

# House Bill 2693

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 **as introduced**.

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

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

## 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.

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

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

6 184.644. (1) For purposes of this section, a liquidated and delinquent debt is a debt that meets  
7 one of the following conditions:

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

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

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

18 (3) *[The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the*  
19 *county a copy of the warrant. The clerk shall enter in the County Clerk Lien Record the name of the*  
20 *person mentioned in the warrant, the amount of the debt for which the warrant is issued and the date*  
21 *when the copy is recorded. The amount of the warrant shall become a lien upon the title to and interest*  
22 *in property of the person against whom the warrant is issued in the same manner as a judgment that*  
23 *creates a judgment lien under ORS chapter 18.]* **Before issuing a warrant to a sheriff under sub-**  
24 **section (2) of this section, the department must record the warrant in the County Clerk Lien**  
25 **Record for the county in which the sheriff serves. Recording of the warrant has the effect**  
26 **described in ORS 205.125.**

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

**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 (5) In the discretion of the Department of Transportation, a warrant of like terms, force and  
 2 effect to levy upon funds of the person in possession of the Department of Revenue may be issued  
 3 and directed to any agent authorized by the Department of Transportation to collect liquidated and  
 4 delinquent debts for the department, and in the execution thereof the agent shall have 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 (6) Nothing in this section affects any provision of ORS 319.182, 319.742 or 825.504.

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

9 314.430. (1) If any tax imposed under ORS chapter 118, 316, 317 or 318 or any portion of the tax  
 10 is not paid within 30 days after the date that the written notice and demand for payment required  
 11 under ORS 305.895 is mailed (or within five days after the tax becomes due, in the case of the ter-  
 12 mination of the tax year by the Department of Revenue under the provisions of ORS 314.440) and  
 13 no provision is made to secure the payment thereof by bond, deposit or otherwise, pursuant to reg-  
 14 ulations promulgated by the department, the department may issue a warrant directed to the sheriff  
 15 of any county of the state commanding the sheriff to levy upon and sell the real and personal  
 16 property of the taxpayer found within that county, for the payment of the amount of the tax, with  
 17 the added penalties, interest, collection charge and the sheriff's cost of executing the warrant, and  
 18 to return such warrant to the department and pay to it the money collected by virtue thereof by a  
 19 time to be therein specified, not less than 60 days from the date of the warrant. A copy of the  
 20 warrant shall be mailed or delivered to the taxpayer by the department at the taxpayer's last-known  
 21 address.

22 (2) *[The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the*  
 23 *county a copy thereof, and thereupon the clerk shall enter in the County Clerk Lien Record the name*  
 24 *of the taxpayer mentioned in the warrant, and the amount of the tax or portion thereof and penalties*  
 25 *for which the warrant is issued and the date when such copy is recorded. Thereupon the amount of*  
 26 *the warrant so recorded shall become a lien upon the title to and interest in property of the taxpayer*  
 27 *against whom it is issued in the same manner as a judgment duly recorded.]* **Before issuing a war-**  
 28 **rant to a sheriff under subsection (1) of this section, the department must record the war-**  
 29 **rant in the County Clerk Lien Record for the county in which the sheriff serves. Recording**  
 30 **of the warrant has the effect described in ORS 205.125.** The sheriff *[thereupon]* shall proceed  
 31 *[upon the same]* **on the warrant** in all respects, with like effect and in the same manner prescribed  
 32 by law in respect to executions issued against property upon judgment of a court of record, and shall  
 33 be entitled to the same fees for services in executing the warrant, to be added to and collected as  
 34 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 directed to any agent authorized to collect taxes, and in the execution thereof the agent shall  
 37 have all the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in ex-  
 38 cess of actual expenses paid in the performance of such duty.

39 (4) If a warrant is returned not satisfied in full, the department shall have the same remedies  
 40 to enforce the claim for taxes against the taxpayer as if the people of the state had recovered  
 41 judgment against the taxpayer for the amount of the tax, and shall balance the assessment record  
 42 of the taxpayer by transferring the unpaid deficiency to the taxpayer's delinquent record.

