

House Bill 2604

Sponsored by Representative KRUMMEL; Representative THATCHER, Senator L GEORGE

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires court or judicial department to offer liquidated or delinquent account in criminal action for collection if payment is not received within six months of judgment. Raises limit of criminal judgment amount that court or judicial department must offer to private collection agency. Requires court or judicial department to offer delinquent payments related to supervision of sex offenders for collection. Allows court to amend criminal judgment to allow defendant to discharge monetary obligation by performing community service.

A BILL FOR AN ACT

1
2 Relating to monetary obligations in judgments in criminal actions; amending ORS 1.197, 1.198,
3 153.093 and 161.685.

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

5 **SECTION 1.** ORS 1.197 is amended to read:

6 1.197. (1) Except as otherwise provided by law, all state courts and all commissions, departments
7 and divisions in the judicial branch of state government shall offer to assign the liquidated and de-
8 linquent accounts of the state court, commission, department or division to a private collection
9 agency, or to the Department of Revenue under the provisions of ORS 293.250, not later than:

10 (a) One year from the date the account was liquidated if no payment has been received on the
11 account within that year; *[or]*

12 (b) One year from the date of receipt of the most recent payment on the account[.]; **or**

13 (c) **Six months from the entry of judgment of conviction if the account consists of a**
14 **monetary obligation in a criminal action and no payment has been received on the account**
15 **within that six months.**

16 (2) Nothing in subsection (1) of this section prohibits a state court or a commission, department
17 or division in the judicial branch of state government from assigning a liquidated and delinquent
18 account to a private collection agency at any time within the one-year period, or from assigning a
19 liquidated and delinquent account to the Department of Revenue during the one-year period, if that
20 assignment is otherwise allowed by law.

21 (3) Nothing in this section prevents a state court or a commission, department or division in the
22 judicial branch of state government from assigning an account to the Department of Revenue for the
23 purpose of seeking an offset against tax refunds or other amounts due the debtor at the time the
24 account is assigned to a private collection agency. A state court and any commission, department
25 or division in the judicial branch of state government that assigns the same account to both the
26 Department of Revenue and a private collection agency shall ensure that both the Department of
27 Revenue and the private collection agency are kept informed of the status of all collections made
28 on the account.

29 (4) If a private collection agency is unable to collect on an account assigned under this section,

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 the private collection agency shall notify the state court, commission, department or division that
 2 assigned the account that the private collection agency is unable to collect on the account and that
 3 the private collection agency will relinquish the account. The private collection agency shall relin-
 4 quish the account within a reasonable time or within such time as may be set by agreement. A
 5 private collection agency that is assigned an account under this section shall be held to the same
 6 standard of confidentiality, service and courtesy imposed on a state court in collecting on liquidated
 7 and delinquent accounts.

8 (5) If a liquidated and delinquent account is assigned to the Department of Revenue as provided
 9 in ORS 293.250, the Department of Revenue shall have one year from the date of liquidation, or from
 10 the date of receipt of the most recent payment on the account, to collect a payment. If the Depart-
 11 ment of Revenue does not collect a payment within the one-year period or if one year has elapsed
 12 since the date of receipt of the most recent payment on the account, the Department of Revenue
 13 shall notify the state court, commission, department or division that assigned the account. The state
 14 court, commission, department or division shall then immediately offer assignment of the account to
 15 a private collection agency.

16 (6) For the purposes of this section, a state court or a commission, department or division in the
 17 judicial branch of state government shall be considered to have offered an account for assignment
 18 to a private collection agency if:

19 (a) The terms of the offer are of a type generally accepted by the collections industry for the
 20 type of account to be assigned; and

21 (b) The offer is made to a private collection agency that engages in the business of collecting
 22 the type of account to be assigned or made generally to private collection agencies through a bid
 23 or request for proposal process.

24 (7) The offer of assignment of accounts required under this section may be made by the State
 25 Court Administrator on behalf of some or all of the state courts and on behalf of some or all of the
 26 commissions, departments and divisions in the judicial branch of state government.

27 **SECTION 2.** ORS 1.198 is amended to read:

28 1.198. (1) ORS 1.197 does not apply to liquidated and delinquent accounts that are prohibited by
 29 state or federal law or regulation from assignment or collection.

30 (2) Notwithstanding ORS 1.197, a state court or a commission, department or division in the
 31 judicial branch of state government, acting in its sole discretion, may choose not to offer a liqui-
 32 dated and delinquent account to a private collection agency or to the Department of Revenue if the
 33 account:

34 (a) Is secured by a consensual security interest in real or personal property;

35 (b) Is based on that part of a judgment that requires payment of restitution or a payment to the
 36 Crime Victims' Assistance section of the Criminal Justice Division of the Department of Justice;

37 (c) Is in litigation, mediation or arbitration or is subject to a stay in bankruptcy proceedings;

38 (d) Is owed by a local or state government or by the federal government;

39 (e) Is owed by a debtor who is hospitalized in a state hospital as defined in ORS 162.135 or who
 40 is on public assistance as defined in ORS 411.010;

41 (f) Consists of moneys for which a district attorney has assumed collection responsibility under
 42 ORS 8.680;

43 (g) Consists of moneys owed by a person who is incarcerated;

44 (h) Is an account that was previously offered to a private collection agency and was refused,
 45 or that was previously assigned to a private collection agency and the agency thereafter relin-

1 quished the account;

2 (i) Is less than \$100, including penalties; [*or*]

3 (j) Would result in loss of federal funding if assigned[.]; **or**

4 **(k) Consists of a monetary obligation in a criminal action and is less than \$500, including**
 5 **penalties. This paragraph does not apply to supervision fees owed by persons required to re-**
 6 **port as sex offenders under ORS 181.594.**

7 **SECTION 3.** ORS 161.685 is amended to read:

8 161.685. (1) When a defendant who has been sentenced or ordered to pay a fine, or to make
 9 restitution as defined in ORS 137.103, defaults on a payment or installment ordered by the court, the
 10 court on motion of the district attorney or upon its own motion may require the defendant to show
 11 cause why the default should not be treated as contempt of court, and may issue a show cause ci-
 12 tation or a warrant of arrest for the appearance of the defendant.

