

**JUDGMENTS/ENFORCEMENT
OF JUDGMENTS:
Garnishments**

REPORT

(HB 2274)

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Judgments/Enforcement of Judgments Work Group Garnishments Report

1. Introductory Summary

For the 2003 Legislative session, the Oregon Law Commission's Judgments/Enforcement of Judgments Work Group submits a bill to continue clarifying and simplifying the garnishment process. The primary changes are technical corrections and procedural changes to further simplify the garnishment process. Additional changes continue the clarification process by eliminating ambiguities and unsettled areas of garnishment law as well as eliminating inconsistent terminology.

2. History of the Project

In 2001, the Oregon legislature enacted legislation¹ recommended by the Judgment/Garnishment Work Group of the Oregon Law Commission to provide a comprehensive rewrite of the garnishment procedures and forms. ORS Chapter 29 needed a rewrite as the statutes followed no recognizable sequence and many of the individual statutes contained a hodge-podge of unrelated provisions. The bill was intended to simplify and clarify the garnishment process. Specifically, the bill consolidated the four existing writ forms into a single form, two forms for writs of continuing garnishment were eliminated, and the two forms for "snapshot" writs were consolidated into a single form.

Following the legislature's passage of the garnishment rewrite bill, the Law Commission authorized the Work Group to continue during the 2002 Legislative Interim as the Work Group did not complete their goal of addressing all aspects of the effect and enforcement of civil judgments. Rep. Max Williams, an Oregon Law Commissioner, continued to chair the Work Group. The Group is composed of members² representing:

¹ HB 2386 (2001).

² **Members**

Rep. Max Williams	Oregon State Legislature
Cleve Abbe	Oregon Title Insurance
Gary Blackledge	Greene & Markley PC
Thom Brown	Cosgrave Verger & Kester LLP
Thomas Christ	Cosgrave Verger & Kester LLP
Mark Comstock	Garrett Hemann Robertson Jennings Comstock & Trethewy PC
Jeffrey Hasson	Law Office of Jeffrey I. Hasson
Randall Jordan	Department of Justice
Jacqueline Koch	Koch & Dearing
Jim Markee	Oregon Collectors Association
David Nebel	Oregon Law Center
Tom Rask	Kell Alterman & Runstein LLP
Ronelle Shankle	Department of Justice, Division of Child Support Administration
Ken Sherman, Jr.	Sherman Sherman Murch Johnnie & Hazel
Rep. Lane P. Shetterly	Oregon State Legislature
Bradd Swank	Office of State Court Administrator
Irene Taylor	Public Defender's Office
Interested Participants	
Jean Fogarty	Department of Justice
Susan Grabe	Oregon State Bar
Wendy Johnson	Oregon Law Commission
David Kenagy	Oregon Law Commission
Tim Martinez	Oregon Bankers Association
Jack Munro	Oregon Land Title

- Attorneys, who have an obvious interest in the process for enforcing judgments;
- Courts, who are interested in clarity of law governing garnishments and any changes that might lead to increases in judicial efficiency;
- The Department of Justice, who 1) is interested on behalf of state agencies that collect judgments and other debts; 2) represents state agencies in their capacity as garnishees; and 3) is interested with respect to collections on behalf of persons to whom support is owed;
- Financial institutions, who along with employers, make up the bulk of garnishees;
- Collection agencies, who issue a significant proportion of the writs of garnishment generated in the state; and
- Debtors, who have an inherent interest in the garnishment process and in the means, manner, and types of property subject to garnishment.

The Group has worked both on a judgments bill and a garnishments bill this session. As the garnishments bill is largely clean-up work, the Group did not turn its attention to it until July 2002. The Group has had four monthly meetings this interim that focused on the garnishment project. The meetings took place at the Oregon State Bar offices and were open to the public. Several discussions among Work Group members (both verbal and via electronic correspondence), took place before and after each meeting. David Heynderickx, Senior Deputy Legislative Counsel, provided the Work Group with drafting services.

3. The Proposal: See HB 2274 (2003).

4. Bill Section-by-Section Analysis

Section 1: (Personal-Representative Garnishee)

This section addresses an unsettled issue of garnishment law. ORS 18.672 provides that a personal-representative garnishee's duty to deliver property does not arise until the probate court approves a distribution petition. In complicated probate cases, the distribution order may not occur for a period of years. Thus, in many cases, the personal-representative garnishee's duty to deliver property will not arise until over a year after the garnishment was delivered. But the statute of limitations for actions against garnishees requires that an action be commenced within one year from the delivery of the writ of garnishment. On its face, the statute of limitations suggests that although the garnishee has a duty to act, the creditor would have no right to enforce that duty to act.