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

44 319.182. (1) If a person fails to pay in full any tax, interest or penalty due under ORS 319.010  
 45 to 319.430, the Department of Transportation may issue a warrant under the department's official

1 seal directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell  
 2 the real and personal property of the person found within that county, for payment of the amount  
 3 due, with the added penalties or charges, interest and the cost of executing the warrant, and to re-  
 4 turn the warrant to the department and pay to the department the money collected from the sale  
 5 by the time specified in the warrant, not less than 60 days from the date of the warrant.

6 (2) *[The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the*  
 7 *county a copy of the warrant. The clerk shall enter in the County Clerk Lien Record the name of the*  
 8 *person mentioned in the warrant, the amount of the tax or portion of the tax and penalties or charges*  
 9 *for which the warrant is issued and the date when the copy is recorded. The amount of the warrant*  
 10 *shall become a lien upon the title to and interest in property of the person against whom it is issued*  
 11 *in the same manner as a judgment that creates a judgment lien under ORS chapter 18.]* **Before issuing**  
 12 **a warrant to a sheriff under subsection (1) of this section, the department must record the**  
 13 **warrant in the County Clerk Lien Record for the county in which the sheriff serves. Re-**  
 14 **coding of the warrant has the effect described in ORS 205.125.**

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

19 (4) In the discretion of the Department of Transportation, a warrant of like terms, force and  
 20 effect to levy upon funds of the person in possession of the Department of Revenue may be issued  
 21 and directed to any agent authorized by the Department of Transportation to collect taxes payable  
 22 under ORS 319.010 to 319.430, and in the execution thereof the agent shall have all of the powers  
 23 conferred by law upon sheriffs but is entitled to no fee or compensation in excess of actual expenses  
 24 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  
 29 personal property of the person found within that county, for payment of the amount of the obli-  
 30 gation and the cost of executing the warrant, and to return the warrant to the department and pay  
 31 to the department the money collected from the sale by the time specified in the warrant, not less  
 32 than 60 days from the date of the warrant.

33 (2) *[The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the*  
 34 *county a copy of the warrant. The clerk shall enter in the County Clerk Lien Record the name of the*  
 35 *person mentioned in the warrant, the amount of the obligation for which the warrant is issued and the*  
 36 *date when the copy is recorded. The amount of the warrant shall become a lien upon the title to and*  
 37 *interest in property of the person against whom it is issued in the same manner as a judgment that*  
 38 *creates a judgment lien under ORS chapter 18.]* **Before issuing a warrant to a sheriff under sub-**  
 39 **section (1) of this section, the department must record the warrant in the County Clerk Lien**  
 40 **Record for the county in which the sheriff serves. Recording of the warrant has the effect**  
 41 **described in ORS 205.125.**

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

(4) In the discretion of the Department of Transportation, a warrant of like terms, force and effect to levy upon funds of the person in possession of the Department of Revenue may be issued and directed to any agent authorized by the Department of Transportation to collect taxes payable under ORS 319.510 to 319.880, and in the execution thereof the agent shall have all of the powers conferred by law upon sheriffs but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.

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

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

(2) *[The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the county a copy thereof. Thereupon the clerk shall enter in the County Clerk Lien Record the names of the persons mentioned in the warrant, and the amount of the tax and penalty for which the warrant is issued and the date when such copy is recorded. Thereupon the amount of the warrant so recorded shall become a lien upon the title to any interest in real property or personal property of the persons against whom it is issued in the same manner as a judgment that creates a judgment lien under ORS chapter 18.]* **Before issuing a warrant to a sheriff under subsection (1) of this section, the department must record the warrant in the County Clerk Lien Record for the county in which the sheriff serves. Recording of the warrant has the effect described in ORS 205.125.** The sheriff shall *[thereupon]* proceed *[upon the same]* **on the warrant** in all respects, with like effect and in the manner prescribed by law in respect to execution issued against property upon judgment of a court of record, and the sheriff is entitled to the same fees for services in executing the warrant to be collected in the same manner. If a warrant is returned not satisfied in full, the department shall have the same remedies to enforce the claim for taxes as if the people of the state had recovered judgment for the amount of the tax.

