2013 OREGON LEGISLATION HIGHLIGHTS

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Most bills passed during the 2013 session have special effective dates. These dates are noted in the description of each bill.

If a special effective date is not proscribed in a bill, it takes effect on January 1, 2014.

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FORWARD

The annual *Oregon Legislation Highlights* offers a timely and authoritative resource to help lawyers catch up on the latest legislative developments.

This book highlights more than 200 bills and other measures that were passed by both houses of the legislature. This book does not describe all of the enacted legislation. *Unless otherwise noted, all legislation takes effect on January 1, 2014.*

The information in this book is organized into chapters by subject. If a bill has a special effective date, that date is noted at the end of the discussion of that bill. Please note that in some cases a bill may have more than one effective date. If in doubt about an effective date of a law, always check the enacting legislation.

Each bill is identified – in the chapter outline and in the text – by its bill number and its 2013 Oregon Laws chapter number. A table of bill numbers and Oregon Laws chapter numbers appears at the end of the book for a quick reference to the discussion in the text.

The legislature's website offers additional information that the reader of this book may find useful. This includes measure summaries written by legislative staff, and in some cases supporting documentation submitted during committee hearings. See www.oregonlegislature.gov for more information.

We are grateful to all who were involved in preparing this book. We are appreciative of the efforts of our volunteer authors, who take time away from their practices to contribute to this publication.

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I. INTRODUCTION

The 2013 regular session of the legislature adjourned on July 8, 2013. An enrolled bill not vetoed by the Governor will become law on January 1, 2014, unless the bill contains an emergency clause or has a specified effective date.

Click on the bill numbers to review the enrolled bills in their entirety.

II. ADMINISTRATIVE LAW SECTION SPONSORED

1. SB 52 (Ch. 156) Electronic Publication of Final Orders

SB 52, the Administrative Law Section's bill, was signed by the Governor on May 16, 2013, and becomes effective January 1, 2014. SB 52 facilitates the publication of agency final orders by the Oregon State Bar in the bar's online law library. SB 52 requires agencies to retain the word processing format in which these agencies create their orders[1] and to provide them for publication upon the bar's request.[2]

Amendments were requested by the section to clarify that SB 52 is limited to final orders in contested cases. The following final orders were *excluded* from the requirements of SB 52, with the limitations indicated.

A. Default orders issued under ORS 183.417(3)[3] and
B. Final orders issued in contested cases by:

1. The Department of Revenue;
2. The State Board of Parole and Post-Prison Supervision;
3. The Department of Corrections;
4. The Employment Relations Board;
5. The Public Utility Commission of Oregon;
6. The Oregon Health Authority;
7. The Land Conservation and Development Commission;
8. The Land Use Board of Appeals;
9. The Division of Child Support of the Department of Justice;

[1] The agencies must utilize a digital format that (a) identifies the final order by the date it was issued, (b) is suitable for indexing and searching, and (c) preserves the textual attributes of the document, including the manner in which the document is paginated and any boldfaced, italicized, or underlined writing in the document.
[2] The orders must be provided semiannually, without charge.
[3] This provision only excludes default orders. It does not exclude consent orders and orders based on stipulations or agreed settlements.

10. The Department of Transportation, *if* the final order relates to the suspension, revocation or cancellation of identification cards, vehicle registrations, vehicle titles or driving privileges or to the assessment of taxes or stipulated settlements in the regulation of vehicle-related businesses;
11. The Employment Department or the Employment Appeals Board, *if* the final order relates to benefits as defined in ORS 657.010;
12. The Employment Department, *if* the final order relates to an assessment of unemployment tax for which a hearing was not held; or
13. The Department of Human Services, *if* the final order was not related to licensing or certification.

