

Senate Bill 324

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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**.

Authorizes collection agencies engaged by Department of Revenue to collect delinquent taxes and to issue tax warrants, liens and writs of attachment and garnishment. Applies to inheritance tax, income and excise tax, timber tax, cigarette and tobacco tax, oil and gas tax and miscellaneous taxes.

Provides that judgments for certain tax debts are not subject to collection under Judicial Department collections and revenue management program. Provides that judgments for specified tax debts be collected by Department of Revenue Collections Unit.

Allows state agency to impose and collect fee of \$_____ for notice of garnishment issued by agency.

Provides that Department of Revenue may transfer liability for transit taxes or other payroll taxes to reorganized business entity.

Allows state agency using debt collection assistance of Department of Revenue to add maximum amount charged by Department of Revenue for collection services to amount to be collected.

Authorizes Department of Revenue to establish collection fee to be imposed on taxpayers that participate in installment payment plans for personal income or corporate excise or income taxes. Provides for refund of one-half of fee to taxpayers that complete all payments on or before due dates for payments under plan.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to collection of debts; creating new provisions; amending ORS 18.854, 18.855, 18.999,
3 118.230, 293.231, 305.330, 305.850, 314.430, 320.080, 321.570, 323.390, 323.610, 324.190 and 697.105;
4 and prescribing an effective date.

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

6 **SECTION 1.** ORS 305.850 is amended to read:

7 305.850. (1) Notwithstanding any provision to the contrary in ORS 9.320 and 305.610, the Direc-
8 tor of the Department of Revenue may engage the services of a collection agency to collect any
9 taxes, interest and penalties resulting from an assessment of taxes or additional taxes imposed by
10 ORS chapter 118, 310, 314, 316, 317, 318, 321 or 323 or ORS 320.005 to 320.150 and any other tax
11 laws administered by the Department of Revenue. The director may engage the services of a col-
12 lection agency by entering into an agreement to pay reasonable charges on a contingent fee or other
13 basis.

14 (2) The director shall cause to be collected, in the same manner as provided in subsection (1)
15 of this section, assessments, taxes and penalties due under ORS chapter 656. All amounts collected
16 pursuant to this subsection shall be credited as provided in ORS 293.250.

17 (3) The director may assign to the collection agency, for collection purposes only, any of the
18 taxes, penalties, interest and moneys due the state.

19 (4) The collection agency may bring such action or take such proceedings, **as may be neces-**
20 **sary**, including but not limited to:

21 (a) Attachment and garnishment proceedings[, *as may be necessary.*]; **and**

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 **(b) Issuing a warrant or lien as provided in ORS 314.430, 320.080, 321.570, 323.390, 323.610**
2 **or 324.190.**

3 **SECTION 2.** ORS 118.230 is amended to read:

4 118.230. (1) Every tax imposed by ORS 118.005 to 118.840 is a lien upon the property embraced
5 in any inheritance, devise, bequest, legacy or gift until paid, and the person to whom such property
6 is transferred, and the personal representatives and trustees of every estate embracing such prop-
7 erty are personally liable for such tax until its payment, to the extent of the value of such property.

8 (2) Taxes imposed under ORS 118.005 to 118.840 may be assessed and collected by the Depart-
9 ment of Revenue in the same manner as income taxes are assessed and collected under ORS chapter
10 314. The department **or a collection agency engaged by the department under ORS 305.850** may
11 issue a warrant as provided in ORS 314.430 and record the warrant in the County Clerk Lien Record
12 maintained under ORS 205.130. A warrant issued under this section has the same force and effect
13 as a warrant issued under ORS 314.430.

