

# Chapter 29

## 1985 REPLACEMENT PART

### Provisional Process; Attachment and Garnishment

#### PROVISIONAL PROCESS

29.087 Concealed property

#### ATTACHMENT

29.115 Notice of attachment to defendant; content; method of delivery; plaintiff to provide address; sheriff's duty if address not known

#### GARNISHMENT

29.125 Definitions for ORS 29.125 to 29.375  
29.135 Garnishment described  
29.145 Writ issued upon application; form; duration of validity  
29.155 Garnishment of property of defendant held by another person  
29.165 Delivery of writ; insurance of deliverer; fee  
29.185 Person to whom writ to be delivered  
29.195 Duty of garnishee  
29.205 Effect of delivery of writ on property of defendant; property to which garnishment does not apply  
29.215 Copy to defendant; method of delivery; duty of plaintiff; civil penalty  
29.225 Form of notice of exemptions  
29.235 Certificate of garnishee; procedure for delivery of property; fee of sheriff; effect of payment  
29.245 Procedure when property owned by defendant and others  
29.255 Duty of garnishee when court directs or release is delivered; effect of due date of debt or sale of defendant's interest; effect on personal representative; payment of exempt wages  
29.265 Disposition of property delivered to court clerk or sheriff; payment of expenses; claim of exemption  
29.275 Liability of garnishee who fails to file certificate or deliver property; discharge of liability  
29.285 When garnishee punishable for contempt  
29.295 Effect of order under ORS 29.285

29.305 Restraining garnishee from disposing or injuring property of defendant  
29.315 Appearance under order  
29.325 Answer of garnishee; effect of failure to answer  
29.335 Insufficient answer; amendment; plaintiff's response  
29.343 Witnesses; trial of issues as issues of law  
29.345 When judgment given against garnishee; amount  
29.355 Execution and writ against garnishee; when execution to issue  
29.365 Release; form; effect; authority of clerk in addition to that of court  
29.375 Authority of state agency to garnish property by warrant and notice; procedure  
29.395 Severability

#### CROSS REFERENCES

##### Attachment of:

Human remains prohibited, 97.110  
Investment securities, 78.3170  
Proceeds of casualty and indemnity insurance, 23.230  
Property of insolvent state bank or trust company, possession by superintendent as bar, 711.430  
Wages, 23.175, 23.185  
Attachment of insurer prior to and during liquidation proceedings prohibited, 734.320  
Deposit in lieu of bond, 22.020 to 22.070  
District court, attachment, 46.080  
Enforcement of duties relating to judicial administration, 1.025  
Justice's court, attachment, 52.210  
Priority of attachment of a vessel, 783.360  
Property in custody of the law, no garnishment, 23.190  
Public officers as garnishees, 23.190  
Redelivery of attached vessel, 783.340  
Tax on personal property, attachment in action to collect, 311.455  
Unclaimed property held for owner, 98.302 to 98.436  
Undertaking may be executed by surety company, 743.732  
Vessel, attachment for damage to person or property, 783.330

**SPECIAL ACTIONS AND PROCEEDINGS**

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**29.010** [Repealed by 1981 c.898 §53]

### PROVISIONAL PROCESS

**29.020** [1973 c.741 §1, repealed by 1981 c.898 §53]

**29.025** [1973 c.741 §2; repealed by 1981 c.898 §53]

**29.030** [1973 c.741 §3; 1979 c.284 §62; repealed by 1981 c.898 §53]

**29.035** [1973 c.741 §4; repealed by 1981 c.898 §53]

**29.040** [1973 c.741 §5, repealed by 1979 c.284 §199]

**29.045** [1973 c.741 §6; repealed by 1981 c.898 §53]

**29.050** [1973 c.741 §7; repealed by 1981 c.898 §53]

**29.055** [1973 c.741 §8; repealed by 1981 c.898 §53]

**29.060** [1973 c.741 §9; repealed by 1981 c.898 §53]

**29.065** [1973 c.741 §10; repealed by 1981 c.898 §53]

**29.070** [1973 c.741 §11, repealed by 1981 c.898 §53]

**29.075** [1973 c.741 §12; repealed by 1981 c.898 §53]

**29.080** [Formerly 29.810; repealed by 1981 c.898 §53]

**29.085** [Formerly 29.830; repealed by 1981 c.898 §53]

**29.087 Concealed property.** When a sheriff is required to take possession of personal property under an order of provisional process that is claim and delivery under ORCP 85, and the property or any part thereof is concealed in a building or inclosure, the sheriff shall publicly demand its delivery. If it is not delivered, the sheriff shall cause the building or inclosure to be broken open, and take the property into possession. [Formerly 29.890; 1981 c.898 §33]

**29.090** [Formerly 29.900; repealed by 1981 c.898 §53]

**29.095** [Formerly 29.910; repealed by 1981 c.898 §53]

**29.110** [Repealed by 1981 c.898 §53]

### ATTACHMENT

**29.115 Notice of attachment to defendant; content; method of delivery; plaintiff to provide address; sheriff's duty if address not known.** (1) Following attachment by the sheriff pursuant to ORCP 84, the sheriff shall promptly mail or deliver the following to the defendant who is not a corporation at the last-known address of the defendant:

- (a) A copy of the writ;
- (b) A copy of the claim of lien filed pursuant to ORCP 84 C., if any; and
- (c) The notice of exemptions and claim form described in ORS 29.225.

(2) The sheriff may meet the requirements of subsection (1) of this section by mailing the documents to the last-known address of the defendant as provided by the plaintiff. The sher-

iff may withhold execution of the writ until the plaintiff either provides such address or a statement that the plaintiff has no knowledge of the defendant's address. The sheriff shall have no duty under this section if the plaintiff provides a statement that the plaintiff has no knowledge of the defendant's address. [Formerly 29.178]

**29.120** [Repealed by 1981 c.898 §53]

### GARNISHMENT

**29.125 Definitions for ORS 29.125 to 29.375.** As used in ORS 29.125 to 29.375:

(1) "Defendant" means a person whose property is being garnished by a plaintiff and includes a judgment debtor after entry of judgment.

