sheriff of the county in which the property is located.

(3) A garnishor may request that the sheriff of a county described in subsection (2) of this section provide a statement to the garnishor of the fees that the sheriff will charge for conducting a sale of property that is described in ORS 18.750. The sheriff shall conduct such investigation as may be necessary to determine the difficulty of conducting any sale of the property under

ORS 18.758, including any costs that the sheriff may incur in taking into possession any of the property described in ORS 18.750 (3). The sheriff shall determine whether the property described in ORS 18.750 (3) should be taken into possession of the sheriff, or whether the sheriff should enter into an agreement with the garnishee for the garnishee to continue to hold the property pending sale by the sheriff. The sheriff shall provide the statement of fees to the garnishor not later than five days after the garnishor requests the statement.

(4) If the garnishor mails or delivers a written request for sale of property and pays the sheriff fees determined under subsection (3) of this section within the time allowed by subsection (1) of this section, the sheriff shall promptly mail or deliver a written notice to the garnishee. The notice shall direct the garnishee to:

(a) Hold all property described in ORS 18.750 (2)(a) to (c) until the garnishee receives further instructions with respect to disposition of the property; and

(b) Deliver all property described in ORS 18.750 (2)(d) to the sheriff, unless the sheriff has agreed with the garnishee that the property should continue to be held by the garnishee pending sale.

(5) Upon sending a notice to a garnishee under subsection (4) of this section, the sheriff shall mail or deliver a copy of the notice to the clerk of the court with authority over the writ of garnishment. [2001 c.249 §47]

18.758 Sheriff's sale. (1) A sheriff shall sell property under ORS 18.750 to 18.760 in the same manner in which property is sold on execution. If the debtor owns only part of the property, the sheriff shall sell the interest of the debtor in the property. The sale of the property must be conducted by the sheriff:

(a) Within 15 days after notice is sent to the garnishee under ORS 18.755 (4), if the garnishee is directed to continue to hold the property pending sale by the sheriff; or

(b) Within 15 days after the property is delivered to the sheriff, if the garnishee is directed to deliver the property to the sheriff under ORS 18.755 (4).

(2) If the garnishor notifies the sheriff that property should be released to the debtor, the sheriff shall promptly release the property.

(3) If the garnishee continues to hold property of the debtor pending sale of the property under ORS 18.750 to 18.760, within five days after the sale of property under this section the sheriff shall advise the garnishee in writing of the identity of the purchaser and that the purchaser is entitled to possession of the property or to possession of the debtor's interest in the property. If the property is a debt owed to the debtor for which payment is not due or is subject to a bailment, lease or security interest that has not yet expired or been satisfied or released, the garnishee need not deliver the property to the purchaser until five days after payment is due, the bailment or lease has expired, or the indebtedness secured by the property is satisfied or the security interest is released. [2001 c.249 §48]

18.760 Challenge to garnishment. If the sheriff receives notice of a challenge to the garnishment pursuant to ORS 18.702 after a request for sale of property has been submitted by the garnishor under ORS 18.755, the sheriff shall not take possession of or sell any property that is subject to the challenge. If the sheriff has taken property into possession before receiving the notice provided for in ORS 18.702, the sheriff shall hold the property pending the court's determination on the challenge. Upon receiving notice of the court's determination under ORS 18.712, the sheriff shall proceed as directed by the court. [2001 c.249 §49]

(Release of Garnishment)

18.770 Release of garnishment. (1) A garnishor may issue a release of garnishment that covers all or any portion of the property held under a writ of garnishment. The release must be in substantially the form provided by ORS 18.842. The garnishor must deliver a copy of the release to the garnishee and the debtor. In addition, the garnishor must deliver a copy of the release to:

(a) The sheriff, if the garnishor has made a request for sale of property under ORS 18.755; and

(b) The clerk of the court specified in the writ of garnishment as the court with authority over the writ, if the garnishor has made a request for sale of property under ORS 18.755 or if the garnishor has received a challenge to the garnishment.

(2) A person who does not receive a copy of a release under this section is not liable for treating the property as though the writ were still in effect.

(3) Any proceedings for the sale of property under ORS 18.758 shall be terminated immediately upon receipt by the sheriff of a copy of a release of garnishment.

(4) Upon receipt of a copy of a release under this section, the garnishee may proceed to deal with the released property as though the writ of garnishment had not been issued. [2001 c.249 §50]

(Sanctions Against Noncomplying Garnishee)

18.775 Liability of garnishee. (1) If a garnishee fails to file a garnishee response within the time required by law, or fails to deliver all garnishable property required to be delivered under the writ of garnishment within the time required by law, the garnishee is liable to the creditor in an amount equal to the lesser of:

(a) The amount required to satisfy the garnishment; or

(b) The value of the debtor's garnishable property held by the garnishee at the time the writ is delivered to the garnishee.

(2) A judgment may be entered against the garnishee for the amounts specified in this section if, after a hearing, the court finds that:

(a) The garnishee at the time of the delivery of the writ of garnishment held garnishable property of the debtor beyond the amount reported in the garnishee response;

(b) The garnishee held any garnishable property of the debtor and the garnishee failed to make a response; or

(c) The garnishee failed to deliver garnishable property required to be delivered under the writ.

(3) The creditor may also recover costs of the creditor as determined under ORCP 68. If the garnishee fails to file a garnishee response within the time required by law, the costs of the creditor may be recovered from the garnishee even if it is determined that the garnishee held no garnishable property of the debtor at the time the writ was delivered to the garnishee.

(4) Any amounts from a garnishee collected other than costs under a judgment entered pursuant to this section must be credited against the debt owed by the debtor to the creditor. [2001 c.249 §51]

18.778 Order to appear. (1) If a garnishee fails to provide a garnishee response within the time required by law, or the response is unsatisfactory to the garnishor, or the garnishee fails to deliver garnishable property under the writ of garnishment within the time required by law, upon application of the garnishor, the garnishee may be ordered by the court to appear at a specified time and place for an examination. In addition to or in lieu of an order to appear for examination, the court may order the garnishee to appear for a hearing under ORS 18.782 to determine whether the garnishee should be held liable for the amount specified in ORS 18.775.

(2) At any time after a garnishor applies for an order under this section, the court may enter an order restraining the garnishee from in any manner disposing of or injuring any of the property of the debtor alleged by the garnishor to be in the garnishee's possession.

(3) Disobedience of any order of the court under this section, or refusal to answer any question upon appearance under an order to appear for examination, may be punished as contempt. [2001 c.249 §52]

18.780 Pleadings; default judgment. (1) If the court orders a garnishee to appear for a hearing under ORS 18.782, the garnishor must serve upon the garnishee written allegations not less than 20 days before the time set for the hearing or within such time as may be specified in the order. The allegations must inform the garnishee that if the garnishee fails to answer the allegations not less than 10 days before the time when the garnishee is required to appear for hearing, default judgment may be given against the garnishee for an amount no greater than the judgment against the debtor, plus any costs awarded by the court in the proceeding. The garnishor may also serve upon the garnishee, not less than 20 days before the time set for the hearing or within such time as may be specified in the order, written interrogatories concerning matters relating to the garnishment.

(2) Unless further time is allowed for good cause, not less than 10 days before the time when the garnishee is required to appear for hearing, the garnishee must file with the court an answer to the allegations and interrogatories of the garnishor and deliver a true copy of the answer to the garnishor. The answer shall be on oath and shall contain a full response to all of the allegations and interrogatories.

(3) The garnishor may except to the answer of the garnishee for insufficiency, within such time as may be allowed by the court. If the answer is adjudged insufficient, the garnishee may be allowed to amend the answer.