14 **SECTION 3.** ORS 314.430 is amended to read:

15 314.430. (1) If any tax imposed under ORS chapter 118, 316, 317 or 318 or any portion of the tax
16 is not paid within 30 days after the date that the written notice and demand for payment required
17 under ORS 305.895 is mailed (or within five days after the tax becomes due, in the case of the ter-
18 mination of the tax year by the Department of Revenue under the provisions of ORS 314.440) and
19 no provision is made to secure the payment thereof by bond, deposit or otherwise, pursuant to reg-
20 ulations promulgated by the department, the department **or a collection agency engaged by the**
21 **department under ORS 305.850** may issue a warrant directed to the sheriff of any county of the
22 state commanding the sheriff to levy upon and sell the real and personal property of the taxpayer
23 found within that county, for the payment of the amount of the tax, with the added penalties, in-
24 terest, collection charge and the sheriff's cost of executing the warrant, and to return such warrant
25 to the department **or collection agency** and pay to it the money collected by virtue thereof by a
26 time to be therein specified, not less than 60 days from the date of the warrant. A copy of the
27 warrant shall be mailed or delivered to the taxpayer by the department **or collection agency** at the
28 taxpayer's last-known address.

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

39 (3) In the discretion of the department a warrant of like terms, force and effect may be issued
40 and directed to any agent authorized to collect taxes, and in the execution thereof the agent shall
41 have all the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in ex-
42 cess of actual expenses paid in the performance of such duty.

43 (4) If a warrant is returned not satisfied in full, the department shall have the same remedies
44 to enforce the claim for taxes against the taxpayer as if the people of the state had recovered
45 judgment against the taxpayer for the amount of the tax, and shall balance the assessment record

1 of the taxpayer by transferring the unpaid deficiency to the taxpayer's delinquent record.

2 **SECTION 4.** ORS 320.080 is amended to read:

3 320.080. (1) If any tax or penalty imposed by ORS 320.005 to 320.150 is not paid as required by
4 ORS 320.005 to 320.150 within 30 days after the date that the written notice and demand for payment
5 required under ORS 305.895 is mailed, the Department of Revenue **or a collection agency engaged**
6 **by the department under ORS 305.850** shall issue a warrant directed to the sheriff of any county
7 of the state commanding the sheriff to levy upon and sell the real and personal property of the
8 person or persons named in the warrant and liable for the tax found within the county, for the
9 payment of the amount thereof with the added penalty and the cost of executing the warrant, and
10 to return the warrant to the department **or collection agency** and pay to it the money collected
11 by virtue thereof by a time to be therein specified not more than 30 days from the date of the
12 warrant. A copy of the warrant shall be mailed or delivered to the taxpayer by the department **or**
13 **collection agency** 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
15 the county a copy thereof. Thereupon the clerk shall enter in the County Clerk Lien Record the
16 names of the persons mentioned in the warrant, and the amount of the tax and penalty for which
17 the warrant is issued and the date when such copy is recorded. Thereupon the amount of the war-
18 rant so recorded shall become a lien upon the title to any interest in real property or personal
19 property of the persons against whom it is issued in the same manner as a judgment that creates
20 a judgment lien under ORS chapter 18. The sheriff shall thereupon proceed upon the same in all
21 respects, with like effect and in the manner prescribed by law in respect to execution issued against
22 property upon judgment of a court of record, and the sheriff is entitled to the same fees for services
23 in executing the warrant to be collected in the same manner. If a warrant is returned not satisfied
24 in full, the department shall have the same remedies to enforce the claim for taxes as if the people
25 of the state had recovered judgment for the amount of the tax.

26 **SECTION 5.** ORS 321.570 is amended to read:

27 321.570. (1) If any tax imposed by ORS 321.005 to 321.185, 321.560 to 321.600 or 321.700 to
28 321.754, or any portion of the tax, is not paid within 30 days after the date that the written notice
29 and demand for payment required under ORS 305.895 is mailed, the Department of Revenue **or a**
30 **collection agency engaged by the department under ORS 305.850** may issue a warrant, directed
31 to the sheriff of any county of the state, commanding the sheriff to levy upon and sell the real and
32 personal property of the taxpayer owning the same, found within that county, for the payment of the
33 amount of the tax, with the added penalties, interest and cost of executing the warrant, and to re-
34 turn the warrant to the department **or collection agency** and to pay to it the money collected from
35 the sale, within 60 days after receipt of the warrant. A copy of the warrant shall be mailed or de-
36 livered to the taxpayer by the department **or collection agency** at the taxpayer's last-known ad-
37 dress.