(2) "Garnishee" means a person other than a plaintiff or a defendant who is in possession of property of a defendant and who has been garnished in accordance with the provisions of ORS 29.125 to 29.375.

(3) "Person" includes individuals, partnerships and corporations.

(4) "Plaintiff" means a person who is garnishing property of a defendant and includes a judgment creditor after entry of judgment.

(5) "Sheriff" includes constables and their deputies.

(6) "Stock" includes rights or shares in an association or corporation with interest and profits thereon. [1981 c.883 §2]

**29.130** [Repealed by 1981 c.898 §53]

**29.135 Garnishment described.** Garnishment is the procedure by which a plaintiff on whose behalf a writ of garnishment has been issued against a defendant reaches tangible or intangible personal property of the defendant in the possession, control or custody of or debts or other monetary obligations owing by a third person. [1981 c.883 §3]

**29.140** [Repealed by 1981 c.898 §53]

**29.145 Writ issued upon application; form; duration of validity.** (1) The clerk of the court shall promptly issue one or more writs of garnishment upon application of the following persons:

(a) A person who complies with the requirements of ORCP 82 A.(3), (5) and (6), 82 B. through G., 83 and 84; or

(b) A person on whose behalf a judgment requiring the payment of money has been entered.

(2) A writ of garnishment shall be in substantially the following form:

IN THE \_\_\_\_\_ COURT
OF THE STATE OF OREGON
FOR THE COUNTY OF \_\_\_\_\_

Plaintiff, )
) WRIT OF GARNISHMENT
) Case No. \_\_\_\_\_
vs. )
)
Defendant. )

IN THE NAME OF THE STATE OF OREGON, TO: \_\_\_\_\_, Garnishee:

The above-named plaintiff/defendant \_\_\_\_\_, hereinafter called "Creditor," whose address is \_\_\_\_\_ and whose telephone number is \_\_\_\_\_, has (check one) [ ] filed an action [ ] obtained a judgment against the above-named plaintiff/defendant \_\_\_\_\_, hereinafter called "Debtor," whose last-known address is \_\_\_\_\_,

on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_. The Debtor's Social Security Number or Employer Identification Number is \_\_\_\_\_ (insert if known). The following amount is necessary to satisfy the Creditor's claim or judgment:

- + Claim or Judgment Debt ..... \$ \_\_\_\_\_
+ Interest ... ..... \$ \_\_\_\_\_
+ Attorney Fees..... \$ \_\_\_\_\_
+ Cost Bill ..... \$ \_\_\_\_\_
+ Accruing Costs..... \$ \_\_\_\_\_
+ Service Fees for this Writ ..... \$ \_\_\_\_\_
+ Sheriff's Fees ..... \$ \_\_\_\_\_
+ Other..... \$ \_\_\_\_\_
= Subtotal ..... \$ \_\_\_\_\_
- Payments Made ... ..... \$( \_\_\_\_\_)
= Total Amount Required to Satisfy in Full this Claim or Judgment..... \$ \_\_\_\_\_

You are required to answer this writ by filling in the attached "Certificate of Garnishee" or providing another appropriate certificate and mailing or delivering the original of such certificate to:

- (a) The clerk of the above-named court, if you hold no property of the Debtor, or if the property you hold is a debt or other obligation payable in money; or
(b) The sheriff of the above-named county, if you hold other property of the Debtor. You must file the certificate within five days from the date this Writ was delivered to you.

Unless otherwise provided by law, you are also required to pay to the clerk any debt which you owe to the Debtor, as specified above, within five days, and to hold subject to this garnishment any other property now in your possession, control or custody until you receive notice from the sheriff to deliver the property to the sheriff or until you receive notice from the sheriff that this garnishment is no longer effective. If you receive no notice from the sheriff within 30 days after the date on which this writ was delivered to you, you may thereafter treat this garnishment as being of no further force or effect. Unless you are otherwise directed by the court, or unless the claim or judgment for which this writ of garnishment was given is satisfied in full, you may not pay any debt or turn over any property to the Debtor, except the exempt portion of any wages you owe to the Debtor.

YOU MUST FILE A CERTIFICATE WHETHER OR NOT YOU HOLD ANY OF THE DEBTOR'S PROPERTY OR OWE ANYTHING TO THE DEBTOR.

IF YOU FAIL TO ANSWER THIS WRIT, OR ANSWER IT UNTRUTHFULLY, OR IF YOU FAIL TO DELIVER THE PROPERTY WHEN REQUIRED TO DO SO, YOU MAY BE HELD LIABLE TO THE CREDITOR IN AN AMOUNT EQUAL TO THE LESSER OF (A) THE TOTAL AMOUNT, OR (B) THE AMOUNT YOU OWE THE DEBTOR OR THE VALUE OF THE PROPERTY YOU HOLD.

Witness the hand and seal of this court on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

CLERK OF THE COURT
By \_\_\_\_\_
Deputy

State of Oregon )
) ss.
County of \_\_\_\_\_ )

I certify that the foregoing is a true and correct copy of the original Writ of Garnishment in the above-entitled case.

CLERK OF THE COURT
By \_\_\_\_\_
Deputy

Attorney for Plaintiff

Address Telephone Number

EARNINGS EXEMPTION
COMPUTATION SCHEDULE

- 1. Debtor's gross weekly "earnings" ..... \$ \_\_\_\_\_
2. Amounts required to be withheld by law

- (Federal and state withholding, social security, etc.) ..... \$ \_\_\_\_\_
- 3. Debtor's "disposable earnings" for week - Subtract line 2 from line 1. .... \$ \_\_\_\_\_
- 4. Minimum Exemption (40 x the present minimum hourly wage) per week ..... \$ \_\_\_\_\_
- 5. Maximum Exemption - Enter 75 percent of line 3 ..... \$ \_\_\_\_\_
- 6. Earnings exempt from garnishment - Line 4 or 5, whichever is greater ..... \$ \_\_\_\_\_
- 7. Nonexempt earnings - Subtract line 6 from line 3. .... \$ \_\_\_\_\_
- 8. Amounts withheld pursuant to order under ORS 25.050 or 25.350 ..... \$ \_\_\_\_\_
- 9. Earnings subject to garnishment - Subtract line 8 from line 7. .... \$ \_\_\_\_\_

