

House Bill 2286

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Joint Interim Committee on Judiciary for Oregon State Bar Debtor-Creditor Section)

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 that sheriff accept cashier's checks and teller's checks from purchaser at execution sale. Specifies procedure for ensuring that checks are honored before property is delivered to purchaser. Changes earliest time for execution sale from 9 a.m. to 10 a.m.

A BILL FOR AN ACT

1
2 Relating to execution sales; creating new provisions; and amending ORS 18.492, 18.538, 18.545 and
3 18.562.

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

5 **SECTION 1. Section 2 of this 2005 Act is added to and made a part of ORS 18.252 to 18.850.**

6 **SECTION 2. (1) Except as provided in this section, a sheriff shall accept as payment from**
7 **a purchaser at an execution sale a cashier's check, a teller's check or cash. Except as pro-**
8 **vided in this section, a sheriff shall accept any combination of cashier's checks, teller's**
9 **checks or cash that is adequate to pay the purchase price. A sheriff may accept a bid from**
10 **the judgment creditor equal to the amount of the money award under the judgment, calcu-**
11 **lated as of the date that the sale is conducted. The judgment creditor need not make any**
12 **payment to the sheriff if the judgment creditor bids the amount of the money award.**

13 **(2) A sheriff shall accept a cashier's check or teller's check as payment from a purchaser**
14 **at an execution sale only if the cashier's check or teller's check is drawn on a financial in-**
15 **stitution that is authorized to do business under the laws of Oregon or the United States.**

16 **(3) If any part of the purchase price at an execution sale is paid with a cashier's check**
17 **or teller's check, the sheriff shall give the purchaser a receipt for the funds in lieu of a bill**
18 **of sale under ORS 18.545 or a certificate of sale under ORS 18.562. The receipt must state**
19 **that the purchaser is the successful bidder and must describe the property sold. If the**
20 **property sold is personal property in the possession of the sheriff, the sheriff shall retain**
21 **possession of the property until such time as provided in subsection (5) of this section.**
22 **Notwithstanding ORS 206.325, the purchaser is liable to the sheriff for all costs to the sheriff**
23 **relating to storage and care of the property after the date of the sale. The sheriff may de-**
24 **cline to return the property to the purchaser until those costs are paid.**

25 **(4) If any part of the purchase price at an execution sale is paid with a cashier's check**
26 **or teller's check, the sheriff shall deposit the check in a financial institution not later than**
27 **the end of the first business day after the day on which the sale is conducted. The check**
28 **must be deposited in a separate account.**

29 **(5) If the sheriff receives verification from a financial institution within 15 days after the**
30 **day of the sale that all cashier's checks and teller's checks delivered to the sheriff for a**

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 purchase have received final settlement, the sheriff shall mail to the purchaser by first class
 2 mail a bill of sale for all personal property purchased and a certificate of sale for all real
 3 property purchased. The sale is effective as of the date and hour of the sale, and the pur-
 4 chaser has priority over any interest acquired in the property after that time. The sheriff
 5 shall thereafter:

6 (a) Make available to the purchaser all personal property in the possession of the sheriff
 7 that was sold to the purchaser; and

8 (b) Deliver the net proceeds of the sale to the court administrator or other official as
 9 provided by law.

10 (6) If the sheriff does not receive verification from a financial institution within 15 days
 11 after the day of the sale that all cashier's checks and teller's checks delivered to the sheriff
 12 for a purchase have received final settlement, the sale is void and the sheriff shall return
 13 to the purchaser any cash tendered by the purchaser and any amounts received for cashier's
 14 checks and teller's checks for which final settlement was received, less any amounts for
 15 which the purchaser is liable under subsection (3) of this section, any bank charges incurred
 16 for cashier's checks or teller's checks and any other amount allowed by law.

17 (7) If any part of the purchase price at an execution sale is paid with a cashier's check
 18 or teller's check, and the return date for the writ, warrant or other process that is the basis
 19 for the sale is less than 16 days after the date of the sale, the return date is automatically
 20 extended to 16 days after the date of the sale.

21 (8) As used in this section:

22 (a) "Cashier's check" has the meaning given in ORS 73.0104.

23 (b) "Financial institution" has the meaning given in ORS 706.008.

24 (c) "Teller's check" has the meaning given in ORS 73.0104.

25 **SECTION 3.** ORS 18.492 is amended to read:

26 18.492. Upon receipt of a writ of execution, the sheriff shall indorse upon the writ of execution
 27 the time when the sheriff received the writ. The sheriff shall make a return on the writ of execution
 28 to the court administrator within 60 days after the sheriff receives the writ. The person that re-
 29 quested issuance of the writ may authorize the sheriff to continue execution under the writ and
 30 delay making a return on the writ for an additional period of time not to exceed 90 days. **The final**
 31 **date for return on the writ may be extended as provided in section 2 of this 2005 Act.**

32 **SECTION 4.** ORS 18.538 is amended to read:

33 18.538. (1) All sales of property upon execution shall be made by auction, between [9] 10
 34 a.m. and 4 p.m. After sufficient property has been sold to satisfy the execution, no more shall be
 35 sold. Neither the officer holding the execution, nor a deputy of the officer, shall become a purchaser
 36 or be interested in any purchase at such sale. When the sale is of personal property capable of
 37 manual delivery, and not in the possession of a third person, it shall be within view of those who
 38 attend the sale, and be sold in such parcels as are likely to bring the highest price. When the sale
 39 is of real property, and consisting of several known lots or parcels, they shall be sold separately,
 40 or otherwise, as is likely to bring the highest price, or when a portion of such real property is
 41 claimed by a third person, and the third person requires it to be sold separately, such portion shall
 42 be sold separately. **Property sold at the execution sale may be paid for as provided in section**
 43 **2 of this 2005 Act.**

44 (2) The county may charge a fee to be collected by the sheriff from the purchaser of property
 45 at the time of sale. The amount of the fee shall be established by the governing body of the county

1 and shall be the amount necessary to reimburse the county for:

- 2 (a) The actual cost of presale notice and of the sale; and
- 3 (b) The anticipated cost of postsale notice and administration.

4 **SECTION 5.** ORS 18.545 is amended to read:

5 18.545. **Except as provided in section 2 of this 2005 Act,** *[when the purchaser of any personal*
6 *property capable of manual delivery, and not in the possession of a third person, shall pay the purchase*
7 *money]* **when the purchaser at an execution sale pays to the sheriff the purchase price for**
8 **personal property in the possession of the sheriff,** the sheriff shall deliver to the purchaser the
9 property[,] and, if *[desired]* **requested by the purchaser,** shall give the purchaser a bill of sale
10 containing an acknowledgment of the payment. In all other sales of personal property, the sheriff
11 shall give the purchaser a bill of sale with like acknowledgment.

12 **SECTION 6.** ORS 18.562 is amended to read:

13 18.562. **Except as provided in section 2 of this 2005 Act,** at the time of sale[,] **of real prop-**
14 **erty at an execution sale** the sheriff shall give to the purchaser a certificate of the sale containing
15 a particular description of the property sold, the price bid for each distinct lot or parcel, the whole
16 price paid, and, when subject to redemption, a statement of that fact. The matters contained in such
17 certificate shall be substantially stated in the sheriff's return of the proceedings of the sheriff upon
18 the writ.

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