38 (2) The sheriff shall, within five days after the receipt of the warrant, record a copy with the
39 county clerk, and the clerk shall immediately enter in the County Clerk Lien Record the name of
40 the taxpayer mentioned in the warrant, and the amount of the tax or portion of the tax and penalties
41 for which the warrant is issued and the date when the copy is recorded. The amount of the warrant
42 so recorded shall become a lien upon the title to and interest in real property of the taxpayer
43 against which it is issued, in the same manner as a judgment that creates a judgment lien under
44 ORS chapter 18. The sheriff immediately shall proceed upon the warrant in all respects, with like
45 effect, and in the same manner prescribed by law in respect to executions issued against property

1 upon judgments of a court of record, and shall be entitled to the same fees for services in executing
2 the warrant, to 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 directed to any agent authorized to collect this tax. In the execution of the warrant, such agent
5 has the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess
6 of actual expenses paid in the performance of such duty.

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

10 **SECTION 6.** ORS 323.390 is amended to read:

11 323.390. (1) If any tax imposed by ORS 323.005 to 323.482 or any portion of such tax is not paid
12 within 30 days after notice of a deficiency determination is given pursuant to ORS 323.403 or of a
13 tax determined under ORS 323.385, and no provision is made to secure the payment thereof by bond,
14 deposit or otherwise, pursuant to regulations promulgated by the Department of Revenue, the de-
15 partment **or a collection agency engaged by the department under ORS 305.850** shall:

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

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

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

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

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

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

42 323.610. (1) If any tax imposed under ORS 323.500 to 323.645, or any portion of the tax, is not
43 paid within the time provided by law and no provision is made to secure the payment of the tax by
44 bond, deposit or otherwise, pursuant to rules adopted by the Department of Revenue, the department
45 **or a collection agency engaged by the department under ORS 305.850** may issue a warrant di-

1 rected to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real
 2 and personal property of the taxpayer found within the county, for the payment of the amount of the
 3 tax, with the added penalties, interest and the sheriff's cost of executing the warrant, and to return
 4 the warrant to the department **or collection agency** and pay to it the money collected from the
 5 sale, within 60 days after the date of receipt of the warrant.

6 (2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of
 7 the county a copy of the warrant, and the clerk shall immediately enter in the County Clerk Lien
 8 Record the name of the taxpayer mentioned in the warrant, the amount of the tax or portion of the
 9 tax and penalties for which the warrant is issued and the date the copy is recorded. The amount
 10 of the warrant so recorded shall become a lien upon the title to and interest in real property of the
 11 taxpayer against whom it is issued in the same manner as a judgment that creates a judgment lien
 12 under ORS chapter 18. The sheriff immediately shall proceed upon the warrant in all respects, with
 13 like effect and in the same manner prescribed by law in respect to executions issued against prop-
 14 erty upon judgment of a court of record, and shall be entitled to the same fees for services in exe-
 15 cuting the warrant, to be added to and collected as a part of the warrant liability.

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

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

23 **SECTION 8.** ORS 324.190 is amended to read:

24 324.190. (1) If any tax imposed by this chapter, or any portion of such tax, is not paid within 30
 25 days after the date that the written notice and demand for payment required under ORS 305.895 is
 26 mailed, the Department of Revenue **or a collection agency engaged by the department under**
 27 **ORS 305.850** shall issue a warrant, directed to the sheriff of any county of the state, commanding
 28 the sheriff to levy upon and sell the real and personal property of the person owing the tax, found
 29 within that county, for the payment in the amount thereof, with the added penalties, interest and
 30 cost of executing the warrant, and to return the warrant to the department **or collection agency**
 31 and to pay to it the money collected by virtue thereof, within 60 days after receipt of the warrant.
 32 A copy of the warrant shall be mailed or delivered to the taxpayer by the department **or collection**
 33 **agency** at the taxpayer's last-known address.

