

**A-Engrossed**  
**House Bill 2693**

Ordered by the House May 4  
Including House Amendments dated May 4

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Sheriff's Civil Command Council)

**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.

*[Requires agency to record warrant in County Clerk Lien Record for county in which sheriff serves before issuing warrant to sheriff.]*

**Makes process for issuance of warrants by agencies uniform. Authorizes each specified agency to file warrant in County Clerk Lien Record and direct sheriff to act on warrant or to direct authorized agent to act on warrant.**

Provides that sheriff's return of service in civil or criminal proceeding is not hearsay for purposes of Oregon Evidence Code.

**Takes effect on 91st day following adjournment sine die.**

**A BILL FOR AN ACT**

1  
2 Relating to sheriffs; creating new provisions; amending ORS 40.460, 184.644, 314.430, 319.182, 319.742,  
3 320.080, 321.570, 323.390, 323.610, 324.190, 657.396, 657.642 and 825.504; and prescribing an ef-  
4 fective date.

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

6 **SECTION 1.** ORS 184.644 is amended to read:

7 184.644. (1) For purposes of this section, a liquidated and delinquent debt is a debt that meets  
8 one of the following conditions:

9 (a) Judgment has been entered on the debt; or

10 (b) Liability for and the amount of the debt have been established through an administrative  
11 proceeding.

12 (2) If a person fails to pay in full any liquidated and delinquent debt due the Department of  
13 Transportation, the department may issue a warrant *[under the department's official seal directed to*  
14 *the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal*  
15 *property of the person found within that county,]* for *[payment of]* the amount due, with the added  
16 penalties or charges, interest and cost of executing the warrant~~], and to return the warrant to the~~  
17 *department and pay to the department the money collected from the sale by the time specified in the*  
18 *warrant, not less than 60 days from the date of the warrant].* **A copy of the warrant shall be mailed**  
19 **or delivered to the debtor by the department at the debtor's last-known address.**

20 *[(3) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the*  
21 *county a copy of the warrant. The clerk shall enter in the County Clerk Lien Record the name of the*  
22 *person mentioned in the warrant, the amount of the debt for which the warrant is issued and the date*  
23 *when the copy is recorded. The amount of the warrant shall become a lien upon the title to and interest*  
24 *in property of the person against whom the warrant is issued in the same manner as a judgment that*

**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 *creates a judgment lien under ORS chapter 18.]*

2 *[(4) The sheriff shall proceed upon the warrant in all respects, with like effect and in the same*  
 3 *manner prescribed by law in respect to executions issued against property upon judgment of a court*  
 4 *of record, and shall be entitled to the same fees for services in executing the warrant, to be added to*  
 5 *and collected as a part of the warrant liability.]*

6 *[(5) In the discretion of the Department of Transportation, a warrant of like terms, force and effect*  
 7 *to levy upon funds of the person in possession of the Department of Revenue may be issued and di-*  
 8 *rected to any agent authorized by the Department of Transportation to collect liquidated and delinquent*  
 9 *debts for the department, and in the execution thereof the agent shall have all of the powers conferred*  
 10 *by law upon sheriffs but is entitled to no fee or compensation in excess of actual expenses paid in the*  
 11 *performance of such duty.]*

12 **(3) At any time after issuing a warrant under this section, the department may record**  
 13 **the warrant in the County Clerk Lien Record of any county of this state. Recording of the**  
 14 **warrant has the effect described in ORS 205.125. After recording a warrant, the department**  
 15 **may direct the sheriff for the county in which the warrant is recorded to levy upon and sell**  
 16 **the real and personal property of the debtor found within that county, and to levy upon any**  
 17 **currency of the debtor found within that county, for the application of the proceeds or cur-**  
 18 **rency against the amount reflected in the warrant and the sheriff's cost of executing the**  
 19 **warrant. The sheriff shall proceed on the warrant in the same manner prescribed by law for**  
 20 **executions issued against property pursuant to a judgment, and is entitled to the same fees**  
 21 **as provided for executions issued against property pursuant to a judgment. The fees of the**  
 22 **sheriff shall be added to and collected as a part of the warrant liability.**

23 **(4) In the discretion of the department a warrant under this section may be directed to**  
 24 **any agent authorized by the department to collect debts under this section, and in the exe-**  
 25 **cution of the warrant the agent has all of the powers conferred by law upon sheriffs, but is**  
 26 **entitled to no fee or compensation in excess of actual expenses paid in the performance of**  
 27 **such duty.**

28 *[(6)] (5) Nothing in this section affects any provision of ORS 319.182, 319.742 or 825.504.*

29 **SECTION 2.** ORS 314.430 is amended to read:

30 314.430. (1) If any tax imposed under ORS chapter 118, 316, 317 or 318 or any portion of the tax  
 31 is not paid within 30 days after the date that the written notice and demand for payment required  
 32 under ORS 305.895 is mailed (or within five days after the tax becomes due, in the case of the ter-  
 33 mination of the tax year by the Department of Revenue under the provisions of ORS 314.440) and  
 34 no provision is made to secure the payment thereof by bond, deposit or otherwise, pursuant to reg-  
 35 ulations promulgated by the department, the department may issue a warrant *[directed to the sheriff*  
 36 *of any county of the state commanding the sheriff to levy upon and sell the real and personal property*  
 37 *of the taxpayer found within that county,]* for the payment of the amount of the tax, with the added  
 38 penalties, interest[,] **and any** collection charge **incurred.** *[and the sheriff's cost of executing the*  
 39 *warrant, and to return such warrant to the department and pay to it the money collected by virtue*  
 40 *thereof by a time to be therein specified, not less than 60 days from the date of the warrant.]* A copy  
 41 of the warrant shall be mailed or delivered to the taxpayer by the department at the taxpayer's  
 42 last-known address.

43 *[(2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the*  
 44 *county a copy thereof, and thereupon the clerk shall enter in the County Clerk Lien Record the name*  
 45 *of the taxpayer mentioned in the warrant, and the amount of the tax or portion thereof and penalties*

1 for which the warrant is issued and the date when such copy is recorded. Thereupon the amount of  
 2 the warrant so recorded shall become a lien upon the title to and interest in property of the taxpayer  
 3 against whom it is issued in the same manner as a judgment duly recorded. The sheriff thereupon shall  
 4 proceed upon the same in all respects, with like effect and in the same manner prescribed by law in  
 5 respect to executions issued against property upon judgment of a court of record, and shall be entitled  
 6 to the same fees for services in executing the warrant, to be added to and collected as a part of the  
 7 warrant liability.]

8 **(2) At any time after issuing a warrant under this section, the department may record**  
 9 **the warrant in the County Clerk Lien Record of any county of this state. Recording of the**  
 10 **warrant has the effect described in ORS 205.125. After recording a warrant, the department**  
 11 **may direct the sheriff for the county in which the warrant is recorded to levy upon and sell**  
 12 **the real and personal property of the taxpayer found within that county, and to levy upon**  
 13 **any currency of the taxpayer found within that county, for the application of the proceeds**  
 14 **or currency against the amount reflected in the warrant and the sheriff's cost of executing**  
 15 **the warrant. The sheriff shall proceed on the warrant in the same manner prescribed by law**  
 16 **for executions issued against property pursuant to a judgment, and is entitled to the same**  
 17 **fees as provided for executions issued against property pursuant to a judgment. The fees of**  
 18 **the sheriff shall be added to and collected as a part of the warrant liability.**

19 (3) In the discretion of the department a warrant *[of like terms, force and effect may be issued*  
 20 *and]* **under this section may be** directed to any agent authorized **by the department** to collect  
 21 taxes, and in the execution *[thereof]* **of the warrant** the agent *[shall have]* **has all of** the powers  
 22 conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses  
 23 paid in the performance of such duty.