**CERTIFICATE OF GARNISHEE**

State of \_\_\_\_\_

County of \_\_\_\_\_

TO: \_\_\_\_\_

(Sheriff or clerk of court)

I hereby certify that at the time of delivery to me of the foregoing Writ of Garnishment on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, I had in my possession, control or custody no property, money, debts, rights, dues or credits due or to become due, belonging or owing to the Debtor named in said Writ of Garnishment, or any of them, except the following:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Dated \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
Name of Garnishee

\_\_\_\_\_  
Signature

(3) A writ of garnishment shall be valid for 60 days after the date of issuance by the clerk. [1981 c 883 §4]

29.150 [Repealed by 1981 c.898 §53]

**29.155 Garnishment of property of defendant held by another person.** Property of a defendant in the possession of a person other

than the plaintiff or defendant shall be garnished by delivery of a writ of garnishment or a true copy thereof to such person. [1981 c 883 §5]

29.160 [Repealed by 1981 c 898 §53]

**29.165 Delivery of writ; insurance of deliverer; fee.** (1) A writ of garnishment shall be delivered in person and not by mail by the sheriff of the county where the writ of garnishment is to be delivered, or by any competent person 18 years of age or older who is a resident of the State of Oregon and is not a party or attorney in the action; provided, however, that no person other than the sheriff shall deliver a writ of garnishment unless the person has filed with the Secretary of State a current certificate of errors and omissions insurance with limits of not less than \$100,000 per occurrence from a company authorized to do business in this state.

(2) The fee for delivery of a writ of garnishment shall be no more than \$12.50 if the writ is delivered in a county with less than 400,000 population. The fee for delivery of a writ of garnishment shall be no more than \$9.50 if the writ is delivered in a county with not less than 400,000 population. Population shall be determined by the most recent federal decennial census. [1981 c 883 §6]

29.170 [Amended by 1961 c.726 §398, 1965 c 108 §1; 1969 c 95 §1; 1969 c.576 §1; 1977 c 786 §1, repealed by 1981 c.883 §1 and 1981 c 898 §53]

29.175 [Repealed by 1981 c.883 §1]

29.178 [1977 c.623 §2, repealed by 1981 c 883 §33; renumbered 29.115]

29.180 [Repealed by 1981 c.898 §53]

**29.185 Person to whom writ to be delivered.** (1) Property shall be garnished by delivering the writ of garnishment to the person specified in this section.

(2) Except as otherwise provided in this section, a writ of garnishment shall be delivered to:

(a) The individual having possession of the property, if the property is in possession of an individual;

(b) Any person designated by the partnership to accept delivery of a writ of garnishment or any partner, if the property is in possession of a partnership; provided, however, that if the partnership is a limited partnership, the writ of garnishment shall be delivered to any person designated by the partnership to accept delivery of a writ of garnishment or any general partner;

(c) Any person designated by the corporation to accept delivery of a writ of garnishment, or any officer or managing agent of the corporation, if the property is in the possession of a corporation;

(d) The president, vice president, treasurer, secretary, cashier, assistant cashier, or any person designated by the bank, trust company, savings and loan association or credit union to accept delivery of a writ of garnishment, or the manager or assistant manager at the office or branch where the account evidencing the indebtedness is carried or other property is held, if the property is held by a bank, trust company, savings and loan association or credit union; provided, however, that delivery of a writ of garnishment is only effective if made at the office or branch where the account evidencing the debt is carried or other property held, except that delivery to the head office of any such institution shall be effective to garnish property held at all offices or branches thereof located in the same city as the head office; or

(e) The board, department, institution, commission or officer charged with approving a claim for the property, if the property is held by the state, any county, city, school district, or other political subdivision therein, or any board, department, institution or commission of the same.

(3) Notwithstanding ORS 78.3170 (2), if the property is a debt, other than a debt evidenced by a negotiable instrument, negotiable document or the like, the writ of garnishment shall be delivered to the debtor thereon in accordance with subsection (2) of this section.

(4) Notwithstanding ORS 78.3170 (2), if the property is stock of the defendant in a corporation, other than stock represented by a negotiable certificate or the like, the writ of garnishment shall be delivered to the corporation in accordance with subsection (2) of this section.

(5) If the property is a negotiable instrument, certificate, document or the like, the writ of garnishment shall, notwithstanding ORS 77.6020 and 78.3170, be delivered to the person having possession of the same in accordance with subsection (2) of this section. Any such garnishment shall not limit the rights of a holder in due course of a negotiable instrument under ORS 73.3020, a holder to whom a negotiable document has been duly negotiated under ORS 77.5010 or a bona fide purchaser of a security under ORS 78.3020.

(6) If the property is an interest of an heir or legatee in an estate of a decedent, the writ of garnishment shall be delivered to the personal representative of the estate in accordance with subsection (2) of this section.

(7) For purposes of this section, a savings and loan association, including such an association doing business in this state and organized under

the laws of another state or of the United States, shall be deemed the debtor of a defendant to whom a certificate, account or obligation, or an interest therein, of the association has been issued, established or transferred and in such case the provisions of subsection (4) of this section shall not apply; provided, however, ownership by a defendant of reserve fund capital stock, or comparable equity stock, or of an interest therein, of any such association shall not be deemed to create such a relationship and the provisions of subsection (4) of this section shall apply. [1981 c.883 §7; 1985 c 676 §58]

**29.190** [Repealed by 1981 c 898 §53]

**29.195 Duty of garnishee.** (1) The garnishee shall examine the writ of garnishment to determine whether the writ complies on its face with ORS 29.145 (2). The garnishee shall have no duty to determine whether the plaintiff or sheriff or other person has complied with the requirements of ORS 29.125 to 29.375 or to otherwise determine the effectiveness of the garnishment.