34 (2) The sheriff shall, within five days after the receipt of the warrant, record a copy with the
 35 county clerk, and thereupon the clerk shall enter in the County Clerk Lien Record the name of the
 36 person mentioned in the warrant, and the amount of the tax or portion thereof and penalties for
 37 which the warrant is issued and the date when the copy is recorded. Thereupon the amount of the
 38 warrant so recorded shall become a lien upon the title to and interest in real property of the person
 39 against which it is issued, in the same manner as a judgment that creates a judgment lien under
 40 ORS chapter 18. The sheriff thereupon shall proceed upon the warrant in all respects, with like ef-
 41 fect, and in the same manner prescribed by law in respect to executions issued against property
 42 upon judgments of a court of records, and shall be entitled to the same fees for services in executing
 43 the warrant, to be added to and collected as a part of the warrant liability.

44 (3) In the discretion of the department a warrant of like terms, force and effect may be issued
 45 and directed to any agent of the department authorized by it to collect this tax. In the execution

1 of the warrant, such agent has the powers conferred by law upon sheriffs, but is entitled to no fee
2 or compensation in excess of actual expenses paid in the performance of such duty.

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

6 **SECTION 9.** ORS 18.854 is amended to read:

7 18.854. (1) Any state agency **or collection agency** authorized to issue warrants to collect taxes
8 and debts owed to the State of Oregon, including but not limited to warrants issued pursuant to ORS
9 179.655, 184.644, 267.385, 293.250, 314.430, 316.207, 320.080, 321.570, 323.390, 411.703, 657.396, 657.642,
10 657.646, 705.175 and 825.504, or any county tax collector authorized to issue warrants to collect
11 taxes and debts owed to the county pursuant to ORS 311.625, may garnish property of a debtor in
12 the possession, control or custody of a person other than the debtor by delivering to the person all
13 of the following:

14 (a) A notice of garnishment;

15 (b) A warrant, or a true copy of a warrant;

16 (c) The items specified in ORS 18.650 (1)(b) to (d); and

17 (d) Any garnishee's search fee payable as provided in ORS 18.790.

18 (2) A notice of garnishment may be issued by any person designated by the state agency, **by the**
19 **collection agency** or by the county tax collector. A warrant need not be recorded in the County
20 Clerk Lien Record as a condition of issuing a notice of garnishment under the provisions of this
21 section. The provisions of ORS 18.800 do not apply to a notice of garnishment.

22 (3) If any of the items described in subsection (1) of this section are not delivered to the
23 garnishee, a notice of garnishment shall not be effective to garnish any property of the debtor, and
24 the garnishee shall not be required to respond to the garnishment and may proceed to deal with any
25 property of the debtor as though the notice of garnishment had not been issued.

26 (4) Notwithstanding ORS 18.652, a notice of garnishment and the other items required by sub-
27 section (1) of this section may be delivered in person by any employee of the state agency, **of the**
28 **collection agency** or of the county tax collector authorized by the agency or the county to deliver
29 the notice of garnishment, or by certified mail, return receipt requested. The employee need not be
30 covered by the errors and omissions insurance required in ORS 18.652.

31 (5) Notwithstanding any provision of ORS 18.600 to 18.850, a debt calculation form need not be
32 prepared or delivered for any notice of garnishment.

