

A-Engrossed
Senate Bill 920

Ordered by the Senate April 25
Including Senate Amendments dated April 25

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Law Commission)

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.

Revises laws relating to execution sales.

A BILL FOR AN ACT

Relating to execution sales; creating new provisions; amending ORS 18.005, 18.322, 18.395, 18.398, 18.406, 18.428, 18.472, 18.505, 18.600, 18.618, 18.685, 18.750, 18.835, 18.910, 88.080, 407.375 and 540.610; and repealing ORS 18.465, 18.468, 18.476, 18.478, 18.482, 18.486, 18.492, 18.494, 18.532, 18.536, 18.538, 18.542, 18.545, 18.548, 18.552, 18.555, 18.562, 18.565, 18.568, 18.572, 18.578, 18.582, 18.585, 18.588, 18.594 and 18.598.

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

WRITS OF EXECUTION
(Function and Form of Writ)

SECTION 1. Function of writ. (1) A writ of execution may direct a sheriff to:

(a) Levy on and sell real property of the judgment debtor and deliver the proceeds to the court for application against a money award.

(b) Levy on and sell personal property of the judgment debtor in the possession of the judgment debtor, and deliver the proceeds to the court for application against a money award.

(c) Levy on and deliver possession of specific real or personal property pursuant to the terms of the judgment.

(d) Levy on and sell specific real or personal property pursuant to the terms of the judgment.

(e) Levy on currency that is in the possession of the judgment debtor and deliver the currency to the court for application against a money award.

(2) A single writ of execution may be issued for two or more of the purposes specified in this section.

SECTION 2. Form of writ. (1) A writ of execution must be directed to a sheriff and must contain the name of the court, the names of the parties to the action and the case number for the action. The writ must describe the judgment and, if the writ of execution is issued for application of property of the judgment debtor against a money award, the writ must

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 state the amount owing on the money award when the writ is issued.

2 (2) If the judgment requires that specific real or personal property of the judgment
3 debtor be sold, the writ must particularly describe the property and direct the sheriff to sell
4 the specified property.

5 (3) If the judgment requires the delivery of the possession of real or personal property,
6 the writ must direct the sheriff to deliver the possession of the property. The writ must
7 particularly describe the property and specify the party to whom the property is to be de-
8 livered.

9
10 (Issuance of Writ)
11

12 **SECTION 3. Court administrator to issue writ.** (1) Except as otherwise provided by law,
13 upon request of a judgment creditor or other prevailing party under a judgment, a court
14 administrator shall issue a writ of execution for any judgment that includes a money award
15 or that requires the delivery or sale of specific real or personal property. Except as provided
16 by ORS 18.255 and 18.472, writs of execution may be issued only by the court administrator
17 for the court in which the judgment was entered.

18 (2) A court administrator may rely on the information provided by the person seeking
19 issuance of a writ of execution and is not liable for any errors or omissions in that infor-
20 mation.

21 **SECTION 4. Sheriff to whom writ is issued.** (1) If a writ of execution directs a sheriff to
22 sell real property or tangible personal property of a judgment debtor and deliver the proceeds
23 to the court for application against a money award, the writ may be issued to the sheriff of
24 any county in this state where property of the judgment debtor is located.

25 (2) If the writ of execution directs the sheriff to sell or deliver possession of specific real
26 or tangible personal property, the writ must be issued to the sheriff of the county where the
27 property is located.

28 (3) If the writ of execution directs the sheriff to sell intangible personal property and
29 deliver the proceeds to the court for application against a money award, the court adminis-
30 trator shall issue the writ to the sheriff for the county in which the court sits.

31 (4) More than one writ of execution may be issued at the same time to different sheriffs
32 for the enforcement of a single judgment. If the writ or the instructions to the sheriff direct
33 the sale of a single, contiguous parcel of real property that is located in more than one
34 county, and the judgment creditor has recorded copies of the writ or abstracts of the writ
35 under section 5 of this 2005 Act in each county that contains part of the property, the sheriff
36 for any county in which part of the property is located may levy on and sell the entire
37 property.

38 **SECTION 5. Recording of writ.** Upon issuance of a writ of execution to the sheriff of any
39 county, the judgment creditor must record a copy of the writ certified to be true by the
40 court administrator or an abstract of the writ in the County Clerk Lien Record for the
41 county if the writ of execution or the accompanying instructions to the sheriff require the
42 sale of real property. The recorded documents must contain a legal description of the real
43 property. The recording of the writ or abstract in any county in which a judgment lien does
44 not exist under ORS 18.150 or 18.152, or in a county in which a notice of pendency under ORS
45 93.740 has not been previously recorded for the property to be sold, has the same effect as

1 recording a notice of pendency under ORS 93.740.

2
3 (Return on Writ)
4

5 **SECTION 6. Return on writ of execution.** (1) The sheriff shall make a return on the writ
6 of execution to the court administrator within 60 days after the sheriff receives the writ.
7 The person that requested issuance of the writ may authorize the sheriff to continue exe-
8 cution under the writ and delay making a return on the writ to a date not later than 150 days
9 after the sheriff receives the writ. The final date for return on the writ may be extended as
10 provided in sections 26 and 29 of this 2005 Act.

11 (2) The return on a writ of execution must reflect whether the sheriff levied on any
12 property pursuant to the terms of the writ. If the sheriff did levy on property pursuant to
13 the terms of the writ, the return must reflect the disposition made of the property by the
14 sheriff. If any property was sold, the sheriff shall deliver the net proceeds of the sale to the
15 court administrator with the return as required by section 35 of this 2005 Act. If currency
16 was levied on, the sheriff shall deliver the currency to the court administrator with the re-
17 turn.

18 (3) The sheriff shall mail a copy of the return by first class mail to the judgment debtor
19 and to the person that requested issuance of the writ.
20

21 (Instructions to Sheriff)
22

23 **SECTION 7. Instructions to sheriff.** (1) The judgment creditor shall provide instructions
24 to the sheriff with a writ of execution. The instructions may be delivered to the sheriff after
25 the writ is delivered to the sheriff. The instructions must include:

26 (a) The names and addresses of all debtors to whom notice must be given under section
27 13 of this 2005 Act;

28 (b) The names and addresses of any other persons to whom notice must be given under
29 section 20 of this 2005 Act;

30 (c) A description of any personal property to be levied on;

31 (d) A street address or other description of the place where any tangible personal prop-
32 erty may be found;

33 (e) A legal description for any real property to be levied on;

34 (f) A statement indicating whether any property to be levied on is residential property
35 as defined by section 15 of this 2005 Act;

36 (g) Whether any condominium unit, manufactured dwelling or floating home to be levied
37 on is inventory held for sale or lease in the regular course of business; and

38 (h) A statement identifying whether any portion of the property to be levied on is in-
39 tangible personal property, and any special instructions required to implement an order en-
40 tered pursuant to section 11 of this 2005 Act.

41 (2) If instructions to the sheriff direct the sale of tangible personal property, the judg-
42 ment creditor may request in the instructions that the property not be seized by the sheriff
43 and that the property be secured in the manner provided by section 9 of this 2005 Act. The
44 instructions may request that the property be rendered inoperable, and the manner in which
45 the property should be rendered inoperable.

1 (3) If a judgment creditor seeks sale of real property under a writ of execution and the
2 real property has a street address, the instructions to the sheriff must include the street
3 address of the real property to be sold. If the real property is residential property that is
4 subject to section 16 of this 2005 Act, a copy of the court order authorizing the sale, or a
5 copy of the judgment directing sale or foreclosure of the property, must be attached to the
6 instructions.

7 (4) In addition to the instructions required by this section, a sheriff may require that a
8 judgment creditor provide all other instructions as may be necessary to allow the sheriff to
9 levy on and to sell or deliver property pursuant to a writ of execution.

10
11 (Levy)
12

13 **SECTION 8. Manner of levying on property.** Upon receipt of a writ of execution, the
14 sheriff shall indorse upon the writ of execution the time when the sheriff received the writ.
15 The sheriff shall then levy on property pursuant to the writ of execution and the instructions
16 provided to the sheriff under section 7 of this 2005 Act by doing all of the following:

17 (1) Filing a notice of levy with the court if real property is to be sold under the writ, or
18 if residential property as described in section 15 (2), (3) or (4) of this 2005 Act is to be sold
19 under the writ.

20 (2) Seizing any tangible personal property that the sheriff has not been instructed to se-
21 cure in the manner provided by section 9 of this 2005 Act.

22 (3) Securing any tangible personal property in the manner provided by section 9 of this
23 2005 Act if the sheriff has been instructed to secure the property in that manner.

24 (4) Filing a notice of levy with the court in the manner provided by section 11 of this 2005
25 Act if the sheriff has been instructed to sell intangible personal property.

26 (5) Securing and delivering possession of property if the writ requires that property be
27 delivered under the writ.

28 **SECTION 9. Alternative procedure for levying on tangible personal property.** (1) If a
29 sheriff is instructed to secure tangible personal property under this section, the sheriff shall
30 leave the property in the custody of the judgment debtor.

31 (2) The sheriff shall attach a notice to the property in substantially the following form:
32
33

34 **NOTICE:** This property is to be sold by the sheriff pursuant to a writ of execution. Any
35 person who moves this property from this place without authorization from the sheriff, who
36 damages this property or who uses property that the sheriff has rendered inoperable without
37 authorization from the sheriff, commits a crime and is subject to prosecution. If you have
38 any questions, you should contact the Sheriff of _____ County.

39 [] If this box has been checked, the sheriff has rendered the property inoperable and the
40 property may not be used by any person without the authorization of the sheriff.
41

42
43 (3) A sheriff is not liable to the judgment creditor, to the judgment debtor or to any other
44 person for any loss or damage to property that is secured in the manner provided by this
45 section.

1 **SECTION 10. Criminal penalty for moving, using or damaging secured property.** A judg-
2 ment debtor or other person commits a Class A misdemeanor if the person knows that a
3 notice has been attached to property secured under section 9 of this 2005 Act and the person:

4 (1) Moves the property without authorization from the sheriff;

5 (2) Damages the property; or

6 (3) If the sheriff has rendered the property inoperable, uses the property without au-
7 thorization from the sheriff.

8 **SECTION 11. Levying on intangible personal property.** (1) A sheriff shall file a notice of
9 levy on intangible property with the court upon receiving the instructions directing the sale
10 of intangible personal property unless the sheriff is provided with an order entered under
11 subsection (2) of this section. The notice shall identify the nature of the property to be sold.

12 (2) A judgment creditor may seek an ex parte order from the court directing the manner
13 in which intangible personal property may be secured by the sheriff. The court shall approve
14 the order if the proposed manner of securing the property is reasonable under the circum-
15 stances. The judgment creditor must attach a copy of the order to instructions provided to
16 the sheriff under section 7 of this 2005 Act. The sheriff shall file a notice of levy with the
17 court upon securing the property in the manner directed by the order.

18 **SECTION 12. Creditor's bond.** (1) As a condition of levying on personal property under a
19 writ of execution, a sheriff may require that the judgment creditor file with the sheriff a
20 good and sufficient bond or irrevocable letter of credit indemnifying the sheriff against any
21 loss to the sheriff by reason of levying on or selling the property if:

22 (a) The sheriff has actual notice of any third-party claim to the property;

23 (b) The sheriff has any doubt as to the ownership of the property or as to any
24 encumbrances on the property; or

25 (c) The property is perishable.

26 (2) A bond or irrevocable letter of credit under this section must be in double the amount
27 of the value of the property to be levied on, as estimated by the sheriff.

28 (3) The sheriff may not require a bond or irrevocable letter of credit under this section
29 if the writ of execution directs the sale or delivery of specific personal property pursuant to
30 the terms of the judgment.

31 **SECTION 13. Notice of levy.** (1) After levying on property, a sheriff shall mail or deliver
32 a copy of the writ of execution to each judgment debtor. If the writ is issued pursuant to
33 an in rem judgment against personal property, the sheriff shall mail or deliver a copy of the
34 writ to the person from whom the property was seized. If the writ is issued pursuant to an
35 in rem judgment against real property, the sheriff shall mail or deliver a copy of the writ to
36 the occupants of the property. The sheriff shall mail the copy of the writ to the addresses
37 included in the instructions to the sheriff. If the judgment debtor has not provided an ad-
38 dress for a person, the sheriff need not mail a copy of the writ to the person.

39 (2) If the sheriff has levied on intangible property, in addition to the copy of the writ
40 required under subsection (1) of this section, the sheriff shall mail or deliver to the persons
41 described in subsection (1) of this section a copy of the notice of levy filed with the court
42 pursuant to section 8 (4) of this 2005 Act.