(4) If the garnishee fails to answer as required under subsection (2) of this section, the creditor may have judgment against the garnishee for want of answer. In no case shall default judgment be given against the garnishee for an amount greater than the judgment against the debtor, plus any costs awarded by the court in the proceeding. The judgment provided for in this subsection is in lieu of any judgment under ORS 18.775. Any amounts other than costs collected from a garnishee under a judgment entered pursuant to this subsection must be credited against the debt owed by the debtor to the creditor. [2001 c.249 §53]

18.782 Hearing. Witnesses, including the debtor and garnishee, may be required to appear and testify at a hearing held pursuant to an order issued under ORS 18.778. The proceedings against a garnishee shall be tried by the court as upon the trial of an issue of law between a plaintiff and defendant. [2001 c.249 §54]

(Financial Institution as Garnishee)

18.790 Search fee; garnishment processing fee. (1) Except as provided in subsection (2) of this section, the garnishor must pay a \$10 search fee at the time of delivery of any writ of garnishment on a financial institution, or at the time a notice of garnishment is delivered to the financial institution under ORS 18.900. If the search fee required by this section is not paid:

(a) The garnishment is not effective to garnish any property of the debtor; and

(b) The financial institution need not file a garnishee response.

(2) The search fee provided for in this section need not be paid to a financial institution if the debtor is an employee of the financial institution.

(3) Notwithstanding subsection (1) of this section, a financial institution may enter into an agreement with any state agency authorized to garnish pursuant to ORS 18.900 for periodic billing and payment of garnishee search fees required under this section.

(4) The right of a financial institution to receive the search fee provided for in this section does not in any way restrict or impair the right of the financial institution to charge and collect an additional garnishment processing fee from any debtor whose property the financial institution holds, or to whom the financial institution owes money. However, a financial institution may not charge or collect a garnishment processing fee in violation of ORS 652.610. If a financial institution charges a garnishment processing fee, the financial institution may collect the fee by deducting the amount of the fee from any amount that the financial institution owes to the debtor. [2001 c.249 §55]

18.792 Safe deposit boxes. Notwithstanding any other provision of ORS 18.600 to 18.850, but subject to the provisions of ORS 18.900, the duty of a financial institution that is a garnishee to deliver any property of the debtor that may be contained in a safe deposit box that is in the garnishee's possession, control or custody at the time the writ of garnishment is delivered is conditioned upon the garnishor first paying to the garnishee, in addition to the search fee provided for in ORS 18.790, all reasonable costs incurred by the garnishee in gaining entry to the safe deposit box. The costs must be paid to the garnishee by the garnishor before access to the safe deposit box is granted. If the garnishor fails to pay such costs to the garnishee within 20 days after the delivery of the garnishee response, the garnishment shall not be effective to garnish any property of the debtor that may be contained in the safe deposit box and the garnishee may proceed to deal with the safe deposit box and its contents as though the writ of garnishment had not been issued. Nothing in this section limits the right of a garnishor to reach the contents of any safe deposit box in any manner otherwise provided by law. [2001 c.249 §56]

18.795 Setoff for amounts owing to financial institution. In addition to such rights as the garnishee may have at law or in equity, a garnishee who is a financial institution may, following delivery of a writ of garnishment to the garnishee, set off such sums as are due from the debtor at the time the writ of garnishment is delivered. A garnishee may not set off any amounts that are not otherwise due to be paid but that have been accelerated after the delivery of a writ of garnishment. Notwithstanding any other provision of ORS 18.600 to 18.850, such a garnishee shall have no obligation to remit any sums upon the garnishment that the garnishee has set off pursuant to this section. A garnishee who sets off amounts pursuant to this section shall disclose the fact and the amount of the setoff in the garnishee response required by ORS 18.680, and must certify in the response that the amount set off by the garnishee was due from the debtor to the garnishee at the time the writ was delivered. [2001 c.249 §56a]

18.798 Effect of garnishment served on financial institution. Notwithstanding any other provision of ORS 18.600 to 18.850, if a writ of garnishment is delivered to a financial institution after 4 p.m. and the financial institution has a deposit account held in the name of the debtor, the writ of garnishment only garnishes moneys on deposit in the account at the beginning of the business day next following the day on which the writ is delivered. [2001 c.249 §56b]

(Writs Issued to Enforce Agency Orders or Warrants)

18.800 Special rules for writs issued to enforce agency orders or warrants. (1) Except as provided in this section, the provisions of ORS 18.600 to 18.850 apply to all writs of garnishment issued on behalf of agencies for the enforcement of agency orders or warrants that are recorded in the County Clerk Lien Record.

(2) Notwithstanding ORS 18.690, a garnishee who receives a writ of garnishment described in subsection (1) of this section need not deliver a copy of the garnishee response to the clerk of the court identified as having authority over the writ.

(3) Notwithstanding ORS 18.700, a debtor who wishes to make a challenge to a writ of garnishment described in subsection (1) of this section must deliver the challenge in person or by first class mail to the garnishor within the time specified by ORS 18.700 (2).

(4) A person issuing a writ of garnishment described in subsection (1) of this section shall modify the forms provided in ORS 18.600 to 18.850 to reflect that:

- (a) The writ of garnishment is issued pursuant to an order or warrant recorded in the County Clerk Lien Record;
- (b) A copy of the garnishee response need not be delivered or mailed to the clerk of the court identified in the writ; and
- (c) A challenge to a writ of garnishment described in subsection (1) of this section must be delivered to the garnishor and not to the court.

(5) Within 14 days after receipt of a challenge to a garnishment described in subsection (1) of this section, the garnishor must either:

- (a) Release all property claimed as exempt from or not subject to garnishment under the challenge to the garnishment; or
- (b) File with the clerk of the court a response to the challenge attaching copies of the writ and garnishee response, and any supporting documentation necessary or helpful to the court in making its determination on the challenge to the garnishment.

(6) The provisions of this section do not apply to writs of garnishment issued by the clerk of the court, writs issued by an attorney for the enforcement of an order recorded under ORS 671.707 or 701.150 or writs issued by the administrator, as defined in ORS 25.010, under ORS 18.645. [2001 c.249 §57]

(Use of Writ for Provisional Process)

18.810 Use of writ for provisional process. (1) Notwithstanding any other provision of ORS 18.600 to 18.850, a debt

calculation form need not be prepared or delivered for any writ of garnishment issued pursuant to an order for provisional process under ORCP 83 and 84.

(2) Notwithstanding ORS 18.730, if a writ of garnishment is issued pursuant to an order for provisional process under ORCP 83 and 84, all payments of money by the garnishee under the writ shall be made to the clerk of the court specified in the writ as the court with authority over the writ. The clerk shall hold the money pending final judgment against the debtor unless the court finds, upon a challenge to the garnishment made by the debtor under ORS 18.700, that all or part of the money is exempt from execution or not subject to garnishment. If final judgment is rendered in favor of the debtor, the court shall order the clerk to pay the money to the debtor. If final judgment is rendered in favor of the creditor, the court shall order the clerk to pay to the creditor as much of the money as will satisfy the judgment and to pay the remainder to the debtor.

(3) Notwithstanding ORS 18.750 to 18.760, if a writ of garnishment is issued pursuant to an order for provisional process under ORCP 83 and 84, the sheriff shall not sell any property described in ORS 18.750 before final judgment is entered in the proceedings, unless the court finds, upon a challenge made by the debtor under ORS 18.700, that all or part of the property is exempt from execution or is not subject to garnishment. If final judgment is rendered in favor of the debtor, the court shall order the sheriff to deliver the property to the debtor. If final judgment is rendered in favor of the creditor, the court shall order the sheriff to sell the property in the manner provided by ORS 18.758.