33 (6) Notwithstanding ORS 18.792, the duty of a garnishee to deliver any property of the debtor
34 that may be contained in a safe deposit box that is in the garnishee's possession, control or custody
35 at the time of delivery of the notice of garnishment to the garnishee is conditioned upon the state
36 agency, **the collection agency** or the county tax collector first paying to the garnishee, in addition
37 to the search fee provided for in ORS 18.790, all reasonable costs incurred by the garnishee in
38 gaining entry to the safe deposit box. The costs shall be paid to the garnishee by the state agency,
39 **the collection agency** or the county tax collector at least five days before the date the state
40 agency, **the collection agency** or the county tax collector takes possession of the property in the
41 safe deposit box. If the state agency, **the collection agency** or the county tax collector fails to pay
42 such costs to the garnishee within 20 days after the delivery of the garnishee response, the
43 garnishment shall not be effective to garnish any property of the debtor that may be contained in
44 the safe deposit box and the garnishee may proceed to deal with the safe deposit box and its con-
45 tents as though the notice of garnishment had not been issued. Nothing in this subsection limits the

1 rights of a state agency, **collection agency** or county tax collector to reach the contents of any safe
2 deposit box in any manner otherwise provided by law.

3 (7) Except as provided in this section and ORS 18.855 and 18.857, all provisions of ORS 18.600
4 to 18.850 apply to notices of garnishment. The state agency, **collection agency** or county tax col-
5 lector shall modify the forms provided in ORS 18.600 to 18.850 as necessary to allow use of those
6 forms for notices of garnishment. The form of the notice of garnishment must clearly indicate that
7 the document is a notice of garnishment and must reflect the date of all warrants on which the
8 notice of garnishment is based.

9 (8) The Attorney General may adopt model forms for notices of garnishment and other docu-
10 ments issued by state agencies and county tax collectors under this section and ORS 18.855 and
11 18.857. There is a presumption, as described in ORS 40.120, that any state agency, **collection**
12 **agency** or county tax collector that uses a model form adopted by the Attorney General under this
13 subsection has complied with the requirements of ORS 18.600 to 18.850, and with the provisions of
14 this section and ORS 18.855 and 18.857, with respect to the form of notices of garnishment.

15 **SECTION 10. Section 11 of this 2011 Act is added to and made a part of ORS 1.194 to 1.200.**

16 **SECTION 11. (1) Judgments described in subsection (2) of this section are not subject to**
17 **the provisions of ORS 1.194 to 1.200 or 1.202, and are not subject to collection under ORS**
18 **1.204. Upon entry of a judgment described in subsection (2) of this section, the debt may be**
19 **collected by the Department of Revenue under ORS 293.250 or as otherwise provided by law.**

20 **(2) The provisions of this section apply to judgments for taxes, penalties and other**
21 **amounts that are payable to the state and that arise out of the administration of tax laws**
22 **by the department, including judgments in criminal actions brought to enforce the tax laws.**

23 **SECTION 12. Section 11 of this 2011 Act applies only to judgments entered on or after**
24 **the effective date of this 2011 Act.**

25 **SECTION 13.** ORS 18.855 is amended to read:

26 18.855. (1) Notwithstanding ORS 18.607, a notice of garnishment issued by a state agency need
27 not contain the name of a court whose authority is invoked.

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

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

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

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

1 making the challenge opportunity for hearing. If the person making the challenge requests a hearing,
 2 the agency shall immediately refer the challenge to the Office of Administrative Hearings estab-
 3 lished under ORS 183.605. The hearing shall be conducted as soon as possible. Notwithstanding ORS
 4 183.315, the hearing shall be conducted as a contested case hearing. An issue that was decided in
 5 a previous hearing, or for which the debtor was previously afforded an opportunity for hearing, may
 6 not be reconsidered.

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

17 (7) A special notice of garnishment issued under subsection (6) of this section shall contain a
 18 statement indicating that it is a special notice of garnishment under subsection (6) of this section
 19 and a statement reflecting the provisions of subsection (6) of this section. Notwithstanding ORS
 20 18.854 (1), a wage exemption calculation form shall not be delivered to the garnishee with a special
 21 notice of garnishment.