43 (3) In addition to the copy of the writ required under subsection (1) of this section, the
44 sheriff shall mail or deliver to each judgment debtor a challenge to execution form as pro-
45 vided by ORS 18.512 unless the writ directs the sheriff to sell or deliver specific real or per-

1 sonal property pursuant to the terms of the judgment.

2 **SECTION 14. Debtor's bond.** If a sheriff is instructed by a judgment creditor to levy on
3 tangible personal property by seizing the property for later sale or by securing the property
4 under section 9 of this 2005 Act for later sale, the sheriff may permit the judgment debtor
5 to retain custody and use of all or part of the property until the sale is made if the judgment
6 debtor files with the sheriff a good and sufficient bond or irrevocable letter of credit indem-
7 nifying the sheriff against any loss to the sheriff by reason of failure of the judgment debtor
8 to deliver the property at the time and place of sale. The bond or irrevocable letter of credit
9 must be in an amount equal to twice the value of the property, as estimated by the sheriff.
10 A sheriff is not discharged from liability to the judgment creditor for property by reason of
11 the filing of a bond or letter of credit under this section.

12
13 **EXECUTION SALE**
14 **(Residential Property)**
15

16 **SECTION 15. Definition of residential property.** For the purposes of this section and
17 sections 16, 17, 18 and 19 of this 2005 Act, "residential property" means any of the following
18 property:

19 (1) Real property on which no more than four units designed to be used as dwellings are
20 located.

21 (2) A condominium unit that is designed to be used as a dwelling and that is not being
22 held as inventory for sale or lease in the regular course of business.

23 (3) A manufactured dwelling as defined by ORS 446.003 that is not being held as inventory
24 for sale or lease in the regular course of business.

25 (4) A floating home as defined in ORS 830.700 that is not being held as inventory for sale
26 or lease in the regular course of business.

27 **SECTION 16. Order required for sale of residential property; exceptions.** (1) If the judg-
28 ment debtor is a natural person, residential property may be sold under a writ of execution
29 only after the entry of a court order authorizing the sale.

30 (2) This section does not apply to writs of execution that direct the sheriff to sell specific
31 property pursuant to the terms of the judgment.

32 (3) This section does not apply to a writ of execution issued to enforce a judgment fore-
33 closing:

34 (a) A construction lien for work, labor or material done or furnished exclusively for the
35 improvement of the property to be sold;

36 (b) A lawfully executed purchase money lien against the property to be sold; or

37 (c) A lawfully executed mortgage or trust deed on the property to be sold.

38 **SECTION 17. Motion for order authorizing sale of residential property.** (1) A judgment
39 creditor may file a motion with a court requesting an order authorizing the sheriff to sell
40 residential property. The motion must be filed with a court that has authority to issue a writ
41 of execution for the judgment. The motion must include a statement that does all of the
42 following:

43 (a) Indicates the amount of the money award or money awards, as reflected in the judg-
44 ment or judgments.

45 (b) Indicates the amount owing on the money award or money awards on the date the

1 motion is filed.

2 (c) Indicates whether any of the money awards arise out of an order or judgment for
3 child support as described in ORS 18.398.

4 (d) Identifies the residential property to be sold.

5 (e) Indicates whether the property is a homestead. If the property is a homestead, the
6 motion must allege facts showing that the homestead may be sold on execution.

7 (2) A motion under this section must be accompanied by an affidavit disclosing the basis
8 of the allegations contained in the motion. If the judgment creditor relies on more than one
9 judgment to support the order, the motion must be accompanied by copies of all other judg-
10 ments on which the judgment creditor relies.

11 (3) A court shall promptly schedule a hearing on a motion filed under this section. In
12 setting the hearing the court shall allow adequate time to allow service on the judgment
13 debtor under section 18 of this 2005 Act.

14 SECTION 18. Notice of motion for order authorizing sale of residential property. (1) At
15 least 10 days before the hearing on a motion filed under section 17 of this 2005 Act, the
16 judgment creditor must:

17 (a) Serve the judgment debtor in the manner provided by ORCP 7 with a copy of the
18 motion and the supporting affidavit, and with a notice of the time and place of the hearing;
19 and

20 (b) Send a copy of the motion and the notice by first class mail to the property at the
21 mailing address for the property.

22 (2) The notice required by subsection (1) of this section must be in substantially the fol-
23 lowing form:

24 _____
25
26 **NOTICE OF HEARING ON SHERIFF'S**
27 **SALE OF YOUR PROPERTY**
28

29 This is to notify you that _____ has asked the court to order the sheriff to sell property
30 located at _____ to satisfy a judgment against _____.

31 Before deciding whether to order the sale, the court will hold a hearing on _____,
32 2_____, at _____ a.m./p.m., in Room _____, _____.

33 The law provides that property is your homestead if the property is actually used as a
34 home by you, your spouse, a dependent parent or a dependent child. If you are temporarily
35 absent from the property but intend to move back in, the property is still your homestead.

36 The law provides that if the property is your homestead, then \$_____ of its value
37 (\$_____ for a manufactured dwelling if you do not own the property where the dwelling is
38 located) may not be taken to satisfy a judgment against you. In addition, a homestead usually
39 may not be sold to satisfy a judgment for \$3,000 or less.

40 The law provides that property may be sold despite the fact that it is your homestead
41 and all of its value may be taken to satisfy a judgment against you if the judgment is for
42 child support.

43 **IF YOU WISH TO PROTECT THIS PROPERTY FROM A SHERIFF'S SALE, YOU**
44 **SHOULD COME TO THE COURT HEARING.**

45 **IF YOU HAVE ANY QUESTIONS, YOU SHOULD SEE A LAWYER AT ONCE.**

1 the sale of the specific real property, the list prepared by the judgment creditor under this
2 section must contain the names and last known addresses of the persons who were parties
3 to the action at the time of judgment in lieu of the names required under subsection (2) of
4 this section.

5 (4) Failure to include the name of a person required to be listed under this section does
6 not affect the validity of an execution sale or in any way give that person any right to
7 challenge the sale of the property. By submitting the instructions to the sheriff, a judgment
8 creditor certifies that the list of persons reflected in the instructions complies with this
9 section, and the failure to include the name of any person as required by this section is
10 subject to sanction under ORCP 17.

11 **SECTION 21. Notice of sale of personal property.** (1) Before conducting an execution sale
12 of personal property, a sheriff shall give written notice of the sale in the manner provided
13 by this section. The notice must identify the property to be sold and the time and place of
14 the sale.

15 (2) Before any execution sale of personal property, the sheriff shall:

16 (a) Mail copies of the notice of sale by first class mail and by certified mail, return re-
17 ceipt requested, to the judgment debtor at the address provided in the instructions to the
18 sheriff; and

19 (b) Mail a copy of the notice of sale by first class mail to any attorney for the judgment
20 debtor identified in the instructions at the address provided in the instructions to the sheriff.

21 (3) The notices required by subsection (2) of this section must be mailed not less than
22 10 days before an execution sale is conducted.

23 (4) The sheriff shall post a notice of the sale in three public places in the county in which
24 the sale is to take place. The notice must be posted not more than 20 days before the date
25 of sale identified in the notice of sale and not less than 10 days before that date.

26 (5) In lieu of posting notice under subsection (4) of this section, a sheriff shall give notice
27 of an execution sale by Internet posting if the judgment creditor requests that posting in the
28 instructions given to the sheriff under section 7 of this 2005 Act and the State Court Ad-
29 ministrator has established a website for the purpose of giving legal notice pursuant to sec-
30 tion 24 of this 2005 Act. Subject to section 24 (3) of this 2005 Act, the notice must be posted
31 on the Internet not less than 20 days before the date identified in the notice of sale and re-
32 main posted until that date.

33 **SECTION 22. Expedited sale of perishable personal property; expedited sale to prevent**
34 **loss of value.** (1) Notwithstanding section 21 of this 2005 Act, if perishable personal property
35 is levied on by a sheriff:

36 (a) The notices required by section 21 (2) of this 2005 Act must be mailed by express mail
37 not less than 48 hours before the execution sale is conducted; and

38 (b) The sheriff shall post notice of the sale in the manner required by section 21 (4) of
39 this 2005 Act not less than 48 hours before the execution sale is conducted.

40 (2) In lieu of conducting an expedited sale under subsection (1) of this section, a judgment
41 creditor or a sheriff may seek an ex parte order from the court directing the manner of
42 conducting an expedited sale to prevent loss of value. An order issued under this section may
43 modify or eliminate any of the requirements of section 21 of this 2005 Act. If an ex parte
44 order is entered under this subsection at the request of the judgment creditor, the judgment
45 creditor must attach a copy of the order to instructions provided to the sheriff under section

1 7 of this 2005 Act.

2 **SECTION 23. Notice of sale of real property.** (1) Before conducting an execution sale of
3 real property, a sheriff shall give written notice of the sale in the manner provided by this
4 section. The notice must identify the property to be sold and the time and place of the sale.

5 (2) Before any execution sale of real property, the sheriff shall:

6 (a) Mail copies of the notice of sale by first class mail and by certified mail, return re-
7 ceipt requested, to the judgment debtor at the address provided in the instructions to the
8 sheriff;

9 (b) Mail a copy of the notice of sale by first class mail to any attorney for the judgment
10 debtor identified in the instructions at the address provided in the instructions; and

11 (c) Mail a copy of the notice of sale by first class mail to any other person listed in the
12 instructions pursuant to section 20 of this 2005 Act at the address provided in the in-
13 structions.

14 (3) The notices required by subsection (2) of this section must be mailed not less than
15 28 days before an execution sale is conducted.

16 (4) Before any execution sale of real property for which the judgment creditor has pro-
17 vided a street address under section 7 (3) of this 2005 Act, the sheriff shall post a notice of
18 the sale in a conspicuous place on the property. The notice must be posted not more than
19 seven days after the sheriff mails notices as required by subsection (2) of this section.

20 (5) The sheriff shall publish a copy of the notice of sale of real property once a week for
21 four successive weeks in a newspaper of general circulation in the county where the real
22 property is located. The sheriff may not conduct the sale until the expiration of the four-
23 week period.

24 (6) In lieu of publication in a newspaper under subsection (5) of this section, a sheriff
25 may publish a notice of sale of real property by Internet posting if the State Court Admin-
26 istrator has established a website for the purpose of giving legal notice pursuant to the
27 provisions of section 24 of this 2005 Act and the judgment creditor has requested that notice
28 be published by Internet posting in the instructions provided to the sheriff under section 7
29 of this 2005 Act. Subject to section 24 (3) of this 2005 Act, the notice must be posted on the
30 Internet not less than 28 days before the date identified in the notice of sale and remain
31 posted until that date.

32 **SECTION 24. Legal notices website.** (1) Subject to the availability of funding, the State
33 Court Administrator may establish and maintain a website for the purpose of giving legal
34 notices pursuant to sections 1 to 54 of this 2005 Act.

35 (2) The State Court Administrator may establish fees for posting legal notices on a
36 website maintained under this section. All fees collected by the State Court Administrator
37 under this subsection shall be deposited in the Judicial Department Operating Account es-
38 tablished under ORS 1.009.

39 (3) For the purpose of determining whether a legal notice has been posted for the period
40 of time required by law, an interruption of service of a website maintained under this section
41 that does not exceed 48 hours does not affect the continuity of the posting. An interruption
42 of service of a website maintained under this section does not prevent the sheriff from con-
43 ducting an execution sale unless the court orders otherwise.

44
45 (Conduct of Execution Sale)

1 **SECTION 25. Conduct of sale generally; county fee.** (1) The sheriff shall conduct an exe-
2 cution sale by public oral auction. The sale must be conducted between 9 a.m. and 4 p.m.
3 All property shall be sold by the sheriff in such parcels as are likely to bring the highest
4 price. Any portion of real property belonging to a person other than the judgment debtor
5 must be sold separately if the person requests a separate sale.

6 (2) The judgment creditor may set a minimum bid amount for property to be sold at an
7 execution sale.

8 (3) Tangible personal property to be sold at an execution sale must be present at the
9 place where the sale is conducted unless the property is not in the possession of the sheriff.

10 (4) The county may establish a fee to be collected by the sheriff at the time of sale. The
11 amount of the fee shall be established by the governing body of the county and may not be
12 greater than the amount necessary to pay the county for the expenses incurred by the
13 county for giving notice of the sale and conducting the sale and for the anticipated expenses
14 for any notices required to be given after the sale and other post-sale administration of the
15 sale.