24 (4) *[If]* **Until a warrant issued under this section** is *[returned not]* satisfied in full, the depart-  
 25 ment *[shall have]* **has** the same remedies to enforce the claim for taxes against the taxpayer as if  
 26 *[the people of]* the state had recovered judgment against the taxpayer for the amount of the tax, *and*  
 27 *shall balance the assessment record of the taxpayer by transferring the unpaid deficiency to the*  
 28 *taxpayer's delinquent record].*

29 **SECTION 3.** ORS 319.182 is amended to read:

30 319.182. (1) If a person fails to pay in full any tax, interest or penalty due under ORS 319.010  
 31 to 319.430, the Department of Transportation may issue a warrant *[under the department's official*  
 32 *seal directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the*  
 33 *real and personal property of the person found within that county,]* for *[payment of]* the amount due,  
 34 with the added penalties or charges, interest and the cost of executing the warrant, *and to return*  
 35 *the warrant to the department and pay to the department the money collected from the sale by the time*  
 36 *specified in the warrant, not less than 60 days from the date of the warrant].* **A copy of the warrant**  
 37 **shall be mailed or delivered to the taxpayer by the department at the taxpayer's last-known**  
 38 **address.**

39 *[(2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the*  
 40 *county a copy of the warrant. The clerk shall enter in the County Clerk Lien Record the name of the*  
 41 *person mentioned in the warrant, the amount of the tax or portion of the tax and penalties or charges*  
 42 *for which the warrant is issued and the date when the copy is recorded. The amount of the warrant*  
 43 *shall become a lien upon the title to and interest in property of the person against whom it is issued*  
 44 *in the same manner as a judgment that creates a judgment lien under ORS chapter 18.]*

45 *[(3) The sheriff shall proceed upon the warrant in all respects, with like effect and in the same*

1 manner prescribed by law in respect to executions issued against property upon judgment of a court  
 2 of record, and shall be entitled to the same fees for services in executing the warrant, to be added to  
 3 and collected as a part of the warrant liability.]

4 [(4) In the discretion of the Department of Transportation, a warrant of like terms, force and effect  
 5 to levy upon funds of the person in possession of the Department of Revenue may be issued and di-  
 6 rected to any agent authorized by the Department of Transportation to collect taxes payable under ORS  
 7 319.010 to 319.430, and in the execution thereof the agent shall have all of the powers conferred by law  
 8 upon sheriffs but is entitled to no fee or compensation in excess of actual expenses paid in the per-  
 9 formance of such duty.]

10 **(2) At any time after issuing a warrant under this section, the department may record**  
 11 **the warrant in the County Clerk Lien Record of any county of this state. Recording of the**  
 12 **warrant has the effect described in ORS 205.125. After recording a warrant, the department**  
 13 **may direct the sheriff for the county in which the warrant is recorded to levy upon and sell**  
 14 **the real and personal property of the taxpayer found within that county, and to levy upon**  
 15 **any currency of the taxpayer found within that county, for the application of the proceeds**  
 16 **or currency against the amount reflected in the warrant and the sheriff's cost of executing**  
 17 **the warrant. The sheriff shall proceed on the warrant in the same manner prescribed by law**  
 18 **for executions issued against property pursuant to a judgment, and is entitled to the same**  
 19 **fees as provided for executions issued against property pursuant to a judgment. The fees of**  
 20 **the sheriff shall be added to and collected as a part of the warrant liability.**

21 **(3) In the discretion of the department a warrant under this section may be directed to**  
 22 **any agent authorized by the department to collect taxes, and in the execution of the warrant**  
 23 **the agent has all of the powers conferred by law upon sheriffs, but is entitled to no fee or**  
 24 **compensation in excess of actual expenses paid in the performance of such duty.**

25 **SECTION 4.** ORS 319.742 is amended to read:

26 319.742. (1) If a person fails to pay in full any obligation due under ORS 319.510 to 319.880, the  
 27 Department of Transportation may issue a warrant [*under the department's official seal directed to*  
 28 *the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal*  
 29 *property of the person found within that county,*] for [*payment of*] the amount of the obligation and  
 30 the cost of executing the warrant[, *and to return the warrant to the department and pay to the de-*  
 31 *partment the money collected from the sale by the time specified in the warrant, not less than 60 days*  
 32 *from the date of the warrant*]. **A copy of the warrant shall be mailed or delivered to the debtor**  
 33 **by the department at the debtor's last-known address.**

34 [(2) *The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the*  
 35 *county a copy of the warrant. The clerk shall enter in the County Clerk Lien Record the name of the*  
 36 *person mentioned in the warrant, the amount of the obligation for which the warrant is issued and the*  
 37 *date when the copy is recorded. The amount of the warrant shall become a lien upon the title to and*  
 38 *interest in property of the person against whom it is issued in the same manner as a judgment that*  
 39 *creates a judgment lien under ORS chapter 18.*]

40 [(3) *The sheriff shall proceed upon the warrant in all respects, with like effect and in the same*  
 41 *manner prescribed by law in respect to executions issued against property upon judgment of a court*  
 42 *of record, and shall be entitled to the same fees for services in executing the warrant, to be added to*  
 43 *and collected as a part of the warrant liability.*]

44 [(4) *In the discretion of the Department of Transportation, a warrant of like terms, force and effect*  
 45 *to levy upon funds of the person in possession of the Department of Revenue may be issued and di-*

1 *rected to any agent authorized by the Department of Transportation to collect taxes payable under ORS*  
 2 *319.510 to 319.880, and in the execution thereof the agent shall have all of the powers conferred by law*  
 3 *upon sheriffs but is entitled to no fee or compensation in excess of actual expenses paid in the per-*  
 4 *formance of such duty.]*

5 **(2) At any time after issuing a warrant under this section, the department may record**  
 6 **the warrant in the County Clerk Lien Record of any county of this state. Recording of the**  
 7 **warrant has the effect described in ORS 205.125. After recording a warrant, the department**  
 8 **may direct the sheriff for the county in which the warrant is recorded to levy upon and sell**  
 9 **the real and personal property of the debtor found within that county, and to levy upon any**  
 10 **currency of the debtor found within that county, for the application of the proceeds or cur-**  
 11 **rency against the amount reflected in the warrant and the sheriff's cost of executing the**  
 12 **warrant. The sheriff shall proceed on the warrant in the same manner prescribed by law for**  
 13 **executions issued against property pursuant to a judgment, and is entitled to the same fees**  
 14 **as provided for executions issued against property pursuant to a judgment. The fees of the**  
 15 **sheriff shall be added to and collected as a part of the warrant liability.**

16 **(3) In the discretion of the department a warrant under this section may be directed to**  
 17 **any agent authorized by the department to collect obligations under this section, and in the**  
 18 **execution of the warrant the agent has all of the powers conferred by law upon sheriffs, but**  
 19 **is entitled to no fee or compensation in excess of actual expenses paid in the performance**  
 20 **of such duty.**

21 **SECTION 5.** ORS 320.080 is amended to read:

22 320.080. (1) If any tax or penalty imposed by ORS 320.005 to 320.150 is not paid as required by  
 23 ORS 320.005 to 320.150 within 30 days after the date that the written notice and demand for payment  
 24 required under ORS 305.895 is mailed, the Department of Revenue shall issue a warrant [*directed to*  
 25 *the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal*  
 26 *property of the person or persons named in the warrant and liable for the tax found within the*  
 27 *county,]* for the payment of the amount [*thereof*] **of the tax**, with the added penalty and the cost of  
 28 executing the warrant[, *and to return the warrant to the department and pay to it the money collected*  
 29 *by virtue thereof by a time to be therein specified not more than 30 days from the date of the*  
 30 *warrant*]. A copy of the warrant shall be mailed or delivered to the taxpayer by the department at  
 31 the taxpayer's last-known address.