(4) If property taken into the possession of the sheriff under a writ of garnishment issued pursuant to an order for provisional process under ORCP 83 and 84 is perishable, or the cost of storing the property is great, the sheriff shall sell the property in the same manner in which property is sold on execution. The proceeds shall be held and distributed in the same manner as provided in subsection (2) of this section for payments made under the writ.

(5) The clerk of the court shall attach to any writ of garnishment issued pursuant to an order for provisional process under ORCP 83 and 84 a notice that informs the garnishee of the provisions of subsection (2) of this section. [2001 c.249 §58]

(Forms)

18.830 Writ of garnishment form. A writ of garnishment must be in substantially the following form:

COURT
COUNTY OF _____

_____))
Plaintiff,))
))
))
vs.))
))
_____))
Defendant.))

WRIT OF
GARNISHMENT

Case No. _____

TO:_____.

You are now a Garnishee. AS A GARNISHEE, YOU NEED TO KNOW THE FOLLOWING:

_____ (who is called the "Debtor") owes money to _____ (who is called the "Creditor"). A judgment was entered against the Debtor for the debt, or the debt otherwise became subject to garnishment, on _____, 2___. The Debtor's Social Security number or employer identification number is _____ (insert if known).

The amount subject to garnishment is \$_____.

This writ garnishes all of the following:

- Wages that you owe the Debtor at the time this writ is delivered to you, and all wages that the Debtor earns during the 90-day period following the date on which you receive this writ.
- All property of the Debtor (including money) that is in your possession, control or custody at the time this writ is delivered to you.
- All debts that you owe the Debtor at the time this writ is delivered to you, whether or not payment is due on the debt at the time you receive this writ.

YOU MUST ANSWER THIS WRIT BY COMPLETING THE ATTACHED GARNISHEE RESPONSE WITHIN THE TIME ALLOWED BY LAW, WHETHER OR NOT YOU HOLD ANY OF THE DEBTOR'S PROPERTY OR OWE ANYTHING TO THE DEBTOR. IF YOU DO NOT TRUTHFULLY ANSWER THIS WRIT, OR YOU DO NOT DELIVER

MONEY OR PROPERTY WHEN YOU ARE REQUIRED TO DO SO, YOU WILL BE LIABLE TO THE CREDITOR.

If you have questions, you should contact an attorney. The clerk of the court cannot give you legal advice. The Creditor's attorney cannot give you legal advice.

A writ of garnishment may only be issued by the clerk of the court, by the attorney for the Creditor or by a person who is specifically authorized by law to issue garnishments. This writ is issued by:

- The clerk of the court
- The attorney for the Creditor
- Other authorized issuer:
Name and title _____
Authority to issue writ _____

This writ is valid only if it has been delivered to you within 60 days after the date of issuance. If the clerk of the court is issuing this writ, the date of issuance is the date the clerk signs the writ (see "COURT SEAL" below). If this writ is issued by any other person, the date of issuance is the date on which the issuer signs the certification (see "CERTIFICATION" below).

IMPORTANT ADDRESSES

(see Step 2 of Instructions to Garnishee form)

(Clerk of the Court)

_____ Court
Street address _____
City _____ County _____
State _____ Zip Code _____

(Debtor)

Name _____
Telephone number (if known) _____

Street address _____
City _____ State _____
Zip Code _____

Creditor has no knowledge of Debtor's address

(Garnishor; check one)

Creditor: (Must be filled in if clerk of the court issues writ.)

Name _____
Street address _____
City _____ State _____
Zip Code _____

Attorney for Creditor:

Name _____
Street address _____
City _____ State _____
Zip Code _____
Telephone number _____
Oregon State Bar number _____

Other authorized issuer of writ:

Name _____
Street address _____
City _____ State _____
Zip Code _____
Telephone number _____

| | |
|---|-----------|
| + Pre-adjudication Interest | \$ _____ |
| + Attorney Fees | \$ _____ |
| + Cost Bill | \$ _____ |
| + Post-adjudication Interest | \$ _____ |
| + Delivery Fee for Writ | \$ _____ |
| + Sheriff's Fees other than Delivery Fees | \$ _____ |
| + Other (Explain. Attach additional sheets if necessary.) | |
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| Total "Other" from additional sheets (if used) | |
| + Past Writ Issuance Fees | \$ _____ |
| + Past Delivery Fees | \$ _____ |
| + Transcript and Filing Fees for Other Counties | \$ _____ |
| = Subtotal | \$ _____ |
| LESS Payments Made on Debt | \$(_____) |
| = <u>Total</u> Amount Required to Satisfy Debt in Full | \$ _____ |

NOTE: INSERTING ITEMS AND AMOUNTS NOT LAWFULLY SUBJECT TO COLLECTION BY GARNISHMENT MAY RESULT IN LIABILITY FOR WRONGFUL EXECUTION.

I certify that I have read this Debt Calculation form and to the best of my knowledge, information and belief the amount shown as owing is correct.

Creditor (Creditor must sign if writ issued by clerk of court.)

Garnishor (Attorney for Creditor or other person authorized by law to issue writ.)

Address

Telephone Number

Oregon State Bar Number (if attorney)

_____, 2____
Date of Calculation

[2001 c.249 §60]

18.835 Garnishee response form. A garnishee response must be in substantially the following form:

COURT
COUNTY OF _____

| | |
|--------------|----------------|
| _____)) | |
| Plaintiff,) | GARNISHEE |
|) | RESPONSE |
| vs.) | Case No. _____ |
|) | |
| _____)) | |

Defendant.)

The writ of garnishment was delivered to me on the ___ day of ____, 2___. The following responses are accurate and complete as of that date.

PART I: DEBTOR'S PROPERTY
GENERALLY
(ALL GARNISHEES MUST FILL OUT
THIS PORTION OF THE RESPONSE)

Place a check in front of all the following statements that apply. You may need to check more than one statement.

I have discovered that a voluntary or involuntary bankruptcy petition has been filed by or on behalf of the Debtor after the date shown on the face of the writ as the date on which the judgment was entered against the Debtor or after the debt otherwise became subject to garnishment. (You need not complete any other part of this response, but you must sign the response and deliver it in the manner specified in Step 2 of the Instructions to Garnishee form.)

I do not employ the Debtor, I do not have in my possession, control or custody any personal property of the Debtor, and I do not owe any debts or other obligations to the Debtor.

I employ the Debtor. (You must complete Part II of this response.)

I have in my possession, control or custody money that belongs to the Debtor (other than wages), or I owe a debt or other obligation to the Debtor (other than wages) that is due as of the time of this response. I am forwarding this money, or enough of it to satisfy the garnishment, to the Garnishor.

I owe a debt or other obligation to the Debtor (other than wages) that is not due as of the time of this response but will become due within 45 days. I will forward the money, or enough of it to satisfy the garnishment, to the Garnishor when the debt or other obligation becomes due.

I owe the following debt or other obligation to the Debtor (other than wages) that will not become due within 45 days of the time of this response. I will not make any payments on the debt or obligation until I receive instructions from the Sheriff or until 30 days have passed from the date on which I deliver this response. (See Instructions to Garnishee form.)

I have in my possession, control or custody the following personal property (other than money) that belongs to the Debtor. I will hold all of the property for the Garnishor until I receive instructions from the Sheriff or until 30 days have passed from the date on which I deliver this response. (See Instructions to Garnishee form.)