22 **(8) A state agency may impose and collect a fee of \$_____ for every notice of garnishment**
 23 **issued by the agency.**

24 **SECTION 14.** ORS 18.999 is amended to read:

25 18.999. This section establishes the right of a plaintiff to recover certain moneys the plaintiff
 26 has expended to recover a debt under ORS 18.854 or to enforce a judgment and establishes proce-
 27 dures for that recovery. The following apply to this section:

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

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

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

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

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

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

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

3 (A) Garnishee’s search fees under ORS 18.790.

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

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

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

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

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

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

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

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

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

15 **(K) Fees for notices of garnishment imposed under ORS 18.855 (8).**

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

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

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

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

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

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

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

32 **SECTION 15.** ORS 18.999, as amended by section 7, chapter 659, Oregon Laws 2009, is amended
 33 to read:

34 18.999. This section establishes the right of a plaintiff to recover certain moneys the plaintiff
 35 has expended to recover a debt under ORS 18.854 or to enforce a judgment and establishes proce-
 36 dures for that recovery. The following apply to this section:

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

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

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

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

1 judgment is necessary to recover moneys in the manner provided in subsection (1)(a) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

24 **(K) Fees for notices of garnishment imposed under ORS 18.855 (8).**

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

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

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

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

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

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

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

41 **SECTION 16. The amendments to ORS 18.855 and 18.999 by sections 13, 14 and 15 of this**
42 **2011 Act apply only to notices of garnishment issued on or after the effective date of this 2011**
43 **Act.**

44 **SECTION 17.** ORS 305.330 is amended to read:

45 305.330. (1) As used in this section, "reorganized business entity":

1 (a) Means a business entity that, while operating substantially the same business as another
2 entity that incurred a liability for taxes, interest or penalties [*administered by the Department of*
3 *Revenue*], has been converted to a different form of business entity from that of the entity that in-
4 curred the liability or has changed ownership from that of the entity that incurred the liability; and

5 (b) Does not include a business entity that is converted to a different form or that has changed
6 ownership solely because of a transfer of assets or because of a transfer of an interest of an investor
7 who has no right to manage the business entity, including, but not limited to, the interest of:

8 (A) A person that is solely a minority shareholder in a corporation;

9 (B) A member of a manager-managed limited liability company; or

10 (C) A limited partner of a limited partnership that does not participate in the control of the
11 business of the limited partnership.

12 (2) The Department **of Revenue** may transfer the liability for taxes, interest or penalties [*that*
13 *are administered and collected by the department*] from the business entity that incurred the liability
14 to a reorganized business entity and may assess those amounts against the reorganized business
15 entity. **Liabilities that may be transferred under this section include the following taxes and**
16 **any associated interest or penalties:**

17 (a) **Taxes that are administered and collected by the department.**

18 (b) **Any tax imposed under ORS 267.385 or other payroll tax.**

19 (3) Factors the department may consider when determining if a business entity is a reorganized
20 business entity include, but are not limited to, whether the business entity:

21 (a) Operates from the same physical location as did the taxpayer owing the debt.

22 (b) Provides the same services or manufactures the same products as did the taxpayer owing the
23 debt.

24 (c) Has one or more of the same:

25 (A) Corporate directors or officers as did the taxpayer owing the debt.

26 (B) Owners or holders of a direct or indirect interest in the business entity as did the taxpayer
27 owing the debt.

28 (4) Following the determination to transfer a liability to a reorganized business entity under
29 subsections (2) and (3) of this section and notwithstanding ORS 314.835, 314.840 or 314.991, the de-
30 partment shall send a notice of liability to the reorganized business entity stating the amount owed
31 by the reorganized business entity.