To resolve this potential conflict, this section amends ORS 12.085 to provide that, with respect to a personal-representative garnishee, the one-year statute of limitations runs from the date of entry of the decree of final distribution of the estate and not from the date of delivery of the writ.

Section 2: (Public Body Definition)

A comprehensive definition of public body was developed by the Oregon Law Commission and adopted by the legislature in 2001 as ORS 174.109. This section amends ORS 18.600(10) to use that definition of public body rather than the one set forth in ORS 192.410.

Section 3: (Joint Debtors; Public Body Definition)

The right to issue one garnishment to reach the assets of more than one joint debtor is currently an unsettled question of garnishment law. This section explicitly amends ORS 18.607 to resolve this question by clarifying that a single garnishment can be directed against the assets of more than one joint debtor.

A single garnishment may be used if the debtors are jointly liable on all or part of the debt. A separate search fee must be delivered to the garnishee for each debtor. Section 9 includes related amendments concerning the garnishee's duties.

This section amends ORS 18.607 to conform to the use of the new comprehensive definition of public body provided by Section 2.

Section 4: (Child Support Payments to Department of Justice)

ORS 18.645 authorizes garnishments to be issued for the collection of past due support under the authority of the administrator as defined in ORS 25.010. To simplify the process and to conform to federal law, this section amends ORS 18.645 to require the garnishee to deliver payments to the Department of Justice, the state disbursement unit. Recognizing that payments will no longer be delivered to the issuer, this section also amends ORS 18.645 to require the Department of Justice, rather than the issuer, to comply with the statute's holding period for garnishment payments.

Section 5: (One Copy of Garnishment Document)

ORS 18.650 currently requires delivery to the garnishee of:

- a) the original writ and a certified true copy; or
- b) two certified true copies of the writ.

Problems with incomplete or improper certifications were reported to the Work Group, as well as disputes between garnishors and garnishees regarding the validity of certifications or attempted certifications. Upon review, the Work Group concluded that only one garnishment document was needed by the garnishee. To simplify compliance by the garnishor and the review process of the garnishee, and to avoid certification disputes between garnishees and garnishors, this section amends ORS 18.650 to require delivery to the garnishee of either an original writ of garnishment or a copy of a writ of garnishment. For simplicity, the certified-to-be-true-copy requirement is eliminated.

Section 6: (Conforming Amendments)

This section amends ORS 18.652 to conform to the amendments provided in Section 5.

Section 7: (Public Body Definition; Person or Place Designation for Delivery of Writ)

This section amends ORS 18.655 to conform to the use of the new comprehensive definition of public body provided by Section 2. To improve garnishment processing, the section also authorizes a public body to designate a particular person or place for the delivery of writs of garnishment to that public body.

Section 8: (Challenge of Garnishment Form: Address Requirements)

This section amends ORS 18.658 to require the garnishor to add the names and addresses of the garnishor and garnishee to the challenge of garnishment form provided to the debtor. This change provides an easy means for the court to identify the name and address of the garnishee for the purpose of sending notices with respect to a challenge of garnishment received by the court.

Section 9: (Joint Debtors: Garnishee's Duties)

As identified in Section 3, current garnishment law does not address the right of a garnishor to issue one garnishment against the property of joint judgment debtors. Correspondingly, the current law does not address the garnishee's duties when the garnishee holds separate property of each debtor and the combined separate property subject to garnishment exceeds the amount required to satisfy the garnishment. This section amends ORS 18.665 to provide that the garnishee may select which property to hold and deliver to satisfy the garnishment. The decision on which property to use is to be within the sole discretion of the garnishee.

Section 10: (Elimination of Copy Requirement)

To simplify the process for the garnishee and in recognition that the garnishee's response includes a complete case caption, this section amends ORS 18.690 to eliminate the requirement that the garnishee deliver a copy of the writ of garnishment with documents to be delivered to the court.

Section 11: (Modification of Supplemental Garnishee's Response Form)

Under current law, the Supplemental Garnishee Response form is set forth in both ORS 18.692 and ORS 18.838. To simplify the garnishment statutes and to conform to the general format of the garnishment statutes, this section deletes the form inserted in ORS 18.692 and provides a cross-reference to the form included as part of the Instructions to Garnishee as set forth in ORS 18.838.