32 [*(2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the*  
 33 *county a copy thereof. Thereupon the clerk shall enter in the County Clerk Lien Record the names of*  
 34 *the persons mentioned in the warrant, and the amount of the tax and penalty for which the warrant*  
 35 *is issued and the date when such copy is recorded. Thereupon the amount of the warrant so recorded*  
 36 *shall become a lien upon the title to any interest in real property or personal property of the persons*  
 37 *against whom it is issued in the same manner as a judgment that creates a judgment lien under ORS*  
 38 *chapter 18. The sheriff shall thereupon proceed upon the same in all respects, with like effect and in*  
 39 *the manner prescribed by law in respect to execution issued against property upon judgment of a court*  
 40 *of record, and the sheriff is entitled to the same fees for services in executing the warrant to be collected*  
 41 *in the same manner. If a warrant is returned not satisfied in full, the department shall have the same*  
 42 *remedies to enforce the claim for taxes as if the people of the state had recovered judgment for the*  
 43 *amount of the tax.*]

44 **(2) At any time after issuing a warrant under this section, the department may record**  
 45 **the warrant in the County Clerk Lien Record of any county of this state. Recording of the**

1 warrant has the effect described in ORS 205.125. After recording a warrant, the department  
 2 may direct the sheriff for the county in which the warrant is recorded to levy upon and sell  
 3 the real and personal property of the taxpayer found within that county, and to levy upon  
 4 any currency of the taxpayer found within that county, for the application of the proceeds  
 5 or currency against the amount reflected in the warrant and the sheriff's cost of executing  
 6 the warrant. The sheriff shall proceed on the warrant in the same manner prescribed by law  
 7 for executions issued against property pursuant to a judgment, and is entitled to the same  
 8 fees as provided for executions issued against property pursuant to a judgment. The fees of  
 9 the sheriff shall be added to and collected as a part of the warrant liability.

10 (3) In the discretion of the department a warrant under this section may be directed to  
 11 any agent authorized by the department to collect taxes, and in the execution of the warrant  
 12 the agent has all of the powers conferred by law upon sheriffs, but is entitled to no fee or  
 13 compensation in excess of actual expenses paid in the performance of such duty.

14 (4) Until a warrant issued under this section is satisfied in full, the department has the  
 15 same remedies to enforce the claim for taxes against the taxpayer as if the state had re-  
 16 covered judgment against the taxpayer for the amount of the tax.

17 **SECTION 6.** ORS 321.570 is amended to read:

18 321.570. (1) If any tax imposed by ORS 321.005 to 321.185, 321.560 to 321.600 or 321.700 to  
 19 321.754, or any portion of the tax, is not paid within 30 days after the date that the written notice  
 20 and demand for payment required under ORS 305.895 is mailed, the Department of Revenue may is-  
 21 sue a warrant[, *directed to the sheriff of any county of the state, commanding the sheriff to levy upon*  
 22 *and sell the real and personal property of the taxpayer owning the same, found within that county,*] for  
 23 the payment of the amount of the tax, with the added penalties, interest and cost of executing the  
 24 warrant[, *and to return the warrant to the department and to pay to it the money collected from the*  
 25 *sale, within 60 days after receipt of the warrant*]. A copy of the warrant shall be mailed or delivered  
 26 to the taxpayer by the department at the taxpayer's last-known address.

27 [(2) *The sheriff shall, within five days after the receipt of the warrant, record a copy with the*  
 28 *county clerk, and the clerk shall immediately enter in the County Clerk Lien Record the name of the*  
 29 *taxpayer mentioned in the warrant, and the amount of the tax or portion of the tax and penalties for*  
 30 *which the warrant is issued and the date when the copy is recorded. The amount of the warrant so*  
 31 *recorded shall become a lien upon the title to and interest in real property of the taxpayer against*  
 32 *which it is issued, in the same manner as a judgment that creates a judgment lien under ORS chapter*  
 33 *18. The sheriff immediately shall proceed upon the warrant in all respects, with like effect, and in the*  
 34 *same manner prescribed by law in respect to executions issued against property upon judgments of a*  
 35 *court of record, and shall be entitled to the same fees for services in executing the warrant, to be added*  
 36 *to and collected as a part of the warrant liability.*]

37 (2) At any time after issuing a warrant under this section, the department may record  
 38 the warrant in the County Clerk Lien Record of any county of this state. Recording of the  
 39 warrant has the effect described in ORS 205.125. After recording a warrant, the department  
 40 may direct the sheriff for the county in which the warrant is recorded to levy upon and sell  
 41 the real and personal property of the taxpayer found within that county, and to levy upon  
 42 any currency of the taxpayer found within that county, for the application of the proceeds  
 43 or currency against the amount reflected in the warrant and the sheriff's cost of executing  
 44 the warrant. The sheriff shall proceed on the warrant in the same manner prescribed by law  
 45 for executions issued against property pursuant to a judgment, and is entitled to the same

1 **fees as provided for executions issued against property pursuant to a judgment. The fees of**  
 2 **the sheriff shall be added to and collected as a part of the warrant liability.**

3 (3) In the discretion of the department a warrant [*of like terms, force and effect may be issued*  
 4 *and*] **under this section may be** directed to any agent authorized **by the department** to collect  
 5 this tax. In the execution of the warrant[, *such*] **the** agent has the powers conferred by law upon  
 6 sheriffs, but is entitled to no fee or compensation in excess of actual expenses paid in the perform-  
 7 ance of such duty.

8 (4) [*If*] **Until** a warrant **issued under this section** is [*returned not*] satisfied in full, the depart-  
 9 ment [*shall have*] **has** the same remedies to enforce the claim for taxes against the taxpayer as if  
 10 the state had [*a recorded*] **recovered** judgment against the taxpayer for the amount of the tax.

11 **SECTION 7.** ORS 323.390 is amended to read:

12 323.390. (1) If any tax imposed by ORS 323.005 to 323.482 or any portion of such tax is not paid  
 13 within 30 days after notice of a deficiency determination is given pursuant to ORS 323.403 or of a  
 14 tax determined under ORS 323.385, and no provision is made to secure the payment thereof by bond,  
 15 deposit or otherwise, pursuant to regulations promulgated by the Department of Revenue, the de-  
 16 partment shall:

17 (a) Assess a collection charge of \$5 if the sum of the tax, penalty and interest then due exceeds  
 18 \$10.