III. ORS CHAPTER 183 AMENDMENTS

1. HB 2560 (Ch. 273) Appointments to Rulemaking Advisory Committees

This bill amends ORS 183.333 to prohibit an agency from appointing an officer, employee, or other agent of the agency to serve as a member of a rulemaking advisory committee if the agency is required by law to appoint a rulemaking advisory committee.[4]

2. SB 125 (Ch. 295) Servicemembers Civil Relief Act

SB 125 amends ORS 183.413 and ORS 183.415. SB 125 requires agencies to include in contested case notices the rights of active duty servicemembers, under the federal Servicemembers Civil Relief Act, to stay proceedings. The notice must also provide the toll-free telephone numbers for the Oregon State Bar and the Oregon Military Department, and the website address of the United States Armed Forces Legal Assistance Legal Services Locator. However, agencies are permitted to give notice using their current forms until their existing inventories of preprinted forms are exhausted. The bill has an emergency clause and took effect on September 1, 2013.

IV. ADMINISTRATIVE PROCEDURES ACT

1. HB 2859 (Ch. 688) Representation in Medical Assistance Hearings

This bill amends ORS 183.458 regarding representation in medical assistance hearings. Section 25 of the bill allows a party to be represented by an attorney licensed to practice law in any state, who is employed by or contracts with a nonprofit legal services program receiving ORS 9.572 funding. Also, a claimant may be represented by a relative, friend, or any other

[4] For example, ORS 414.325(9) and 454.610(1)(a).

person of the claimant's choosing in any contested case hearing involving an applicant or recipient of medical assistance. HB 2859 took effect on July 29, 2013. Most sections of the bill become operative on January 1, 2014.

V. ELECTION LAW, PUBLIC OFFICIALS, RECORDS, AND MEETINGS

1. HB 2078 (Ch. 262) Changes to Lobbying Regulation

This bill amends provisions in ORS chapter 171 regarding lobbyists. HB 2078 changes the time in ORS 171.740 for registering with the Oregon Government Ethics Commission as a lobbyist from three days to ten days and requires compensated lobbyists to register within 10 days of agreeing to provide lobbying services. HB 2078 removes the requirement that the legislature receive notification of violations of lobbying laws.

2. HB 2080 (Ch. 43) Government Ethics Commission

HB 2080 amends ORS 244.370 and deletes the requirement for mandatory hearings before civil penalties can be imposed by the Oregon Government Ethics Commission for ethics violations. The bill took effect on April 18, 2013.

3. HB 2370 (Ch. 645) Internet Publication of Meeting Notices

HB 2370 requires that certain information be posted on the Oregon transparency website established by the Oregon Department of Administrative Services.

The department must post notices of public meetings required to be provided by a state agency under ORS 192.640. If the state agency maintains a website where minutes or summaries of the public meetings are available, the state agency must provide the department with the link to that website for posting on the transparency website.

The department also must post a link for the website maintained by the Secretary of State for rules adopted by a state agency. If a state agency maintains a website where the rules of the agency are posted, or where any information relating to the rules of the agency is posted, the state agency must provide the department with the link to that website for posting on the transparency website.

HB 2370 also allows local governments to request posting of their website information on the state's transparency website. The department must include a prominent link on the home page of the transparency website for this information.

4. HB 3013 (Ch. 325) Disclosure of Housing Appraisals

HB 3013 amends ORS 192.501 and ORS 192.502 regarding the disclosure of appraisal information. HB 3013 specifies that project appraisals obtained in the course of real estate transactions by housing authorities, urban renewal agencies, or the Housing and Community Services Department are not exempt from disclosure, but may be disclosed only after the transactions have concluded.

5. HB 3294 (Ch. 587) Disclosure of Email Addresses

This bill amends ORS 192.502 regarding the disclosure of email addresses. HB 3294 exempts from disclosure email addresses possessed by an agency or subdivision of the executive department and local governments, except those assigned by a public body to public employees for use by the employees in the ordinary course of their employment.