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

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

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

1 *which the warrant is issued and the date when the copy is recorded. The amount of the warrant so*  
 2 *recorded shall become a lien upon the title to and interest in real property of the taxpayer against*  
 3 *which it is issued, in the same manner as a judgment that creates a judgment lien under ORS chapter*  
 4 **18.] Before issuing a warrant to a sheriff under subsection (1) of this section, the department**  
 5 **must record the warrant in the County Clerk Lien Record for the county in which the sheriff**  
 6 **serves. Recording of the warrant has the effect described in ORS 205.125.** The sheriff [*imme-*  
 7 *diately*] shall proceed [*upon*] **on** the warrant in all respects, with like effect, and in the same manner  
 8 prescribed by law in respect to executions issued against property upon judgments of a court of  
 9 record, and shall be entitled to the same fees for services in executing the warrant, to be added to  
 10 and collected as a part of the warrant liability.

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

15 (4) If a warrant is returned not satisfied in full, the department shall have the same remedies  
 16 to enforce the claim for taxes against the taxpayer as if the state had a recorded judgment against  
 17 the taxpayer for the amount of the tax.

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

19 323.390. (1) If any tax imposed by ORS 323.005 to 323.482 or any portion of such tax is not paid  
 20 within 30 days after notice of a deficiency determination is given pursuant to ORS 323.403 or of a  
 21 tax determined under ORS 323.385, and no provision is made to secure the payment thereof by bond,  
 22 deposit or otherwise, pursuant to regulations promulgated by the Department of Revenue, the de-  
 23 partment shall:

24 (a) Assess a collection charge of \$5 if the sum of the tax, penalty and interest then due exceeds  
 25 \$10.

26 (b) Issue a warrant directed to the sheriff of any county of the state commanding the sheriff to  
 27 levy upon and sell the real and personal property of the taxpayer found within that county, for the  
 28 payment of the amount of the tax, with the added penalties, interest, collection charge and the  
 29 sheriff's cost of executing the warrant, and to return such warrant to the department and pay to it  
 30 the money collected by virtue thereof by a time to be therein specified, not less than 60 days from  
 31 the date of the warrant.

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, and thereupon the clerk shall enter in the County Clerk Lien Record the name*  
 34 *of the taxpayer mentioned in the warrant, and the amount of the tax or portion thereof and penalties*  
 35 *and interest for which the warrant is issued and the date when such copy is recorded. Thereupon the*  
 36 *amount of the warrant so recorded shall become a lien upon the title to and interest in property of the*  
 37 *taxpayer against whom it is issued in the same manner as a judgment that creates a judgment lien*  
 38 *under ORS chapter 18.] Before issuing a warrant to a sheriff under subsection (1) of this sec-*  
 39 **tion, the department must record the warrant in the County Clerk Lien Record for the**  
 40 **county in which the sheriff serves. Recording of the warrant has the effect described in ORS**  
 41 **205.125.** The sheriff [*thereupon*] shall proceed [*upon the same*] **on the warrant** in all respects, with  
 42 like effect and in the same manner prescribed by law in respect to executions issued against prop-  
 43 erty upon judgment of a court of record, and shall be entitled to the same fees for services in exe-  
 44 cuting the warrant, to be added to and collected as a part of the warrant liability.

45 (3) In the discretion of the department a warrant of like terms, force and effect may be issued

1 and directed to any agent authorized to collect income taxes, and in the execution thereof the agent  
 2 shall have all the powers conferred by law upon sheriffs, but is entitled to no fee or compensation  
 3 in excess of actual expenses paid in the performance of such duty.