Section 12: (Challenge to Garnishment Clarifications)

This section amends ORS 18.700 to provide clarification regarding Challenges to Garnishment. As adopted in House Bill 2386 (2001), ORS 18.700 continues the right of the debtor to raise the issues formerly raised through a “Claim of Exemption.”³ Since the Claim of Exemption served other functions than merely to present exemption claims, the new more generic document title “Challenge to Garnishment” was adopted for use in House Bill 2386. The Challenge to Garnishment serves the same function formerly served by the document titled “Claim of Exemption.” Unfortunately, the new title has suggested to debtors the right to pursue claims or objections outside of the scope of types of claims properly raised through a Claim of Exemption/ Challenge to Garnishment; for example, some debtors are trying to make collateral attacks on the judgment. This section clarifies that the Challenge to Garnishment allowed by ORS 18.700 cannot be used to raise issues not specifically authorized by that statute or ORS 18.725.

Section 13: (Creditor’s Responsibility to Deliver Funds to Court)

This section amends ORS 18.705 to clarify the creditor’s responsibility to ensure that garnished funds are delivered to the court in the event that a challenge to garnishment is filed. Garnishment law requires the garnishor to hold garnished funds 10 days after receipt. At the end of the 10-day period, the garnishor is entitled to apply the funds to the debt. When the garnishor is the creditor’s attorney, at the end of that 10-day period, the garnishor is authorized to deliver the funds to the creditor, unless a challenge to garnishment has been previously filed. When a challenge to garnishment is filed during the 10-day period, the garnished funds must be paid into the court. It is expected that the person holding the garnished funds – whether the creditor or the garnishor – has the responsibility to deliver the funds to the court. Instead, the current statutory language places that responsibility only on the garnishor. If the money was previously transferred to the creditor, the creditor should have the responsibility and obligation to deliver the funds to the court. The amendments in this section clarify that the creditor and not the garnishee, has that responsibility in this circumstance and thus assures that the garnished funds must be paid with the court.

This section also revises renumbered sub-section 4 of ORS 18.705 to delete confusing wording.

³ There are three issues that may be raised by the debtor:

1) ORS 18.700(1) allows a debtor to use a Challenge to Garnishment to “claim such exemptions from garnishment as are permitted by law.” See former ORS 29.142, which stated “... the defendant may claim such exemptions from garnishment as are permitted by law.” See ORS 23.160.

2) ORS 18.700(1)(a) allows a debtor to use a Challenge to Garnishment to assert that the amount specified in the garnishment as being subject to garnishment is greater than the total amount owed by the debtor to the creditor. See former ORS 29.142(d). This section allows the debtor to correct mathematical errors and failures to provide proper credit for payments. It does not allow the debtor to question the validity of the judgment.

3) ORS 18.700(1)(b) allows a debtor to use a Challenge to Garnishment to assert that certain property is not garnishable property. See former ORS 29.142(e). This section allows the debtor to assert that garnished property is one of the types of property identified in ORS 18.618 as not garnishable property.

The challenge to garnishment process may also be used by a third party to claim an interest in the garnished property. See former ORS 29.245(2) (1999).

Section 14: (Notice of a Challenge to Garnishment)

Under current law, the court is required to give notice of a challenge to garnishment hearing to “the parties.” Although this was intended to require notice to the garnishee, the garnishor, and the debtor, the courts did not always have that information. The language was also subject to the interpretation that the “parties” meant the original parties as shown on the court records. Consistent with the Section 8 amendments to the challenge to garnishment form, this section amends ORS 18.710 to require that the court provide notice to the garnishee, the garnishor, and the debtor. To assist the court in the resolution of the challenge to garnishment, the creditor is also required to deliver a copy of the writ of garnishment to the court prior to the hearing.

Section 15: (Payment to State Agency)

To simplify payment processing when a state agency is a creditor, this section amends ORS 18.730 to allow the agency to require checks payable under such writs to be made payable as directed by the garnishor. This would include allowing the check to be made payable to the state agency.

Section 16: (Creditor’s Responsibility to Return Excess Funds)

This section amends ORS 18.745 to clarify that the creditor is also responsible for ensuring that payments received under a writ of garnishment that exceed the amount owing on the debt must be returned to the debtor.

Section 17: (Designation of Issuer of Writ of Garnishment)

The writ of garnishment form provides for identification of the issuer of the writ. Space is left to place a check mark to designate whether the writ is issued by the clerk of the court, the attorney for the creditor, or other authorized issuer. To clarify the proper completion of the writ, this section amends ORS 18.830 to add the phrase, “(check one)” as a direction to the person completing the form, that it is necessary to designate the type of issuer. The phrase, “authority to issue writ” is also amended to add the word “statutory” and now reads, “statutory authority to issue writ.” The word “statutory” is inserted to clarify that the authority to issue a writ must be based upon statutory authority.