16 (5) A person who purchases real property at an execution sale must provide the sheriff
17 with an address to which a redemption notice may be sent and must notify the sheriff of any
18 change in address until the purchaser transfers the purchaser's interest in the property, the
19 property is redeemed or the time allowed for redemption expires, whichever occurs first. Any
20 person who thereafter acquires the purchaser's interest in the property must notify the
21 sheriff of the transfer, provide the sheriff with an address to which a redemption notice may
22 be sent and notify the sheriff of any change in address until there is a another transfer, the
23 property is redeemed or the time allowed for redemption expires, whichever occurs first.

24 **SECTION 26. Postponement of sale.** (1) A sheriff may postpone an execution sale to a
25 specified date if:

26 (a) The sheriff is unable to conduct the sale at the place and time specified in the notice
27 of the sale;

28 (b) The sheriff considers it appropriate to postpone the sale for want of purchasers; or

29 (c) For other sufficient cause.

30 (2) A sheriff shall postpone an execution sale to a specified date upon the request of a
31 judgment creditor. The sheriff may not postpone the execution sale to a date later than the
32 final date for return on the writ of execution under section 6 of this 2005 Act.

33 (3) If possible, the sheriff shall make a public announcement of a postponement at the
34 time and place scheduled for the sale.

35 (4) An execution sale may be postponed more than one time under the provisions of this
36 section. An execution sale may not be postponed beyond the date that a return on the writ
37 is due. If the judgment creditor requests a postponement to a specified date, and the date is
38 more than 60 days after the sheriff received the writ, the request for a postponement of the
39 sale automatically operates as a request for an extension of the time for a return on the writ
40 of execution under section 6 (1) of this 2005 Act, and the return on the writ is due on the
41 next business day after the date specified by the judgment creditor for the sale.

42 (5) The sheriff need not give additional notice of sale in the manner provided by section
43 20, 21, 22 or 23 of this 2005 Act by reason of a postponement. The State Court Administrator
44 by rule may establish procedures for giving notice of a postponement by a posting on a
45 website maintained under section 24 of this 2005 Act.

1 **SECTION 27. Amount of property to be sold; officers and deputies may not purchase.** At
2 an execution sale, the sheriff shall sell only the property necessary to satisfy the judgment.
3 A sheriff conducting an execution sale and deputies of the sheriff may not purchase property
4 at the sale or acquire any interest in property by reason of the sale.

5 **SECTION 28. Bid by judgment creditor.** (1) A judgment creditor may make oral bids for
6 property to be sold at an execution sale. Unless the amount bid by the judgment creditor
7 exceeds the full amount of the money award, calculated as of the date that the sale is to be
8 conducted, plus the costs of the sale as described in section 35 (2) of this 2005 Act that have
9 been paid by the judgment creditor, the judgment creditor need not make any payment to
10 the sheriff if the judgment creditor is the highest bidder. If the judgment creditor is the
11 highest bidder, the judgment creditor may reduce the amount bid by all costs of the sale as
12 described in section 35 (2) of this 2005 Act that have been paid by the judgment creditor be-
13 fore applying the net proceeds towards satisfaction of the judgment.

14 (2) A judgment creditor may submit a written bid for property to be sold in an execution
15 sale before the sale is conducted. A bid under this subsection may not be for more than the
16 full amount of the money award, calculated as of the date that the sale is to be conducted,
17 plus the costs of the sale that are recoverable by the judgment creditor as described in sec-
18 tion 35 (2) of this 2005 Act. A bid under this subsection must be received by the sheriff not
19 less than 48 hours before the sale is conducted. The sheriff may rely on the judgment cred-
20 itor's calculation of the amount due under the money award and for the costs of sale, and
21 is not required to make a separate calculation.

22 (3) A judgment creditor may instruct the sheriff to accept any bid that matches the
23 amount of the bid made by the judgment creditor under subsection (2) of this section.

24 (4) A written bid under subsection (2) of this section is irrevocable, but the judgment
25 creditor who submits the written bid may make an oral bid at the time of the sale that is
26 higher than the written bid.

27 **SECTION 29. Manner of payment.** (1) Except as provided in this section, a sheriff shall
28 accept as payment from a purchaser of real property at an execution sale a cashier's check,
29 a teller's check or cash. Except as provided in this section, a sheriff shall accept any com-
30 bination of cashier's checks, teller's checks or cash that is adequate to pay the purchase
31 price.

32 (2) A sheriff shall accept a cashier's check or teller's check as payment from a purchaser
33 at an execution sale only if the cashier's check or teller's check is made payable to the
34 sheriff and is drawn on a financial institution that is authorized to do business under the
35 laws of Oregon or the United States.

36 (3) If any part of the purchase price at an execution sale is paid with a cashier's check
37 or teller's check, the sheriff shall give the purchaser a receipt for the funds in lieu of a
38 certificate of sale under section 31 of this 2005 Act. The receipt must state that the pur-
39 chaser is the successful bidder and must describe the property sold.

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

44 (5) If the sheriff receives verification from a financial institution within 15 days after the
45 date of the execution sale that all cashier's checks and teller's checks delivered to the sheriff

1 for a purchase have received final settlement, the sale is effective as of the date and hour
2 of the sale, and the purchaser has priority over any interest acquired in the real property
3 after that time. The sheriff shall thereafter:

4 (a) Mail to the purchaser by first class mail a certificate of sale as provided under ORS
5 18.562 for all real property purchased; and

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

8 (6) Subject to subsection (8) of this section, if the sheriff does not receive verification
9 from a financial institution within 15 days after the date of the sale that all cashier's checks
10 and teller's checks delivered to the sheriff for a purchase have received final settlement, the
11 sale is void and the sheriff shall return to the purchaser any cash tendered by the purchaser
12 and any amounts received for cashier's checks and teller's checks for which final settlement
13 was received, less any amounts for which the purchaser is liable under subsection (3) of this
14 section, any bank charges incurred for cashier's checks or teller's checks and any other
15 amount allowed by law.

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

20 (8) The judgment creditor may extend the time for the sheriff to receive verification of
21 a cashier's check or teller's check provided for in subsections (5) and (6) of this section. If
22 the judgment creditor extends the time for the sheriff to receive verification of a cashier's
23 check or teller's check, the return date for the writ is automatically extended three business
24 days after the date specified by the judgment creditor.

25 (9) As used in this section:

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

27 (b) "Financial institution" has the meaning given that term in ORS 706.008.

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

29 **SECTION 30. Bill of sale for personal property.** (1) If a sheriff sells personal property at
30 an execution sale, upon receipt of the purchase money the sheriff shall give a bill of sale to
31 the purchaser for any intangible property or other property not in the possession of the
32 sheriff. The sheriff shall deliver personal property in the possession of the sheriff to the
33 purchaser, but shall give the purchaser a bill of sale for that property only if the purchaser
34 requests it.

35 (2) If the sheriff has secured property in the manner provided by section 9 of this 2005
36 Act and the judgment debtor refuses to make the property available to the purchaser, with-
37 out further court order the sheriff shall use all reasonable force necessary to allow the
38 purchaser to access the property at the place where the property was located when the
39 sheriff secured the property.

40 **SECTION 31. Sheriff's certificate of sale for real property.** (1) If a sheriff sells real
41 property at an execution sale, the sheriff shall prepare a certificate of sale containing a
42 particular description of the property sold, the price bid for each distinct lot or parcel and
43 the total amount paid. The certificate must state whether the property is subject to re-
44 demption. Except as provided in section 29 (3) of this 2005 Act, the sheriff shall give the
45 certificate to the purchaser.

1 (2) A purchaser may record in the County Clerk Lien Record the sheriff's certificate of
2 sale provided to the purchaser under the provisions of this section.

3 **SECTION 32. Notice of completed sale.** (1) After the execution sale of any residential
4 property as defined in section 15 of this 2005 Act that is subject to redemption and not later
5 than 30 days after the purchaser is given the certificate of sale, the sheriff shall:

6 (a) Securely attach to the main entrance of any dwelling unit upon the property a written
7 notice stating that the property has been sold; and

8 (b) Send a copy of the notice described in paragraph (a) of this subsection by first class
9 mail and by registered or certified mail to the judgment debtor.

10 (2) The notice required by subsection (1)(a) of this section shall be in substantially the
11 following form:

12 _____
13

14 **YOUR PROPERTY HAS BEEN SOLD**

15 Your property located at _____ has been sold. The property was sold on
16 _____, 2____, to satisfy a court judgment against you. The purchaser's name and address
17 are _____. The purchaser paid _____ for your property.

18 Oregon law gives you the right to buy back the property from the purchaser by paying
19 the purchaser the amount paid at the sale plus taxes, expenses and interest. YOU WILL
20 LOSE THE RIGHT TO BUY BACK YOUR PROPERTY ON _____, 2____. If you do not buy
21 back your property, the sheriff will give a deed for your property to the purchaser on that
22 date.

23 The law that gives you the right to buy back your property is found in sections 1 to 54
24 of this 2005 Act. You must follow exactly the instructions provided there.

25 **IF YOU HAVE ANY QUESTIONS, YOU SHOULD SEE A LAWYER AT ONCE.**
26 _____
27

28 (3) The sheriff shall retain the return receipt for a notice sent by registered or certified
29 mail as provided in subsection (1)(b) of this section and shall make and retain a record of the
30 posting of notice required by subsection (1)(a) of this section.

31 (4) Failure of the sheriff to comply with any provision of this section does not affect the
32 validity of the sale of residential property. However, this subsection does not limit any other
33 right the judgment debtor may have.

34 **SECTION 33. Possession after sale; right to rents or value of use.** (1) Subject to sub-
35 section (2) of this section, the purchaser of real property at an execution sale is entitled to
36 possession of the property from the date of sale until a redemption of the property, if any.
37 Subject to subsection (2) of this section, the redemptioner of real property is entitled to
38 possession of the property from the date the payment required by section 41 or 42 of this 2005
39 Act is made until another redemption, if any.

40 (2) If property sold on execution or redeemed is in the possession of a tenant who holds
41 the property at the time of the sale under an unexpired lease that has a priority that is in-
42 ferior to the claim of the judgment creditor, the lessee has the right to remain in possession
43 of the property until expiration of the period allowed for redemption if the lessee makes the
44 lease payments to the purchaser or redemptioner, or pays to the purchaser or redemptioner
45 a monthly payment equal to the value of the use and occupancy of the property, whichever

1 amount is greater.

2 **SECTION 34. Confirmation of sale of real property.** (1) A sale of real property in an ex-
3 ecution sale is conclusively established to have been conducted in the manner required by
4 sections 1 to 54 of this 2005 Act unless the judgment debtor or another person adversely af-
5 fected by the sale files an objection to the sale within 10 days after the filing of the sheriff's
6 return under section 6 of this 2005 Act.

7 (2) If an objection to a sale is filed, the court shall schedule a hearing on the objection.
8 The court shall grant an order confirming the sale unless the person objecting to the sale
9 establishes that the sale was not conducted in a manner that substantially conformed with
10 the manner required by law, and that as a result it was probable that the person suffered
11 damage. An order confirming a sale under this subsection conclusively establishes that the
12 sale was conducted in the manner required by sections 1 to 54 of this 2005 Act. If the court
13 sustains the objection, the court shall direct that the property be resold. Notwithstanding
14 any other provision of sections 1 to 54 of this 2005 Act, the court may establish timelines for
15 the conduct of the second sale and the return by the sheriff upon completion of the second
16 sale.

17 (3) If the court orders that real property be resold under this section, the sheriff may
18 not accept any bid in the second sale that is less than the amount paid in the first sale. If
19 no higher bid is received in the second sale, the sheriff shall so indicate in the sheriff's re-
20 turn to the court. If a higher bid is received at the second sale, upon receipt of the proceeds
21 the court administrator shall return to the first purchaser the amounts paid by the pur-
22 chaser. If the original purchaser makes the highest bid in the second sale, the purchaser
23 need pay to the sheriff only the difference between the bid in the second sale and the
24 amounts already paid by the purchaser.

25 **SECTION 35. Delivery and distribution of proceeds.** (1) After the deduction of all sheriff's
26 fees and costs allowed by law that have not been paid by the judgment creditor, the sheriff
27 shall deliver all net proceeds from an execution sale to the court administrator with the
28 sheriff's return on the writ. The court shall enter an order of distribution for the proceeds.

29 (2) A judgment creditor is entitled to recover from the proceeds of the sale all of the
30 following costs of sale paid by the judgment creditor:

31 (a) Sheriff's fees;

32 (b) The cost of any title report required to determine persons entitled to notice under
33 section 20 (2) of this 2005 Act;

34 (c) The cost of any indemnity bond required by section 12 of this 2005 Act;

35 (d) Services fees that may be recovered as costs under section 19 of this 2005 Act; and

36 (e) Recording fees incurred pursuant to section 5 of this 2005 Act.

37 (3) The court shall order that the costs specified in subsection (2) of this section be paid
38 before application of the remaining proceeds to satisfaction of the judgment.

