

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)

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**.

Allows court to extend time to execute writ for eviction upon showing of good cause by sheriff.
Requires plaintiff requesting warrant directing sheriff to abate nuisance to pay sheriff fees and expenses of executing warrant. Allows recovery of fees and expenses from defendant without entry of supplemental judgment.

A BILL FOR AN ACT

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

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

3 **SECTION 1.** ORS 105.161 is amended to read:

4 105.161. (1) Following issuance of the writ of execution of judgment of restitution and payment
5 of any fees required by the sheriff, the sheriff shall immediately enforce and serve the writ upon the
6 defendant, along with the eviction trespass notice, as follows:

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

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

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

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

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

21 (3) Any writ not enforced and served within 30 days following issuance [*shall expire*] **expires**
22 and [*become*] **becomes** unenforceable **unless the court extends the operation of the writ upon**
23 **a showing of good cause by the sheriff.**

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

26 **SECTION 2.** ORS 105.510 is amended to read:

27 105.510. [*If the order to abate provided for in ORS 105.505 is made, the clerk shall when requested*
28 *by the plaintiff within six months after the order is made, issue a warrant directed to the sheriff, re-*
29 *quiring the sheriff forthwith to abate the nuisance at the expense of the defendant and to return the*

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 *warrant as soon thereafter as possible, with the proceedings of the sheriff indorsed thereon. The ex-*
 2 *penditure of abating the nuisance may be levied by the sheriff on the property of the defendant and in this*
 3 *respect the warrant is to be deemed an execution against property.] **Not more than six months after***
 4 **an order to abate is entered under ORS 105.505, the plaintiff may file a request with the clerk**
 5 **of court for the issuance of a warrant to the sheriff that directs the sheriff to abate the**
 6 **nuisance. The sheriff may require that the plaintiff pay all sheriff's fees required by ORS**
 7 **21.410 before executing the warrant, and may require that the plaintiff also pay all expenses**
 8 **of the sheriff incurred in executing the warrant.**

9 **SECTION 3.** ORS 18.999 is amended to read:

10 18.999. This section establishes the right of a plaintiff to recover certain moneys the plaintiff
 11 has expended to recover a debt under ORS 18.854 or to enforce a judgment and establishes proce-
 12 dures for that recovery. The following apply to this section:

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

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

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

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

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

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

31 (a) Statutorily established moneys that meet the requirements under subsection (3) of this sec-
 32 tion, as follows:

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

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

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

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

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

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

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

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

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

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

45 **(K) Amounts paid to a sheriff for the fees and expenses of executing a warrant under**

1 **ORS 105.510.**

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

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

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

8 (b) Providing reasonable notice to the defendant of moneys the plaintiff recovers under sub-
 9 section (1)(a) of this section.

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

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

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

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

20 18.999. This section establishes the right of a plaintiff to recover certain moneys the plaintiff
 21 has expended to recover a debt under ORS 18.854 or to enforce a judgment and establishes proce-
 22 dures for that recovery. The following apply to this section:

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

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

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

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

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

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

41 (a) Statutorily established moneys that meet the requirements under subsection (3) of this sec-
 42 tion, as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (b) Providing reasonable notice to the defendant of moneys the plaintiff recovers under sub-
19 section (1)(a) of this section.

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

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

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

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