13 (2) If the court finds that the default constitutes contempt, the court may impose one or more
 14 of the sanctions authorized by ORS 33.105.

15 (3) When a fine or an order of restitution is imposed on a corporation or unincorporated asso-
 16 ciation, it is the duty of the person authorized to make disbursement from the assets of the corpo-
 17 ration or association to pay the fine or make the restitution from those assets, and if that person
 18 fails to do so, the court may hold that person in contempt.

19 (4) Notwithstanding ORS 33.105, the term of confinement for contempt for nonpayment of fines
 20 or failure to make restitution shall be set forth in the commitment order, and shall not exceed one
 21 day for each \$25 of the fine or restitution, 30 days if the fine or order of restitution was imposed
 22 upon conviction of a violation or misdemeanor, or one year in any other case, whichever is the
 23 shorter period.

24 (5) If it appears to the satisfaction of the court that the default in the payment of a fine or
 25 restitution is not contempt, the court may enter an order allowing the defendant additional time for
 26 payment, reducing the amount of the payment or installments due on the payment, or revoking the
 27 fine or order of restitution in whole or in part.

28 (6) A default in the payment of a fine or costs or failure to make restitution or a default on an
 29 installment on a fine, costs or restitution may be collected by any means authorized by law for the
 30 enforcement of a judgment. The levy of execution or garnishment for the collection of a fine or
 31 restitution shall not discharge a defendant confined for contempt until the amount of the fine or
 32 restitution has actually been collected.

33 (7) The court, or the court clerk if ordered by the court, may report a default on a court-ordered
 34 payment to a consumer reporting agency.

35 **(8) At any time after entry of a judgment in a criminal action, the court may amend that**
 36 **part of the judgment containing a money award to allow the defendant to discharge some**
 37 **or all of the monetary obligation by performing community service. The defendant's service**
 38 **must be credited at an hourly rate not less than the federal or state minimum wage,**
 39 **whichever is higher. The court must notify the defendant that participation in community**
 40 **service is voluntary and must obtain the defendant's consent. If the portion of the monetary**
 41 **obligation attributable to restitution is to be satisfied by community service, the victim must**
 42 **consent.**

43 [(8)] (9) The Chief Justice of the Supreme Court shall adopt rules under ORS 1.002 establishing
 44 policies and procedures for reporting a default under subsection (7) of this section to a consumer
 45 reporting agency that may include, but are not limited to, limitations on reporting a default to a

1 consumer reporting agency.

2 [(9)] (10) Except as otherwise provided in this section, proceedings under this section shall be
3 conducted:

4 (a) As provided in ORS 33.055, if the court seeks to impose remedial sanctions as described in
5 ORS 33.015 to 33.155; and

6 (b) As provided in ORS 33.065, if the court seeks to impose punitive sanctions as described in
7 ORS 33.015 to 33.155.

8 [(10)] (11) Confinement under this section may be custody or incarceration, whether actual or
9 constructive.

10 [(11)] (12) As used in this section, “consumer reporting agency” means any person that regularly
11 engages for fees, dues, or on a nonprofit basis, in whole or in part, in the practice of assembling or
12 evaluating consumer credit information or other information on consumers for the purpose of fur-
13 nishing consumer reports to third parties.

14 **SECTION 4.** ORS 153.093 is amended to read:

15 153.093. (1) Notwithstanding any other provision of law, a court or violations bureau may not
16 defer, waive, suspend or otherwise reduce the fine for a violation to an amount that is less than:

17 (a) 75 percent of the base fine amount established for the offense under ORS 153.125 to 153.145,
18 if the offense is a Class A, B, C or D violation, or an unclassified violation, under ORS 153.012 and
19 153.015; or

20 (b) 20 percent of the base fine amount established for the offense under ORS 153.125 to 153.145,
21 if the offense is a specific fine violation as described by ORS 153.015.

22 (2) Nothing in this section:

23 (a) Affects the manner in which a court imposes or reduces monetary obligations other than
24 fines.

25 (b) Allows a court to reduce any fine amount below a minimum fine amount established by
26 statute for the offense.

27 (c) Affects the ability of a court to establish a payment schedule for fines imposed by the court.

28 **(d) Prevents the court from allowing a defendant to satisfy some or all of a monetary**
29 **obligation through community service, as provided in ORS 161.685 (8).**

30 (3) For the purpose of determining whether a fine meets the requirements of subsection (1) of
31 this section, the unitary assessment amount under ORS 137.290 and the county assessment amount
32 under ORS 137.309 shall be included in calculating the amount required under subsection (1) of this
33 section.

34 (4) The Department of Revenue or Secretary of State may audit any court to determine whether
35 the court is complying with the requirements of this section. In addition, the Department of Revenue
36 or Secretary of State may audit any court to determine whether the court is complying with the
37 requirements of ORS 137.290 (4) and 153.630 (4). The Department of Revenue or Secretary of State
38 may file an action under ORS 34.105 to 34.240 to enforce the requirements of this section and ORS
39 137.290 (4) and 153.630 (4).

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