39 (4) If any proceeds from an execution sale remain after the payment of costs under
40 subsection (3) of this section and satisfaction of the judgment, the court administrator shall
41 pay the remaining proceeds as directed by the court in the order of distribution.

42 **SECTION 36. Effect of sale on judgment debtor's or mortgagor's title; effect of redemp-**
43 **tion by judgment debtor or mortgagor.** (1) The title of a judgment debtor or mortgagor to
44 real property that is subject to redemption under sections 37a to 48 of this 2005 Act is not
45 transferred by the sale of the property at an execution sale. If a judgment debtor or

1 mortgagor, or a successor in interest to a judgment debtor or mortgagor, redeems property
2 sold at an execution sale, the right to possession of the property is restored subject to all
3 liens of record, whether arising before, on or after the sale, as though the sale had never
4 occurred.

5 (2) If a judgment debtor or mortgagor, or a successor in interest to a judgment debtor
6 or mortgagor, redeems property sold at an execution sale, the property may not be redeemed
7 by any other person. The sheriff shall provide the redemptioner with a certificate of re-
8 demption. A certificate of redemption may be recorded in the County Clerk Lien Record for
9 the county in which the property is located.

10 SECTION 37. Conduct of sale pursuant to court rule or terms of order or judgment. A
11 court, by the terms of a judgment or order, may direct that an execution sale under a spe-
12 cific judgment be conducted in a manner different than the manner specified by sections 1
13 to 54 of this 2005 Act. The Chief Justice of the Supreme Court may by court rule provide that
14 execution sales be conducted in a manner different than the manner specified by sections 1
15 to 54 of this 2005 Act.

16
17 (Redemption)

18
19 SECTION 37a. Definitions. As used in sections 37a to 48 of this 2005 Act:

20 (1) "Certificate holder" means a person who holds a certificate of sale issued under sec-
21 tion 31 of this 2005 Act or who holds a certificate of redemption issued under section 44e of
22 this 2005 Act.

23 (2) "Claimant" means a person who claims to have a right to redeem under sections 37a
24 to 48 of this 2005 Act.

25 (3) "Land sale contract" means a contract for the transfer or conveyance of an interest
26 in real property. "Land sale contract" does not include earnest money agreements, prelimi-
27 nary sales agreements, options or rights of first refusal.

28 (4) "Redemptioner" means a person other than a judgment debtor who has redeemed
29 property under sections 37a to 48 of this 2005 Act.

30 (5) "Redemption notice" means a notice described under section 44a of this 2005 Act.

31 SECTION 38. Property that may be redeemed. (1) All real property sold at an execution
32 sale may be redeemed except for a leasehold interest with an unexpired term of less than two
33 years.

34 (2) A manufactured dwelling, as defined by ORS 446.003, may be redeemed only if the
35 manufactured dwelling is sold together with the real property on which the manufactured
36 dwelling is located.

37 (3) The right of a seller to receive payments under a land sale contract that is sold with
38 the real property may be redeemed.

39 (4) Except as provided in section 50 (3) of this 2005 Act, a purchaser's interest in a land
40 sale contract may be redeemed.

41 SECTION 39. Who may redeem. (1) Subject to subsection (3) of this section, property that
42 is described in section 38 of this 2005 Act and that is sold at an execution sale may be re-
43 deemed by:

44 (a) The judgment debtor;

45 (b) A mortgagor whose interest in the property was sold at the execution sale;

1 (c) Any person with a lien against the property that has a priority that is inferior to the
2 claim of the judgment creditor; or

3 (d) The successor in interest of any person described in paragraph (a), (b) or (c) of this
4 subsection.

5 (2) Subject to subsection (3) of this section, for the purposes of sections 37a to 48 of this
6 2005 Act:

7 (a) All references to a judgment debtor include a mortgagor whose interest in the prop-
8 erty that was sold at the execution sale and any successor in interest to such a mortgagor;

9 (b) All references to a judgment debtor include a successor in interest to a judgment
10 debtor; and

11 (c) A person described in subsection (1)(c) of this section, and any successor in interest
12 of that person, is a lien claimant.

13 (3) Any person described in subsection (1) of this section who conveys all of the person's
14 interest in property sold on execution to a successor in interest may not redeem the prop-
15 erty.

16 **SECTION 40. Time for redemption.** (1) Except as otherwise provided in sections 37a to
17 48 of this 2005 Act, the ability of a judgment debtor to redeem property sold at an execution
18 sale expires unless the judgment debtor redeems the property within 180 days after the date
19 of sale.

20 (2) Except as provided in subsection (3) of this section, the ability of a lien claimant to
21 redeem property sold at an execution sale expires unless the lien claimant redeems the
22 property within 60 days after the date of sale.

23 (3) If any lien claimant redeems property within the time provided by subsection (2) of
24 this section, any other lien claimant may redeem the property from the redemptioner. The
25 subsequent redemption must be made within 60 days after the redemption amount specified
26 in section 41 or 42 of this 2005 Act is paid to the sheriff. Other lien claimants may thereafter
27 redeem from a preceding redemptioner, in the same manner, as long as each redemption is
28 made within 60 days after the previous redemption.

29 **SECTION 41. Redemption amount payable to purchaser.** Subject to section 43 of this 2005
30 Act, a claimant may redeem property from the purchaser at an execution sale by paying to
31 the sheriff:

32 (1) The amount paid by the purchaser at the execution sale, with interest on that amount
33 at the rate of nine percent per annum from the date of sale;

34 (2) The amount of any taxes the purchaser has paid on the property, with interest at the
35 rate of nine percent per annum from the date of payment;

36 (3) Any amounts necessarily expended by the purchaser to prevent waste, with interest
37 at the rate of nine percent per annum from the date of payment; and

38 (4) Any amounts that the purchaser has paid on liens superior to the interest of the
39 purchaser, with interest at the rate of nine percent per annum from the date of payment.

40 **SECTION 42. Redemption amount payable to redemptioner.** Subject to section 43 of this
41 2005 Act, a claimant may redeem property from a redemptioner by paying to the sheriff:

42 (1) The amount paid by the redemptioner, with interest on that amount at the rate of
43 nine percent per annum from the date of payment;

44 (2) The amount owing on the lien of the redemptioner, unless the payment is made by a
45 lien claimant and the lien claimant has a lien that has a priority that is superior to the lien

1 of the redemptioner;

2 (3) The amount of any taxes the redemptioner has paid on the property, with interest at
3 the rate of nine percent per annum from the date of payment;

4 (4) Any amounts necessarily expended by the redemptioner to prevent waste, with in-
5 terest at the rate of nine percent per annum from the date of payment; and

6 (5) Any amounts that the redemptioner has paid on liens superior to the lien of the
7 redemptioner, with interest at the rate of nine percent per annum from the date of payment.

8 **SECTION 43. Setoff for rents, income and profits realized by certificate holder; certif-**
9 **icate holder's lien for crops and amounts expended to prevent waste.** (1) A judgment debtor
10 is entitled to a setoff against the amounts required to redeem property sold at an execution
11 sale for all rents, income and profits realized by the certificate holder from the property.

12 (2) If the real property sold at an execution sale is farmland, the certificate holder has
13 a lien on the first crops sown or grown after the sale and for all sums reasonably expended
14 by the certificate holder in plowing, cultivating or seeding the property. The lien of the cer-
15 tificate holder is superior to all other liens except the liens provided by law for payment of
16 wages for work in cultivating the land or harvesting the crops grown on the property. If the
17 real property is not farmland, the certificate holder has a lien on the profits accruing from
18 the property during the period that the certificate holder held the land for sums necessarily
19 expended by the certificate holder to prevent waste.

20 **NOTE:** Section 44 was deleted by amendment. Subsequent sections were not renumbered.

21 **SECTION 44a. Redemption notice.** (1) A claimant who wishes to redeem property must
22 serve the certificate holder with a redemption notice. The notice must specify a date and
23 approximate time when the claimant will make payment to the sheriff, the redemption
24 amount calculated by the claimant and the manner in which the redemption amount was
25 calculated. The notice must include a mailing address for the claimant. The date of the re-
26 demption must be a weekday that is not a legal holiday. The time of the redemption must
27 be between the hours of 9 a.m. and 4 p.m. The notice must inform the certificate holder if
28 an accounting under section 45 of this 2005 Act is required.

29 (2) If the claimant is a lien claimant, the notice must reflect the nature of the lien
30 claimant's interest and the claimant shall attach to the notice copies of any documents
31 necessary to establish that interest. If the claimant is a successor in interest to another
32 person with redemption rights under section 39 of this 2005 Act, the claimant shall attach
33 to the notice copies of any documents necessary to establish how the person acquired the
34 interest. If the claimant claims to have an interest with a priority that is superior to the
35 interest of the certificate holder, the claimant shall attach to the notice copies of any docu-
36 ments necessary to establish that priority.

37 (3) A redemption notice must be served by personal service or by first class mail. If the
38 notice is served by first class mail, service is effective on mailing. A copy of the notice may
39 be filed with the sheriff before the notice is given to the certificate holder, but must be filed
40 with the sheriff no later than seven days before the redemption date specified in the notice.
41 The notice must be served on the certificate holder not more than 30 days before the pay-
42 ment date specified in the redemption notice, and:

43 (a) Not less than 14 days before the payment date specified in the notice, if service is
44 made by first class mail; or

45 (b) Not less than seven days before the payment date specified in the notice, if personal

1 service is made.

2 (4) A claimant shall submit proof of service of the notice required by this section at the
3 time the claimant pays the sheriff under section 44e of this 2005 Act.

4 (5) If a certificate holder fails to comply with the requirements of section 25 (5) or 46a
5 of this 2005 Act, the certificate holder may not object to a redemption by reason of failure
6 to receive a redemption notice.

7 **SECTION 44b. Objection to redemption notice.** (1) A certificate holder may object to a
8 redemption notice if the certificate holder asserts that the claimant is not eligible to redeem.
9 An objection under this section must be filed with the court administrator, filed with the
10 sheriff and mailed by first class mail to the claimant before the payment date specified in
11 the notice.

12 (2) The filing of an objection under this section does not affect the requirement of pay-
13 ment of the redemption amount specified in the redemption notice under section 44e of this
14 2005 Act.

15 **SECTION 44c. Response to redemption notice.** (1) A certificate holder shall respond to a
16 redemption notice if:

17 (a) The notice requests an accounting under section 45 of this 2005 Act; or

18 (b) The certificate holder objects to the redemption amount specified in the notice.

19 (2) A response to a redemption notice must be served by personal service or by first class
20 mail. If the response is served by first class mail, service is effective on mailing. A copy of
21 the response may be filed with the sheriff before the response is given to the claimant, but
22 must be filed with the sheriff before the payment date specified in the notice. The response
23 must be served on the claimant before the payment date specified in the notice.

24 (3) If the redemption notice requests an accounting, the accounting must be attached to
25 the response given under this section.

26 (4) If the certificate holder objects to the redemption amount specified in the notice be-
27 cause the certificate holder claims additional amounts are owing under section 41 or 42 of
28 this 2005 Act, the response must include all information specified in section 45 (1)(a) to (c)
29 of this 2005 Act.

30 (5) A response filed under this section must include a statement of the amount claimed
31 as the proper redemption amount after deductions or additions by reason of any accounting
32 provided with the response or by reason of additional amounts claimed under subsection (4)
33 of this section.

34 (6) If a claimant does not object to the amount claimed as the proper redemption amount
35 in the response, the claimant may pay the additional amounts to the sheriff within seven
36 days after the response is served on the claimant. If the additional amounts are paid to the
37 sheriff as provided in this subsection, the sheriff shall issue a certificate of redemption to
38 the claimant. If the additional amounts are not paid on the payment date specified in the
39 redemption notice, the sheriff shall issue a certificate of redemption to the claimant dated
40 as of the date that the receipt was issued under section 44e of this 2005 Act.

41 **SECTION 44d. Objection to response.** (1) A claimant may object to the amount claimed
42 in the response as the proper redemption amount. An objection under this section must be
43 filed with the court administrator and mailed by first class mail to the certificate holder
44 within seven days after the response is served under section 44c of this 2005 Act.

45 (2) The filing of an objection under this section does not affect the requirement of pay-

1 ment of the redemption amount specified in the redemption notice under section 44e of this
2 2005 Act. Payment of the amount claimed in the response waives any objection filed under
3 this section unless the claimant delivers a copy of the objection to the sheriff with the pay-
4 ment.