6. SB 145 (Ch. 758) Campaign Treasurer Responsibilities

This bill amends ORS 260.037 to delete the campaign treasurer's responsibility for performing the duties in ORS 260.035(2). The bill makes the candidate, not the treasurer, responsible for any default or violation of these duties. SB 145 amends the notice requirement in ORS 260.232 regarding the intent to impose a civil penalty by the Secretary of State. SB 145 repeals ORS 260.045 and 260.102 and amends a number of provisions in ORS chapter 260.

7. SB 154 (Ch. 759) Registration of Signature Gatherers

SB 154 amends ORS 250.048 to require that an organization or entity that pays money or other valuable consideration to a person for obtaining signatures on a state initiative, referendum, or recall petition, or a prospective petition, to register with the Secretary of State. SB 154 has an emergency clause, was signed by the Governor on August 14, 2013, and has an operative date of January 1, 2014.

VI. HEALTH CARE REGULATION AND HEALTH CARE PROFESSIONALS

1. HB 2074 (Ch. 568) Oregon Health Licensing Agency

This bill amends ORS 676.605 to change the name of the Oregon Health Licensing Agency to the Health Licensing Office and creates the office within the Oregon Health Authority. The bill amends ORS 676.610 and makes the director of the Oregon Health Authority the appointing authority for the director of the Health Licensing Office.

HB 2074 repeals ORS 676.620 and portions of HB 2101 that conflict with HB 2074. The bill contains many conforming amendments regarding the health-related occupations that its predecessor agency now oversees.

The bill instructs legislative counsel to harmonize and clarify statutes by substituting words designating the Health Licensing Office for the Oregon Health Licensing Agency. Also, any rule, document, record, or proceeding authorized by the legislature that references the Oregon Health Licensing Agency is considered to be a reference to the Health Licensing Office.

The Governor signed HB 2074 on July 1, 2013, and its provisions become operative on July 1, 2014.

2. HB 2081 (Ch. 59) Board of Psychologist Examiners

HB 2081 amends ORS 675.090 and modifies the exemptions from licensure by the Oregon Board of Psychologist Examiners.

3. HB 2082 (Ch. 60) Board of Licensed Social Workers

This bill amends ORS chapter 675, including the provisions regarding definitions, civil penalties, and the composition of the State Board of Licensed Social Workers. It has an emergency clause, but the amendments to ORS 675.510, 675.532, 675.533, 675.535, 675.540, 675.560 and 675.590, and the repeal of ORS 675.992 and 675.994 do not become operative until January 1, 2015.

4. HB 2089 (Ch. 14) Oregon Health Authority

HB 2089 transfers some of the functions of the Department of Human Services to the Oregon Health Authority and specifies other functions that are shared by the Department of Human Services and the Oregon Health Authority. Among the many statutory amendments in the bill, HB 2089 adds a new provision allowing officers or employees of either the Oregon Health Authority or the Department of Human Services to represent the agencies in contested case hearings, in accordance with ORS 183.452. HB 2089 was signed into law on March 21, 2013, and took effect on that date.

5. HB 2096 (Ch. 18) Fair Dismissals Appeals Board

This bill amends ORS 342.930 regarding the composition for the Fair Dismissal Appeals Board and it sets the initial terms of the new board members. The bill contains an emergency clause and took effect on July 1, 2013.

6. HB 2101 (Ch. 314) Oregon Health Licensing Agency

HB 2101 amends ORS chapter 676 and adds new provisions regarding the Oregon Health Licensing Agency. It is intended to consolidate provisions relating to the Oregon Health Licensing Agency's authority over certificates, permits, licenses, registrations, and fees. HB 2101 contains a host of conforming amendments modifying and repealing statutes pertaining to the agencies with oversight by the Oregon Health Licensing Agency. HB 2101 has an emergency clause, was signed into law on June 6, 2013, and becomes operative on January 1, 2014.