(2) In searching its records for the property of the defendant, the garnishee shall use all of the information contained in the writ of garnishment pertaining to the identity of the defendant. [1981 c 883 §8]

**29.200** [Repealed by 1981 c 898 §53]

**29.205 Effect of delivery of writ on property of defendant; property to which garnishment does not apply.** (1) Delivery of a writ of garnishment in accordance with ORS 29.155 to 29.185 shall be effective to garnish all property of the defendant which is in the garnishee's possession, control or custody at the time of delivery of the writ of garnishment to the garnishee, including but not limited to property in safe deposit boxes, stock, debts and other obligations then in existence and payable in money, 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 defendant to garnishee.

(2) Notwithstanding subsection (1) of this section, property which may not be taken by garnishment shall include but is not limited to equitable interests, property in the custody of the law, property in the possession of a conservator and property in the possession of a personal representative constituting the subject matter of a trust contained in a duly probated will of a decedent. [1981 c.883 §9]

**29.210** [Repealed by 1981 c.898 §53]

**29.215 Copy to defendant; method of delivery, duty of plaintiff; civil penalty.**

(1) Following delivery of a writ of garnishment to a garnishee, the person or sheriff who delivered the writ of garnishment shall promptly mail or deliver a copy of the writ of garnishment, together with the notice of exemptions and claim form described in ORS 29.225, to each defendant who is not a corporation and whose property is being garnished by said writ. Such person or sheriff may meet the requirements of this subsection by mailing the documents to the last-known address of the defendant provided by the plaintiff. The person or sheriff may delay garnishment until the plaintiff either provides such address or a statement that the plaintiff has no knowledge of the defendant's address. The person or sheriff shall have no duty under this subsection if the plaintiff provides a statement that the plaintiff has no knowledge of the defendant's address.

(2) If the plaintiff fails to provide either the defendant's address or a statement that the plaintiff has no knowledge of the defendant's address to the person or sheriff who delivered the writ of garnishment, the court shall order the plaintiff to return any property which was exempt from garnishment and garnished, and, in any case, shall order the plaintiff to pay a civil penalty of \$200 to the defendant, in addition to all costs and reasonable attorney fees incurred by the defendant in recovering such property and penalty.

[1981 c 883 §10]

**29.220** [Repealed by 1981 c 898 §53]

**29.225 Form of notice of exemptions.**

(1) The notice of exemptions referred to in ORS 29.215 shall be in substantially the following form:

**NOTICE OF EXEMPT PROPERTY**

Property belonging to you may have been taken or held in order to satisfy a claim or judgment which has been asserted or entered against you. Important legal papers are enclosed.

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

State and federal law say certain property may not be taken. Some of the property which may not be taken is listed below.

(1) Wages or a salary as described in ORS 23.175 and 23.185 (\$134 per week or 75 percent of your take-home wages, whichever is more).

(2) Social security (including SSI).

(3) Public assistance (welfare).

(4) Unemployment benefits.

(5) Disability benefits.

(6) Workers' compensation benefits.

(7) Exempt wages, social security, welfare, unemployment benefits and disability benefits when placed in a checking or savings account (up to \$5,000).

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

(9) A homestead (home, farm, mobile home, houseboat) if you live in it, to the value of \$13,000 (\$15,000, if land is included) or proceeds from its sale for one (1) year.

(10) Household goods, furniture, radios, a television set and utensils to \$1,450.

\*(11) Automobile, truck, trailer or other vehicle to \$1,200.

\*(12) Tools, implements, apparatus, team, harness or library necessary to carry on your occupation to \$750. Food for such team for 60 days.

\*(13) Books, pictures and musical instruments to \$300.

\*(14) Wearing apparel, jewelry and other personal items to \$900.

(15) Domestic animals and poultry for family use to \$1,000 and their food for 60 days.

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

(17) One rifle or shotgun and one pistol.

(18) Public or private pensions.

(19) Veterans benefits and loans.

(20) Medical assistance benefits.

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

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

(23) Federal annuities.

(24) Other annuities to \$250 per month, excess over \$250 per month subject to same exemption as wage.

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

\*(26) Your right to receive, or property traceable to:

\*(a) An award under any crime victim reparation law.

\*(b) A payment, not exceeding \$7,500, on account of personal bodily injury, not including pain and suffering or compensation for actual

pecuniary loss, of 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.

(27) Interest in personal property to the value of \$400, but this cannot be used to increase the amount of any other exemption.

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

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 following form.
- (2) Mail or deliver the form to the court. You should be prepared to explain your exemption in court. If you have any questions, you should see an attorney.

(2) The claim form referred to in ORS 29.215 shall be in substantially the following form:

_____ )	CLAIM OF EXEMPTION
Plaintiff )	Case No. _____
vs. )	
_____ )	
_____ )	
Defendant )	

I/We claim the following described property or money as exempt from execution:

I/We believe this property is exempt because:

Name_____	Name_____
Signature_____	Signature_____
Address_____	Address_____
_____	_____
Telephone	Telephone
Number_____	Number_____
(Required)	(Required)

(3) Subsection (1) of this section is intended neither to expand nor restrict the law relating to exempt property. Whether property is exempt from execution, attachment and garnishment shall be determined by reference to other law.

(4) The notice described in subsection (1) of this section may be modified either to provide

more complete exemption information or to update the notice based on subsequent changes in exemption laws. However, any such modification shall not be required. [1981 c.883 §11a]

29.230 [Repealed by 1981 c 898 §53]

**29.235 Certificate of garnishee; procedure for delivery of property; fee of sheriff; effect of payment.** (1) Within five days from the date the writ of garnishment is delivered to the garnishee, the garnishee shall prepare a certificate designating the amount and description of any property of the defendant in the possession, control or custody of the garnishee at the time of delivery of the writ of garnishment, or an amount thereof sufficient to satisfy the plaintiff's claim or judgment, whichever is less. The certificate may be in the form set forth in the writ of garnishment described in ORS 29.145 (2).