19 (b) Issue a warrant [*directed to the sheriff of any county of the state commanding the sheriff to levy*  
 20 *upon and sell the real and personal property of the taxpayer found within that county,*] for the payment  
 21 of the amount of the tax, with the added penalties, interest, collection charge and the sheriff's cost  
 22 of executing the warrant[, *and to return such warrant to the department and pay to it the money col-*  
 23 *lected by virtue thereof by a time to be therein specified, not less than 60 days from the date of the*  
 24 *warrant*]. **A copy of the warrant shall be mailed or delivered to the taxpayer by the depart-**  
 25 **ment at the taxpayer's last-known address.**

26 [*(2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the*  
 27 *county a copy thereof, and thereupon the clerk shall enter in the County Clerk Lien Record the name*  
 28 *of the taxpayer mentioned in the warrant, and the amount of the tax or portion thereof and penalties*  
 29 *and interest for which the warrant is issued and the date when such copy is recorded. Thereupon the*  
 30 *amount of the warrant so recorded shall become a lien upon the title to and interest in property of the*  
 31 *taxpayer against whom it is issued in the same manner as a judgment that creates a judgment lien*  
 32 *under ORS chapter 18. The sheriff thereupon shall proceed upon the same in all respects, with like*  
 33 *effect and in the same manner prescribed by law in respect to executions issued against property upon*  
 34 *judgment of a court of record, and shall be entitled to the same fees for services in executing the war-*  
 35 *rant, to be added to and collected as a part of the warrant liability.*]

36 **(2) At any time after issuing a warrant under this section, the department may record**  
 37 **the warrant in the County Clerk Lien Record of any county of this state. Recording of the**  
 38 **warrant has the effect described in ORS 205.125. After recording a warrant, the department**  
 39 **may direct the sheriff for the county in which the warrant is recorded to levy upon and sell**  
 40 **the real and personal property of the taxpayer found within that county, and to levy upon**  
 41 **any currency of the taxpayer found within that county, for the application of the proceeds**  
 42 **or currency against the amount reflected in the warrant and the sheriff's cost of executing**  
 43 **the warrant. The sheriff shall proceed on the warrant in the same manner prescribed by law**  
 44 **for executions issued against property pursuant to a judgment, and is entitled to the same**  
 45 **fees as provided for executions issued against property pursuant to a judgment. The fees of**

1 **the sheriff shall be added to and collected as a part of the warrant liability.**

2 (3) In the discretion of the department a warrant [*of like terms, force and effect may be issued*  
3 **and] under this section may be** directed to any agent authorized **by the department** to collect  
4 income taxes, and in the execution [*thereof*] **of the warrant** the agent [*shall have*] **has all of** the  
5 powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual  
6 expenses paid in the performance of such duty.

7 (4) [*If*] **Until a warrant issued under this section** is [*returned not*] satisfied in full, the depart-  
8 ment [*shall have*] **has** the same remedies to enforce the claim for taxes against the taxpayer as if  
9 [*the people of*] the state had recovered judgment against the taxpayer for the amount of the tax.

10 **SECTION 8.** ORS 323.610 is amended to read:

11 323.610. (1) If any tax imposed under ORS 323.500 to 323.645, or any portion of the tax, is not  
12 paid within the time provided by law and no provision is made to secure the payment of the tax by  
13 bond, deposit or otherwise, pursuant to rules adopted by the Department of Revenue, the department  
14 may issue a warrant [*directed to the sheriff of any county of the state commanding the sheriff to levy*  
15 *upon and sell the real and personal property of the taxpayer found within the county,*] for the payment  
16 of the amount of the tax, with the added penalties, interest and the sheriff's cost of executing the  
17 warrant[, *and to return the warrant to the department and pay to it the money collected from the sale,*  
18 *within 60 days after the date of receipt of the warrant*]. **A copy of the warrant shall be mailed or**  
19 **delivered to the taxpayer by the department at the taxpayer's last-known address.**

20 [*(2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the*  
21 *county a copy of the warrant, and the clerk shall immediately enter in the County Clerk Lien Record*  
22 *the name of the taxpayer mentioned in the warrant, the amount of the tax or portion of the tax and*  
23 *penalties for which the warrant is issued and the date the copy is recorded. The amount of the warrant*  
24 *so recorded shall become a lien upon the title to and interest in real property of the taxpayer against*  
25 *whom it is issued in the same manner as a judgment that creates a judgment lien under ORS chapter*  
26 *18. The sheriff immediately shall proceed upon the warrant in all respects, with like effect and in the*  
27 *same manner prescribed by law in respect to executions issued against property upon judgment of a*  
28 *court of record, and shall be entitled to the same fees for services in executing the warrant, to be added*  
29 *to and collected as a part of the warrant liability.*]

30 (2) **At any time after issuing a warrant under this section, the department may record**  
31 **the warrant in the County Clerk Lien Record of any county of this state. Recording of the**  
32 **warrant has the effect described in ORS 205.125. After recording a warrant, the department**  
33 **may direct the sheriff for the county in which the warrant is recorded to levy upon and sell**  
34 **the real and personal property of the taxpayer found within that county, and to levy upon**  
35 **any currency of the taxpayer found within that county, for the application of the proceeds**  
36 **or currency against the amount reflected in the warrant and the sheriff's cost of executing**  
37 **the warrant. The sheriff shall proceed on the warrant in the same manner prescribed by law**  
38 **for executions issued against property pursuant to a judgment, and is entitled to the same**  
39 **fees as provided for executions issued against property pursuant to a judgment. The fees of**  
40 **the sheriff shall be added to and collected as a part of the warrant liability.**

41 (3) In the discretion of the department a warrant [*of like terms, force and effect*] **under this**  
42 **section** may be [*issued and*] directed to any agent authorized **by the department** to collect the  
43 taxes imposed by ORS 323.500 to 323.645. In the execution of the warrant[, ] the agent [*shall have*]  
44 **has all of** the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in  
45 excess of actual expenses paid in the performance of such duty.



1 (4) *[If]* **Until** a warrant **issued under this section** is *[returned not]* satisfied in full, the depart-  
 2 ment *[shall have]* **has** the same remedies to enforce the claim for taxes against the taxpayer as if  
 3 *[the people of]* the state had recovered judgment against the taxpayer for the amount of the tax.

4 **SECTION 9.** ORS 324.190 is amended to read:

5 324.190. (1) If any tax imposed by this chapter, or any portion of such tax, is not paid within 30  
 6 days after the date that the written notice and demand for payment required under ORS 305.895 is  
 7 mailed, the Department of Revenue shall issue a warrant~~], directed to the sheriff of any county of the~~  
 8 ~~state, commanding the sheriff to levy upon and sell the real and personal property of the person owing~~  
 9 ~~the tax, found within that county, for the payment in the amount thereof]~~ **for the payment of the**  
 10 **amount of the tax**, with the added penalties, interest and cost of executing the warrant~~], and to~~  
 11 ~~return the warrant to the department and to pay to it the money collected by virtue thereof, within 60~~  
 12 ~~days after receipt of the warrant].~~ A copy of the warrant shall be mailed or delivered to the taxpayer  
 13 by the department at the taxpayer's last-known address.