32 (5) Within 30 days from the date of notice of liability given under subsection (4) of this section,
33 the reorganized business entity shall:

34 (a) Pay the liability stated in the notice and any other penalty or interest related to that li-
35 ability; or

36 (b) Advise the department in writing of objections to the notice of liability and, if desired, re-
37 quest a conference. A conference requested under this paragraph shall be governed by those pro-
38 visions of ORS 305.265 that govern a conference requested from a notice of deficiency under ORS
39 305.265. Notwithstanding ORS 314.835, 314.840 or 314.991, the department may disclose any infor-
40 mation to the reorganized business entity that the department would be authorized to disclose to the
41 business entity that incurred the liability.

42 (6) After a determination of the issues raised in written objections made under subsection (5)
43 of this section or after a conference, if a conference was requested, the department shall mail the
44 reorganized business entity a letter affirming, canceling or adjusting the notice of liability. If the
45 entity remains liable for an outstanding amount under this section, the letter shall be considered a

1 notice of assessment and, within 90 days from the date the letter is mailed, the entity shall:

2 (a) Pay the amount set forth in the notice of assessment; or

3 (b) Appeal to the Oregon Tax Court in the manner provided for an appeal from a notice of as-
4 sessment.

5 (7) If neither payment nor written objections to the notice of liability sent under subsection (4)
6 of this section is received by the department within 30 days after the date of the notice of liability,
7 the notice of liability becomes final. The reorganized business entity may appeal the notice to the
8 tax court within 90 days after the date the notice became final, in the manner provided for an appeal
9 from a notice of assessment.

10 **SECTION 18.** ORS 293.231 is amended to read:

11 293.231. (1) Except as provided in subsections (4) to (9) of this section, a state agency, unless
12 otherwise prohibited by law, shall offer for assignment every liquidated and delinquent account to
13 a private collection agency or to the Department of Revenue as provided in ORS 293.250 not later
14 than:

15 (a) Ninety days from the date the account was liquidated if no payment has been received on
16 the account within the 90-day period; or

17 (b) Ninety days from the date of receipt of the most recent payment on the account.

18 (2) Nothing in subsection (1) of this section prohibits a state agency from offering for assignment
19 a liquidated and delinquent account to a private collection agency at any time within the 90-day
20 period.

21 (3) If, after a reasonable time, the private collection agency is unable to collect the account, the
22 private collection agency shall notify the state agency that assigned the account that it has been
23 unable to collect the account and shall relinquish the account to the state agency. A private col-
24 lection agency that collects an account under this section shall be held to the same standard of
25 confidentiality, service and courtesy imposed on the state agency that assigned the account.

26 (4) If a state agency assigns a liquidated and delinquent account to the Department of Revenue
27 as provided in ORS 293.250, the department shall have six months from the date of assignment to
28 collect a payment. If the department does not collect a payment within that six-month period or if
29 six months have elapsed since the date of receipt of the most recent payment on the account, the
30 department shall notify the state agency. The state agency shall then immediately offer for assign-
31 ment the debt to a private collection agency.

32 (5) The provisions of subsection (1) of this section do not apply to a liquidated and delinquent
33 account that is prohibited by state or federal law or regulation from assignment or collection.

34 (6) The Oregon Department of Administrative Services may adopt rules exempting specified
35 kinds of liquidated and delinquent accounts from the time periods established in subsections (1), (2)
36 and (4) of this section.

37 (7) The Oregon Department of Administrative Services shall adopt rules exempting liquidated
38 and delinquent accounts that originate in the Department of Revenue or the Employment Depart-
39 ment from the time periods established in subsections (1), (2) and (4) of this section.

40 (8) A liquidated and delinquent account that is subject to assignment under this section shall
41 be assigned to a private collection agency if more than one year has elapsed without a payment on
42 the account.