(2) If the garnishee determines that the writ of garnishment does not comply on its face with ORS 29.145 (2), or if the garnishee is unable to determine from the information contained in the writ whether the property the garnishee holds is the property of the defendant, the writ of garnishment shall be ineffective to garnish the property of the defendant, and the garnishee shall mail or deliver its certificate to the clerk of the court which issued the writ within five days following the garnishee's receipt thereof, noting thereon the noncompliance with ORS 29.145 (2) or the garnishee's inability to determine from the information contained in the writ whether the garnishee holds property of the defendant.

(3) If the garnishee has no property of the defendant in the garnishee's possession, control or custody at the time of delivery of the writ of garnishment to the garnishee, the garnishee shall, within five days from the date the writ of garnishment was delivered to the garnishee, mail or deliver its certificate to the clerk of the court which issued the writ.

(4) If the garnishee has property of the defendant in the garnishee's possession, control or custody at the time of delivery of the writ of garnishment to the garnishee, the garnishee shall, within five days from the date the writ of garnishment was delivered to the garnishee, do the following:

(a) If the property garnished is a debt or other obligation payable in money, the garnishee shall mail or deliver the property, or an amount thereof sufficient to satisfy the plaintiff's claim or judgment, to the clerk of the court which issued the writ, together with the certificate of the garnishee.

(b) If the property garnished is property other than a debt or other obligation payable in money, the garnishee shall mail or deliver its certificate to the sheriff of the county in which the writ was delivered, together with a copy of the writ, and shall hold the garnished property, or an amount thereof sufficient to satisfy the garnishment, until the sheriff takes possession of such property or the garnishment is terminated or released. Notwithstanding ORS 29.275 and without limiting its effect, the sheriff shall accept a garnishee's certificate received after five days from the date the writ of garnishment was delivered to the garnishee.

(5) Within five days after the receipt by the sheriff of a garnishee's certificate pursuant to paragraph (b) of subsection (4) of this section, the sheriff shall send or deliver a copy of the certificate to the plaintiff, together with a notice setting forth the sheriff's fees for taking possession of and selling the property and advising the plaintiff that the sheriff will direct the garnishee to deliver the property described in the certificate only if, within 20 days after the date on which the writ of garnishment was delivered to the garnishee, the sheriff receives the fees set forth in the notice.

(6) If the plaintiff pays the sheriff's fees within the time provided in subsection (5) of this section, the sheriff shall promptly mail or deliver a written notice to the garnishee directing the garnishee to mail or deliver the garnished property, or an amount thereof sufficient to satisfy the garnishment, to the sheriff. If the garnishee receives that notice within 30 days after the writ of garnishment was delivered to it, the garnishee shall mail or deliver the garnished property, or an amount thereof sufficient to satisfy the garnishment, to the sheriff within five days after receipt of the notice.

(7) If the plaintiff fails to pay the sheriff's fees within the time provided in subsection (5) of this section, upon the expiration of that period the garnishment of the property described in the garnishee's certificate shall be of no further force or effect, and the sheriff shall promptly give the garnishee notice in writing of the termination of the garnishment. If the garnishee receives that notice, effective on the date of such receipt the garnishee may deal with the garnished property as if the writ of garnishment had not been delivered to the garnishee.

(8) If the garnishee receives no notice from the sheriff under subsection (6) or (7) of this section within 30 days after the date on which the writ of garnishment was delivered or mailed to the sheriff, after the expiration of that 30-day

period the garnishment shall be of no further force or effect, and the garnishee may deal with the garnished property as if the writ of garnishment had not been delivered to the garnishee.

(9) Notwithstanding ORS 29.205 or subsections (4) to (8) of this section, the garnishee may deliver any property to the sheriff or clerk of the court, as the case may be, which the garnishee reasonably believes may have been garnished. The garnishee shall have no duty to determine whether property held by the garnishee is exempt from garnishment or is a property interest subject to garnishment. [1981 c.883 §12; 1983 c.622 §3]

**29.240** [Repealed by 1981 c.898 §53]

**29.245 Procedure when property owned by defendant and others.** (1) In the case of property in the garnishee's possession which is or appears to be owned by the defendant and one or more other persons, the garnishee may deliver or hold subject to the garnishment all of said property, or so much thereof as is necessary to satisfy the garnishment, pursuant to ORS 29.235.

(2) Nothing contained in subsection (1) of this section shall preclude any of the owners of the property from asserting said owner's interest in or right to said property or any part thereof. To assert such a claim, the owner or owners, or any of them, shall complete and file with the court which issued the writ of garnishment an application in substantially the form set forth in ORS 29.225 (2). Upon the filing of said application, the claim shall be adjudicated in a summary manner at a hearing before said court. [1981 c.883 §13]

**29.250** [Repealed by 1981 c.898 §53]

**29.255 Duty of garnishee when court directs or release is delivered; effect of due date of debt or sale of defendant's interest; effect on personal representative; payment of exempt wages.** Notwithstanding ORS 29.235:

(1) The garnishee shall have no duty to deliver the certificate or to deliver or hold subject to the garnishment any property pursuant to ORS 29.235 if garnishee is otherwise directed by the court or if a release of the garnishment has been delivered to the garnishee pursuant to ORS 29.365.

(2) If the property is a debt which is then in existence but not yet due, and which will become due within 45 days after the date on which the writ of garnishment is delivered to the garnishee, then within five days following the garnishee's receipt of the writ of garnishment, the garnishee shall prepare a certificate designating the lesser of

the amount of said debt or an amount thereof sufficient to satisfy the plaintiff's claim or judgment, and the due date of said debt, and shall mail or deliver said certificate to the clerk of the court which issued the writ. Thereafter, unless the garnishee receives written notice that the garnishment has been set aside, satisfied or released, within five days after the debt becomes due, the garnishee shall mail or deliver to the clerk of the court which issued the writ the amount of the debt then due, or an amount thereof sufficient to satisfy the plaintiff's claim or judgment, whichever is less.

