

House Bill 2393

Sponsored by Representative COWAN (at the request of Oregon State Sheriffs' Association) (Pre-session filed.)

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**.

Increases fees collectible by sheriff for serving legal documents and performing other civil duties.

Allows two or more sheriffs to enter into intergovernmental agreement for the purpose of establishing and maintaining website for purpose of giving legal notices relating to writs of execution issued to sheriffs.

Provides procedures for notice to sheriff of challenges to notices of garnishment.

Provides that certain property seized for forfeiture be delivered to law enforcement agency that employs officer seizing property.

A BILL FOR AN ACT

1
2 Relating to sheriffs; creating new provisions; and amending ORS 18.652, 18.855, 18.857, 18.920, 18.924,
3 18.926, 21.410, 167.162, 506.695 and 506.700.

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

SERVICE FEES

5
6
7
8 **SECTION 1.** ORS 21.410 is amended to read:

9 21.410. (1) The sheriff of a county shall collect the following fees in civil actions, suits and
10 proceedings for each case delivered to the office of the sheriff:

11 (a) [~~\$28~~] **\$40** for serving a summons, a subpoena, a citation, an order, a notice, including notice
12 of seizure and sale of personal or real property, a notice of restitution and notice of seizure under
13 writ of attachment or execution, a writ of garnishment or a similar [*documents*] **document**, in-
14 cluding small claims or writ of execution, directed to not more than two parties at the same address.
15 If service is requested for more than two parties at the same address, the fee is [~~\$15~~] **\$20** for each
16 party at the same address. The fee authorized by this paragraph shall not be charged to the state
17 in civil actions, suits and proceedings where one party is a person who has been appointed counsel
18 at state expense.

19 (b) For seizure and sale of personal or real property, enforcement of writ of execution of judg-
20 ment of restitution, or other enforcement or seizure under writ of attachment or execution, or other
21 process or proceeding, [~~\$47~~] **\$70**, and, in addition, such sums as may be reasonable and necessary
22 [*to*] **for the costs of standing by in anticipation of securing custody of the property, the ex-**
23 **penditure of** [*secure*] **securing** each keeper or custodian of property [*in custody*], the expense of inven-
24 tory of property [*in custody*] and the expense incurred in [*newspaper*] advertising required by law
25 in the [*execution of process*] **sale of the property.**

26 (c) For making a conveyance of real property sold on any process, [~~\$15~~] **\$30**, to be paid by, or
27 for, the grantee.

28 (d) For making a copy of any process, order, notice or other instrument in writing, when nec-

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 essary to complete the service thereof, for each folio, \$3; but no charge shall be made for copy of
 2 complaint or other document not actually made by the sheriff.

3 (e) For entering and processing distraint warrants for state agencies, \$6.25 each.

4 (2) Persons other than a sheriff serving process and other documents may charge any fee agreed
 5 to between the server and the person requesting service.

6 (3) Fees collected for service by the sheriff shall be retained for the benefit of the county where
 7 the party to be served cannot be found.

8 (4) No mileage or commission shall be collected by a sheriff for service of any document or
 9 process but in any service involving travel in excess of 75 miles round trip an additional fee not to
 10 exceed [~~\$25~~] \$40 may be billed and collected by a sheriff. Mileage shall be measured from the lo-
 11 cation at which the service is made to the circuit court in that county.

12 (5) Amounts paid for service of process and other documents may be recovered as costs and
 13 disbursements to the extent provided by ORS 20.115.

14 (6) A sheriff may not collect a fee under this section for serving a foreign restraining order or
 15 an order that only grants relief under ORS 107.095 (1)(c).

16 (7) As used in this section:

17 (a) "Folio" means 100 words, counting two figures as one word. Any portion of a folio, when the
 18 whole paper contains less than a folio, or when such portion is an excess over the last folio, shall
 19 be deemed a folio.

20 (b) "Foreign restraining order" means a restraining order that is a foreign judgment as defined
 21 by ORS 24.105.