43 (9) Notwithstanding subsection (1) of this section, a state agency may, at its discretion, choose
44 not to offer for assignment to a private collection agency a liquidated and delinquent account that:

45 (a) Is secured by a consensual security interest in real or personal property;

1 (b) Is a court-ordered judgment that includes restitution or a payment to the Department of
2 Justice Crime Victims' Assistance Section;

3 (c) Is in litigation, including bankruptcy, arbitration and mediation;

4 (d) Is a student loan owed by a student who is attending school;

5 (e) Is owed to a state agency by a local or state government or by the federal government;

6 (f) Is owed by a debtor who is hospitalized in a state hospital as defined in ORS 162.135 or who
7 is on public assistance as defined in ORS 411.010;

8 (g) Is owed by a debtor who is imprisoned;

9 (h) Is less than \$100, including penalties; or

10 (i) Would result in loss of federal funding if assigned.

11 (10) Nothing in this section prohibits a state agency from collecting a tax offset after a liqui-
12 dated and delinquent account is assigned to a private collection agency.

13 (11) For the purposes of this section, a state agency shall be deemed to have offered for as-
14 signment an account if:

15 (a) The terms of the offer are of a type generally acceptable within the collections industry for
16 the type of account offered for assignment; and

17 (b) The offer is made to a private collection agency that engages in collecting on accounts of
18 the type sought to be assigned or is made generally available to private collection agencies through
19 a bid or request for proposal process.

20 (12) A state agency [*that retains a private collection agency under this section*] may add a fee to
21 the amount of the liquidated and delinquent account [*as provided in ORS 697.105*]. A fee may not
22 be added under this subsection unless the state agency has provided notice to the debtor:

23 (a) Of the existence of the debt;

24 (b) That the debt may be assigned [*to a private collection agency*] for collection; and

25 (c) Of the amount of the fee that may be added to the debt under this subsection.

26 (13) Except as provided by federal law, the state agency may not add a fee under subsection (12)
27 of this section that exceeds:

28 (a) The collection fee of the private collection agency, **if the state agency has retained a**
29 **private collection agency to collect the liquidated and delinquent account; or**

30 (b) **The maximum charge for the cost of assistance retained by the Department of Re-**
31 **venue under ORS 293.250 (3)(a), if the state agency assigns the liquidated and delinquent ac-**
32 **count to the Department of Revenue under ORS 293.250.**

33 **SECTION 19.** ORS 697.105 is amended to read:

34 697.105. (1) Except as provided in ORS 1.202 [*and 293.231*], if a public body, as defined in ORS
35 174.109, uses a private collection agency to collect a debt owed to the public body, the public body
36 may add a reasonable fee to the amount of the debt, payable by the debtor, to compensate the public
37 body, in whole or in part, for the collection agency fee incurred or to be incurred.

38 (2) A fee may not be added under subsection (1) of this section unless the public body has pro-
39 vided notice to the debtor:

40 (a) Of the existence of the debt;

41 (b) That the debt may be assigned to a private collection agency for collection; and

42 (c) Of the amount of the fee that may be added to the debt under subsection (1) of this section.

43 (3) Except as provided by federal law, the public body may not add a fee under this section that
44 exceeds the collection fee of the private collection agency.

45 **SECTION 20.** Section 21 of this 2011 Act is added to and made a part of ORS chapter 314.

1 **SECTION 21.** (1) The Department of Revenue may by rule establish and charge a rea-
2 sonable collection fee, not to exceed \$_____, to be imposed on taxpayers that participate
3 in an installment payment plan for taxes due under this chapter or ORS chapter 316, 317 or
4 318.

5 (2) The fee shall be added to the taxpayer's total tax liability and shall be in addition to
6 any penalty provided under ORS 314.400 or other law.

7 (3) If a taxpayer participating in an installment payment plan for taxes due under this
8 chapter or ORS chapter 316, 317 or 318 completes all payments under the plan on or before
9 the dates on which payments are due, one-half of the amount of the collection fee imposed
10 on the taxpayer shall be refunded to the taxpayer.

11 **SECTION 22.** This 2011 Act takes effect on the 91st day after the date on which the 2011
12 session of the Seventy-sixth Legislative Assembly adjourns sine die.

13 _____