5 **SECTION 44e. Payment of redemption amount.** (1) Except as provided in section 45 (2)
6 and (4) of this 2005 Act, unless a certificate holder has indicated a lower redemption amount
7 in the certificate holder's response under section 44c of this 2005 Act, a claimant shall pay
8 the sheriff at least the redemption amount specified in the notice on or before the payment
9 date specified in the redemption notice. If the calculations or other documentation provided
10 to the sheriff appear irregular to the sheriff, the sheriff shall transmit the payment to the
11 court administrator with copies of all records relating to the sale that are within the sher-
12 iff's possession.

13 (2) The sheriff shall issue to the claimant who makes payment under this section a cer-
14 tificate of redemption on the payment date specified in the redemption notice unless:

15 (a) Before the payment date specified in the notice, an objection is filed with the sheriff
16 in the manner required by section 44b of this 2005 Act;

17 (b) Before the payment date specified in the notice, a response is filed with the sheriff
18 in the manner required by section 44c of this 2005 Act, and the claimant fails to pay addi-
19 tional amounts claimed in the response on the payment date specified in the notice;

20 (c) An objection to a response is delivered to the sheriff with the payment in the manner
21 required by section 44d of this 2005 Act; or

22 (d) The sheriff has transmitted the payment to the court administrator under subsection
23 (1) of this section.

24 (3) If a claimant pays the sheriff the redemption amount specified in the redemption no-
25 tice, but the sheriff does not issue a certificate of redemption pursuant to subsection (2) of
26 this section, the sheriff shall give the claimant a receipt for the funds in lieu of a certificate
27 of redemption.

28 (4) If a claimant does not make payment as required by subsection (1) of this section, the
29 redemption notice is of no effect.

30 **SECTION 44f. Court proceedings on objections.** (1) If an objection is filed under section
31 44b or 44d of this 2005 Act, the sheriff shall transmit to the court administrator copies of
32 all records relating to the sale that are within the sheriff's possession.

33 (2) The court shall schedule a hearing on an objection filed under section 44b or 44d of
34 this 2005 Act as soon as possible.

35 (3) If a certificate holder files an objection under section 44b of this 2005 Act, and the
36 court determines that the claimant is eligible to redeem, the court shall direct the sheriff
37 to issue a certificate of redemption to the claimant, dated as of the date that the receipt was
38 issued under section 44e of this 2005 Act. If the court determines that the claimant is not
39 eligible to redeem, the court shall direct the sheriff to refund all amounts paid by the
40 claimant to the sheriff.

41 (4) If an objection is filed by a claimant under section 44d of this 2005 Act, the court shall
42 determine the proper redemption amount. If the court determines that the proper redemp-
43 tion amount is greater than the amount paid under section 44e of this 2005 Act, the court
44 shall direct the sheriff to issue a certificate of redemption to the claimant upon payment of
45 the additional amounts plus interest within 10 days after entry of the court's order, dated

1 as of the date that the receipt was issued under section 44e of this 2005 Act. If the additional
2 amounts and interest are not paid within the time allowed, the redemption is void and the
3 sheriff shall refund to the claimant all amounts paid to the sheriff. If the court determines
4 that the proper redemption amount is less than the amount paid under section 44e of this
5 2005 Act, the court shall direct the sheriff to issue a certificate of redemption to the claim-
6 ant, dated as of the date that the receipt was issued under section 44e of this 2005 Act, and
7 order a refund to the claimant of the amounts determined by the court to be in excess of the
8 proper redemption amount.

9 (5) Upon issuance of a certificate of redemption under this section, the sheriff shall de-
10 liver to the certificate holder the amount determined to be the proper redemption amount.

11 (6) If the court determines under subsection (4) of this section that the proper redemp-
12 tion amount is greater than the amount paid under section 44e of this 2005 Act, and deter-
13 mines that the amount specified in the redemption notice does not represent a good faith
14 attempt to determine the proper redemption amount, the court shall enter judgment against
15 the claimant for all attorney fees incurred by the certificate holder in the proceedings.

16 **SECTION 45. Accounting.** (1) A judgment debtor may require that a certificate holder
17 provide an accounting under this section by including a request for an accounting in the re-
18 demption notice. If a redemption notice includes a request for an accounting, the certificate
19 holder shall attach an accounting to the response given under section 44c of this 2005 Act.
20 The accounting must reflect:

21 (a) The amount of any taxes the certificate holder has paid on the property, with interest
22 at the rate of nine percent per annum from the date of payment.

23 (b) Any amounts necessarily expended by the certificate holder to prevent waste, with
24 interest at the rate of nine percent per annum from the date of payment.

25 (c) Any amounts that the certificate holder has paid on liens superior to the lien of the
26 certificate holder, with interest at the rate of nine percent per annum from the date of
27 payment.

28 (d) The net proceeds of rents, income or profits from the property by the certificate
29 holder while the certificate holder has been in possession of the property.

30 (2) If a redemption notice includes a request for an accounting and the certificate holder
31 fails to respond as required by section 44c of this 2005 Act, the time for paying the redemp-
32 tion amount is automatically extended to 30 days after the redemption date specified in the
33 redemption notice or until the time specified by subsection (4) of this section if a claimant
34 files a motion under subsection (3) of this section.

35 (3) If a redemption notice includes a request for an accounting, and the certificate holder
36 fails to respond as required by section 44c of this 2005 Act, the claimant may file a motion
37 with the court requesting an order requiring the certificate holder to show cause why the
38 certificate holder should not be held in contempt. A motion under this subsection must be
39 made not more than 28 days after the redemption notice is served on the certificate holder.
40 The claimant must deliver a copy of the motion to the sheriff.

41 (4) If a motion is filed under subsection (3) of this section:

42 (a) The time for redemption of the property is automatically extended to 30 days after
43 the accounting is provided by the certificate holder; and

44 (b) The time for paying the redemption amount is automatically extended to 30 days after
45 the accounting is provided by the certificate holder.

1 interest in land with an unexpired term of more than two years must be levied on and sold in
2 the same manner as provided for real property under sections 1 to 54 of this 2005 Act.

3 (2) The legal description required by section 7 (1)(e) of this 2005 Act in instructions to a
4 sheriff directing the sale of a purchaser's interest in a land sale contract, as defined by
5 section 37a of this 2005 Act, or the sale of a leasehold interest in land with an unexpired term
6 of more than two years must be of the property sold under the land sale contract, or of the
7 real property subject to the lease.

8 (3) There is no right of redemption if a purchaser's interest in a land sale contract, as
9 defined by section 37a of this 2005 Act, is sold at an execution sale pursuant to a judgment
10 enforcing the seller's rights under the contract and if the judgment directing the sale of the
11 purchaser's interest indicates that the purchaser's interest is sold without redemption
12 rights.

13 **SECTION 51. Seller's right to receive payments under land sale contract.** (1) Except as
14 provided by this section, the right of a seller to receive payments under a land sale contract,
15 as defined by section 37a of this 2005 Act:

16 (a) May not be sold pursuant to a writ of garnishment;

17 (b) May be sold only under a writ of execution in conjunction with a sale of the seller's
18 interest in the real property; and

19 (c) Must be levied on and sold in the same manner as provided for real property under
20 sections 1 to 54 of this 2005 Act.

21 (2) This section does not affect the ability of a judgment creditor to garnish payments
22 owed to a seller under a land sale contract, as defined by section 37a of this 2005 Act, that
23 are due within 45 days after the writ of garnishment is delivered, as provided by ORS 18.685
24 (5).

25 **SECTION 52. Equitable interests in property.** (1) Except as provided in subsection (3) of
26 this section, an equitable interest in property may be sold pursuant to a writ of execution
27 only if:

28 (a) An order or judgment specifically authorizes the sale of the equitable interest; and

29 (b) The writ of execution specifically directs the sale of the equitable interest.

30 (2) If a writ of execution specifically directs the sale of the equitable interest in property,
31 the judgment creditor must submit a copy of the order or judgment authorizing the sale with
32 the instructions to the sheriff required by section 7 of this 2005 Act.

33 (3) If a writ of execution specifically directs the sale of the equitable interest in real
34 property, the equitable interest shall be levied on and sold in the same manner as provided
35 for real property under sections 1 to 54 of this 2005 Act, except that section 7 (1)(e) of this
36 2005 Act does not apply to the instructions to a sheriff provided under section 7 of this 2005
37 Act.

38 (4) A purchaser's interest in a land sale contract, as defined by section 37a of this 2005
39 Act, or a leasehold interest in land with an unexpired term of more than two years, may be
40 sold pursuant to a writ of execution even though the sale is not specifically authorized by
41 an order or judgment and the writ does not specifically direct the sale of the interest.

42
43 MISCELLANEOUS
44

45 **SECTION 53. Referral of disputes to court.** If at any time a judgment debtor, judgment

1 creditor, purchaser or lien claimant objects to the performance by a sheriff of any duty im-
2 posed on the sheriff under sections 1 to 54 of this 2005 Act, the sheriff may give written
3 notice of the objection to the court and request that the court resolve the dispute. If written
4 notice is given to the court under this section, the court shall resolve the dispute and provide
5 such additional instructions to the sheriff as may be necessary.

6 **SECTION 54.** Nothing in sections 1 to 54 of this 2005 Act affects the ability of a court to
7 direct seizure of property under ORS 18.268 (2).

8 **SECTION 55.** ORS 18.005 is amended to read:

9 18.005. As used in this chapter:

10 (1) "Action" means any proceeding commenced in a court in which the court may render a
11 judgment.

12 (2) "Child support award" means a money award or agency order that requires the payment of
13 child support in installments and that is entered under ORS 108.010 to 108.550, 416.310 to 416.340,
14 416.400 to 416.470, 416.510 to 416.990, 419B.400 or 419C.590 or ORS chapter 25, 107, 109 or 110.

15 (3) "Civil action" means any action that is not a criminal action.

16 (4) "Claim" includes a charge in a criminal action.

17 (5) "Court administrator" means a trial court administrator in a circuit court that has a trial
18 court administrator and the clerk of the court in all other courts.

19 (6) "Criminal action" has the meaning given in ORS 131.005.

20 (7) "Execution" means enforcement of the money award portion of a judgment or enforcement
21 of a judgment requiring delivery of the possession or sale of specific real or personal property, by
22 means of writs of execution, writs of garnishment and other statutory or common law writs or
23 remedies that may be available under the law.

24 (8) "General judgment" means the judgment entered by a court that decides all claims in the
25 action except:

26 (a) A claim previously decided by a limited judgment; and

27 (b) A claim that may be decided by a supplemental judgment.

28 (9) "Judgment" means the concluding decision of a court on one or more claims in one or more
29 actions, as reflected in a judgment document.

30 (10) "Judgment document" means a writing in the form provided by ORS 18.038 that incorpo-
31 rates a court's judgment.

32 (11) "Judgment lien" means the effect of a judgment on real property as described in ORS 18.150
33 (2) and (3) for the county in which the judgment is entered, and as described in ORS 18.152 (2) and
34 (3) for a county in which the judgment is recorded under ORS 18.152. "Judgment lien" includes any
35 support arrearage lien attaching to real property under ORS 18.150 (3) or 18.152 (3).

36 (12) "Judgment remedy" means:

37 (a) The ability of a judgment creditor to enforce a judgment through execution; and

38 (b) Any judgment lien arising under ORS 18.150 or 18.152.

39 (13) "Limited judgment" means a judgment rendered before entry of a general judgment in an
40 action that disposes of at least one but fewer than all claims in the action and that is rendered
41 pursuant to a statute or other source of law that specifically authorizes disposition of fewer than
42 all claims in the action. "Limited judgment" includes:

43 (a) A judgment entered under ORCP 67 B or 67 G;

44 (b) A judgment entered before the conclusion of an action in a circuit court for the partition
45 of real property, defining the rights of the parties to the action and directing sale or partition; and

1 (c) An interlocutory judgment foreclosing an interest in real property.

2 (14) "Money award" means a judgment or portion of a judgment that requires the payment of
3 money.

4 (15) "Person" includes a public body as defined in ORS 174.109.

5 [(15)] (16) "Supplemental judgment" means a judgment that by law may be rendered after a
6 general judgment has been entered in the action and that affects a substantial right of a party.

7 [(16)] (17) "Support arrearage lien" means a lien that attaches to real property under the pro-
8 visions of ORS 18.150 (3) or 18.152 (3).

9 [(17)] (18) "Support award" means a money award or agency order that requires the payment
10 of child or spousal support in installments.

11 **SECTION 56.** ORS 18.322 is amended to read:

12 18.322. [Except as provided in ORS 18.536,] The judgment debtor's claim of exemption shall, upon
13 application of either plaintiff or judgment debtor, be adjudicated in a summary manner at a hearing
14 in the court out of which the execution issues.