22 **SECTION 2. The amendments to ORS 21.410 by section 1 of this 2009 Act apply only to**
 23 **documents submitted to a sheriff for service on or after the effective date of this 2009 Act**
 24 **and to services requested of a sheriff on or after the effective date of this 2009 Act.**

25 **SECTION 3.** ORS 18.652 is amended to read:

26 18.652. (1) A writ of garnishment may be delivered to the garnishee personally or by certified
 27 mail, return receipt requested. Delivery is effective upon receipt of the writ by the garnishee. If the
 28 garnishee refuses to accept delivery by certified mail, the garnishor may attempt personal delivery,
 29 but the garnishor must have a new writ issued in order to claim additional delivery fees.

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

31 (a) The sheriff of the county where the writ is to be delivered; or

32 (b) A competent person 18 years of age or older who is a resident of the State of Oregon and
 33 who is not a party or attorney in the action.

34 (3) If personal delivery is made under this section, the person serving the writ must note the
 35 date of delivery upon the original writ delivered to the garnishee or upon the copy of the writ de-
 36 livered to the garnishee.

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

40 *[(5) The delivery fee for a writ of garnishment by a person other than a sheriff shall be in an*
 41 *amount agreed to between the person making the delivery and the garnishor. The delivery fee for a*
 42 *writ by a sheriff under this section is \$15.]*

1 **SECTION 4.** ORS 18.926 is amended to read:

2 18.926. (1) *[Subject to the availability of funding, the State Court Administrator may establish and*
 3 *maintain a website for the purpose of giving legal notices pursuant to ORS 18.860 to 18.993.]* **Two or**
 4 **more sheriffs may enter into an intergovernmental agreement under ORS chapter 190 for the**
 5 **purpose of establishing and maintaining a website where legal notices under ORS 18.860 to**
 6 **18.993 may be posted.**

7 (2) *[The State Court Administrator]* **An intergovernmental agreement entered into under this**
 8 **section** may establish fees for posting legal notices on a website maintained under this section.
 9 *[All fees collected by the State Court Administrator under this subsection shall be deposited in the*
 10 *Judicial Department Operating Account established under ORS 1.009.]*

11 (3) For the purpose of determining whether a legal notice has been posted for the period of time
 12 required by law, an interruption of service of a website maintained under this section that does not
 13 exceed 48 hours does not affect the continuity of the posting. An interruption of service of a website
 14 maintained under this section does not prevent the sheriff from conducting an execution sale unless
 15 the court orders otherwise.

16 **SECTION 5.** ORS 18.920 is amended to read:

17 18.920. (1) Before conducting an execution sale of personal property, a sheriff shall give written
 18 notice of the sale in the manner provided by this section. The notice must identify the property to
 19 be sold and the time and place of the sale.

20 (2) Before any execution sale of personal property, the sheriff shall:

21 (a) Mail copies of the notice of sale by first class mail and by certified mail, return receipt re-
 22 quested, to the judgment debtor at the address provided in the instructions to the sheriff; and

23 (b) Mail a copy of the notice of sale by first class mail to any attorney for the judgment debtor
 24 identified in the instructions at the address provided in the instructions to the sheriff.

25 (3) The notices required by subsection (2) of this section must be mailed not less than 10 days
 26 before an execution sale is conducted.

27 (4) The sheriff shall post a notice of the sale in three public places in the county in which the
 28 sale is to take place. The notice must be posted not more than 20 days before the date of sale
 29 identified in the notice of sale and not less than 10 days before that date.

30 (5) In lieu of posting notice under subsection (4) of this section, a sheriff shall give notice of an
 31 execution sale by Internet posting if the judgment creditor requests that posting in the instructions
 32 given to the sheriff under ORS 18.875 and *[the State Court Administrator has established]* a website
 33 **has been established under ORS 18.926** for the purpose of giving legal *[notice pursuant to ORS*
 34 *18.926]* **notices under ORS 18.860 to 18.993.** Subject to ORS 18.926 (3), the notice must be posted
 35 on the Internet not less than 10 days before the date identified in the notice of sale and remain
 36 posted until that date.