I may owe money to or hold property of the Debtor, but I am not sure what or how much it might be. (You must provide an explanation in the following space and you must deliver an amended response when you find out. You must deliver an amended response even if you find out that you have no property of the Debtor or owe no money to the Debtor.)

The writ of garnishment delivered to me, on its face, does not comply with the Oregon laws governing writs of garnishment, or I cannot determine the identity of the Debtor from the information in the writ. (You must provide an explanation in the following space.)

___ I have received an order to withhold income that applies to the income of the Debtor. The order to withhold income has priority over the writ of garnishment, and compliance with the order will reduce or eliminate the money that I would otherwise deliver under the writ. (Provide details, including the name of the agency serving the order to withhold income, the date the order was served on you and the amount to be withheld. If you employ the Debtor, you must still complete Part II of this response.)

___ I have received notice of a challenge to the garnishment. I will deliver to the clerk of the court all money that I would otherwise deliver to the Garnishor. (See Step 3 of Instructions to Garnishee form.)

___ Other (Explain)

PART II: DEBTOR'S EMPLOYER
(GARNISHEES WHO EMPLOY THE
DEBTOR MUST FILL OUT THIS
PORTION OF THE RESPONSE)

Place a check in front of all the following statements that apply. You may need to check more than one statement.

Note: THE LAW PROHIBITS DISCHARGE OF THE DEBTOR FROM EMPLOYMENT BY REASON OF GARNISHMENT.

___ I employ the Debtor. The Debtor is paid on a _____ basis (insert "weekly," "monthly" or other pay period). Wages will next be payable to the Debtor on the ___ day of _____, 2___. I will complete a Wage Exemption Calculation form for each payment of wages that is made during the 90-day period immediately following the date that the writ of garnishment was delivered to me. I will also complete a Wage Exemption Calculation form for the payday immediately following the end of the 90-day period. I will forward to the Garnishor on each of these occasions those wages calculated to be subject to garnishment, or enough of those wages to satisfy the garnishment.

___ I had already received a writ of garnishment from another Garnishor before this writ was delivered to me. Under Oregon law, the previous writ has priority. The previous writ will terminate on the ___ day of _____, 2__.

I hereby certify that I have fully and accurately completed this garnishee response.

Dated _____, 2__

Name of Garnishee

Signature

Address

[2001 c.249 §61]

18.838 Instructions to garnishee form. Instructions to garnishees must be in substantially the following form:

INSTRUCTIONS TO GARNISHEE

Except as specifically provided in these instructions, you must complete and deliver the Garnishee Response within seven calendar days after you receive the writ of garnishment. If the writ does not comply with Oregon law, the writ is not effective to garnish any property of the Debtor, but you still must complete and deliver the Garnishee Response. You must complete and deliver the response even though you cannot determine from the writ whether you hold any property or owe any debt to the Debtor. If the seventh calendar day is a Saturday, Sunday or legal holiday, you must deliver your response on or before the next following day that is not a Saturday, Sunday or legal holiday.

The writ is not effective, and you need not make a Garnishee Response, if:

- You do not receive the writ within 60 days after the date of issuance shown on the face of the writ.
- You do not receive an original writ of garnishment and a copy of the writ certified to be true by the Garnishor, or two copies of the original writ certified to be true by the Garnishor.

Statutes that may affect your rights and duties under the writ can be found in ORS 18.600 to 18.850.

NOTE: The Garnishor may be the Creditor, the attorney for the Creditor or some other person who is authorized by law to issue the writ of garnishment. See the writ to determine who the Garnishor is.

STEP 1. FILL OUT THE GARNISHEE RESPONSE.

All garnishees who are required to deliver a garnishee response must fill in Part I of the Garnishee Response. Garnishees who employ the Debtor must also fill in Part II of the response. You should keep a copy of the response for your records.

Completing Part I of the Garnishee Response. If you discover before you deliver your response that a bankruptcy petition has been filed by or on behalf of the Debtor, and the bankruptcy petition was filed after a judgment was entered against the Debtor or after the debt otherwise became subject to garnishment (see the date specified in the writ), you must put a check by the appropriate statement in Part I. If a bankruptcy petition has been filed, you should not make any payments to the Garnishor unless the court orders otherwise. You need not complete any other part of the response, but you still must sign the response and deliver it in the manner described in Step 2 of these instructions.

In all other cases you must list in Part I all money and personal property of the Debtor that is in your possession, control or custody at the time of delivery of the writ. You must also list all debts that you owe to the Debtor, whether or not those debts are currently due (e.g., money loaned to you by the Debtor that is to be repaid at a later time).

If you are the employer of the Debtor at the time the writ is delivered to you, you must put a check by the appropriate statement in Part I. In addition, you must complete Part II of the response.

If you believe that you may hold property of the Debtor or that you owe a debt to the Debtor, but you are not sure, you must put a check by the appropriate statement and provide an explanation. When you find out what property you hold that belongs to the Debtor, or you find out whether you owe money to the Debtor and how much, you must prepare and deliver an amended response. You must do this even if you find out that you have no property of the Debtor or that you do not owe anything to the Debtor.

If you determine that the writ, on its face, does not comply with Oregon laws governing writs of garnishment, or if you are unable to determine the identity of the Debtor from the information in the writ, then the writ is not effective to garnish any property of the Debtor. You must put a check by the appropriate statement in Part I and provide an explanation. You still must complete the response and deliver the response in the manner described in Step 2 of these instructions.

If you have received an order to withhold income that applies to the income of the Debtor and that order has priority over the garnishment, and if compliance with the order will reduce or eliminate the money or property that you would otherwise deliver under the garnishment, you must put a check by the appropriate statement in Part I. You still must fill out the remainder of the response and deliver the response in the manner described in Step 2 of these instructions. If you employ the Debtor, you still must complete Part II of the response.

If you receive notice of a challenge to the garnishment before you send your response, you must complete and deliver your response as otherwise required by these instructions. However, see Step 3 of these instructions regarding payment of money or delivery of property after receipt of notice of a challenge to the garnishment.

If you owe a debt to the Debtor and the Debtor owes a debt to the holder of an underlying lien on your property, you may be able to offset the amount payable to the underlying lienholder. See ORS 18.620. You must note that you have made the offset in Part I of the response (under "Other") and specify the amount that was offset.

Completing Part II of the Garnishee Response (employers only). You must fill in Part II of the response if you employ the Debtor on the date the writ of garnishment is delivered to you, or if you previously employed the Debtor and still owe wages to the Debtor on the date the writ is delivered to you.

Wages affected. The writ garnishes all wages that you owe to the Debtor for work performed before the date you received the writ, even though the wages will not be paid until a later date. The writ also garnishes all wages that are attributable to services performed during the 90-day period following the date you received the writ, even though you would not pay the Debtor for all or part of those services until after the end of the 90-day period. Wages subject to garnishment under the writ include all amounts paid by you as an employer, whether on an hourly, weekly or monthly basis, and include commission payments and bonuses.

Example 1: Debtor A is employed by you and is paid a monthly salary on the first day of each month. You receive a writ of garnishment on July 17. The writ garnishes all wages that you owe to Debtor A for work performed on or before July 17. If Debtor A was paid on July 1 for services performed in the month of June, the writ garnishes Debtor A's salary for the period beginning July 1 and ending October 15 (90 days after receipt of the writ).

Calculation of wages subject to garnishment. A Wage Exemption Calculation form is attached to the writ of garnishment. You must use this form to calculate the amount of the Debtor's wages that is subject to garnishment. You should read the instructions printed on the Wage Exemption Calculation form to determine the normal wage exemption and the minimum wage exemption for each payment you make under the writ.