14 *[(2) The sheriff shall, within five days after the receipt of the warrant, record a copy with the*  
 15 *county clerk, and thereupon the clerk shall enter in the County Clerk Lien Record the name of the*  
 16 *person mentioned in the warrant, and the amount of the tax or portion thereof and penalties for which*  
 17 *the warrant is issued and the date when the copy is recorded. Thereupon the amount of the warrant*  
 18 *so recorded shall become a lien upon the title to and interest in real property of the person against*  
 19 *which it is issued, in the same manner as a judgment that creates a judgment lien under ORS chapter*  
 20 *18. The sheriff thereupon shall proceed upon the warrant in all respects, with like effect, and in the*  
 21 *same manner prescribed by law in respect to executions issued against property upon judgments of a*  
 22 *court of records, and shall be entitled to the same fees for services in executing the warrant, to be*  
 23 *added to and collected as a part of the warrant liability.]*

24 **(2) At any time after issuing a warrant under this section, the department may record**  
 25 **the warrant in the County Clerk Lien Record of any county of this state. Recording of the**  
 26 **warrant has the effect described in ORS 205.125. After recording a warrant, the department**  
 27 **may direct the sheriff for the county in which the warrant is recorded to levy upon and sell**  
 28 **the real and personal property of the taxpayer found within that county, and to levy upon**  
 29 **any currency of the taxpayer found within that county, for the application of the proceeds**  
 30 **or currency against the amount reflected in the warrant and the sheriff's cost of executing**  
 31 **the warrant. The sheriff shall proceed on the warrant in the same manner prescribed by law**  
 32 **for executions issued against property pursuant to a judgment, and is entitled to the same**  
 33 **fees as provided for executions issued against property pursuant to a judgment. The fees of**  
 34 **the sheriff shall be added to and collected as a part of the warrant liability.**

35 (3) In the discretion of the department a warrant *[of like terms, force and effect may be issued*  
 36 *and]* **under this section may be** directed to any agent *[of the department]* authorized by *[it]* **the**  
 37 **department** to collect this tax. In the execution of the warrant~~], such]~~ **the** agent has the powers  
 38 conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses  
 39 paid in the performance of such duty.

40 (4) *[If]* **Until** a warrant **under this section** is *[returned not]* satisfied in full, the department  
 41 *[shall have]* **has** the same remedies to enforce the claim for taxes against the *[owner]* **taxpayer** as  
 42 if the state had a recorded judgment against the *[owner]* **taxpayer** for the amount of the tax.

43 **SECTION 10.** ORS 657.396 is amended to read:

44 657.396. (1) In any case in which the Director of the Employment Department may bring a civil  
 45 action for the collection of amounts liable to be repaid under ORS 657.310, interest on those amounts

1 or penalties, the [*director*] **Employment Department** may instead:

2 (a) Assess a collection charge of \$5 if the amount liable to be repaid, the interest then due or  
3 the penalty exceeds \$10.

4 (b) Issue a warrant [*under official seal directed to the sheriff of any county of the state com-*  
5 *manding the sheriff to levy upon and sell the real and personal property of the individual found within*  
6 *that county,*] for [*the payment of*] the amount liable to be repaid with the added interest, penalty,  
7 collection charge and the sheriff's cost of executing the warrant[, *and to return the warrant to the*  
8 *director and pay to the director the money collected by virtue of the warrant by a time to be specified*  
9 *in the warrant, but not less than 60 days from the date of the warrant*]. **A copy of the warrant shall**  
10 **be mailed or delivered to the debtor by the department at the debtor's last-known address.**

11 [(2) *The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the*  
12 *county a copy of the warrant, and thereupon the clerk shall enter in the County Clerk Lien Record the*  
13 *name of the individual mentioned in the warrant and the amount liable to be repaid, interest, penalty*  
14 *and collection charge for which the warrant is issued and the date when the copy is recorded. There-*  
15 *upon the amount of the warrant so recorded shall become a lien upon the title to and interest in*  
16 *property of the individual against whom it is issued in the same manner as a judgment that creates a*  
17 *judgment lien under ORS chapter 18. The sheriff thereupon shall proceed upon the same in all respects,*  
18 *with like effect and in the same manner prescribed by law in respect to executions issued against*  
19 *property upon the judgment of a court of record, and shall be entitled to the same fees for services in*  
20 *executing the warrant, to be added to and collected as a part of the warrant liability.*]

21 [(3) *In the discretion of the director, a warrant of like terms, force and effect may be issued and*  
22 *directed to any agent authorized by the director to collect amounts liable to be repaid and in the exe-*  
23 *cution of the warrant the agent shall have all the powers conferred by law upon sheriffs, but is entitled*  
24 *to no fee or compensation in excess of actual expenses paid in the performance of the agent's duty.*]

25 [(4) *If a warrant is returned not satisfied in full, the director has the same remedies to enforce the*  
26 *claim for amounts due, interest and penalty against the individual as if the director had recovered*  
27 *judgment against the individual for the amount liable to be repaid, interest and penalty.*]

28 **(2) At any time after issuing a warrant under this section, the department may record**  
29 **the warrant in the County Clerk Lien Record of any county of this state. Recording of the**  
30 **warrant has the effect described in ORS 205.125. After recording a warrant, the department**  
31 **may direct the sheriff for the county in which the warrant is recorded to levy upon and sell**  
32 **the real and personal property of the debtor found within that county, and to levy upon any**  
33 **currency of the debtor found within that county, for the application of the proceeds or cur-**  
34 **rency against the amount reflected in the warrant and the sheriff's cost of executing the**  
35 **warrant. The sheriff shall proceed on the warrant in the same manner prescribed by law for**  
36 **executions issued against property pursuant to a judgment, and is entitled to the same fees**  
37 **as provided for executions issued against property pursuant to a judgment. The fees of the**  
38 **sheriff shall be added to and collected as a part of the warrant liability.**

39 **(3) In the discretion of the department a warrant under this section may be directed to**  
40 **any agent authorized by the department to collect amounts under this section, and in the**  
41 **execution of the warrant the agent has all of the powers conferred by law upon sheriffs, but**  
42 **is entitled to no fee or compensation in excess of actual expenses paid in the performance**  
43 **of such duty.**

44 [(5)] **(4) Interest upon the amounts liable to be repaid and the penalty as set forth in the warrant**  
45 **shall be paid and collected at the rate prescribed in ORS 657.310.**

1       **SECTION 11.** ORS 657.642 is amended to read:

2       657.642. (1) In any case in which the Director of the Employment Department may bring a civil  
3 action for the collection of taxes, interest and penalties under this chapter, the [*director*] **Employ-**  
4 **ment Department** may instead:

5       (a) Assess a collection charge of \$5 if the sum of the tax, penalty and interest then due exceeds  
6 \$10.

7       (b) Issue a warrant [*under official seal directed to the sheriff of any county of the state com-*  
8 *manding the sheriff to levy upon and sell the real and personal property of the employer found within*  
9 *that county,*] for [*the payment of*] the amount of the tax with the added penalties, interest, collection  
10 charge and the sheriff's cost of executing the warrant[, *and to return such warrant to the director*  
11 *and pay to the director the money collected by virtue thereof by a time to be therein specified, not less*  
12 *than 60 days from the date of the warrant*]. **A copy of the warrant shall be mailed or delivered**  
13 **to the taxpayer by the department at the taxpayer's last-known address.**

14       [(2) *The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the*  
15 *county a copy thereof, and thereupon the clerk shall enter in the County Clerk Lien Record the name*  
16 *of the employer mentioned in the warrant, and the amount of the tax, interest, penalties and collection*  
17 *charge for which the warrant is issued and the date when such copy is recorded. Thereupon the amount*  
18 *of the warrant so recorded shall become a lien upon the title to and interest in property of the employer*  
19 *against whom it is issued in the same manner as a judgment that creates a judgment lien under ORS*  
20 *chapter 18. The sheriff thereupon shall proceed upon the same in all respects, with like effect and in*  
21 *the same manner prescribed by law in respect to executions issued against property upon the judgment*  
22 *of a court of record, and shall be entitled to the same fees for services in executing the warrant, to be*  
23 *added to and collected as a part of the warrant liability.*]