4 (4) If a warrant is returned not satisfied in full, the department shall have the same remedies  
 5 to enforce the claim for taxes against the taxpayer as if the people of the state had recovered  
 6 judgment against the taxpayer for the amount of the tax.

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

8 323.610. (1) If any tax imposed under ORS 323.500 to 323.645, or any portion of the tax, is not  
 9 paid within the time provided by law and no provision is made to secure the payment of the tax by  
 10 bond, deposit or otherwise, pursuant to rules adopted by the Department of Revenue, the department  
 11 may issue a warrant directed to the sheriff of any county of the state commanding the sheriff to levy  
 12 upon and sell the real and personal property of the taxpayer found within the county, for the pay-  
 13 ment of the amount of the tax, with the added penalties, interest and the sheriff's cost of executing  
 14 the warrant, and to return the warrant to the department and pay to it the money collected from  
 15 the sale, within 60 days after the date of receipt of the warrant.

16 (2) *[The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the*  
 17 *county a copy of the warrant, and the clerk shall immediately enter in the County Clerk Lien Record*  
 18 *the name of the taxpayer mentioned in the warrant, the amount of the tax or portion of the tax and*  
 19 *penalties for which the warrant is issued and the date the copy is recorded. The amount of the warrant*  
 20 *so recorded shall become a lien upon the title to and interest in real property of the taxpayer against*  
 21 *whom it is issued in the same manner as a judgment that creates a judgment lien under ORS chapter*  
 22 *18.]* **Before issuing a warrant to a sheriff under subsection (1) of this section, the department**  
 23 **must record the warrant in the County Clerk Lien Record for the county in which the sheriff**  
 24 **serves. Recording of the warrant has the effect described in ORS 205.125.** The sheriff [*imme-*  
 25 *diately*] shall proceed [*upon*] **on** the warrant in all respects, with like effect and in the same manner  
 26 prescribed by law in respect to executions issued against property upon judgment of a court of re-  
 27 cord, and shall be entitled to the same fees for services in executing the warrant, to be added to  
 28 and collected as a part of the warrant liability.

29 (3) In the discretion of the department a warrant of like terms, force and effect may be issued  
 30 and directed to any agent authorized to collect the taxes imposed by ORS 323.500 to 323.645. In the  
 31 execution of the warrant, the agent shall have all the powers conferred by law upon sheriffs, but is  
 32 entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.

33 (4) If a warrant is returned not satisfied in full, the department shall have the same remedies  
 34 to enforce the claim for taxes against the taxpayer as if the people of the state had recovered  
 35 judgment against the taxpayer for the amount of the tax.

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

37 324.190. (1) If any tax imposed by this chapter, or any portion of such tax, is not paid within 30  
 38 days after the date that the written notice and demand for payment required under ORS 305.895 is  
 39 mailed, the Department of Revenue shall issue a warrant, directed to the sheriff of any county of  
 40 the state, commanding the sheriff to levy upon and sell the real and personal property of the person  
 41 owing the tax, found within that county, for the payment in the amount thereof, with the added  
 42 penalties, interest and cost of executing the warrant, and to return the warrant to the department  
 43 and to pay to it the money collected by virtue thereof, within 60 days after receipt of the warrant.  
 44 A copy of the warrant shall be mailed or delivered to the taxpayer by the department at the  
 45 taxpayer's last-known address.