A Wage Exemption Calculation form must be sent with the first payment you make under the writ. For the 90-day period during which the writ is effective, you must also fill out and return a Wage Exemption Calculation form with a subsequent payment any time the initial calculation changes. Finally, you must fill out and return a Wage Exemption Calculation form with the final payment that you make under the writ.

Payment of amount subject to garnishment. Payments under the writ must be made at the following times, unless the amount owing on the judgment or other debt is fully paid before the final payment is made or the writ is released:

(a) You must make a payment to the Garnishor of all wages subject to garnishment at the time you next pay wages to the Debtor. Complete the wage exemption computation, using the Wage Exemption Calculation form, to determine the portion of the Debtor's wages that is subject to garnishment. Be sure to adjust the minimum exemption amount for any payment that covers less than a full pay period. You must include a copy of the Wage Exemption Calculation form with this first payment.

Example 2: Using the facts given in Example 1, when you next make any payment of wages to Debtor A after you receive the writ on July 17, you must complete the Wage Exemption Calculation form and send the form to the Garnishor along with all amounts determined to be subject to garnishment that are attributable to the period covered by the payment. If you pay Debtor A on August 1, the payment will be for all wages attributable to the period beginning July 1 and ending July 31.

(b) Unless the writ of garnishment is satisfied or released, during the 90-day period following the date you received the writ, you must pay to the Garnishor all wages that are determined to be subject to garnishment whenever you issue a paycheck to the Debtor. If the Debtor is paid on a weekly basis, you must make payment under the writ on a weekly basis. If the Debtor is paid on a monthly basis, you must make payment under the writ on a monthly basis. If the amount paid to the Debtor varies from paycheck to paycheck, or changes at any time from the amount being paid at the time the writ was delivered to you, you must perform a new wage exemption computation to determine the amount of wages subject to garnishment under the writ. You must send a copy of the new Wage Exemption Calculation form with your payment to the Garnishor.

Example 3: Using the facts given above, as you make each subsequent payment of wages to Debtor A you must make a payment of that portion of the Debtor's wages that are subject to garnishment. If you continue to pay Debtor A on the first of each month, payments must be made on September 1 and October 1.

(c) Upon the expiration of the 90-day period, you must make a final payment to the Garnishor for all wages that were owing to the Debtor for the work performed by the Debtor through the 90th day following your receipt of the writ. This payment may be made at the time of the Debtor's next paycheck. You will need to complete another Wage Exemption Calculation form to determine the amount of the wages subject to garnishment.

Example 4: Using the facts given above, you must make a final payment for the wages owing to Debtor A for the period beginning October 1 and ending October 15. You may make this payment at the time you issue Debtor A's paycheck on November 1, but you must make the payment at any time you issue a paycheck to Debtor A after October 15. Be sure that in completing the wage exemption computation for the final payment you adjust the minimum exemption amount to take into account the fact that the period covered is only 15 days of the full month (see instructions on Wage Exemption Calculation form).

If you receive more than one writ of garnishment. If you receive a second writ of garnishment for the same Debtor from another Garnishor, the first writ will have priority for wages. The priority of the first writ lasts for the 90-day period following

delivery of that writ to you, or until the first writ is paid in full, whichever comes first. In your response to the second writ, you must put a check by the appropriate statement in Part II and indicate the date on which the first writ will expire (90 days after the date you received the writ). You should make no payments under the second writ until expiration of the first writ. The expiration date of the second writ is 90 days after the date you received the second writ; the expiration date is not affected by any delay in payment attributable to the priority of the first writ.

STEP 2. DELIVER THE GARNISHEE RESPONSE.

You must deliver your Garnishee Response and copies of the response in the manner provided in this step. The response and copies may be mailed or delivered personally.

You must complete and deliver the Garnishee Response within seven calendar days after you receive the writ of garnishment. If the seventh calendar day is a Saturday, Sunday or legal holiday, you must deliver your response on or before the next following day that is not a Saturday, Sunday or legal holiday.

If you are required to hold any property under the writ or make any payment under the writ, either at the time of making your response or later, you must:

- (a) Send the original of your Garnishee Response to the clerk of the court at the address indicated on the writ under Important Addresses.
- (b) Send a copy of your Garnishee Response to the Garnishor at the address indicated on the writ under Important Addresses.
- (c) Send a copy of your Garnishee Response to the Debtor if an address is indicated on the writ under Important Addresses.

If you are not required to hold any property under the writ or make any payment under the writ, either at the time of making your response or later, you must:

- (a) Send the original of your Garnishee Response to the Garnishor at the address indicated on the writ under Important Addresses.
- (b) Send a copy of your Garnishee Response to the Debtor if an address is indicated on the writ under Important Addresses.

STEP 3. DELIVER THE FUNDS OR OTHER PROPERTY.

As long as the writ is in effect, you may be liable to the Creditor if you pay any debt or turn over any property to the Debtor except as specifically allowed by law. If you have any money or property of the Debtor in your possession, control or custody at the time of delivery of the writ, or owe any debt to the Debtor, you must pay the money or hold the property as required by this step. Exceptions to this requirement are listed below.

IF YOU ARE HOLDING MONEY FOR THE DEBTOR OR OWE A DEBT THAT IS CURRENTLY DUE, you must pay the money to the Garnishor with your response. You must send your payment to the Garnishor at the address indicated on the writ under Important Addresses. Make your check payable to the Garnishor.

IF YOU OWE A DEBT TO THE DEBTOR THAT WILL BECOME DUE WITHIN 45 DAYS AFTER THE DATE YOU RECEIVED THE WRIT, you must send your payment directly to the Garnishor at the address provided in the writ when the debt becomes due. Make your check payable to the Garnishor.

IF YOU ARE HOLDING PROPERTY THAT BELONGS TO THE DEBTOR, OR OWE A DEBT TO THE DEBTOR THAT WILL NOT BECOME DUE WITHIN 45 DAYS AFTER THE DATE YOU RECEIVED THE WRIT, you must keep the property or debt in your possession, control or custody until you receive written notice from the Sheriff. The Sheriff's notice will tell you what to do with the property or debt. If you have followed all of the instructions in the writ and you receive no notice from the Sheriff within 30 days after the date on which you delivered your Garnishee Response, you may treat the writ as being of no further force or effect.

EXCEPTIONS:

1. Challenge to garnishment or specific directions from court. If you are making any payments under the garnishment and before making a payment you receive notice of a challenge to the garnishment from the court, or receive a specific direction from the court to make payments to the court, you must send or deliver the payment directly to the clerk of the court. If the money is currently due when you receive the notice, send the payment promptly to the court. If the payment is for a debt that is payable within 45 days after you receive the writ, make the payment to the court promptly when it becomes due. If you make payment by check, make the check payable to the State of Oregon. Because you may be liable for any payment that does not reach the court, it is better not to send cash by mail.

A challenge to the garnishment does not affect your duty to follow the instructions you receive from the Sheriff for

property that belongs to the Debtor and debts that you owe to the Debtor that do not become due within 45 days.

2. Previous writ of garnishment. If you receive a second writ of garnishment for the same Debtor from another Garnishor, the first writ will have priority and you need not make payments or deliver property under the second writ to the extent that compliance with the first writ will reduce or eliminate the payment of money or delivery of property that you would otherwise make under the garnishment. You must still deliver a Garnishee Response to the second writ, and must commence payment under the second writ as soon as the first writ is satisfied or expires.

3. Offset for payment of underlying lien. If you owe a debt to the Debtor and the Debtor owes a debt to the holder of an underlying lien on your property, you may be able to offset the amount payable to the underlying lienholder. See ORS 18.620.