24       [(3) *In the discretion of the director, a warrant of like terms, force and effect may be issued and*  
25 *directed to any agent authorized by the director to collect taxes and in the execution thereof the agent*  
26 *shall have all the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in*  
27 *excess of actual expenses paid in the performance of such duty.*]

28       [(4) *If a warrant is returned not satisfied in full, the director shall have the same remedies to en-*  
29 *force the claim for taxes, interest and penalties against the employer as if the director had recovered*  
30 *judgment against the employer for the amount of the taxes, interest and penalties.*]

31       **(2) At any time after issuing a warrant under this section, the department may record**  
32 **the warrant in the County Clerk Lien Record of any county of this state. Recording of the**  
33 **warrant has the effect described in ORS 205.125. After recording a warrant, the department**  
34 **may direct the sheriff for the county in which the warrant is recorded to levy upon and sell**  
35 **the real and personal property of the taxpayer found within that county, and to levy upon**  
36 **any currency of the taxpayer found within that county, for the application of the proceeds**  
37 **or currency against the amount reflected in the warrant and the sheriff's cost of executing**  
38 **the warrant. The sheriff shall proceed on the warrant in the same manner prescribed by law**  
39 **for executions issued against property pursuant to a judgment, and is entitled to the same**  
40 **fees as provided for executions issued against property pursuant to a judgment. The fees of**  
41 **the sheriff shall be added to and collected as a part of the warrant liability.**

42       **(3) In the discretion of the department a warrant under this section may be directed to**  
43 **any agent authorized by the department to collect taxes under this section, and in the exe-**  
44 **cution of the warrant the agent has all of the powers conferred by law upon sheriffs, but is**  
45 **entitled to no fee or compensation in excess of actual expenses paid in the performance of**

1 **such duty.**

2 **(4) Until a warrant issued under this section is satisfied in full, the department has the**  
 3 **same remedies to enforce the claim for taxes against the taxpayer as if the state had re-**  
 4 **covered judgment against the taxpayer for the amount of the tax.**

5 (5) Interest upon the taxes due as set forth in the warrant shall be paid and collected at the rate  
 6 prescribed in ORS 657.515 (2).

7 **SECTION 12.** ORS 825.504 is amended to read:

8 825.504. (1) If any tax, or fee in lieu of tax, reported due, or any final assessment made by the  
 9 Department of Transportation under ORS 825.490, 825.494 and 825.496, including any penalties or  
 10 charges therein imposed, or any final penalty imposed under ORS 825.950, 825.955 or 825.960, is not  
 11 paid in full, the department may issue a warrant [*under the department's official seal directed to the*  
 12 *sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal*  
 13 *property of the taxpayer found within that county,*] for [*payment of*] the amount [*thereof*] **of the tax,**  
 14 **fee or assessment,** with the added penalties or charges, interest and the cost of executing the  
 15 warrant[, *and to return such warrant to the department and pay to the department the money collected*  
 16 *by virtue thereof by a time to be specified therein, not less than 60 days from the date of the*  
 17 *warrant*]. **A copy of the warrant shall be mailed or delivered to the taxpayer by the depart-**  
 18 **ment at the taxpayer's last-known address.**

19 [(2) *The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the*  
 20 *county a copy thereof, and thereupon the clerk shall enter in the County Clerk Lien Record the name*  
 21 *of the taxpayer mentioned in the warrant, and the amount of the tax or portion thereof and penalties*  
 22 *or charges for which the warrant is issued and the date when such copy is recorded. Thereupon the*  
 23 *amount of the warrant so recorded shall become a lien upon the title to and interest in property of the*  
 24 *taxpayer against whom it is issued in the same manner as a judgment that creates a judgment lien*  
 25 *under ORS chapter 18.*]

26 [(3) *The sheriff thereupon shall proceed upon the same in all respects, with like effect and in the*  
 27 *same manner prescribed by law in respect to executions issued against property upon judgment of a*  
 28 *court of record, and shall be entitled to the same fees for services in executing the warrant, to be added*  
 29 *to and collected as a part of the warrant liability.*]

30 [(4) *In the discretion of the Department of Transportation, a warrant of like terms, force and effect*  
 31 *to levy upon funds of the taxpayer in possession of the Department of Revenue may be issued and di-*  
 32 *rected to any agent authorized by the Department of Transportation to collect taxes payable under this*  
 33 *chapter, and in the execution thereof the agent shall have all of the powers conferred by law upon*  
 34 *sheriffs but is entitled to no fee or compensation in excess of actual expenses paid in the performance*  
 35 *of such duty.*]

36 **(2) At any time after issuing a warrant under this section, the department may record**  
 37 **the warrant in the County Clerk Lien Record of any county of this state. Recording of the**  
 38 **warrant has the effect described in ORS 205.125. After recording a warrant, the department**  
 39 **may direct the sheriff for the county in which the warrant is recorded to levy upon and sell**  
 40 **the real and personal property of the taxpayer found within that county, and to levy upon**  
 41 **any currency of the taxpayer found within that county, for the application of the proceeds**  
 42 **or currency against the amount reflected in the warrant and the sheriff's cost of executing**  
 43 **the warrant. The sheriff shall proceed on the warrant in the same manner prescribed by law**  
 44 **for executions issued against property pursuant to a judgment, and is entitled to the same**  
 45 **fees as provided for executions issued against property pursuant to a judgment. The fees of**

1 **the sheriff shall be added to and collected as a part of the warrant liability.**

2 **(3) In the discretion of the department a warrant under this section may be directed to**  
3 **any agent authorized by the department to collect amounts under this section, and in the**  
4 **execution of the warrant the agent has all of the powers conferred by law upon sheriffs, but**  
5 **is entitled to no fee or compensation in excess of actual expenses paid in the performance**  
6 **of such duty.**

7 **(4) Until a warrant issued under this section is satisfied in full, the department has the**  
8 **same remedies to enforce the claim for the tax, fee or assessment as if the state had re-**  
9 **covered judgment against the taxpayer for the amount of the tax, fee or assessment.**

10 (5) The procedures authorized by this section may also be used for collection of any fees and  
11 penalties imposed on persons registering vehicles under ORS chapter 826.

12 **SECTION 13. The amendments to ORS 184.644, 314.430, 319.182, 319.742, 320.080, 321.570,**  
13 **323.390, 323.610, 324.190, 657.396, 657.642 and 825.504 by sections 1 to 12 of this 2011 Act apply**  
14 **only to warrants issued on or after the effective date of this 2011 Act.**

15 **SECTION 14.** ORS 40.460 is amended to read:

16 40.460. The following are not excluded by ORS 40.455, even though the declarant is available  
17 as a witness:

18 (1) (Reserved.)

19 (2) A statement relating to a startling event or condition made while the declarant was under  
20 the stress of excitement caused by the event or condition.

21 (3) A statement of the declarant's then existing state of mind, emotion, sensation or physical  
22 condition, such as intent, plan, motive, design, mental feeling, pain or bodily health, but not includ-  
23 ing a statement of memory or belief to prove the fact remembered or believed unless it relates to  
24 the execution, revocation, identification, or terms of the declarant's will.

25 (4) Statements made for purposes of medical diagnosis or treatment and describing medical his-  
26 tory, or past or present symptoms, pain or sensations, or the inception or general character of the  
27 cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

28 (5) A memorandum or record concerning a matter about which a witness once had knowledge  
29 but now has insufficient recollection to enable the witness to testify fully and accurately, shown to  
30 have been made or adopted by the witness when the matter was fresh in the memory of the witness  
31 and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into  
32 evidence but may not itself be received as an exhibit unless offered by an adverse party.