Section 18: (Garnishee Response Form Fixes)

To facilitate and simplify contacts between garnishors and garnishees, this section amends the Garnishee Response form set forth in ORS 18.835 to include space for the garnishee to provide a telephone number and fax number, if available.

Section 19: (Conforming Amendments)

The instructions to garnishee form found in ORS 18.838 is amended by this section.

a) To conform to the amendments provided for in Sections 5 and 6 of the proposed bill, the instructions have been modified to reflect the statutory change requiring service of only the original or a copy of the writ of garnishment.

b) Existing law includes a conflict between the legal duties of the garnishee as set forth in ORS 18.690 and as set forth in the instructions to the garnishee in ORS 18.838. Currently, the garnishee is required to send the original garnishee response to the creditor. The garnishee sends a copy of the response to the court if there is property subject to garnishment. If there is no property subject to garnishment, no copy is sent to the court. In the garnishee instructions; however, the original garnishee's response is sometimes sent to court and sometimes sent to the garnishor. To conform the instructions to the statute and to provide a uniform rule concerning the original garnishee's response, this section amends the instructions to require that the garnishee always send the original garnishee response to the garnishor.

c) Consistent with ORS 18.692, this section modifies the instructions to use the title "Supplemental Garnishee Response" rather than "Notice of Bankruptcy Filing or Receipt of Order to Withhold Income" when that document is required. The instructions have been further clarified to provide that the duty to make a Supplemental Garnishee Response arises only if the garnishee has not delivered all property subject to garnishment under the writ when a Supplemental Garnishee Response would otherwise be required.

Section 20: (Calculation Form Amendments; Multiple Writ Example Addition)

This section amends the wage exemption calculation form set forth in ORS 18.840.

To use terminology consistent with the other garnishment statutes, the phrase "served on" has been replaced with "delivered to" to match ORS 18.650.

To clarify part 8 of the calculation form, this section adds two phrases, "for this pay period" and "or under another writ with priority." The first change makes clear that only amounts withheld during the current pay period are to be subtracted under this subsection. The second change makes clear that the amount subject to garnishment for this writ is also reduced by amounts being withheld during this pay period to satisfy prior writs of garnishment.

The instructions have also been supplemented to clarify the processing of multiple writs. This includes an additional example covering the situation in which two valid Writs of Garnishment are honored for the same pay period. The issue of multiple claims against funds subject to garnishment can arise with a variety of types of documents, including IRS levies, orders to withhold earnings for other than support debts, and notices of garnishment. The nature of the instructions prevents an exhaustive explanation of all possible circumstances presented to garnishees. The additional language and example is not intended to be exhaustive, but rather to provide clarification for that specific instance.

Section 21: (Conforming Amendments)

This section amends ORS 18.845 by revising the document title from “Notice of Exempt Property” to “Notice of Exempt Property and Instructions for Challenge to Garnishment” to clarify that the notice of exemptions form also provides instructions for challenges to garnishment. This section also provides instructions clarifying that a challenge to garnishment can only be used to present the specific issues allowed by ORS 18.700 and 18.725. These changes are made in conjunction with Sections 12 and 22 of the proposed bill.

Section 22: (Conforming Amendments)

This section amends ORS 18.850, the form of the Challenge to Garnishment to conform to the changes made in Sections 8, 12 and 21 of the proposed bill.

Section 23: (Attorney General’s Authority to Adopt Garnishment Documents)

This section amends ORS 18.900 to clarify that the Attorney General’s authority to adopt a notice of garnishment form includes authority to adopt other garnishment documents, such as the Instructions to Garnishee, Garnishee’s Response, and Challenge to Garnishment necessary for the notice of garnishments, to comply with ORS 18.900 to 18.905.

Section 24: (Provisional Process and Concealed Property; Sheriff Authority to Take Possession)

By inadvertence, House Bill 2386 (2001), the garnishment revision bill, included the complete repeal of all sections of Chapter 29. This included the repeal of ORS 29.087. That section related to provisional process and concealed property. The repeal of that section was not discussed by the prior Garnishment Work Group and was not intended.

Former ORS 29.087 provided the sheriff’s explicit authority to act to take possession of concealed personal property under provisional process for claim and delivery. At least one court has concluded that the repeal of that section’s explicit authority to act evidenced a legislative intent to eliminate any implicit authority the sheriff might have to take those actions. Since the repeal was unintentional, this section restores the sheriff’s explicit authority. Since the authority is directly related to claim and delivery provisional process, this section also amends ORCP 85C to restore the sheriff’s explicit authority as described.

Section 25: (Prospective Effect)

This section makes the amendments, that the bill proposes, prospective. That is, they apply only to writs of garnishment issued on or after the effective date of the Act.