7. HB 2104 (Ch. 87) Board of Medical Imaging

This bill affects the regulatory provisions of the Board of Medical Imaging and amends ORS 688.405, 688.415, 688.435 and 688.557. Specifically, the bill bans imaging procedures for non-medical purposes, or in cases where the imaging is not directed by a licensed physician, and authorizes the Board to discipline persons for violations, even when they are not licensed by the Board.

8. HB 2118 (Ch. 678) Oregon Health Insurance Exchange Corporation

HB 2118 concerns the Oregon Health Insurance Exchange Corporation, including notice and hearing requirements regarding the corporation's eligibility determinations.

Section 2 of the bill allows the corporation to serve by regular mail or, if requested, by electronic mail the notice described in ORS 183.415 of the corporation's determinations regarding: 1) A person's eligibility to purchase or to continue to purchase a qualified health plan through the health insurance exchange; 2) A person's eligibility for a premium tax credit for purchasing a qualified health plan or the amount of the person's premium tax credit; or 3) A person's eligibility for cost-sharing reductions for qualified health plans and the amount of the person's cost-sharing reduction.

The legal presumption provided in ORS 40.135(1)(q) – that a letter duly directed and mailed was received in the regular course of the mail – does not apply to these notices. Also, unlike other notices required by ORS 183.415, these notices do not have to be served personally or by registered or certified mail.

If the party fails to request a hearing, a notice served by regular or electronic mail becomes a final order the day after the date prescribed in the notice as the deadline for requesting a hearing. The notice will also become final on the date the corporation or the Office of Administrative Hearings mails an order dismissing a hearing request because the party withdrew the request for hearing or the party did not appear at the hearing. However, a party has the right to request a hearing after an order becomes final in these ways, within a period of time prescribed by the agency by rule. The time for requesting a hearing may not be less than 60 days after the order becomes final.

The corporation is required to advise the party of the right to request a hearing regarding the final order if a party informs the corporation that the party did not receive a notice served by regular or electronic mail. The corporation must enact rules for requesting these hearings.

If a party requests a hearing within the time prescribed by the agency, the corporation must refer the request for hearing to the Office of Administrative Hearings for a contested case proceeding. The hearing will be on the merits when the corporation finds that the party did not receive the written notice and did not have actual knowledge of the notice. In other cases, the contested case hearing will determine if the party received the written notice or had actual knowledge of the notice. The corporation has the burden of showing that the party had actual knowledge of the notice or that the corporation mailed the notice to the party's correct address or sent an electronic notice to the party's correct electronic mail address.

The bill took effect on July 29, 2013.

9. HB 2122 (Ch. 234) Transfer of Enrollees in Managed-Care Organization

This bill amends ORS 414.647 to require Oregon Health Authority approval of the transfer of 500 or more medical assistance recipients enrolled in one managed-care organization to another managed-care organization. The Oregon Health Authority may approve the transfer if a provider serving the enrollees stops contracting with the transferring organization and begins contracting with the receiving organization and other conditions are met. The Oregon Health Authority may not approve the transfer of enrollees if the provider's contract with the transferring organization was terminated for just cause and the Oregon Health Authority was notified of this.

A provider is entitled to a contested case hearing in accordance with ORS chapter 183, on an expedited basis, to dispute the denial of a transfer of enrollees. The provider and the managed care organization contesting the transfer are parties to the contested case proceeding. The Oregon Health Authority may award attorney fees and costs to the party that prevails in the hearing.

The bill was signed by the Governor on May 28, 2013, and took effect on that date.

10. HB 2124 (Ch. 367) Impaired Health-Professional Program

HB 2124 amends provisions in ORS chapter 676 relating to the impaired health-professional program of the Oregon Health Authority. The bill defines substantial noncompliance by a licensee and a direct supervisor's responsibilities. HB 2124 exempts a licensee with a mental health diagnosis from the random drug-testing requirement in the bill. The bill also deletes specific monitoring and evaluation requirements from diversion agreements.