37 **SECTION 6.** ORS 18.924 is amended to read:

38 18.924. (1) Before conducting an execution sale of real property, a sheriff shall give written no-
 39 tice of the sale in the manner provided by this section. The notice must identify the property to be
 40 sold and the time and place of the sale.

41 (2) Before any execution sale of real property, the sheriff shall:

42 (a) Mail copies of the notice of sale by first class mail and by certified mail, return receipt re-
 43 quested, to the judgment debtor at the address provided in the instructions to the sheriff;

44 (b) Mail a copy of the notice of sale by first class mail to any attorney for the judgment debtor
 45 identified in the instructions at the address provided in the instructions; and

1 (c) Mail a copy of the notice of sale by first class mail to any other person listed in the in-
 2 structions pursuant to ORS 18.918 at the address provided in the instructions.

3 (3) The notices required by subsection (2) of this section must be mailed not less than 28 days
 4 before an execution sale is conducted.

5 (4) Before any execution sale of real property for which the judgment creditor has provided a
 6 street address under ORS 18.875 (3), the sheriff shall post a notice of the sale in a conspicuous place
 7 on the property. The notice must be posted not more than seven days after the sheriff mails notices
 8 as required by subsection (2) of this section.

9 (5) The sheriff shall publish a copy of the notice of sale of real property once a week for four
 10 successive weeks in a newspaper of general circulation in the county where the real property is
 11 located. The sheriff may not conduct the sale until the expiration of the four-week period.

12 (6) In lieu of publication in a newspaper under subsection (5) of this section, a sheriff shall
 13 publish a notice of sale of real property by Internet posting if [*the State Court Administrator has*
 14 *established*] a website **has been established under ORS 18.926** for the purpose of giving legal [*no-*
 15 *tice pursuant to the provisions of ORS 18.926*] **notices under ORS 18.860 to 18.993**, and the judgment
 16 creditor has requested that notice be published by Internet posting in the instructions provided to
 17 the sheriff under ORS 18.875. Subject to ORS 18.926 (3), the notice must be posted on the Internet
 18 not less than 28 days before the date identified in the notice of sale and remain posted until that
 19 date.

20
 21 **CHALLENGE TO NOTICE OF GARNISHMENT**

22
 23 **SECTION 7.** ORS 18.855 is amended to read:

24 18.855. (1) Notwithstanding ORS 18.607, a notice of garnishment issued by a state agency need
 25 not contain the name of a court whose authority is invoked.

26 (2) State agencies shall make such modifications as are necessary in the wage exemption cal-
 27 culation form provided by ORS 18.840 if a notice of garnishment is issued for a debt due for a state
 28 tax that is subject to the provisions of ORS 18.385 (6).

29 (3) Notwithstanding ORS 18.625, but subject to ORS 18.618 (2), a notice of garnishment issued
 30 by a state agency acts to garnish all wages earned by the debtor by reason of services to the
 31 garnishee until the full amount of the debt is paid or until the notice of garnishment is released by
 32 the state agency or by court order. A notice of garnishment issued by a state agency must contain
 33 language reasonably designed to notify the garnishee of the provisions of this subsection.

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

37 (5) Notwithstanding ORS 18.700, a challenge to a notice of garnishment issued by a state agency
 38 must be delivered in person or by first class mail to the state agency within the time specified by
 39 ORS 18.700 (2). **Upon receiving a challenge, the state agency shall provide notice of the chal-**
 40 **lenge in the manner provided by ORS 18.702. Upon a sheriff receiving notice under ORS**
 41 **18.702, the sheriff shall proceed as provided by ORS 18.760, except that upon determination**
 42 **of the challenge by an administrative law judge, the sheriff shall proceed as directed by the**
 43 **judge.** Within 14 days after receiving the challenge, the state agency must either concede the
 44 challenge or give the person making the challenge opportunity for hearing. If the person making the
 45 challenge requests a hearing, the agency shall immediately refer the challenge to the Office of Ad-

1 ministrative Hearings established under ORS 183.605. The hearing shall be conducted as soon as
2 possible. Notwithstanding ORS 183.315, the hearing shall be conducted as a contested case hearing.
3 An issue that was decided in a previous hearing, or for which the debtor was previously afforded
4 an opportunity for hearing, may not be reconsidered.