(3) If the property is a debt which is then in existence but not yet due, and which will not become due within 45 days after the date on which the writ of garnishment is delivered to the garnishee, or if the property is in the possession of the garnishee on an unexpired bailment or lease, or pursuant to a security interest granted by the defendant to the garnishee, or stock not evidenced by a negotiable certificate, then:

(a) The garnishee shall not be required to deliver the property to the sheriff or the clerk of the court pursuant to ORS 29.235, but shall instead hold the property pending receipt of the advice provided for in paragraph (d) of this subsection.

(b) Within five days after receiving the writ of garnishment, the garnishee shall mail or deliver to the sheriff of the county in which the writ was served, the garnishee's certificate designating the amount and description of the property, and noting thereon the garnishee's reason for not delivering the property.

(c) Upon the sheriff's receipt of the certificate, the sheriff shall send or deliver a copy of the certificate to the plaintiff, together with the notice described in ORS 29.235 (5). Upon the receipt of the sheriff's fees, at any time after the entry of a judgment against the defendant, unless a claim of exemption has been filed with the clerk and said claim is pending, the sheriff shall sell the defendant's interest in the property according to the certificate.

(d) Within five days following the sale of the defendant's interest in said property, the sheriff shall advise the garnishee in writing of the identity of the purchaser and that said purchaser is entitled to possession of the property as provided in paragraph (e) of this subsection. If the garnishee has not received the notice provided for in the preceding sentence by the date on which the debt becomes due or the garnishee's interest in the property expires, then, unless the garnishee has been notified in writing by the plaintiff or the

sheriff that the sale of the defendant's interest therein has been delayed, the garnishee may proceed to deal with the property as if the garnishment had not been issued.

(e) Within five days following the garnishee's receipt of written notice from the sheriff, identifying the purchaser of the defendant's interest, the garnishee shall pay the debt or deliver the property, as the case may be, to the purchaser of the defendant's interest therein. However, if, upon the garnishee's receipt of said written advice or notice, the debt remains not yet due or the bailment, lease or security interest has not yet expired or been satisfied or released, as the case may be, the garnishee shall not be required to deliver the property to the purchaser or the defendant until five days after the debt is due, the bailment or lease has expired, or the indebtedness secured by the property is satisfied or the security interest is released.

(4) Garnishment shall not impair the powers of a personal representative over estate property for the purposes of administration. The personal representative shall prepare a certificate, noting thereon that the property is estate property subject to administration. Such certificate shall be delivered within the time prescribed in ORS 29.235 to the clerk of the court which issued the writ. The personal representative shall also file a copy of the writ of garnishment and certificate in the office of the clerk of the court in which the estate is being administered and 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 clerk of the court, as the case may be.

(5) If the property is not conveniently deliverable, the garnishee may note that fact on the certificate, and may continue to hold the property until the sheriff takes possession thereof.

(6) Garnishees who are employers shall pay the exempt portion of earnings to defendants who are employees. The garnishee may determine the exempt portion of such earnings in accordance with the Earnings Exemption Computation Schedule contained in the writ of garnishment delivered to the garnishee. [1981 c.883 §14]

**29.260** [Repealed by 1981 c.898 §53]

**29.265 Disposition of property delivered to court clerk or sheriff; payment of expenses; claim of exemption.** (1) Property delivered to the clerk of the court in accordance with ORS 29.235 shall be disposed of as follows:

(a) If the writ of garnishment was issued pursuant to an order for provisional process, the

clerk shall hold the money pending final judgment against the defendant unless the court finds, upon a claim of the defendant, that the property, or some part thereof, is exempt from execution. If final judgment is rendered in favor of the defendant, the court shall order the clerk to pay the money to the defendant. If final judgment is rendered in favor of plaintiff, unless a claim of exemption has been filed by the defendant with the clerk and is pending, the court shall order the clerk to pay to the plaintiff so much of the money as will satisfy the judgment, and to pay the remainder to the defendant.

(b) If the writ of garnishment was issued pursuant to a final judgment, then 10 days after receipt of the money, unless a claim of exemption has been filed with the clerk and is pending, the clerk shall pay to the plaintiff so much of the money as will satisfy the judgment and shall pay the remainder to the defendant.

(2) Property delivered to the sheriff in accordance with ORS 29.235 shall be disposed of as follows:

(a) If the writ of garnishment was issued pursuant to an order for provisional process, the sheriff shall hold nonperishable property pending final judgment against the defendant unless the court finds, upon a claim of the defendant, that the property, or some part thereof, is exempt from execution. If final judgment is rendered in favor of the defendant, the court shall order the sheriff to deliver the property to the defendant. If final judgment is rendered in favor of the plaintiff, unless a claim of exemption has been filed by the defendant with the clerk and is pending, the court shall order the sheriff to sell the property in the same manner in which property is sold on execution.

(b) If the writ of garnishment was issued pursuant to a final judgment, then 15 days after receipt of the property, unless a claim of exemption has been filed with the clerk and is pending, the sheriff shall sell the property in the same manner in which property is sold on execution.

(c) If the garnished property is perishable, or livestock and the cost of keeping is great, the sheriff shall sell the property in the same manner in which property is sold on execution.

(3) The plaintiff shall be liable for the sheriff's reasonable expenses in taking and keeping property tendered pursuant to this section. If final judgment is rendered in favor of the plaintiff, such expenses shall be allowed as disbursements.

(4) Notwithstanding subsections (1) and (2) of this section, if the plaintiff notifies the clerk or

the sheriff that the money or property should be released to the defendant, the clerk or the sheriff shall promptly release it.

(5) A claim of exemption shall be filed with the court within 180 days after delivery of the writ of garnishment to the garnishee.

(6) If a claim of exemption is allowed by the court after the money or proceeds of sale have been paid to the plaintiff, the plaintiff shall return the money or proceeds, or the exempt portion thereof, to the defendant within 10 days after the court's order allowing the claim of exemption. [1981 c 883 §15]

**29.270** [Repealed by 1981 c 883 §1 and 1981 c.898 §53]

**29.275 Liability of garnishee who fails to file certificate or deliver property; discharge of liability.** (1) Unless the garnishee shall file a certificate and deliver the property required to be delivered to the sheriff or clerk of the court within the time provided by law, the garnishee shall be liable to the plaintiff in an amount equal to the lesser of:

(a) The amount required to satisfy plaintiff's claim or judgment; or

(b) The value of the defendant's property held by the garnishee at the time of the garnishee's receipt of the writ of garnishment.