15 **SECTION 57.** ORS 18.395 is amended to read:

16 18.395. (1) A homestead shall be exempt from sale on execution, from the lien of every judgment
17 and from liability in any form for the debts of the owner to the amount in value of \$25,000, except
18 as otherwise provided by law. The exemption shall be effective without the necessity of a claim
19 thereof by the judgment debtor. When two or more members of a household are debtors whose in-
20 terests in the homestead are subject to sale on execution, the lien of a judgment or liability in any
21 form, their combined exemptions under this section shall not exceed \$33,000. The homestead must
22 be the actual abode of and occupied by the owner, or the owner's spouse, parent or child, but the
23 exemption shall not be impaired by:

24 (a) Temporary removal or temporary absence with the intention to reoccupy the same as a
25 homestead;

26 (b) Removal or absence from the property; or

27 (c) The sale of the property.

28 (2) The exemption shall extend to the proceeds derived from such sale to an amount not ex-
29 ceeding \$25,000 or \$33,000, whichever amount is applicable under subsection (1) of this section, if
30 the proceeds are held for a period not exceeding one year and held with the intention to procure
31 another homestead therewith.

32 (3) The exemption period under subsection (1)(b) and (c) of this section shall be one year from
33 the removal, absence or sale, whichever occurs first.

34 (4) When the owner of a homestead has been granted a discharge in bankruptcy or has conveyed
35 the homestead property, the value thereof, for the purpose of determining a leviable interest in ex-
36 cess of the homestead exemption, shall be the value on the date of the petition in bankruptcy,
37 whether the value is determined in the bankruptcy proceedings or not, or on the date the
38 conveyance becomes effective, whichever shall first occur. However, with respect to judgments not
39 discharged in the bankruptcy, or entered against the owner after discharge, the value on the effec-
40 tive date of conveyance shall be controlling.

41 (5) Except as provided in subsection (7) of this section, no homestead that is the actual abode
42 of and occupied by the judgment debtor, or that is the actual abode of and occupied by a spouse,
43 dependent parent or dependent child of the judgment debtor, shall be sold on execution to satisfy a
44 judgment that at the time of entry does not exceed \$3,000. However, such judgment shall remain a
45 lien upon the real property, and the property may be sold on execution:

1 (a) At any time after the sale of the property by the judgment debtor; and

2 (b) At any time after the property is no longer the actual abode of and occupied by the judgment
3 debtor or the spouse, dependent parent or dependent child of the judgment debtor.

4 (6) The limitation on execution sales imposed by subsection (5) of this section is not impaired
5 by temporary removal or temporary absence with the intention to reoccupy the property as a
6 homestead.

7 (7) The limitation on execution sales imposed by subsection (5) of this section does not apply if
8 two or more judgments are owing to a single judgment creditor and the total amount owing to the
9 judgment creditor, determined by adding the amount of each individual judgment as of the date the
10 judgment was entered, is greater than \$3,000.

11 (8) Upon the issuance of an order authorizing sale as *provided in ORS 18.536* **required by**
12 **section 16 of this 2005 Act**, and in conformance with subsection (5) of this section, the *levying*
13 *officer* **sheriff** may proceed to *advertise and* sell the property. If the homestead exemption applies,
14 the *levying officer* **sheriff** shall pay the homestead owner out of the proceeds the sum of \$25,000
15 or \$33,000, whichever is applicable, and apply the balance of the proceeds on the execution. How-
16 ever, no sale shall be made where the homestead exemption applies unless the sum bid for the
17 homestead is in excess of the sum of the costs of sale and \$25,000 or \$33,000, whichever is applica-
18 ble. If no such bid is received, the expense of the *advertising and preparation for* sale shall be borne
19 by the petitioner.

20 **(9) The homestead exemption provided by this section applies to a purchaser's interest**
21 **under a land sale contract, as defined by section 37a of this 2005 Act.**

22 **SECTION 58.** ORS 18.398 is amended to read:

23 18.398. (1) It is the policy of this state:

24 (a) To afford protection to the debtor and the debtor's family homestead through the homestead
25 exemption;

26 (b) To maintain dependent children from the financial resources of both parents of those chil-
27 dren;

28 (c) That the homestead exemption should not be permitted to serve as a shield for a debtor's
29 evasion of child support obligations;

30 (d) That the burden for that support should not be shifted in all cases to the present family of
31 the debtor through the sale of the family residence; and

32 (e) That to accommodate these policies, the court should have the discretion to decline to allow
33 all or part of a claimed homestead exemption in cases involving child support as provided in this
34 section.

35 (2) Notwithstanding ORS 18.395 to 18.422, a court in its discretion may decline to allow a
36 homestead exemption in whole or part in any proceeding under *ORS 18.536* **section 19 of this 2005**
37 **Act** if the proceeding is based on a judgment for child support that arises out of an order or judg-
38 ment under ORS 24.115, 107.095, 107.105, 107.135, 108.120, 109.100, 109.103, 109.155, 109.165, 416.400
39 to 416.470, 419B.400 or 419C.590 or ORS chapter 110 or 125.

40 (3) In exercising the discretion granted under subsection (1) of this section, the court shall
41 consider:

42 (a) The financial resources of both parties;

43 (b) The number of dependents of each of the parties;

44 (c) The ages, health and conditions of parties and their dependents;

45 (d) The child support payment history of the judgment debtor on the judgment which is the

1 subject of the petition; and

2 (e) Other collection attempts by the judgment creditor on the judgment which is the subject of
3 the petition.

4 (4) This section shall not apply to any proceeding under [*ORS 18.536*] **section 19 of this 2005**
5 **Act** brought by or on the behalf of the state or any agency of the state.

6 **SECTION 58a.** ORS 18.406 is amended to read:

7 18.406. ORS 18.395 to 18.422 do not apply to construction liens for work, labor or material done
8 or furnished exclusively for the improvement of the homestead property, to purchase money liens
9 [or], to mortgages lawfully executed, **or to the enforcement of a seller's rights under a land sale**
10 **contract, as defined by section 37a of this 2005 Act.**

11 **SECTION 59.** ORS 18.428 is amended to read:

12 18.428. (1) **Except as otherwise provided by law, a [*mobile home*], **manufactured dwelling or****
13 **floating home** and the property upon which the [*mobile home*] **manufactured dwelling or floating**
14 **home** is situated[, *that is the actual abode of and occupied by the owner, or the owner's spouse, parent*
15 *or child, when that mobile home is occupied as a sole residence and no other homestead exemption*
16 *exists, shall be*] **are** exempt from execution and from liability in any form for the debts of the owner
17 to the value of \$23,000[, *except as otherwise provided by law*] **if the manufactured dwelling or**
18 **floating home is the actual abode of and occupied by the owner, or by the spouse, parent or**
19 **child of the owner, the manufactured dwelling or floating home is occupied as a sole resi-**
20 **dence and no other homestead exemption exists.** When two or more members of a household are
21 debtors whose interests in the homestead are subject to sale on execution, the lien of a judgment
22 or liability in any form, their combined exemptions under this section may not exceed \$30,000. The
23 exemption shall be effective without the necessity of a claim thereof by the judgment debtor.

24 (2) The exemption provided for in subsection (1) of this section is not impaired by temporary
25 removal or absence with the intention to reoccupy the [*mobile property*] **manufactured dwelling**
26 **or floating home** as a home, nor by the sale thereof, but shall extend to the proceeds derived from
27 such sale up to \$23,000 or \$30,000, whichever amount is applicable under subsection (1) of this sec-
28 tion, while the proceeds are held for a period not exceeding one year and with the intention to
29 procure another [*mobile or other*] homestead [*therewith*] **with those proceeds.**

30 (3) Upon the issuance of an order authorizing sale as [*provided in ORS 18.536*] **required by**
31 **section 16 of this 2005 Act**, the [*levying officer*] **sheriff** may proceed to [*advertise and*] sell the
32 premises and, if the homestead exemption applies, out of the proceeds pay the [*mobile home*] owner
33 the sum of \$23,000 or \$30,000, whichever amount is applicable under subsection (1) of this section,
34 and apply the balance of the proceeds on the execution. However, no sale shall be made where the
35 homestead exemption applies unless the sum bid for the property is in excess of the sum of the costs
36 of sale and \$23,000 or \$30,000, whichever amount is applicable. If no such bid is received, the ex-
37 pense of the [*advertising and preparation for*] sale shall be borne by the petitioner.

38 (4) The provisions of subsections (1), (2), (3) and (7) of this section do not apply to construction
39 liens for work, labor or material done or furnished exclusively for the improvement of the [*mobile*
40 *home*] **manufactured dwelling or floating home**, or to purchase money liens and to mortgages
41 lawfully executed, or to executions issued on a judgment recovered for the purchase price.

42 (5) If a debtor owns a [*mobile home*] **manufactured dwelling or floating home** but not the
43 property upon which the [*mobile home*] **manufactured dwelling or floating home** is situated, sub-
44 sections (1), (2), (3) and (4) of this section [*shall*] apply, but the value of the debtor's interest exempt
45 from execution and liability may not exceed \$20,000 for an individual debtor, or \$27,000 when two

1 or more members of a household are debtors whose interests in the homestead are subject to exe-
2 cution or liability in any form.

3 (6) When the owner of a homestead under this section has been granted a discharge in bank-
4 ruptcy or has conveyed the property, the value thereof, for the purpose of determining a leviable
5 interest in excess of the homestead exemption, shall be the value on the date of the petition in
6 bankruptcy, whether the value is determined in the bankruptcy proceedings or not, or on the date
7 the conveyance becomes effective, whichever shall first occur.

8 (7) Except as provided in subsection (9) of this section, [*no mobile home*] **a manufactured**
9 **dwelling or floating home**, [*or*] **and the** property upon which the [*mobile home*] **manufactured**
10 **dwelling or floating home** is situated, that is the actual abode of and occupied by the judgment
11 debtor, or that is the actual abode of and occupied by a spouse, dependent parent or dependent child
12 of the judgment debtor, [*shall*] **may not** be sold on execution to satisfy a judgment that at the time
13 of entry does not exceed \$3,000. The judgment shall remain a lien upon the real property owned by
14 the judgment debtor and upon which the [*mobile home*] **manufactured dwelling or floating home**
15 is situated, and the [*mobile home*] **manufactured dwelling or floating home** and real property upon
16 which [*it*] **the manufactured dwelling or floating home** is situated may be sold on execution:

17 (a) At any time after the sale of the [*mobile home*] **manufactured dwelling or floating home**
18 **by the judgment debtor, or the sale of the real property on which the manufactured dwelling**
19 **or floating home is situated** by the judgment debtor; and

20 (b) At any time after the [*mobile home*] **manufactured dwelling or floating home** [*or real*
21 *property*] is no longer the actual abode of and occupied by the judgment debtor or the spouse, de-
22 pendent parent or dependent child of the judgment debtor.

23 (8) The limitation on execution sales imposed by subsection (7) of this section is not impaired
24 by temporary removal or absence with the intention to reoccupy the [*mobile home*] **manufactured**
25 **dwelling, floating home** and property as a home.

26 (9) The limitation on execution sales imposed by subsection (7) of this section does not apply if
27 two or more judgments are owing to a single judgment creditor and the total amount owing to the
28 judgment creditor, determined by adding the amount of each individual judgment as of the date the
29 judgment was entered, is greater than \$3,000.

30 (10) As used in this section[, *unless the context requires otherwise, "mobile home" includes, but*
31 *is not limited to, a houseboat.*]:

32 (a) **"Floating home" has the meaning given that term in ORS 830.700.**

33 (b) **"Manufactured dwelling" has the meaning given that term in ORS 446.003.**

34 **SECTION 60.** ORS 18.472 is amended to read:

35 18.472. (1) If support enforcement services are being provided under ORS 25.080, the adminis-
36 trator as defined in ORS 25.010 may issue a writ of execution for the support award portion of the
37 judgment for which support enforcement services are being provided. A copy of the writ of execution
38 must be filed with the circuit court of the county in which the judgment was entered or recorded.
39 A writ of execution issued under this section must be executed by the sheriff in the same manner
40 as a writ issued by the court administrator [*under ORS 18.468*].

41 (2) The Department of Justice shall adopt an appropriate form for writs of execution under this
42 section. The form must be substantially as set forth for writs of execution [*issued under ORS*
43 *18.468*] **described in section 2 of this 2005 Act.**

44 **SECTION 61.** ORS 18.505 is amended to read:

45 18.505. (1) Except as provided in subsection (2) of this section, a judgment debtor may use a

1 challenge to execution form only to claim such exemptions under a writ of execution as are per-
2 mitted by law.

3 (2) A judgment debtor may not use a challenge to execution form to challenge execution on
4 residential [*real*] property [*or a mobile home*] of the debtor **as defined by section 15 of this 2005**
5 **Act** if the judgment creditor has obtained an order under [*ORS 18.536*] **section 16 of this 2005 Act**
6 authorizing the sale or if the judgment directs the sale or delivery of specific property.

