

Enrolled
House Bill 2694

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)

CHAPTER

AN ACT

Relating to sheriffs; amending ORS 18.999, 105.161 and 105.510.

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

SECTION 1. ORS 105.161 is amended to read:

105.161. (1) Following issuance of the writ of execution of judgment of restitution and payment of any fees required by the sheriff, the sheriff shall immediately enforce and serve the writ upon the defendant, along with the eviction trespass notice, as follows:

(a) The sheriff shall mail a copy of the writ and the eviction trespass notice by first class mail to the defendant at the premises;

(b) The sheriff shall serve the writ and the eviction trespass notice at the premises by personal delivery to the defendant or, if the defendant is not available for service, by attaching the writ and notice in a secure manner to the main entrance to that portion of the premises of which the defendant has possession;

(c) Immediately following the service of the writ and the eviction trespass notice, the sheriff shall return possession of the premises to the plaintiff by removing the defendant or any other person subject to the judgment; and

(d) Following the sheriff's removal of the defendant and return of possession of the premises to the plaintiff, the plaintiff shall be responsible for removing, storing and disposing of any personal property left by the defendant on the premises, as provided by ORS 105.165.

(2) Following issuance of the writ, at the plaintiff's request, the sheriff shall delay enforcement and service of the writ.

[(3) Any writ not enforced and served within 30 days following issuance shall expire and become unenforceable.]

(3) Any writ not enforced and served within 30 days following issuance expires and becomes unenforceable unless the court extends the operation of the writ before the writ expires based on a showing of good cause by the sheriff. If the court extends the operation of a writ under this subsection, the sheriff shall promptly notify the plaintiff of the extension.

(4) A judgment may not be enforced if the parties have entered a new rental agreement or if the plaintiff has accepted rent for a period of occupancy beginning after the judgment was entered.

SECTION 2. ORS 105.510 is amended to read:

105.510. *[If the order to abate provided for in ORS 105.505 is made, the clerk shall when requested by the plaintiff within six months after the order is made, issue a warrant directed to the sheriff, requiring the sheriff forthwith to abate the nuisance at the expense of the defendant and to return the warrant as soon thereafter as possible, with the proceedings of the sheriff indorsed thereon. The ex-*

pense of abating the nuisance may be levied by the sheriff on the property of the defendant and in this respect the warrant is to be deemed an execution against property.] Not more than six months after an order to abate is entered under ORS 105.505, the plaintiff may file a request with the clerk of court for the issuance of a warrant to the sheriff that directs the sheriff to abate the nuisance. The sheriff may require that the plaintiff pay all sheriff's fees required by ORS 21.410 before executing the warrant, and may require that the plaintiff also pay all expenses of the sheriff incurred in executing the warrant.

SECTION 3. ORS 18.999 is amended to read:

18.999. This section establishes the right of a plaintiff to recover certain moneys the plaintiff has expended to recover a debt under ORS 18.854 or to enforce a judgment and establishes procedures for that recovery. The following apply to this section:

(1) When a plaintiff receives moneys under a garnishment, attachment or payment, the plaintiff may proceed as follows:

(a) Before crediting the total amount of moneys received against the judgment or debt, the plaintiff may recover and keep from the total amount received under the garnishment, attachment or payment any moneys allowed to be recovered under this section.

(b) After recovering moneys as allowed under paragraph (a) of this subsection, the plaintiff shall credit the remainder of the moneys received against the judgment or debt as provided by law.

(2) Moneys recovered under subsection (1)(a) of this section shall not be considered moneys paid on and to be credited against the original judgment or debt sought to be enforced. No additional judgment is necessary to recover moneys in the manner provided in subsection (1)(a) of this section.

(3) The only moneys a plaintiff may recover under subsection (1)(a) of this section are those described in subsection (4) of this section that the plaintiff has paid to enforce the existing specific judgment or debt that the specific garnishment or attachment was issued to enforce or upon which the payment was received. Moneys recoverable under subsection (1)(a) of this section remain recoverable and, except as provided under subsection (8) of this section, may be recovered from moneys received by the plaintiff under subsequent garnishments, attachments or payments on the same specific judgment or debt.

(4) This section allows the recovery only of the following:

(a) Statutorily established moneys that meet the requirements under subsection (3) of this section, as follows:

(A) Garnishee's search fees under ORS 18.790.

(B) Fees for delivery of writs of garnishment under ORS 18.652.

(C) Circuit court fees as provided under ORS 21.325.

(D) County court fees as provided under ORS 5.125.

(E) County clerk recording fees as provided in ORS 205.320.

(F) Actual fees or disbursements made under ORS 21.410.

(G) Costs of execution as provided in ORS 105.112.

(H) Fees paid to an attorney for issuing a garnishment in an amount not to exceed \$18 for each garnishment.

(I) Costs of an execution sale as described in ORS 18.950 (2).

(J) Fees paid under ORS 21.125 for motions and responses to motions filed after entry of a judgment.

(K) Amounts paid to a sheriff for the fees and expenses of executing a warrant under ORS 105.510.