1 (2) *[The sheriff shall, within five days after the receipt of the warrant, record a copy with the*  
 2 *county clerk, and thereupon the clerk shall enter in the County Clerk Lien Record the name of the*  
 3 *person mentioned in the warrant, and the amount of the tax or portion thereof and penalties for which*  
 4 *the warrant is issued and the date when the copy is recorded. Thereupon the amount of the warrant*  
 5 *so recorded shall become a lien upon the title to and interest in real property of the person against*  
 6 *which it is issued, in the same manner as a judgment that creates a judgment lien under ORS chapter*  
 7 **18.] Before issuing a warrant to a sheriff under subsection (1) of this section, the department**  
 8 **must record the warrant in the County Clerk Lien Record for the county in which the sheriff**  
 9 **serves. Recording of the warrant has the effect described in ORS 205.125.** The sheriff *[there-*  
 10 *upon]* shall proceed *[upon]* **on** the warrant in all respects, with like effect, and in the same manner  
 11 prescribed by law in respect to executions issued against property upon judgments of a court of  
 12 records, and shall be entitled to the same fees for services in executing the warrant, to be added to  
 13 and collected as a part of the warrant liability.

14 (3) In the discretion of the department a warrant of like terms, force and effect may be issued  
 15 and directed to any agent of the department authorized by it to collect this tax. In the execution  
 16 of the warrant, such agent has the powers conferred by law upon sheriffs, but is entitled to no fee  
 17 or compensation in excess of actual expenses paid in the performance of such duty.

18 (4) If a warrant is returned not satisfied in full, the department shall have the same remedies  
 19 to enforce the claim for taxes against the owner as if the state had a recorded judgment against the  
 20 owner for the amount of the tax.

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

22 657.396. (1) In any case in which the Director of the Employment Department may bring a civil  
 23 action for the collection of amounts liable to be repaid under ORS 657.310, interest on those amounts  
 24 or penalties, the director may instead:

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

27 (b) Issue a warrant under official seal directed to the sheriff of any county of the state com-  
 28 manding the sheriff to levy upon and sell the real and personal property of the individual found  
 29 within that county, for the payment of the amount liable to be repaid with the added interest, pen-  
 30 alty, collection charge and the sheriff's cost of executing the warrant, and to return the warrant to  
 31 the director and pay to the director the money collected by virtue of the warrant by a time to be  
 32 specified in the warrant, but not less than 60 days from the date of the warrant.

33 (2) *[The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the*  
 34 *county a copy of the warrant, and thereupon the clerk shall enter in the County Clerk Lien Record the*  
 35 *name of the individual mentioned in the warrant and the amount liable to be repaid, interest, penalty*  
 36 *and collection charge for which the warrant is issued and the date when the copy is recorded. There-*  
 37 *upon the amount of the warrant so recorded shall become a lien upon the title to and interest in*  
 38 *property of the individual against whom it is issued in the same manner as a judgment that creates a*  
 39 *judgment lien under ORS chapter 18.] Before issuing a warrant to a sheriff under subsection (1)*  
 40 **of this section, the department must record the warrant in the County Clerk Lien Record**  
 41 **for the county in which the sheriff serves. Recording of the warrant has the effect described**  
 42 **in ORS 205.125.** The sheriff *[thereupon]* shall proceed *[upon the same]* **on the warrant** in all re-  
 43 spects, with like effect and in the same manner prescribed by law in respect to executions issued  
 44 against property upon the judgment of a court of record, and shall be entitled to the same fees for  
 45 services in executing the warrant, to be added to and collected as a part of the warrant liability.

1 (3) In the discretion of the director, a warrant of like terms, force and effect may be issued and  
 2 directed to any agent authorized by the director to collect amounts liable to be repaid and in the  
 3 execution of the warrant the agent shall have all the powers conferred by law upon sheriffs, but is  
 4 entitled to no fee or compensation in excess of actual expenses paid in the performance of the  
 5 agent's duty.

6 (4) If a warrant is returned not satisfied in full, the director has the same remedies to enforce  
 7 the claim for amounts due, interest and penalty against the individual as if the director had recov-  
 8 ered judgment against the individual for the amount liable to be repaid, interest and penalty.

9 (5) Interest upon the amounts liable to be repaid and the penalty as set forth in the warrant  
 10 shall be paid and collected at the rate prescribed in ORS 657.310.