7 (3) Any person other than a judgment debtor who has an interest in any [*personal*] property
8 [*seized*] **levied on** by a sheriff [*under ORS 18.476, or in any real property or a mobile home for which*
9 *a notice of an execution sale has been given under ORS 18.532,*] may assert that interest by delivering
10 a challenge to execution in the manner provided by subsection (4) of this section.

11 (4) A person may make a challenge to an execution by completing the challenge to execution
12 form provided in ORS 18.512, or a substantially similar form, and by delivering, in person or by first
13 class mail, the original of the completed form to the court administrator for the court identified in
14 the writ of execution and a copy of the challenge to the person who requested issuance of the writ.

15 **(5) A challenge to execution must be delivered in the manner provided by subsection (4)**
16 **of this section within 30 days after the property is levied on as described in section 8 of this**
17 **2005 Act or before the property is sold on execution, whichever occurs first.**

18 [*(5) A challenge to execution against personal property must be delivered in the manner provided*
19 *by subsection (4) of this section within 30 days after the property is seized under ORS 18.476, or before*
20 *the property is sold on execution, whichever is first.*]

21 [*(6) A judgment debtor must deliver a challenge to execution against real property or a mobile*
22 *home in the manner provided in subsection (4) of this section within 30 days after mailing of the notice*
23 *required by ORS 18.532, or before the property is sold on execution, whichever is first.*]

24 **SECTION 62.** ORS 18.600 is amended to read:

25 18.600. As used in ORS 18.600 to 18.850:

26 (1) “Check” has the meaning given that term in ORS 73.0104.

27 (2) “Creditor” means a person to whom a debt is owed by a debtor.

28 (3) “Debt” means any monetary obligation for which a garnishment may be issued under ORS
29 18.605.

30 (4) “Debtor” means a person whose property is being garnished for the purpose of paying a debt
31 owed to a creditor.

32 (5) “Financial institution” means a financial institution or trust company as those terms are
33 defined in ORS 706.008.

34 (6) “Garnishable property” means all property described in ORS 18.615, but does not include:

35 (a) Any property that is not subject to garnishment under ORS 18.618; and

36 (b) Any property that is applied as a setoff under ORS 18.620 or 18.795.

37 (7) “Garnishee” means a person to whom a writ of garnishment has been delivered.

38 (8) “Garnishor” means:

39 (a) The creditor, if the writ is issued by the court administrator on behalf of the creditor under
40 ORS 18.635 (2); or

41 (b) The issuer, if the writ is issued under ORS 18.635 by any person other than the court ad-
42 ministrator.

43 (9) “Past due support” means the amount of child or spousal support, or both, determined under
44 a court or administrative order in a proceeding under ORS chapter 107, 108, 109, 110, 416, 419B or
45 419C that has not been paid or is certified to be owed by another state under ORS 25.083.

1 [(10) "Person" includes any public body, as defined in ORS 174.109.]

2 [(11)] (10) "Wages" includes all amounts paid for the services of an employee by an employer,
3 including amounts paid as a commission or bonus.

4 [(12)] (11) "Writ" means a writ of garnishment.

5 **SECTION 63.** ORS 18.618 is amended to read:

6 18.618. (1) Notwithstanding ORS 18.615, the following are not garnishable property:

7 (a) Equitable interests.

8 (b) Property in the custody of the law.

9 (c) Property in the possession of a conservator.

10 (d) Property in the possession of a personal representative that constitutes the subject matter
11 of a trust contained in a duly probated will of a decedent.

12 (e) **The right of a seller under a land sale contract, as defined by section 37a of this 2005**
13 **Act, to receive payments that are due more than 45 days after the writ of garnishment is**
14 **delivered.**

15 (2) Notwithstanding any other provision of law, if a voluntary or involuntary bankruptcy peti-
16 tion has been filed by or on behalf of the debtor after a writ of garnishment could be issued under
17 ORS 18.605, the garnishment of any property of the debtor in the garnishee's possession, control or
18 custody is stayed pursuant to section 362 of the United States Bankruptcy Code (11 U.S.C. 101 to
19 1330).

20 **SECTION 64.** ORS 18.750 is amended to read:

21 18.750. (1) A garnishee shall not deliver the property described in this section to the garnishor.
22 If the garnishor seeks to apply the property described in this section against the debt of the debtor,
23 the property must be sold by the sheriff in the manner specified in ORS 18.750 to 18.760.

24 (2) The provisions of ORS 18.750 to 18.760 apply to:

25 (a) **Except as provided in ORS 18.618 (1)(e)**, any money owed by a garnishee to a debtor the
26 payment of which is not due at the time the writ of garnishment is delivered to the garnishee and
27 the payment of which does not become due within 45 days after the date of delivery;

28 (b) Property of the debtor that the garnishee holds under an unexpired bailment or lease;

29 (c) Property of the debtor in which the garnishee has a security interest that was granted to the
30 garnishee by the debtor before the delivery of the writ; and

31 (d) Any other garnishable property that is not payable in money.

32 (3) The property described in subsection (2)(a) to (c) of this section must be delivered by the
33 garnishee to the purchaser in the manner provided by ORS 18.758 (3) if the interest of the debtor
34 in the property is sold by the sheriff under ORS 18.758. Subject to the provisions of ORS 18.755, the
35 garnishee must deliver to the sheriff any other garnishable property that is not payable in money
36 upon receiving notice from the sheriff under ORS 18.755 (4).

37 **SECTION 65.** ORS 18.685 is amended to read:

38 18.685. A garnishee must note upon a garnishee response the date on which the garnishee re-
39 ceived the writ of garnishment. The garnishee must also note upon the response the following in-
40 formation and deliver the response in the manner provided by ORS 18.690:

41 (1) If the garnishee discovers that a voluntary or involuntary bankruptcy petition has been filed
42 by or on behalf of the debtor and the petition was filed after the date shown on the face of the writ
43 as the date on which the judgment was entered or otherwise first became subject to garnishment.

44 (2) If the garnishee does not employ the debtor and the garnishee does not have any garnishable
45 property of the debtor in the possession, control or custody of the garnishee, the garnishee must so

1 note on the response.

2 (3) If the garnishee employs the debtor, the garnishee must so state on the response and make
3 all other responses required by this section or ORS 18.688. The garnishee must thereafter make
4 payment under the writ in the manner provided by ORS 18.735.

5 (4) If the garnishee has any cash belonging to the debtor, or the garnishee owes any money to
6 the debtor other than wages that is due as of the time the response is made, the garnishee must so
7 note on the response. The garnishee must make payment with the response in the manner provided
8 by ORS 18.730 of the amount subject to the garnishment, or of such amount as will satisfy the
9 garnishment, whichever amount is less.

10 (5) If the garnishee owes any money to the debtor other than wages that is not due as of the
11 time the response is made but that will become due within 45 days after the time the [*response is*
12 *made*] **writ is delivered**, the garnishee must so note on the response. When the money becomes due,
13 the garnishee must make payment in the manner provided by ORS 18.732 of the amount subject to
14 the garnishment, or of such amount as will satisfy the garnishment, whichever amount is less.

15 (6) **Except as provided in ORS 18.618 (1)(e)**, if the garnishee owes any money to the debtor
16 other than wages that is not due as of the time the response is made and the money will not become
17 due within 45 days after the time the [*response is made*] **writ is delivered**, the garnishee must so
18 note on the response. The garnishee must thereafter comply with ORS 18.750 to 18.760.

19 (7) If the garnishee has any garnishable property of the debtor in the possession, control or
20 custody of the garnishee that is not cash or owed money, the garnishee must so note on the re-
21 sponse. The garnishee must thereafter comply with ORS 18.750 to 18.760.

22 (8) If the garnishee can determine from the writ that the garnishee may owe money to or hold
23 garnishable property of the debtor, but is not sure what or how much, the garnishee must so state
24 on the response and must state that the garnishee will file an amended response when the garnishee
25 determines what or how much money or property the garnishee owes or holds.

26 (9) If the garnishee determines that the writ of garnishment does not comply on its face with
27 ORS 18.600 to 18.850, or if the garnishee is unable to determine the identity of the debtor from the
28 information contained in the writ, the writ of garnishment is ineffective to garnish the property of
29 the debtor. The garnishee must so note on the response and provide an explanation.

30 (10) If, before delivering the garnishee response, the garnishee receives an order to withhold
31 income issued under ORS chapter 25 that applies to the income of the debtor, the garnishee must
32 so note on the response. The garnishee must provide details of the order to withhold income, in-
33 cluding the name of the agency serving the order, the date the order was served on the garnishee
34 and the amount to be withheld. If the garnishee employs the debtor, the garnishee must make the
35 responses required under ORS 18.688.

36 (11) If the garnishee receives notice of a challenge to the garnishment before delivering the re-
37 sponse, the garnishee must so note on the response. The garnishee must thereafter comply with ORS
38 18.708.

39 **SECTION 66.** ORS 18.835 is amended to read:

40 18.835. A garnishee response must be in substantially the following form:

41 _____

42
43 _____ COURT
44 COUNTY OF _____
45

1 _____)
 2 Plaintiff,) GARNISHEE
 3) RESPONSE
 4 vs.) Case No. _____
 5)
 6 _____)
 7 Defendant.)

8
 9 The writ of garnishment was delivered to me on the ____ day of _____, 2____. The following
 10 responses are accurate and complete as of that date.
 11 _____

12
 13 PART I: DEBTOR'S PROPERTY
 14 GENERALLY
 15 (ALL GARNISHEES MUST FILL OUT
 16 THIS PORTION OF THE RESPONSE)
 17

18 Place a check in front of all the following statements that apply. You may need to check more than
 19 one statement.
 20

21 — I have discovered that a voluntary or involuntary bankruptcy petition has been filed by or
 22 on behalf of the Debtor after the date shown on the face of the writ as the date on which
 23 the judgment was entered against the Debtor or after the debt otherwise became subject to
 24 garnishment. (You need not complete any other part of this response, but you must sign the
 25 response and deliver it in the manner specified in Step 2 of the Instructions to Garnishee
 26 form.)
 27

28 — I do not employ the Debtor, I do not have in my possession, control or custody any personal
 29 property of the Debtor, and I do not owe any debts or other obligations to the Debtor.
 30

31 — I employ the Debtor. (You must complete Part II of this response.)
 32

33 — I have in my possession, control or custody money that belongs to the Debtor (other than
 34 wages), or I owe a debt or other obligation to the Debtor (other than wages) that is due as
 35 of the time of this response. I am forwarding this money, or enough of it to satisfy the
 36 garnishment, to the Garnishor.
 37

38 — I owe a debt or other obligation to the Debtor (other than wages) that *[is]* **was** not due as
 39 of the time of this response but will become due within 45 days **after the writ was deliv-**
 40 **ered to me.** I will forward the money, or enough of it to satisfy the garnishment, to the
 41 Garnishor when the debt or other obligation becomes due.
 42

43 — I owe the following debt or other obligation to the Debtor (other than wages) that will not
 44 become due within 45 days *[of the time of this response]* **after the date that the writ was**
 45 **delivered to me.** I will not make any payments on the debt or obligation until I receive

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instructions from the Sheriff or until 30 days have passed from the date on which I deliver this response. (See Instructions to Garnishee form.)

— I have in my possession, control or custody the following personal property (other than money) that belongs to the Debtor. I will hold all of the property for the Garnishor until I receive instructions from the Sheriff or until 30 days have passed from the date on which I deliver this response. (See Instructions to Garnishee form.)

— I may owe money to or hold property of the Debtor, but I am not sure what or how much it might be. (You must provide an explanation in the following space and you must deliver an amended response when you find out. You must deliver an amended response even if you find out that you have no property of the Debtor or owe no money to the Debtor.)

— The writ of garnishment delivered to me, on its face, does not comply with the Oregon laws governing writs of garnishment, or I cannot determine the identity of the Debtor from the information in the writ. (You must provide an explanation in the following space.)

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— I have received an order to withhold income that applies to the income of the Debtor. The order to withhold income has priority over the writ of garnishment, and compliance with the order will reduce or eliminate the money that I would otherwise deliver under the writ. (Provide details, including the name of the agency serving the order to withhold income, the date the order was served on you and the amount to be withheld. If you employ the Debtor, you must still complete Part II of this response.)

— I have received notice of a challenge to the garnishment. I will deliver to the court administrator all money that I would otherwise deliver to the Garnishor. (See Step 3 of Instructions to Garnishee form.)