(b) Interest on the amounts specified in paragraph (a) of this subsection at the rate provided for judgments in ORS 82.010 for the period of time beginning with the expenditure of the amount and ending upon recovery of the amount under this section.

(5) The plaintiff shall be responsible for doing all of the following:

(a) Maintaining a precise accounting of moneys recovered under subsection (1)(a) of this section and making the accounting available for any proceeding relating to that judgment or debt.

(b) Providing reasonable notice to the defendant of moneys the plaintiff recovers under subsection (1)(a) of this section.

(6) Moneys recovered under subsection (1)(a) of this section remain subject to all other provisions of law relating to payments, or garnished or attached moneys including, but not limited to, those relating to exemption, claim of exemption, overpayment and holding periods.

(7) Nothing in this section limits the right of a plaintiff to recover moneys described in this section or other moneys in any manner otherwise allowed by law.

(8) A writ of garnishment or attachment is not valid if issued solely to recover moneys recoverable under subsection (1)(a) of this section unless the right to collect the moneys is first reduced to a judgment or to a debt enforceable under ORS 18.854.

SECTION 4. ORS 18.999, as amended by section 7, chapter 659, Oregon Laws 2009, is amended to read:

18.999. This section establishes the right of a plaintiff to recover certain moneys the plaintiff has expended to recover a debt under ORS 18.854 or to enforce a judgment and establishes procedures for that recovery. The following apply to this section:

(1) When a plaintiff receives moneys under a garnishment, attachment or payment, the plaintiff may proceed as follows:

(a) Before crediting the total amount of moneys received against the judgment or debt, the plaintiff may recover and keep from the total amount received under the garnishment, attachment or payment any moneys allowed to be recovered under this section.

(b) After recovering moneys as allowed under paragraph (a) of this subsection, the plaintiff shall credit the remainder of the moneys received against the judgment or debt as provided by law.

(2) Moneys recovered under subsection (1)(a) of this section shall not be considered moneys paid on and to be credited against the original judgment or debt sought to be enforced. No additional judgment is necessary to recover moneys in the manner provided in subsection (1)(a) of this section.

(3) The only moneys a plaintiff may recover under subsection (1)(a) of this section are those described in subsection (4) of this section that the plaintiff has paid to enforce the existing specific judgment or debt that the specific garnishment or attachment was issued to enforce or upon which the payment was received. Moneys recoverable under subsection (1)(a) of this section remain recoverable and, except as provided under subsection (8) of this section, may be recovered from moneys received by the plaintiff under subsequent garnishments, attachments or payments on the same specific judgment or debt.

(4) This section allows the recovery only of the following:

(a) Statutorily established moneys that meet the requirements under subsection (3) of this section, as follows:

(A) Garnishee's search fees under ORS 18.790.

(B) Fees for delivery of writs of garnishment under ORS 18.652.

(C) Circuit court fees as provided under ORS 21.325.

(D) County court fees as provided under ORS 5.125.

(E) County clerk recording fees as provided in ORS 205.320.

(F) Actual fees or disbursements made under ORS 21.410.

(G) Costs of execution as provided in ORS 105.112.

(H) Fees paid to an attorney for issuing a garnishment in an amount not to exceed \$12 for each garnishment.

(I) Costs of an execution sale as described in ORS 18.950 (2).

(J) Fees paid under ORS 21.125 for motions and responses to motions filed after entry of a judgment.

(K) Amounts paid to a sheriff for the fees and expenses of executing a warrant under ORS 105.510.

(b) Interest on the amounts specified in paragraph (a) of this subsection at the rate provided for judgments in ORS 82.010 for the period of time beginning with the expenditure of the amount and ending upon recovery of the amount under this section.

- (5) The plaintiff shall be responsible for doing all of the following:
- (a) Maintaining a precise accounting of moneys recovered under subsection (1)(a) of this section and making the accounting available for any proceeding relating to that judgment or debt.
 - (b) Providing reasonable notice to the defendant of moneys the plaintiff recovers under subsection (1)(a) of this section.
- (6) Moneys recovered under subsection (1)(a) of this section remain subject to all other provisions of law relating to payments, or garnished or attached moneys including, but not limited to, those relating to exemption, claim of exemption, overpayment and holding periods.
- (7) Nothing in this section limits the right of a plaintiff to recover moneys described in this section or other moneys in any manner otherwise allowed by law.
- (8) A writ of garnishment or attachment is not valid if issued solely to recover moneys recoverable under subsection (1)(a) of this section unless the right to collect the moneys is first reduced to a judgment or to a debt enforceable under ORS 18.854.

Passed by House April 27, 2011

Repassed by House May 31, 2011

.....
 Ramona Kenady Line, Chief Clerk of House

.....
 Bruce Hanna, Speaker of House

.....
 Arnie Roblan, Speaker of House

Passed by Senate May 26, 2011

.....
 Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2011

Approved:

.....M.,....., 2011

.....
 John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2011

.....
 Kate Brown, Secretary of State