4. Subsequent events:

(a) Bankruptcy. If you make your response and then discover that a voluntary or involuntary bankruptcy petition has been filed by or on behalf of the Debtor after the judgment was entered against the Debtor or after the debt otherwise became subject to garnishment (see date in writ), you may not make any further payments or delivery of property under the writ unless the court orders otherwise. You must mail the following notice to the Garnishor and to the Debtor.

(b) Order to withhold income. If you make your response and then receive an order to withhold income that has priority over the writ, you may make payments or deliver property under the writ only after payment of the amounts required under the order to withhold income. You must mail the following notice to the Garnishor and to the Debtor.

NOTICE OF BANKRUPTCY FILING
OR RECEIPT OF ORDER
TO WITHHOLD INCOME

TO: The Garnishor and the Debtor

RE: Writ of garnishment received _____, 2__ (date), in the case of _____ (Plaintiff) vs. _____ (Defendant), Circuit Court of _____ County, Oregon, Case No. _____.

The undersigned Garnishee furnished a Garnishee Response to this writ of garnishment on _____, 2__ (date). Since that time (check appropriate statement):

I have discovered that a voluntary or involuntary bankruptcy petition has been filed by or on behalf of the Debtor after the judgment was entered against the Debtor or after the debt otherwise became subject to garnishment.

I have received an order to withhold income of the Debtor by reason of a support obligation. Under ORS 25.375, the order to withhold income has priority over any other legal process under Oregon law against the same income. The withholding of income pursuant to the order to withhold income might reduce or eliminate subsequent payments under the garnishment. (Provide details, including the name of the agency serving the order to withhold, the date the order was served on you and the amounts to be withheld.)

Dated _____, 2__

Name of Garnishee

Signature

Address

SPECIAL INSTRUCTIONS FOR BANKS
AND OTHER FINANCIAL INSTITUTIONS

If the Garnishor fails to pay the search fee required by ORS 18.790 and you do not employ the Debtor, you are not required to deliver a Garnishee Response and you may deal with any property of the Debtor as though the garnishment had not been issued.

If the Debtor owes a debt to you that was due at the time you received the writ of garnishment, you may be able to offset the amount of that debt. See ORS 18.795. You must note that you have made the offset in Part I of the Garnishee Response

(under "Other") and specify the amount that was offset.

Before making a payment under the writ, you may first deduct any processing fee that you are allowed under ORS 18.790.

You need not deliver any property contained in a safe deposit box unless the Garnishor pays you in advance for the costs that will be incurred in gaining entry to the box. See ORS 18.792.

[2001 c.249 §62]

18.840 Wage exemption calculation form. A wage exemption calculation form must be served on the garnishee with each writ of garnishment. A wage exemption calculation form must be in substantially the following form:

WAGE EXEMPTION CALCULATION
(to be filled out by employers only)

1. Debtor's gross wages for period covered by this payment.....\$___
2. Total amount required to be withheld by law for amount in Line 1 (Federal and state withholding, Social Security, etc.).....\$___
3. Debtor's disposable wages (Subtract Line 2 from Line 1).....\$___
4. Normal exemption (Enter 75 percent of Line 3).....\$___
5. Minimum exemption (check one)
 \$170 (payment of wages weekly)
 \$340 (payment of wages every two weeks)
 \$368 (payment of wages half-monthly)
 \$731 (payment of wages monthly)
 \$___ (Any other period longer than one week, including partial payments for less than full pay period) (Multiply \$170 by number of weeks or fraction of a week)
6. Wages exempt from garnishment (Line 4 or 5, whichever is greater).....\$___
7. Nonexempt wages (Subtract Line 6 from Line 3).....\$___
8. Amount withheld pursuant to a support order under support withholding process.....\$___
9. Wages subject to garnishment (Subtract Line 8 from Line 7).....\$___

INSTRUCTIONS FOR WAGE EXEMPTION CALCULATION FORM

If you employ the Debtor named in the writ of garnishment, you must fill out and return this Wage Exemption Calculation form. A Wage Exemption Calculation form must be sent with the first payment you make under the writ. For the 90-day period during which the writ is effective, you must also fill out and return a Wage Exemption Calculation form with a subsequent payment any time the initial calculation changes. Finally, you must fill out and return a Wage Exemption Calculation form with the final payment that you make under the writ.

The writ of garnishment has no further force or effect with respect to the specified property.

Dated _____, 2__

Name of Garnishor

Signature

Address

[2001 c.249 §63a]

18.845 Notice of exemptions form. A notice of exemptions form must be in substantially the form set forth in this section. Nothing in the notice form described in this section is intended to expand or restrict the law relating to exempt property. A determination as to whether property is exempt from execution, attachment and garnishment must be made by reference to other law. The form provided in this section may be modified to provide more information or to update the notice based on subsequent changes in exemption laws.

NOTICE OF EXEMPT PROPERTY

Property belonging to you may have been taken or held in order to satisfy a debt. The debt may be reflected in a judgment or in a warrant or order issued by a state agency. Important legal papers are enclosed.

YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CAREFULLY.

State and federal law specify that certain property may not be taken. Some of the property that you may be able to get back is listed below.

(1) Wages or a salary as described in ORS 23.175 and 23.186. Whichever of the following amounts is greater:

- (a) 75 percent of your take-home wages; or
- (b) \$170 per workweek.

(2) Social Security benefits.

(3) Supplemental Security Income (SSI).

(4) Public assistance (welfare).

(5) Unemployment benefits.

(6) Disability benefits (other than SSI benefits).

(7) Workers' compensation benefits.

(8) Exempt wages, Social Security benefits (other than SSI), welfare, unemployment benefits and disability benefits when placed in a checking or savings account (up to \$7,500).

(9) Spousal support, child support or separate maintenance to the extent reasonably necessary for your support or the support of any of your dependents.

(10) A homestead (home, farm, manufactured dwelling or houseboat) if you live in it, to the value of \$20,000 (\$23,000 for a manufactured dwelling with land included; \$25,000 for any other homestead with land included) or proceeds from its sale for one year.

(11) Household goods, furniture, radios, a television set and utensils with a combined value not to exceed \$3,000.

*(12) An automobile, truck, trailer or other vehicle with a value not to exceed \$1,700.

*(13) Tools, implements, apparatus, team, harness or library that are necessary to carry on your occupation, with a combined value not to exceed \$3,000.

*(14) Books, pictures and musical instruments with a combined value not to exceed \$600.

*(15) Wearing apparel, jewelry and other personal items with a combined value not to exceed \$1,800.

(16) Domestic animals and poultry for family use with a combined value not to exceed \$1,000 and their food for 60 days.

(17) Provisions (food) and fuel for your family for 60 days.

(18) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt may not exceed \$1,000.

(19) Public or private pensions.

(20) Veterans' benefits and loans.

(21) Medical assistance benefits.

(22) Health insurance proceeds and disability proceeds of life insurance policies.

(23) Cash surrender value of life insurance policies not payable to your estate.

(24) Federal annuities.

(25) Other annuities to \$250 per month (excess over \$250 per month is subject to the same exemption as wages).

(26) Professionally prescribed health aids for you or any of your dependents.

*(27) Elderly rental assistance allowed pursuant to ORS 310.635.