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

12 657.642. (1) In any case in which the Director of the Employment Department may bring a civil  
 13 action for the collection of taxes, interest and penalties under this chapter, the director may instead:

14 (a) Assess a collection charge of \$5 if the sum of the tax, penalty and interest then due exceeds  
 15 \$10.

16 (b) Issue a warrant under official seal directed to the sheriff of any county of the state com-  
 17 manding the sheriff to levy upon and sell the real and personal property of the employer found  
 18 within that county, for the payment of the amount of the tax with the added penalties, interest,  
 19 collection charge and the sheriff's cost of executing the warrant, and to return such warrant to the  
 20 director and pay to the director the money collected by virtue thereof by a time to be therein  
 21 specified, not less than 60 days from the date of the warrant.

22 (2) *[The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the*  
 23 *county a copy thereof, and thereupon the clerk shall enter in the County Clerk Lien Record the name*  
 24 *of the employer mentioned in the warrant, and the amount of the tax, interest, penalties and collection*  
 25 *charge for which the warrant is issued and the date when such copy is recorded. Thereupon the amount*  
 26 *of the warrant so recorded shall become a lien upon the title to and interest in property of the employer*  
 27 *against whom it is issued in the same manner as a judgment that creates a judgment lien under ORS*  
 28 *chapter 18.] **Before issuing a warrant to a sheriff under subsection (1) of this section, the***  
 29 **department must record the warrant in the County Clerk Lien Record for the county in**  
 30 **which the sheriff serves. Recording of the warrant has the effect described in ORS 205.125.**  
 31 The sheriff *[thereupon]* shall proceed *[upon the same]* **on the warrant** in all respects, with like effect  
 32 and in the same manner prescribed by law in respect to executions issued against property upon the  
 33 judgment of a court of record, and shall be entitled to the same fees for services in executing the  
 34 warrant, to be added to and collected as a part of the warrant liability.

35 (3) In the discretion of the director, a warrant of like terms, force and effect may be issued and  
 36 directed to any agent authorized by the director to collect taxes and in the execution thereof the  
 37 agent shall have all the powers conferred by law upon sheriffs, but is entitled to no fee or compen-  
 38 sation in excess of actual expenses paid in the performance of such duty.

39 (4) If a warrant is returned not satisfied in full, the director shall have the same remedies to  
 40 enforce the claim for taxes, interest and penalties against the employer as if the director had re-  
 41 covered judgment against the employer for the amount of the taxes, interest and penalties.

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

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

45 825.504. (1) If any tax, or fee in lieu of tax, reported due, or any final assessment made by the



1 Department of Transportation under ORS 825.490, 825.494 and 825.496, including any penalties or  
 2 charges therein imposed, or any final penalty imposed under ORS 825.950, 825.955 or 825.960, is not  
 3 paid in full, the department may issue a warrant under the department's official seal directed to the  
 4 sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal  
 5 property of the taxpayer found within that county, for payment of the amount thereof, with the  
 6 added penalties or charges, interest and the cost of executing the warrant, and to return such  
 7 warrant to the department and pay to the department the money collected by virtue thereof by a  
 8 time to be specified therein, not less than 60 days from the date of the warrant.

9 (2) *[The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the*  
 10 *county a copy thereof, and thereupon the clerk shall enter in the County Clerk Lien Record the name*  
 11 *of the taxpayer mentioned in the warrant, and the amount of the tax or portion thereof and penalties*  
 12 *or charges for which the warrant is issued and the date when such copy is recorded. Thereupon the*  
 13 *amount of the warrant so recorded shall become a lien upon the title to and interest in property of the*  
 14 *taxpayer against whom it is issued in the same manner as a judgment that creates a judgment lien*  
 15 *under ORS chapter 18.] Before issuing a warrant to a sheriff under subsection (1) of this sec-*  
 16 **tion, the department must record the warrant in the County Clerk Lien Record for the**  
 17 **county in which the sheriff serves. Recording of the warrant has the effect described in ORS**  
 18 **205.125.**

19 (3) The sheriff *[thereupon]* shall proceed *[upon the same]* **on a warrant issued under this sec-**  
 20 **tion** in all respects, with like effect and in the same manner prescribed by law in respect to exe-  
 21 cutions issued against property upon judgment of a court of record, and shall be entitled to the same  
 22 fees for services in executing the warrant, to be added to and collected as a part of the warrant  
 23 liability.