33 (6) A memorandum, report, record, or data compilation, in any form, of acts, events, conditions,  
34 opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person  
35 with knowledge, if kept in the course of a regularly conducted business activity, and if it was the  
36 regular practice of that business activity to make the memorandum, report, record, or data compi-  
37 lation, all as shown by the testimony of the custodian or other qualified witness, unless the source  
38 of information or the method of circumstances of preparation indicate lack of trustworthiness. The  
39 term "business" as used in this subsection includes business, institution, association, profession, oc-  
40 cupation, and calling of every kind, whether or not conducted for profit.

41 (7) Evidence that a matter is not included in the memoranda, reports, records, or data compila-  
42 tions, and in any form, kept in accordance with the provisions of subsection (6) of this section, to  
43 prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a  
44 memorandum, report, record, or data compilation was regularly made and preserved, unless the  
45 sources of information or other circumstances indicate lack of trustworthiness.

1 (8) Records, reports, statements or data compilations, in any form, of public offices or agencies,  
2 including federally recognized American Indian tribal governments, setting forth:

3 (a) The activities of the office or agency;

4 (b) Matters observed pursuant to duty imposed by law as to which matters there was a duty to  
5 report, excluding, in criminal cases, matters observed by police officers and other law enforcement  
6 personnel; [or]

7 (c) In civil actions and proceedings and against the government in criminal cases, factual  
8 findings, resulting from an investigation made pursuant to authority granted by law, unless the  
9 sources of information or other circumstances indicate lack of trustworthiness; **or**

10 **(d) In civil actions and criminal proceedings, a sheriff's return of service.**

11 (9) Records or data compilations, in any form, of births, fetal deaths, deaths or marriages, if the  
12 report thereof was made to a public office, including a federally recognized American Indian tribal  
13 government, pursuant to requirements of law.

14 (10) To prove the absence of a record, report, statement or data compilation, in any form, or the  
15 nonoccurrence or nonexistence of a matter of which a record, report, statement or data compilation,  
16 in any form, was regularly made and preserved by a public office or agency, including a federally  
17 recognized American Indian tribal government, evidence in the form of a certification in accordance  
18 with ORS 40.510, or testimony, that diligent search failed to disclose the record, report, statement  
19 or data compilation, or entry.

20 (11) Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood  
21 or marriage, or other similar facts of personal or family history, contained in a regularly kept record  
22 of a religious organization.

23 (12) A statement of fact contained in a certificate that the maker performed a marriage or other  
24 ceremony or administered a sacrament, made by a member of the clergy, a public official, an official  
25 of a federally recognized American Indian tribal government or any other person authorized by the  
26 rules or practices of a religious organization or by law to perform the act certified, and purporting  
27 to have been issued at the time of the act or within a reasonable time thereafter.

28 (13) Statements of facts concerning personal or family history contained in family bibles,  
29 genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts,  
30 or tombstones, or the like.

31 (14) The record of a document purporting to establish or affect an interest in property, as proof  
32 of content of the original recorded document and its execution and delivery by each person by whom  
33 it purports to have been executed, if the record is a record of a public office, including a federally  
34 recognized American Indian tribal government, and an applicable statute authorizes the recording  
35 of documents of that kind in that office.

36 (15) A statement contained in a document purporting to establish or affect an interest in prop-  
37 erty if the matter stated was relevant to the purpose of the document, unless dealings with the  
38 property since the document was made have been inconsistent with the truth of the statement or  
39 the purport of the document.

40 (16) Statements in a document in existence 20 years or more the authenticity of which is es-  
41 tablished.

42 (17) Market quotations, tabulations, lists, directories, or other published compilations, generally  
43 used and relied upon by the public or by persons in particular occupations.

44 (18) (Reserved.)

45 (18a)(a) A complaint of sexual misconduct, complaint of abuse as defined in ORS 107.705 or

1 419B.005, complaint of abuse of an elderly person, as those terms are defined in ORS 124.050, or a  
2 complaint relating to a violation of ORS 163.205 or 164.015 in which a person 65 years of age or  
3 older is the victim, made by the witness after the commission of the alleged misconduct or abuse  
4 at issue. Except as provided in paragraph (b) of this subsection, such evidence must be confined to  
5 the fact that the complaint was made.

6 (b) A statement made by a person concerning an act of abuse as defined in ORS 107.705 or  
7 419B.005, a statement made by a person concerning an act of abuse of an elderly person, as those  
8 terms are defined in ORS 124.050, or a statement made by a person concerning a violation of ORS  
9 163.205 or 164.015 in which a person 65 years of age or older is the victim, is not excluded by ORS  
10 40.455 if the declarant either testifies at the proceeding and is subject to cross-examination, or is  
11 unavailable as a witness but was chronologically or mentally under 12 years of age when the  
12 statement was made or was 65 years of age or older when the statement was made. However, if a  
13 declarant is unavailable, the statement may be admitted in evidence only if the proponent estab-  
14 lishes that the time, content and circumstances of the statement provide indicia of reliability, and  
15 in a criminal trial that there is corroborative evidence of the act of abuse and of the alleged  
16 perpetrator's opportunity to participate in the conduct and that the statement possesses indicia of  
17 reliability as is constitutionally required to be admitted. No statement may be admitted under this  
18 paragraph unless the proponent of the statement makes known to the adverse party the proponent's  
19 intention to offer the statement and the particulars of the statement no later than 15 days before  
20 trial, except for good cause shown. For purposes of this paragraph, in addition to those situations  
21 described in ORS 40.465 (1), the declarant shall be considered "unavailable" if the declarant has a  
22 substantial lack of memory of the subject matter of the statement, is presently incompetent to tes-  
23 tify, is unable to communicate about the abuse or sexual conduct because of fear or other similar  
24 reason or is substantially likely, as established by expert testimony, to suffer lasting severe emo-  
25 tional trauma from testifying. Unless otherwise agreed by the parties, the court shall examine the  
26 declarant in chambers and on the record or outside the presence of the jury and on the record. The  
27 examination shall be conducted immediately prior to the commencement of the trial in the presence  
28 of the attorney and the legal guardian or other suitable person as designated by the court. If the  
29 declarant is found to be unavailable, the court shall then determine the admissibility of the evidence.  
30 The determinations shall be appealable under ORS 138.060 (1)(c) or (2)(a). The purpose of the ex-  
31 amination shall be to aid the court in making its findings regarding the availability of the declarant  
32 as a witness and the reliability of the statement of the declarant. In determining whether a state-  
33 ment possesses indicia of reliability under this paragraph, the court may consider, but is not limited  
34 to, the following factors:

35 (A) The personal knowledge of the declarant of the event;

36 (B) The age and maturity of the declarant or extent of disability if the declarant is a person  
37 with a developmental disability;

38 (C) Certainty that the statement was made, including the credibility of the person testifying  
39 about the statement and any motive the person may have to falsify or distort the statement;

40 (D) Any apparent motive the declarant may have to falsify or distort the event, including bias,  
41 corruption or coercion;

42 (E) The timing of the statement of the declarant;

43 (F) Whether more than one person heard the statement;

44 (G) Whether the declarant was suffering pain or distress when making the statement;

45 (H) Whether the declarant's young age or disability makes it unlikely that the declarant fabri-

1 cated a statement that represents a graphic, detailed account beyond the knowledge and experience  
2 of the declarant;

3 (I) Whether the statement has internal consistency or coherence and uses terminology appro-  
4 priate to the declarant's age or to the extent of the declarant's disability if the declarant is a person  
5 with a developmental disability;

6 (J) Whether the statement is spontaneous or directly responsive to questions; and

7 (K) Whether the statement was elicited by leading questions.