5 (6) If a state agency is issuing a notice of garnishment for collection of a state tax, and the state
6 agency has reason to believe that the debtor intends to leave the state or do any other act that
7 would jeopardize collection of the tax, the state agency may issue a special notice of garnishment.
8 Any earnings, as defined in ORS 18.375, garnished under a special notice of garnishment are not
9 subject to a claim of exemption under ORS 18.385. A special notice of garnishment issued under this
10 subsection garnishes only that property of the debtor that is in the garnishee's possession, control
11 or custody at the time the special notice is delivered, including debts not yet due, and all wages
12 owed by the garnishee to the debtor at the time the special notice is delivered. A special notice of
13 garnishment does not act to garnish wages earned by the debtor by reason of services rendered to
14 the garnishee after the delivery of the special notice of garnishment.

15 (7) A special notice of garnishment issued under subsection (6) of this section shall contain a
16 statement indicating that it is a special notice of garnishment under subsection (6) of this section
17 and a statement reflecting the provisions of subsection (6) of this section. Notwithstanding ORS
18 18.854 (1), a wage exemption calculation form shall not be delivered to the garnishee with a special
19 notice of garnishment.

20 **SECTION 8.** ORS 18.857 is amended to read:

21 18.857. (1) A notice of garnishment issued by a county tax collector must name the circuit court
22 for the county that employs the tax collector as the court whose authority is invoked.

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

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

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

40 (5) Notwithstanding ORS 18.700, a debtor who wishes to make a challenge to a notice of
41 garnishment issued by a county tax collector must deliver the challenge in person or by first class
42 mail to the county tax collector within the time specified by ORS 18.700 (2). **Upon receiving a
43 challenge, the county tax collector shall provide notice of the challenge in the manner pro-
44 vided by ORS 18.702. Upon a sheriff receiving notice under ORS 18.702, the sheriff shall pro-
45 ceed as provided in ORS 18.760.**

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

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

8
 9 **CUSTODY OF PROPERTY SEIZED FOR FORFEITURE**

10
 11 **SECTION 9.** ORS 167.162 is amended to read:

12 167.162. (1) A gambling device is a public nuisance. Any peace officer shall summarily seize any
 13 such device that the peace officer finds and deliver it to the custody of the [*sheriff*] **law enforce-**
 14 **ment agency that employs the officer**, [*who*] **which** shall hold it subject to the order of the court
 15 having jurisdiction.

16 (2) Whenever it appears to the court that the gambling device has been possessed in violation
 17 of ORS 167.147, the court shall adjudge forfeiture thereof and shall order the [*sheriff*] **law enforce-**
 18 **ment agency holding the gambling device** to destroy the device and to deliver any coins taken
 19 therefrom to the county treasurer, who shall deposit them to the general fund of the county. How-
 20 ever, when the defense provided by ORS 167.147 (3) is raised by the defendant, the gambling device
 21 or slot machine shall not be forfeited or destroyed until after a final judicial determination that the
 22 defense is not applicable. If the defense is applicable, the gambling device or slot machine shall be
 23 returned to its owner.

24 (3) The seizure of the gambling device or operating part thereof constitutes sufficient notice to
 25 the owner or person in possession thereof. The [*sheriff*] **law enforcement agency** shall make return
 26 to the court showing that the [*sheriff*] **law enforcement agency** has complied with the **court's** or-
 27 der.