*(28) Your right to receive, or property traceable to:

- *(a) An award under any crime victim reparation law.
- *(b) A payment or payments, not exceeding a total of \$10,000, on account of personal bodily injury suffered by you or an individual of whom you are a dependent.
- *(c) A payment in compensation of loss of future earnings of you or an individual of whom you are or were a dependent, to the extent reasonably necessary for your support and the support of any of your dependents.
- (29) Amounts paid to you as an earned income tax credit under federal tax law.
- (30) Interest in personal property to the value of \$400, but this cannot be used to increase the amount of any other exemption.
- (31) Equitable interests in property.
- (32) If the amount shown as owing on the Debt Calculation form exceeds the amount you actually owe to the creditor, the difference between the amount owed and the amount shown on the Debt Calculation form.

Note: If two or more people in your household owe the claim or judgment, each of them may claim the exemptions marked by an asterisk (*).

SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND SPOUSAL SUPPORT. Some property that may not otherwise be taken for payment against the debt may be taken to pay for overdue support. For instance, Social Security benefits, workers' compensation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but only 75 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support obligation.

YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK. You may seek to reclaim your exempt property by doing the following:

- (1) Fill out the Challenge to Garnishment form that you received with this notice.
- (2) Mail or deliver the Challenge to Garnishment form to the clerk of the court at the address shown on the writ of garnishment. If you wish to claim wages or salary as exempt, you must mail or deliver the form within 120 days after you receive this notice. If you wish to claim that any other money or property is exempt, or claim that the property is not subject to garnishment, you must mail or deliver the form within 30 days after you receive this notice. You have the burden of showing that your challenge is made on time, so you should keep records showing when the challenge was mailed or delivered.
- (3) The law only requires that the Garnishor hold the garnished money or property for 10 days before applying it to the Creditor's use. You may be able to keep the property from being used by the Creditor by promptly following (1) and (2) above.

You should be prepared to explain your exemption in court. If you have any questions about the garnishment or the debt, you should see an attorney.

IF YOU CLAIM AN EXEMPTION IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. Penalties that you could be subject to are listed in ORS 18.715.

When you file a Challenge to Garnishment form, the Garnishee may be required to make all payments under the garnishment to the court, and the Garnishor may be required to pay to the court all amounts received by the Garnishor that are subject to the challenge to the garnishment. The Garnishee and Garnishor are subject to penalties if they do not. For a complete explanation of their responsibilities, see ORS 18.705 and 18.708.

[2001 c.249 §64; 2001 c.538 §2a]

18.850 Challenge to garnishment form. A challenge to garnishment form must be in substantially the following form:

_____ COURT
COUNTY OF _____

| | |
|--------------|----------------|
| _____) | CHALLENGE TO |
| Plaintiff,) | GARNISHMENT |
|) | |
| vs.) | Case No. _____ |
|) | |
| _____) | |
| Defendant.) | |

I/We claim that the following described property or money is exempt from execution or is not subject to garnishment:

I/We believe this property is exempt from or not subject to garnishment because (the Notice of Exempt Property that you

received lists most types of property that you can claim as exempt from or not subject to garnishment):

I am a person other than the Debtor and I have the following interest in the property:

| | |
|-----------------|-----------------|
| Name _____ | Name _____ |
| Signature _____ | Signature _____ |
| Address _____ | Address _____ |
| _____ | _____ |
| Telephone _____ | Telephone _____ |
| Number _____ | Number _____ |
| (Required) | (Required) |

[2001 c.249 §65]

NOTICE OF GARNISHMENT

18.900 Notices of garnishment generally. (1) Any state agency authorized to issue warrants to collect taxes and debts owed to the State of Oregon, including but not limited to warrants issued pursuant to ORS 179.655, 267.385, 293.250, 314.430, 316.207, 320.080, 321.570, 323.390, 657.642 and 825.504, or any county tax collector authorized to issue warrants to collect taxes and debts owed to the county pursuant to ORS 311.625, may garnish property of a debtor in the possession, control or custody of a person other than the debtor by delivering to the person all of the following:

- (a) A notice of garnishment;
- (b) A warrant, or a true copy of a warrant;
- (c) The items specified in ORS 18.650 (1)(b) to (d); and
- (d) Any garnishee's search fee payable as provided in ORS 18.790.

(2) A notice of garnishment may be issued by any person designated by the state agency or by the county tax collector. A warrant need not be recorded in the County Clerk Lien Record as a condition of issuing a notice of garnishment under the provisions of this section. The provisions of ORS 18.800 do not apply to a notice of garnishment.

(3) If any of the items described in subsection (1) of this section are not delivered to the garnishee, a notice of garnishment shall not be effective to garnish any property of the debtor, and the garnishee shall not be required to respond to the garnishment and may proceed to deal with any property of the debtor as though the notice of garnishment had not been issued.

(4) Notwithstanding ORS 18.652, a notice of garnishment and the other items required by subsection (1) of this section may be delivered in person by any employee of the state agency or of the county tax collector authorized by the agency or the county to deliver the notice of garnishment, or by certified mail, return receipt requested. The employee need not be covered by the errors and omissions insurance required in ORS 18.652.

(5) Notwithstanding any provision of ORS 18.600 to 18.850, a debt calculation form need not be prepared or delivered for any notice of garnishment.

(6) Notwithstanding ORS 18.792, the duty of a garnishee to deliver any property of the debtor that may be contained in a safe deposit box that is in the garnishee's possession, control or custody at the time of delivery of the notice of garnishment to the garnishee is conditioned upon the state agency or the county tax collector first paying to the garnishee, in addition to the search fee provided for in ORS 18.790, all reasonable costs incurred by the garnishee in gaining entry to the safe deposit box. The costs shall be paid to the garnishee by the state agency or the county tax collector at least five days before the date the state agency or the county tax collector takes possession of the property in the safe deposit box. If the state agency or the county tax collector fails to pay such costs to the garnishee within 20 days after the delivery of the garnishee response, the garnishment shall not be effective to garnish any property of the debtor that may be contained in the safe deposit box and the garnishee may proceed to deal with the safe deposit box and its contents as though the notice of garnishment had not been issued. Nothing in this subsection limits the rights of a state agency or county tax collector to reach the contents of any safe deposit box in any manner otherwise provided by law.

(7) Except as provided in this section and ORS 18.902 and 18.905, all provisions of ORS 18.600 to 18.850 apply to notices of garnishment. The state agency or county tax collector shall modify the forms provided in ORS 18.600 to 18.850 as necessary to allow use of those forms for notices of garnishment. The form of the notice of garnishment must clearly indicate that the document is a notice of garnishment and must reflect the date of all warrants on which the notice of garnishment is based.

(8) The Attorney General may adopt model forms for notices of garnishment issued by state agencies and county tax collectors. There is a presumption, as described in ORS 40.120, that any state agency or county tax collector that uses a model form adopted by the Attorney General under this subsection has complied with the requirements of ORS 18.600 to 18.850, and with the provisions of this section and ORS 18.902 and 18.905, with respect to the form of notices of garnishment. [2001 c.249 §81]

18.902 Notices of garnishment issued by state agencies. (1) Notwithstanding ORS 18.607, a notice of garnishment issued by a state agency need not contain the name of a court whose authority is invoked.

(2) State agencies shall make such modifications as are necessary in the wage exemption calculation form provided by ORS 18.840 if a notice of garnishment is issued for a debt due for a state tax that is subject to the provisions of ORS 23.186 (6).

(3) Notwithstanding ORS 18.625, a notice of garnishment issued by a state agency acts to garnish all wages earned by the debtor by reason of services to the garnishee until the full amount of the debt is paid or until the notice of garnishment is released by the state agency or by court order. A notice of garnishment issued by a state agency must contain language reasonably designed to notify the garnishee of the provisions of this subsection.

(4) Notwithstanding ORS 18.690, a garnishee who receives a notice of garnishment issued by a state agency need not deliver a copy of the garnishee response to the clerk of the court, but must deliver the original of the response to the state agency.