— Other (Explain)

**PART II: DEBTOR'S EMPLOYER
(GARNISHEES WHO EMPLOY THE
DEBTOR MUST FILL OUT THIS
PORTION OF THE RESPONSE)**

Place a check in front of all the following statements that apply. You may need to check more than one statement.

NOTE: THE LAW PROHIBITS DISCHARGE OF THE DEBTOR FROM EMPLOYMENT BY REASON OF GARNISHMENT.

1 — I employ the Debtor. The Debtor is paid on a _____ basis (insert “weekly,” “monthly” or
2 other pay period). Wages will next be payable to the Debtor on the _____ day of _____,
3 2____. I will complete a Wage Exemption Calculation form for each payment of wages that is
4 made during the 90-day period immediately following the date that the writ of garnishment
5 was delivered to me. I will also complete a Wage Exemption Calculation form for the payday
6 immediately following the end of the 90-day period. I will forward to the Garnishor on each
7 of these occasions those wages calculated to be subject to garnishment, or enough of those
8 wages to satisfy the garnishment.

9
10 — I had already received a writ of garnishment from another Garnishor before this writ was
11 delivered to me. Under Oregon law, the previous writ has priority. The previous writ will
12 terminate on the _____ day of _____, 2____.

13 _____
14

15 I hereby certify that I have fully and accurately completed this garnishee response.

16

17 Dated _____, 2____

18

19 _____

20 Name of Garnishee

21

22 _____

23 Signature

24

25 Telephone number _____

26

27 Fax number (if available) _____

28

29 _____

30 Address

31

32 _____

33 **SECTION 67.** ORS 18.910 is amended to read:

34 18.910. This section establishes the right of a plaintiff to recover certain moneys the plaintiff
35 has expended to recover a debt under ORS 18.900 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 \$4 for each
20 garnishment.

21 **(I) Costs of an execution sale as described in section 35 (2) of this 2005 Act.**

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

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

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

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

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

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

35 (8) A writ of garnishment or attachment is not valid if issued solely to recover moneys recov-
36 erable under subsection (1)(a) of this section unless the right to collect the moneys is first reduced
37 to a judgment or to a debt enforceable under ORS 18.900.

38 **SECTION 68.** ORS 88.080 is amended to read:

39 88.080. A judgment of foreclosure shall order the mortgaged property sold. Property sold on ex-
40 ecution issued upon a judgment may be redeemed in like manner and with like effect as property
41 sold [on] **at** an execution **sale** pursuant to [ORS 18.478, 18.486, 18.532, 18.536, 18.538, 18.542, 18.545,
42 18.548, 18.552, 18.555, 18.562, 18.565, 18.568, 18.572, 18.578, 18.582, 18.585, 18.588, 18.594 and 18.598]
43 **sections 1 to 54 of this 2005 Act**, and not otherwise. A sheriff's deed for property sold on execution
44 issued upon a judgment shall have the same force and effect as a sheriff's deed issued for property
45 sold [on] **at** an execution **sale** pursuant to [ORS 18.478, 18.486, 18.532, 18.536, 18.538, 18.542, 18.545,

1 18.548, 18.552, 18.555, 18.562, 18.565, 18.568, 18.572, 18.578, 18.582, 18.585, 18.588, 18.594 and 18.598]
 2 **sections 1 to 54 of this 2005 Act.**

3 **SECTION 69.** ORS 407.375 is amended to read:

4 407.375. (1) When the Director of Veterans' Affairs offers for sale a home or farm obtained for
 5 and in behalf of the state under ORS 407.135 and 407.145 (1), the director shall provide notice of the
 6 proposed sale to prospective purchasers. The notice shall state the minimum bid that will be ac-
 7 cepted.

8 (2) Subject to subsection (3) of this section, the director shall accept the highest such bid or
 9 offer received during the 15-day period after a home or farm acquired under ORS 407.135 or 407.145
 10 (1) is first offered for sale unless the person making the highest bid or offer is disqualified from such
 11 purchase based on prior credit history, inadequate income or other grounds for refusal established
 12 in rules adopted by the director. Prior to such refusal, the person making the highest bid or offer
 13 shall be given the opportunity to purchase the property for cash.

14 (3) When the highest bid under subsection (2) of this section is made by a person who is not
 15 eligible for a loan under Article XI-A of the Oregon Constitution, the person who submits the high-
 16 est bid or offer received from those persons eligible for a loan under Article XI-A of the Oregon
 17 Constitution shall be given the opportunity to purchase the property for the amount bid by the
 18 highest bidder. The property must be purchased by matching the highest bid within a period of time
 19 and at a place specified by rule of the director.

20 (4) When the director sells a home or farm obtained under ORS 407.135 or 407.145 (1) to a per-
 21 son, the director may accept improvement of the property by such purchaser in lieu of other means
 22 of satisfying the requirements of ORS 407.225 (3). For the purpose of this section, all purchasers are
 23 subject to the provisions of ORS 407.225 (3). The director shall require the purchaser to provide an
 24 improvement plan containing a description of the proposed improvements to be made and the cost
 25 of the necessary work and materials. An appraiser employed by the director must certify that the
 26 ratio of the purchase price and the net appraised value of the home and farm after the proposed
 27 improvement is completed will satisfy the requirements of ORS 407.225 (3). The director may then
 28 approve the sale subject to the condition that the improvement of the home or farm be completed
 29 within 180 days after purchase. Failure by the applicant to complete the improvement within the
 30 time allowed shall be considered a breach of the purchase agreement and grounds for foreclosure
 31 by the director. Upon timely application and a showing that the improvement cannot be completed
 32 within the time allowed because of circumstances beyond the applicant's control, the director may
 33 grant the applicant an additional period not to exceed 180 days in which to complete the improve-
 34 ment.

35 (5) The rate of interest for a contract made for the acquisition of a home or farm obtained by
 36 the director under ORS 407.135 or 407.145 (1) shall be the rate per annum prescribed by the director.

37 (6) Notwithstanding subsection (5) of this section, if the provisions of subsections (1) to (3) of
 38 this section have been complied with and no satisfactory bid has been received, the director, after
 39 considering the time value of money, may sell the home or farm at a private negotiated sale at any
 40 price or at any rate of interest, either fixed or variable, that the director considers to be necessary
 41 and prudent to sell the property and that provides an economic benefit to the home and farm loan
 42 program that is equivalent to the property being marketed at the current appraised value of the
 43 property and the rate prescribed under subsection (5) of this section.

44 (7) Except as provided in this subsection, redemption of a home or farm obtained and sold by
 45 the director under ORS 407.135 or 407.145 (1) shall be made as provided in [ORS 18.565 to 18.594]

1 **sections 37a to 48 of this 2005 Act.** When the director accepts improvement of property by a pur-
 2 chaser in lieu of purchase money or cash down payment under subsection (4) of this section, re-
 3 demption shall be made by paying an amount equal to the fair market value of those improvements
 4 actually made to the property under the improvement plan described in subsection (4) of this section,
 5 with interest thereon at the rate of nine percent per annum from the date of sale. The director shall
 6 determine the fair market value of the improvements and such amount shall be paid in addition to
 7 the amount of purchase money and interest thereon required under [ORS 18.582 (2)] **sections 41 and**
 8 **42 of this 2005 Act.**

9 **SECTION 70.** ORS 540.610 is amended to read:

10 540.610. (1) Beneficial use shall be the basis, the measure and the limit of all rights to the use
 11 of water in this state. Whenever the owner of a perfected and developed water right ceases or fails
 12 to use all or part of the water appropriated for a period of five successive years, the failure to use
 13 shall establish a rebuttable presumption of forfeiture of all or part of the water right.

14 (2) Upon a showing of failure to use beneficially for five successive years, the appropriator has
 15 the burden of rebutting the presumption of forfeiture by showing one or more of the following:

16 (a) The water right is for use of water, or rights of use, acquired by cities and towns in this
 17 state, by appropriation or by purchase, for all reasonable and usual municipal purposes.

18 (b) A finding of forfeiture would impair the rights of such cities and towns to the use of water,
 19 whether acquired by appropriation or purchase, or heretofore recognized by act of the legislature,
 20 or which may hereafter be acquired.

21 (c) The use of water, or rights of use, are appurtenant to property obtained by the Department
 22 of Veterans' Affairs under ORS 407.135 or 407.145 for three years after the expiration of [*redemp-*
 23 *tions as provided in ORS 18.568 to 18.598*] **the period of redemption provided for in section 40**
 24 **of this 2005 Act** while the land is held by the Director of Veterans' Affairs, even if during such time
 25 the water is not used for a period of more than five successive years.

26 (d) The use of water, or rights of use, under a water right, if the owner of the property to which
 27 the right is appurtenant is unable to use the water due to economic hardship as defined by rule by
 28 the Water Resources Commission.

29 (e) The period of nonuse occurred during a period of time within which land was withdrawn
 30 from use in accordance with the Act of Congress of May 28, 1956, chapter 327 (7 U.S.C. 1801-1814;
 31 1821-1824; 1831-1837), or the Federal Conservation Reserve Program, Act of Congress of December
 32 23, 1985, chapter 198 (16 U.S.C. 3831-3836, 3841-3845). If necessary, in a cancellation proceeding un-
 33 der this section, the water right holder rebutting the presumption under this paragraph shall provide
 34 documentation that the water right holder's land was withdrawn from use under a federal reserve
 35 program.

36 (f) The end of the alleged period of nonuse occurred more than 15 years before the date upon
 37 which evidence of nonuse was submitted to the commission or the commission initiated cancellation
 38 proceedings under ORS 540.631, whichever occurs first.

39 (g) The owner of the property to which the water right was appurtenant is unable to use the
 40 water because the use of water under the right is discontinued under an order of the commission
 41 under ORS 537.775.

42 (h) The nonuse occurred during a period of time within which the water right holder was using
 43 reclaimed water in lieu of using water under an existing water right.

44 (i) The nonuse occurred during a period of time within which the water right holder was reusing
 45 water through land application as authorized by ORS 537.141 (1)(i) or 537.545 (1)(g) in lieu of using

1 water under an existing water right.

2 (j) The owner or occupant of the property to which the water right is appurtenant was unable
3 to make full beneficial use of the water because water was not available. A water right holder re-
4 butting the presumption under this paragraph shall provide evidence that the water right holder
5 was ready, willing and able to use the water had it been available.

6 (k) The holder of a water right is prohibited by law from using the water. If the prohibition is
7 subject to remedial action that would allow the use of the water, the water right holder shall pro-
8 vide evidence that the water right holder is conducting the remedial action with reasonable dili-
9 gence.

10 (L) The nonuse occurred during a period of time within which the exercise of all or part of the
11 water right was not necessary due to climatic conditions, so long as the water right holder had a
12 facility capable of handling the full allowed rate and duty, and was otherwise ready, willing and able
13 to use the entire amount of water allowed under the water right.

14 (m) The nonuse occurred during a period of time within which the water was included in a
15 transfer application pending before the Water Resources Department.

16 (3) Notwithstanding subsection (1) of this section, if the owner of a perfected and developed
17 water right uses less water to accomplish the beneficial use allowed by the right, the right is not
18 subject to forfeiture so long as:

19 (a) The user has a facility capable of handling the entire rate and duty authorized under the
20 right; and

21 (b) The user is otherwise ready, willing and able to make full use of the right.

22 (4) The right of all cities and towns in this state to acquire rights to the use of the water of
23 natural streams and lakes, not otherwise appropriated, and subject to existing rights, for all rea-
24 sonable and usual municipal purposes, and for such future reasonable and usual municipal purposes
25 as may reasonably be anticipated by reason of growth of population, or to secure sufficient water
26 supply in cases of emergency, is expressly confirmed.

27 (5) After a water right is forfeited under subsection (1) of this section, the water that was the
28 subject of use shall revert to the public and become again the subject of appropriation in the manner
29 provided by law, subject to existing priorities.

30 **SECTION 71. ORS 18.472, 18.505, 18.508, 18.512, 18.515 and 18.518 are added to and made**
31 **a part of sections 1 to 54 of this 2005 Act.**

32 **SECTION 72. Sections 1 to 54 of this 2005 Act are added to and made a part of ORS 18.252**
33 **to 18.850.**

34 **SECTION 73. ORS 18.465, 18.468, 18.476, 18.478, 18.482, 18.486, 18.492, 18.494, 18.532, 18.536,**
35 **18.538, 18.542, 18.545, 18.548, 18.552, 18.555, 18.562, 18.565, 18.568, 18.572, 18.578, 18.582, 18.585,**
36 **18.588, 18.594 and 18.598 are repealed.**

37 **SECTION 74. The unit and section captions used in this 2005 Act are provided only for**
38 **the convenience of the reader and do not become part of the statutory law of this state or**
39 **express any legislative intent in the enactment of this 2005 Act.**

40