28 (4) Whenever, in any proceeding in court for the forfeiture of any gambling device except a slot
 29 machine seized for a violation of ORS 167.147, a judgment for forfeiture is entered, the court shall
 30 have exclusive jurisdiction to remit or mitigate the forfeiture.

31 (5) In any such proceeding the court shall not allow the claim of any claimant for remission or
 32 mitigation unless and until the claimant proves that the claimant:

- 33 (a) Has an interest in the gambling device, as owner or otherwise, that the claimant acquired
 34 in good faith.
- 35 (b) At no time had any knowledge or reason to believe that it was being or would be used in
 36 violation of law relating to gambling.

37 (6) In any proceeding in court for the forfeiture of any gambling device except a slot machine
 38 seized for a violation of law relating to gambling, the court may in its discretion order delivery
 39 thereof to any claimant who shall establish the right to the immediate possession thereof, and shall
 40 execute, with one or more sureties, or by a surety company, approved by the court, and deliver to
 41 the court, a bond in such sum as the court shall determine, running to the State of Oregon, and
 42 conditioned to return such gambling device at the time of trial, and conditioned further that, if the
 43 gambling device be not returned at the time of trial, the bond may in the discretion of the court
 44 stand in lieu of and be forfeited in the same manner as such gambling device.

45 **SECTION 10.** ORS 506.695 is amended to read:

1 506.695. (1) All boats, fishing gear and vehicles used in violation of the commercial fishing laws
 2 or the rules of the State Fish and Wildlife Commission may be seized, and piling driven for the sole
 3 or primary purposes of violation of such laws may be removed, by any member of the commission
 4 or any officer described in ORS 506.521. [*Following the seizure the boats, gear and vehicles shall be*
 5 *delivered to the sheriff of the county in which the seizure occurred.*] The [*sheriff*] **agency that seizes**
 6 **property under this subsection** shall retain custody of the seized property until it is ordered re-
 7 turned to the owner or confiscation is adjudged pursuant to this section.

8 (2) Upon the order of the court at the time of passing sentence for a crime, the property seized
 9 under subsection (1) of this section may be forfeited. If forfeited, such property shall be turned over
 10 to the commission.

11 (3) The commission may dispose of such forfeited property in any manner it deems proper, but
 12 the clear proceeds derived from the sale of any forfeited property shall be deposited with the State
 13 Treasury to be placed in the Common School Fund.

14 **SECTION 11.** ORS 506.700 is amended to read:

15 506.700. (1) At any time after the seizure mentioned in ORS 506.695, but before the entry of
 16 judgment pursuant to ORS 506.695, the owner of the seized property may require the return thereof
 17 upon giving to the [*sheriff*] **agency that seized the property** a written undertaking, executed by
 18 sufficient surety, to be approved by the court described in ORS 506.695, to the effect that such
 19 surety is bound in double the value of the property as determined by the court, for the delivery
 20 thereof to the plaintiff, if such delivery be adjudged, and for the payment to the plaintiff of such sum
 21 as may, for any cause, be recovered against the owner. The owner shall file such written under-
 22 taking with the clerk of the court for the county in which the seizure occurred and shall serve a
 23 true copy thereof upon the district attorney for the same county.

24 (2) If confiscation or forfeiture of such property is required by a judgment of the court under
 25 ORS 506.695, the owner shall return the property to the plaintiff. If the owner fails to return the
 26 property, any officer described under ORS 506.521 may maintain an action upon such undertaking,
 27 and the clear proceeds shall be deposited with the State Treasury in the Common School Fund.

28 **SECTION 12.** **The amendments to ORS 167.162, 506.695 and 506.700 by sections 9, 10 and**
 29 **11 of this 2009 Act apply only to property seized under ORS 167.162, 506.695 and 506.700 on**
 30 **or after the effective date of this 2009 Act.**

31 **SECTION 13.** **The unit captions used in this 2009 Act are provided only for the conven-**
 32 **ience of the reader and do not become part of the statutory law of this state or express any**
 33 **legislative intent in the enactment of this 2009 Act.**

34