CHAPTER 644

AN ACT SB 254

Relating to collection of debts owed to state; creating new provisions; amending ORS 18.999 and 192.586; and prescribing an effective date.

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

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

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

(2) "Data match system" means the system for exchange of information between financial institutions and the Department of Revenue described in section 2 of this 2017 Act.

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

(4) "Financial institution" means any of the following doing business in this state:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3. (1) If, using the data match system, the Department of Revenue ascertains that a delinquent debtor holds an account at a financial institution, and the delinquent debtor is a delinquent child support obligor, the de-

partment may not issue or cause to be issued a notice of garnishment to the financial institution under ORS 18.600 to 18.850 against the delinquent debtor within 30 days after the date that the department so ascertained.

(2) As used in this section:

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

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

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

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

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

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

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

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

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

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

(a) That is in a person's control or possession prior to transmission to or from the department; or

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

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

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

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

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

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

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

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

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

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

(4) In addition to any other liability or penalty provided by law, violation of section 5 of this 2017 Act by an officer or employee of the State of Oregon is a Class C felony. An officer or employee of the State of Oregon who violates section 5 of this 2017 Act shall be dismissed from office and may not hold any public office with the State of Oregon for a period of five years from the date of dismissal.

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

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

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

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

(2) Rules adopted under this section must include:

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

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

(c) A procedure by which financial institutions that lack the technical ability to partic-

ipate in the data match system required by section 2 of this 2017 Act may transmit to the department a list of the names and Social Security numbers or other taxpayer identification numbers of all account holders.

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

SECTION 7a. The Department of Revenue shall adopt rules under section 7 of this 2017 Act not later than July 1, 2018.

SECTION 8. ORS 18.999 is amended to read:

18.999. This section establishes the right of a plaintiff to recover certain moneys the plaintiff has expended to recover a debt under ORS 18.854 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 21.235 and 21.258.

(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 21.300.

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

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

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

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

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

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

(b) Interest on the amounts specified in paragraph (a) 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 18.854.

SECTION 9. ORS 192.586 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Information provided by the division under this section is limited to information reported pursuant to ORS 25.790 that has not yet been entered into either:

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

(b) The automated state directory of new hires required to be established by the division under 42 U.S.C. 653a.

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

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

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

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

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

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

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

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

SECTION 14. This 2017 Act takes effect on the 91st day after the date on which the 2017

regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

Approved by the Governor August 2, 2017
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