8 (c) This subsection applies to all civil, criminal and juvenile proceedings.

9 (d) This subsection applies to a child declarant, a declarant who is an elderly person as defined  
10 in ORS 124.050 or an adult declarant with a developmental disability. For the purposes of this sub-  
11 section, "developmental disability" means any disability attributable to mental retardation, autism,  
12 cerebral palsy, epilepsy or other disabling neurological condition that requires training or support  
13 similar to that required by persons with mental retardation, if either of the following apply:

14 (A) The disability originates before the person attains 22 years of age, or if the disability is at-  
15 tributable to mental retardation the condition is manifested before the person attains 18 years of  
16 age, the disability can be expected to continue indefinitely, and the disability constitutes a sub-  
17 stantial handicap to the ability of the person to function in society.

18 (B) The disability results in a significant subaverage general intellectual functioning with con-  
19 current deficits in adaptive behavior that are manifested during the developmental period.

20 (19) Reputation among members of a person's family by blood, adoption or marriage, or among  
21 a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce,  
22 death, legitimacy, relationship by blood or adoption or marriage, ancestry, or other similar fact of  
23 a person's personal or family history.

24 (20) Reputation in a community, arising before the controversy, as to boundaries of or customs  
25 affecting lands in the community, and reputation as to events of general history important to the  
26 community or state or nation in which located.

27 (21) Reputation of a person's character among associates of the person or in the community.

28 (22) Evidence of a final judgment, entered after a trial or upon a plea of guilty, but not upon a  
29 plea of no contest, adjudging a person guilty of a crime other than a traffic offense, to prove any  
30 fact essential to sustain the judgment, but not including, when offered by the government in a  
31 criminal prosecution for purposes other than impeachment, judgments against persons other than the  
32 accused. The pendency of an appeal may be shown but does not affect admissibility.

33 (23) Judgments as proof of matters of personal, family or general history, or boundaries, essen-  
34 tial to the judgment, if the same would be provable by evidence of reputation.

35 (24) Notwithstanding the limits contained in subsection (18a) of this section, in any proceeding  
36 in which a child under 12 years of age at the time of trial, or a person with a developmental disa-  
37 bility as described in subsection (18a)(d) of this section, may be called as a witness to testify con-  
38 cerning an act of abuse, as defined in ORS 419B.005, or sexual conduct performed with or on the  
39 child or person with a developmental disability by another, the testimony of the child or person with  
40 a developmental disability taken by contemporaneous examination and cross-examination in another  
41 place under the supervision of the trial judge and communicated to the courtroom by closed-circuit  
42 television or other audiovisual means. Testimony will be allowed as provided in this subsection only  
43 if the court finds that there is a substantial likelihood, established by expert testimony, that the  
44 child or person with a developmental disability will suffer severe emotional or psychological harm  
45 if required to testify in open court. If the court makes such a finding, the court, on motion of a



1 party, the child, the person with a developmental disability or the court in a civil proceeding, or on  
2 motion of the district attorney, the child or the person with a developmental disability in a criminal  
3 or juvenile proceeding, may order that the testimony of the child or the person with a developmental  
4 disability be taken as described in this subsection. Only the judge, the attorneys for the parties, the  
5 parties, individuals necessary to operate the equipment and any individual the court finds would  
6 contribute to the welfare and well-being of the child or person with a developmental disability may  
7 be present during the testimony of the child or person with a developmental disability.

8 (25)(a) Any document containing data prepared or recorded by the Oregon State Police pursuant  
9 to ORS 813.160 (1)(b)(C) or (E), or pursuant to ORS 475.235 (4), if the document is produced by data  
10 retrieval from the Law Enforcement Data System or other computer system maintained and operated  
11 by the Oregon State Police, and the person retrieving the data attests that the information was re-  
12 trieved directly from the system and that the document accurately reflects the data retrieved.

13 (b) Any document containing data prepared or recorded by the Oregon State Police that is  
14 produced by data retrieval from the Law Enforcement Data System or other computer system  
15 maintained and operated by the Oregon State Police and that is electronically transmitted through  
16 public or private computer networks under an electronic signature adopted by the Oregon State  
17 Police if the person receiving the data attests that the document accurately reflects the data re-  
18 ceived.

19 (c) Notwithstanding any statute or rule to the contrary, in any criminal case in which docu-  
20 ments are introduced under the provisions of this subsection, the defendant may subpoena the ana-  
21 lyst, as defined in ORS 475.235 (6), or other person that generated or keeps the original document  
22 for the purpose of testifying at the preliminary hearing and trial of the issue. Except as provided  
23 in ORS 44.550 to 44.566, no charge shall be made to the defendant for the appearance of the analyst  
24 or other person.

25 (26)(a) A statement that purports to narrate, describe, report or explain an incident of domestic  
26 violence, as defined in ORS 135.230, made by a victim of the domestic violence within 24 hours after  
27 the incident occurred, if the statement:

28 (A) Was recorded, either electronically or in writing, or was made to a peace officer as defined  
29 in ORS 161.015, corrections officer, youth correction officer, parole and probation officer, emergency  
30 medical technician or firefighter; and

31 (B) Has sufficient indicia of reliability.

32 (b) In determining whether a statement has sufficient indicia of reliability under paragraph (a)  
33 of this subsection, the court shall consider all circumstances surrounding the statement. The court  
34 may consider, but is not limited to, the following factors in determining whether a statement has  
35 sufficient indicia of reliability:

36 (A) The personal knowledge of the declarant.

37 (B) Whether the statement is corroborated by evidence other than statements that are subject  
38 to admission only pursuant to this subsection.

39 (C) The timing of the statement.

40 (D) Whether the statement was elicited by leading questions.

41 (E) Subsequent statements made by the declarant. Recantation by a declarant is not sufficient  
42 reason for denying admission of a statement under this subsection in the absence of other factors  
43 indicating unreliability.

44 (27) A report prepared by a forensic scientist that contains the results of a presumptive test  
45 conducted by the forensic scientist as described in ORS 475.235, if the forensic scientist attests that

1 the report accurately reflects the results of the presumptive test.

2 (28)(a) A statement not specifically covered by any of the foregoing exceptions but having  
3 equivalent circumstantial guarantees of trustworthiness, if the court determines that:

4 (A) The statement is relevant;

5 (B) The statement is more probative on the point for which it is offered than any other evidence  
6 that the proponent can procure through reasonable efforts; and

7 (C) The general purposes of the Oregon Evidence Code and the interests of justice will best be  
8 served by admission of the statement into evidence.

9 (b) A statement may not be admitted under this subsection unless the proponent of it makes  
10 known to the adverse party the intention to offer the statement and the particulars of it, including  
11 the name and address of the declarant, sufficiently in advance of the trial or hearing, or as soon as  
12 practicable after it becomes apparent that such statement is probative of the issues at hand, to  
13 provide the adverse party with a fair opportunity to prepare to meet it.

14 **SECTION 15. This 2011 Act takes effect on the 91st day after the date on which the 2011**  
15 **regular session of the Seventy-sixth Legislative Assembly adjourns sine die.**

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