(5) Notwithstanding ORS 18.700, a challenge to a notice of garnishment issued by a state agency must be delivered in person or by first class mail to the state agency within the time specified by ORS 18.700 (2). Within 14 days after receiving the challenge, the state agency must either concede the challenge or give the person making the challenge opportunity for hearing. If the person making the challenge requests a hearing, the agency shall immediately refer the challenge to the Hearing Officer Panel established under chapter 849, Oregon Laws 1999. The hearing shall be conducted as soon as possible. Notwithstanding ORS 183.315, the hearing shall be conducted as a contested case hearing. An issue that was decided in a previous hearing, or for which the debtor was previously afforded an opportunity for hearing, may not be reconsidered.

(6) If a state agency is issuing a notice of garnishment for collection of a state tax, and the state agency has reason to believe that the debtor intends to leave the state or do any other act that would jeopardize collection of the tax, the state agency may issue a special notice of garnishment. Any earnings, as defined in ORS 23.175, garnished under a special notice of garnishment are not subject to a claim of exemption under ORS 23.186. A special notice of garnishment issued under this subsection garnishes only that property of the debtor that is in the garnishee's possession, control or custody at the time the special notice is delivered, including debts not yet due, and all wages owed by the garnishee to the debtor at the time the special notice is delivered. A special notice of garnishment does not act to garnish wages earned by the debtor by reason of services rendered to the garnishee after the delivery of the special notice of garnishment.

(7) A special notice of garnishment issued under subsection (6) of this section shall contain a statement indicating that it is a special notice of garnishment under subsection (6) of this section and a statement reflecting the provisions of subsection (6) of this section. Notwithstanding ORS 18.900 (1), a wage exemption calculation form shall not be delivered to the garnishee with a special notice of garnishment. [2001 c.249 §82]

Note: The amendments to 18.902 by section 82a, chapter 249, Oregon Laws 2001, become operative January 1, 2004. See section 82b, chapter 249, Oregon Laws 2001. The text that is operative on and after January 1, 2004, is set forth for the user's convenience.

18.902. (1) Notwithstanding ORS 18.607, a notice of garnishment issued by a state agency need not contain the name of a court whose authority is invoked.

(2) State agencies shall make such modifications as are necessary in the wage exemption calculation form provided by ORS 18.840 if a notice of garnishment is issued for a debt due for a state tax that is subject to the provisions of ORS 23.186 (6).

(3) Notwithstanding ORS 18.625, a notice of garnishment issued by a state agency acts to garnish all wages earned by the debtor by reason of services to the garnishee until the full amount of the debt is paid or until the notice of garnishment is released by the state agency or by court order. A notice of garnishment issued by a state agency must contain language reasonably designed to notify the garnishee of the provisions of this subsection.

(4) Notwithstanding ORS 18.690, a garnishee who receives a notice of garnishment issued by a state agency need not deliver a copy of the garnishee response to the clerk of the court, but must deliver the original of the response to the state agency.

(5) Notwithstanding ORS 18.700, a challenge to a notice of garnishment issued by a state agency must be delivered in person or by first class mail to the state agency within the time specified by ORS 18.700 (2). Within 14 days after receiving the challenge, the state agency must either concede the challenge or give the person making the challenge opportunity for hearing. If the person making the challenge requests a hearing, the agency shall conduct a hearing as soon as possible. Notwithstanding ORS 183.315, the hearing shall be conducted as a contested case hearing. An issue that was decided in a previous hearing, or for which the debtor was previously afforded an opportunity for hearing, may not be reconsidered.

(6) If a state agency is issuing a notice of garnishment for collection of a state tax, and the state agency has reason to believe that the debtor intends to leave the state or do any other act that would jeopardize collection of the tax, the state agency may issue a special notice of garnishment. Any earnings, as defined in ORS 23.175, garnished under a special notice of garnishment are not subject to a claim of exemption under ORS 23.186. A special notice of garnishment issued under this subsection garnishes only that property of the debtor that is in the garnishee's possession, control or custody at the time the special notice is delivered, including debts not yet due, and all wages owed by the garnishee to the debtor at the time the special notice is delivered. A special notice of garnishment does not act to garnish wages earned by the debtor by reason of services rendered to the garnishee after the delivery of the special notice of garnishment.

(7) A special notice of garnishment issued under subsection (6) of this section shall contain a statement indicating that it is

a special notice of garnishment under subsection (6) of this section and a statement reflecting the provisions of subsection (6) of this section. Notwithstanding ORS 18.900 (1), a wage exemption calculation form shall not be delivered to the garnishee with a special notice of garnishment.

18.905 Notice of garnishment issued by county tax collector. (1) A notice of garnishment issued by a county tax collector must name the circuit court for the county that employs the tax collector as the court whose authority is invoked.

(2) At least 15 days before any county tax collector issues a notice of garnishment, the tax collector must mail to the debtor by certified mail, return receipt requested, at the debtor's last-known address, a notification of all amounts owing to the county, a statement that further collection enforcement actions may be taken by the county to collect those amounts, and a statement that those enforcement actions may include seizing any real property owned by the debtor, imposing a lien against any real property owned by the debtor, or garnishing bank accounts, wages and other property owned by the debtor. Only one such notification shall be required and any number of garnishments may be issued after the notification is mailed.

(3) Notwithstanding ORS 18.615, a notice of garnishment issued by a county tax collector acts to garnish only that property of the debtor that is in the garnishee's possession, control or custody at the time the notice is delivered, including debts not yet due, and all wages owed by the garnishee to the debtor at the time the notice is delivered. A notice of garnishment issued by a county tax collector does not act to garnish wages earned by the debtor by reason of services rendered to the garnishee after the delivery of the notice of garnishment.

(4) Notwithstanding ORS 18.690, a garnishee who receives a notice of garnishment issued by a county tax collector need not deliver a copy of the garnishee response to the clerk of the court, but must deliver the original of the response to the county tax collector.

(5) Notwithstanding ORS 18.700, a debtor who wishes to make a challenge to a notice of garnishment issued by a county tax collector must deliver the challenge in person or by first class mail to the county tax collector within the time specified by ORS 18.700 (2).

(6) Within 14 days after receipt of a challenge to a garnishment under subsection (5) of this section, the county tax collector must either:

- (a) Release all property claimed as exempt from or not subject to garnishment under the challenge to the garnishment; or
- (b) File with the clerk of the court a response to the challenge, attaching copies of the notice of garnishment and the garnishee response, and any supporting documentation necessary or helpful to the court in making its determination on the challenge to the garnishment. [2001 c.249 §83]

MISCELLANEOUS

18.910 Recovery of expenses incurred in enforcing judgment and certain other monetary obligations. This section establishes the right of a plaintiff to recover certain moneys the plaintiff has expended to recover a debt under ORS 18.900 or to enforce a judgment and establishes procedures for that recovery. The following apply to this section:

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

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

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

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

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

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

(a) Statutorily established moneys that meet the requirements under subsection (3) of this section, as follows:

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

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

(C) Circuit court fees as provided under ORS 21.325.

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

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

(F) Actual fees or disbursements made under ORS 21.410.

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

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

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

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

(b) Providing reasonable notice to the defendant of moneys the plaintiff recovers under subsection (1)(a) of this section.

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

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

(8) A writ of garnishment or attachment is not valid if issued solely to recover moneys recoverable under subsection (1)(a) of this section unless the right to collect the moneys is first reduced to a judgment or to a debt enforceable under ORS 18.900. [Formerly 29.367]