24 (4) In the discretion of the Department of Transportation, a warrant of like terms, force and  
 25 effect to levy upon funds of the taxpayer in possession of the Department of Revenue may be issued  
 26 and directed to any agent authorized by the Department of Transportation to collect taxes payable  
 27 under this chapter, and in the execution thereof the agent shall have all of the powers conferred  
 28 by law upon sheriffs but is entitled to no fee or compensation in excess of actual expenses paid in  
 29 the performance of such duty.

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

32 **SECTION 13. The amendments to ORS 184.644, 314.430, 319.182, 319.742, 320.080, 321.570,**  
 33 **323.390, 323.610, 324.190, 657.396, 657.642 and 825.504 by sections 1 to 12 of this 2011 Act apply**  
 34 **only to warrants issued on or after the effective date of this 2011 Act.**

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

36 40.460. The following are not excluded by ORS 40.455, even though the declarant is available  
 37 as a witness:

38 (1) (Reserved.)

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

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

45 (4) Statements made for purposes of medical diagnosis or treatment and describing medical his-

1 tory, or past or present symptoms, pain or sensations, or the inception or general character of the  
 2 cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

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

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

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

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

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

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

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

30 **(d) A sheriff's return of service in a civil or criminal proceeding.**

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

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

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

43 (12) A statement of fact contained in a certificate that the maker performed a marriage or other  
 44 ceremony or administered a sacrament, made by a member of the clergy, a public official, an official  
 45 of a federally recognized American Indian tribal government or any other person authorized by the

1 rules or practices of a religious organization or by law to perform the act certified, and purporting  
2 to have been issued at the time of the act or within a reasonable time thereafter.

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

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

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

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

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

19 (18) (Reserved.)

20 (18a)(a) A complaint of sexual misconduct, complaint of abuse as defined in ORS 107.705 or  
21 419B.005, complaint of abuse of an elderly person, as those terms are defined in ORS 124.050, or a  
22 complaint relating to a violation of ORS 163.205 or 164.015 in which a person 65 years of age or  
23 older is the victim, made by the witness after the commission of the alleged misconduct or abuse  
24 at issue. Except as provided in paragraph (b) of this subsection, such evidence must be confined to  
25 the fact that the complaint was made.

26 (b) A statement made by a person concerning an act of abuse as defined in ORS 107.705 or  
27 419B.005, a statement made by a person concerning an act of abuse of an elderly person, as those  
28 terms are defined in ORS 124.050, or a statement made by a person concerning a violation of ORS  
29 163.205 or 164.015 in which a person 65 years of age or older is the victim, is not excluded by ORS  
30 40.455 if the declarant either testifies at the proceeding and is subject to cross-examination, or is  
31 unavailable as a witness but was chronologically or mentally under 12 years of age when the  
32 statement was made or was 65 years of age or older when the statement was made. However, if a  
33 declarant is unavailable, the statement may be admitted in evidence only if the proponent estab-  
34 lishes that the time, content and circumstances of the statement provide indicia of reliability, and  
35 in a criminal trial that there is corroborative evidence of the act of abuse and of the alleged  
36 perpetrator's opportunity to participate in the conduct and that the statement possesses indicia of  
37 reliability as is constitutionally required to be admitted. No statement may be admitted under this  
38 paragraph unless the proponent of the statement makes known to the adverse party the proponent's  
39 intention to offer the statement and the particulars of the statement no later than 15 days before  
40 trial, except for good cause shown. For purposes of this paragraph, in addition to those situations  
41 described in ORS 40.465 (1), the declarant shall be considered "unavailable" if the declarant has a  
42 substantial lack of memory of the subject matter of the statement, is presently incompetent to tes-  
43 tify, is unable to communicate about the abuse or sexual conduct because of fear or other similar  
44 reason or is substantially likely, as established by expert testimony, to suffer lasting severe emo-  
45 tional trauma from testifying. Unless otherwise agreed by the parties, the court shall examine the