(2) Delivery of the property by the garnishee to the sheriff or clerk of the court, as the case may be, shall discharge the garnishee from liability to the plaintiff for the value thereof. The sheriff or clerk of the court shall, when requested, provide the garnishee with a receipt for any property received. [1981 c.883 §16]

**29.280** [Repealed by 1981 c.883 §1 and 1981 c 898 §53]

**29.285 When garnishee punishable for contempt.** If a garnishee fails to provide a certificate within the time stated, or if a certificate, when given, is unsatisfactory to the plaintiff, or if the garnishee fails to deliver property within the time stated, the garnishee or an officer of the garnishee may be ordered by the court where the action is pending or judgment has been entered to appear and be examined on oath concerning the same, and disobedience of such order may be punished as contempt. [1981 c.883 §17]

**29.290** [Repealed by 1981 c.883 §1 and 1981 c 898 §53]

**29.295 Effect of order under ORS 29.285.** The order provided for in ORS 29.285 shall require such person or officer to appear before the court at a stated time and place. In the proceedings upon the order, the person or the association or corporation represented by an officer shall be known as the garnishee. [1981 c.883 §18]

**29.300** [Repealed by 1981 c.883 §1 and 1981 c.898 §53]

**29.305 Restraining garnishee from disposing or injuring property of defendant.**

The court may, at the time of the application of the plaintiff for the order provided for in ORS 29.285, or at any time thereafter, by order, restrain the garnishee from in any manner disposing of or injuring any of the property of the defendant alleged by the plaintiff to be in the garnishee's possession, and disobedience of such order may be punished as contempt. [1981 c.883 §19]

**29.310** [Repealed by 1981 c.883 §1 and 1981 c.898 §53]

**29.315 Appearance under order.** After the allowance of the order provided for in ORS 29.285, and not less than 20 days before the garnishee or officer thereof shall be required to appear, or within a time to be specified in the order, the plaintiff shall serve upon the garnishee or officer thereof written allegations, and may serve written interrogatories concerning matters relating to the garnishment. [1981 c.883 §20]

**29.320** [Repealed by 1981 c.883 §1 and 1981 c.898 §53]

**29.325 Answer of garnishee; effect of failure to answer.** (1) Unless further time is allowed for good cause, not less than 10 days prior to the day when the garnishee or officer thereof is required to appear, the garnishee shall file an answer to the allegations and interrogatories with the court and deliver a true copy of the answer to the plaintiff. The answer shall be on oath, and shall contain a full and direct response to all the allegations and interrogatories.

(2) If the garnishee or officer thereof fails to answer, the court, on motion of the plaintiff, may compel the garnishee or officer thereof to do so, or the plaintiff may, at any time after the entry of judgment against the defendant, have judgment against the garnishee for want of answer. In no case shall judgment be given against the garnishee for a greater amount than the judgment against the defendant. [1981 c.883 §§21, 22]

**29.330** [Repealed by 1981 c.883 §1 and 1981 c.898 §53]

**29.335 Insufficient answer; amendment; plaintiff's response.** Plaintiff may except to the answer of the garnishee or officer thereof for insufficiency, within such time as may be prescribed or allowed, and if the answer is adjudged insufficient, the garnishee or officer may be allowed to amend the answer, on such terms as may be proper, or judgment may be given for the plaintiff as for want of answer, or such garnishee or officer may be compelled to make a sufficient answer. The plaintiff may reply to the whole or a part of the answer within such time as may be prescribed or allowed. [1981 c.883 §23]

**29.340** [Repealed by 1981 c.883 §1 and 1981 c.898 §53]

**29.343 Witnesses; trial of issues as issues of law.** Witnesses, including the defendant and garnishee or officer thereof, may be required to appear and testify, and the issues shall be tried, upon proceedings against a garnishee, as upon the trial of an issue of law between a plaintiff and defendant. [1981 c.883 §24]

**29.345 When judgment given against garnishee; amount.** If by the answer it shall appear, or if upon trial it shall be found, that the garnishee, at the time of the delivery of the garnishment documents, held property beyond the amount required to be reported in the certificate, or held any property if no certificate was given, or failed to deliver property required to be delivered, judgment may be given against the garnishee for the value thereof in money. [1981 c.883 §25]

**29.350** [Repealed by 1981 c.883 §1 and 1981 c.898 §53]

**29.355 Execution and writ against garnishee; when execution to issue.** Executions and writs of garnishment may issue upon judgment against a garnishee as upon ordinary judgments between a plaintiff and a defendant, and costs and disbursements shall be allowed and recovered in like manner; provided, however, when judgment is rendered against any garnishee, and property of the defendant in the possession of the garnishee is a debt owing by the garnishee to the defendant not yet due, a bailment or lease which has not yet expired, or a security interest in favor of garnishee, execution shall not issue until the debt is due, bailment or lease has expired, or the indebtedness secured by the property is satisfied or security interest released. [1981 c.883 §26]

**29.360** [Repealed by 1981 c.883 §1 and 1981 c.898 §53]

**29.365 Release; form; effect; authority of clerk in addition to that of court.** (1) The clerk of the court shall issue releases of garnishments based upon writs issued by such clerk, whenever the plaintiff, or the plaintiff's agent or attorney, shall file with the clerk a written request therefor. Such release shall be executed in duplicate, under the seal of the court or the stamp of the clerk, and may cover all or any portion of the property held under garnishment. One duplicate original of the release shall be delivered to the garnishee, and the other duplicate original shall be filed by the clerk in the court record. Any pending proceedings in such case for the sale upon execution of any property so garnished shall, as to all property covered by the release, thereupon be terminated and be considered of no effect. All costs are to be paid by the plaintiff.

(2) Upon receipt by the garnishee of the duplicate original release, the garnishee, and all property subject to such garnishment, shall to the extent stated in the release, be released from all liability arising by reason of the issuance and service of the writ of garnishment, or by reason of the garnishee's return thereon as though the garnishment documents had not been served. The garnishee may rely upon any such release so received without any obligation to inquire into the authority therefor.

(3) The authority vested by this section in the clerk of the court to issue releases is not exclusive but in addition to the authority of the court having jurisdiction of the cause to release, discharge or dissolve garnishments. [1981 c.883 §27]

**29.370** [Repealed by 1981 c 883 §1 and 1981 c.898 §53]

**29.375 Authority of state agency to garnish property by warrant and notice; procedure.** (1) Notwithstanding ORS 29.155, 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, 314.430, 316.207, 320.080, 321.570, 323.390, 657.642 and 767.865, may garnish property of a defendant in the possession of a person other than the plaintiff or defendant by delivery to such person of a warrant together with a notice of garnishment.

(2)(a) Where the garnishment is on an employer, the state agency shall use a notice of continuous garnishment as the notice of garnishment under subsection (1) of this section. A continuous garnishment shall continue in full force and effect on the garnishee until the garnishee has paid the state agency the full amount of the warrant, or the garnishment is released by the agency or by court order, or other disposition is made by court order. The garnishment shall contain language reasonably designed to notify the garnishee of the provisions of this subsection.

(b) Each time an amount due the defendant is payable, and in any event not less than once every 30 days, until the continuous garnishment is no longer effective the garnishee shall make the delivery required by subsection (4) of this section.

(c) Notwithstanding paragraph (a) of this subsection, if the state agency has reason to believe that a taxpayer intends to leave the state or do any other act that would jeopardize the collection of any tax or debt owed to the state, the state agency may issue a garnishment pursuant to subsection (1) of this section.

(3) Notwithstanding ORS 29.165, a warrant and notice of garnishment delivered under sub-

section (1) or (2) of this section may be delivered in person by any employe of the state agency authorized by the agency to deliver such warrant and notice of garnishment, or by certified mail return receipt requested. Such employe need not be covered by errors and omissions insurance as provided by ORS 29.165.

(4) Notwithstanding ORS 29.235, the garnishee shall deliver the certificate of the garnishee together with the garnished property to the state agency which issued the warrant.

(5) Except as provided in this section, all provisions of ORS 29.125 to 29.365 shall apply to garnishments under a warrant and notice of garnishment. [1981 c 883 §28; 1983 c.622 §2]

**29.380** [Repealed by 1981 c 898 §53]

**29.390** [Repealed by 1981 c.898 §53]

**29.395 Severability.** If any provision of ORS 12.085, 21.375, 21.410, 23.185, 23.425 and 29.115 to 29.395 and ORCP 81 and 84 C. and D. or the application thereof to any person or circumstance is held invalid for any reason, such invalidity shall not affect any other provision or application of ORS 12.085, 21.375, 21.410, 23.185, 23.425 and 29.115 to 29.395 and ORCP 81 and 84 C. and D. which can remain in effect without the invalid provision or application, and to this end the provisions of ORS 12.085, 21.375, 21.410, 23.185, 23.425 and 29.115 to 29.395 and ORCP 81 and 84 C. and D. are severable. [1981 c.883 §40]

**29.400** [Repealed by 1981 c 883 §1 and 1981 c 898 §53]

**29.410** [1973 c.797 §422; repealed by 1981 c.898 §53]

**29.510** [Repealed by 1979 c.284 §199]

**29.520** [Repealed by 1981 c 898 §53]

**29.530** [Repealed by 1981 c 898 §53]

**29.540** [Repealed by 1981 c.898 §53]

**29.550** [Repealed by 1981 c.898 §53]

**29.560** [Amended by 1977 c.415 §5; repealed by 1981 c.898 §53]

**29.570** [Repealed by 1981 c.898 §53]

**29.580** [Repealed by 1981 c.898 §53]

**29.590** [Repealed by 1981 c.898 §53]

**29.600** [Repealed by 1981 c.898 §53]

**29.610** [Repealed by 1981 c 898 §53]

**29.620** [Amended by 1977 c.415 §6, repealed by 1981 c 898 §53]

**29.630** [Repealed by 1981 c 898 §53]

**29.640** [Repealed by 1981 c.898 §53]

**29.650** [Repealed by 1981 c 898 §53]

**29.660** [Repealed by 1981 c.898 §53]

## SPECIAL ACTIONS AND PROCEEDINGS

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| <b>29.670</b> [Repealed by 1981 c 898 §53]                     | <b>29.840</b> [Repealed by 1977 c.415 §7]                      |
| <b>29.680</b> [Repealed by 1981 c.898 §53]                     | <b>29.850</b> [Repealed by 1977 c.415 §7]                      |
| <b>29.690</b> [Repealed by 1981 c.898 §53]                     | <b>29.860</b> [Repealed by 1977 c.415 §7]                      |
| <b>29.700</b> [Repealed by 1981 c.898 §53]                     | <b>29.870</b> [Repealed by 1977 c.415 §7]                      |
| <b>29.710</b> [Repealed by 1981 c.898 §53]                     | <b>29.880</b> [Repealed by 1977 c.415 §7]                      |
| <b>29.720</b> [Repealed by 1981 c.898 §53]                     | <b>29.890</b> [Renumbered 29 087]                              |
| <b>29.730</b> [Repealed by 1981 c.898 §53]                     | <b>29.900</b> [Amended by 1977 c 415 §3, renumbered<br>29.090] |
| <b>29.740</b> [Repealed by 1981 c.898 §53]                     | <b>29.910</b> [Amended by 1977 c 415 §4; renumbered<br>29.095] |
| <b>29.810</b> [Amended by 1977 c 415 §1; renumbered<br>29.080] |  |
| <b>29.820</b> [Repealed by 1977 c.415 §7]                      |  |
| <b>29.830</b> [Amended by 1977 c.415 §2, renumbered<br>29.085] |  |
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