1 declarant in chambers and on the record or outside the presence of the jury and on the record. The  
 2 examination shall be conducted immediately prior to the commencement of the trial in the presence  
 3 of the attorney and the legal guardian or other suitable person as designated by the court. If the  
 4 declarant is found to be unavailable, the court shall then determine the admissibility of the evidence.  
 5 The determinations shall be appealable under ORS 138.060 (1)(c) or (2)(a). The purpose of the ex-  
 6 amination shall be to aid the court in making its findings regarding the availability of the declarant  
 7 as a witness and the reliability of the statement of the declarant. In determining whether a state-  
 8 ment possesses indicia of reliability under this paragraph, the court may consider, but is not limited  
 9 to, the following factors:

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

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

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

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

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

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

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

20 (H) Whether the declarant's young age or disability makes it unlikely that the declarant fabri-  
 21 cated a statement that represents a graphic, detailed account beyond the knowledge and experience  
 22 of the declarant;

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

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

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

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

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

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

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

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

44 (20) Reputation in a community, arising before the controversy, as to boundaries of or customs  
 45 affecting lands in the community, and reputation as to events of general history important to the

1 community or state or nation in which located.

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

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

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

10 (24) Notwithstanding the limits contained in subsection (18a) of this section, in any proceeding  
 11 in which a child under 12 years of age at the time of trial, or a person with a developmental disa-  
 12 bility as described in subsection (18a)(d) of this section, may be called as a witness to testify con-  
 13 cerning an act of abuse, as defined in ORS 419B.005, or sexual conduct performed with or on the  
 14 child or person with a developmental disability by another, the testimony of the child or person with  
 15 a developmental disability taken by contemporaneous examination and cross-examination in another  
 16 place under the supervision of the trial judge and communicated to the courtroom by closed-circuit  
 17 television or other audiovisual means. Testimony will be allowed as provided in this subsection only  
 18 if the court finds that there is a substantial likelihood, established by expert testimony, that the  
 19 child or person with a developmental disability will suffer severe emotional or psychological harm  
 20 if required to testify in open court. If the court makes such a finding, the court, on motion of a  
 21 party, the child, the person with a developmental disability or the court in a civil proceeding, or on  
 22 motion of the district attorney, the child or the person with a developmental disability in a criminal  
 23 or juvenile proceeding, may order that the testimony of the child or the person with a developmental  
 24 disability be taken as described in this subsection. Only the judge, the attorneys for the parties, the  
 25 parties, individuals necessary to operate the equipment and any individual the court finds would  
 26 contribute to the welfare and well-being of the child or person with a developmental disability may  
 27 be present during the testimony of the child or person with a developmental disability.

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

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

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

45 (26)(a) A statement that purports to narrate, describe, report or explain an incident of domestic

1 violence, as defined in ORS 135.230, made by a victim of the domestic violence within 24 hours after  
2 the incident occurred, if the statement:

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

6 (B) Has sufficient indicia of reliability.

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

11 (A) The personal knowledge of the declarant.

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

14 (C) The timing of the statement.

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

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

19 (27) A report prepared by a forensic scientist that contains the results of a presumptive test  
20 conducted by the forensic scientist as described in ORS 475.235, if the forensic scientist attests that  
21 the report accurately reflects the results of the presumptive test.

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

24 (A) The statement is relevant;

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

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

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

34