HB 2124 requires a third-party independent audit of the program every four years. The bill allows certain boards to contract with other programs to deliver services to licensees.

HB 2124 took effect on June 13, 2013.

11. HB 2611 (Ch. 240) Health Care Cultural Competency

HB 2611 allows the following boards and commission, in collaboration with the Oregon Health Authority, to require continuing education in cultural competency for the health-care professionals regulated by them:

1. State Board of Examiners for Speech-Language Pathology and Audiology;
2. State Board of Chiropractic Examiners;
3. State Board of Licensed Social Workers;
4. Oregon Board of Licensed Professional Counselors and Therapists;
5. Oregon Board of Dentistry;
6. Board of Licensed Dietitians;
7. State Board of Massage Therapists;
8. Oregon Board of Naturopathic Medicine;
9. Oregon State Board of Nursing;
10. Nursing Home Administrators Board;
11. Oregon Board of Optometry;
12. State Board of Pharmacy;
13. Oregon Medical Board;
14. Occupational Therapy Licensing Board;
15. Physical Therapist Licensing Board;
16. State Board of Psychologist Examiners;
17. Board of Medical Imaging;
18. State Board of Direct Entry Midwifery;
19. State Board of Denture Technology;
20. Respiratory Therapist and Polysomnographic Technologist Licensing Board;
21. Home Care Commission; and
22. Oregon Health Authority for emergency medical service providers.

The bill has an emergency clause and became law on May 28, 2013. OHA is required to develop and provide a list of approved continuing education opportunities to the Board by January 1, 2015. The bill becomes operative January 1, 2017.

12. HB 2737 (Ch. 581) Certifications by the Oregon Health Authority

This bill amends ORS 743A.168. The bill requires the Oregon Health Authority to create a certification process for providers not otherwise subject to certification or licensing, including mental health outpatient clinics so that they can claim reimbursement under a policy or certificate of health insurance. The bill took effect on July 1, 2013.

13. HB 2768 (Ch. 211) Licensed Professional Counselors and Therapists

HB 2768 amends ORS chapter 675 regarding licensure by the Oregon Board of Licensed Professional Counselors and Therapists.

14. HB 2997 (Ch. 657) Registry of Direct Entry Midwifery

HB 2997 relates to the State Board of Direct Entry Midwifery. HB 2997 amends ORS 687.415 and prohibits practicing midwifery unless the person has a license pursuant to ORS 687.405 to 687.495. HB 2997 also provides that a license to practice direct entry midwifery is required for purposes of reimbursement under medical assistance programs.

The bill provides an exception to the licensure requirements for a licensed health care practitioner if the services described in ORS 687.405 are within the scope of the person's license.

HB 2997 also provides that a license is not necessary if: 1) The person is acting as a traditional midwife and does not use legend drugs or devices that require a license under Oregon law; 2) The person does not advertise that the person is a midwife; and 3) The person provides to each client specific disclosures on a form adopted by the board.

This required disclosure form must advise the client that the person does not possess a professional license issued by the state, the person's education and qualification have not been reviewed by the state, the person is not authorized to carry and administer potentially life-saving medications, and, consequently, the risk of harm or death to a mother or newborn may increase. The person acting without a license must advise the client there is no recourse to a complaint process. The disclosure form must provide a plan for transporting the client to the nearest hospital if a problem arises during labor or childbirth. The required form must also provide the types of midwives licensed by the state.

HB 2997 amends ORS 687.420 concerning qualifications for licensure as a midwife, ORS 687.480 regarding board rulemaking, and ORS 676.608 regarding investigations and discipline by the Oregon Health Licensing Agency.

Concerning its investigations, the Oregon Health Licensing Agency must allow the Board of Direct Entry Midwifery to: 1) review the motion or complaint before beginning the investigation; 2) prioritize midwifery investigations; and 3) consult with the board during and after the investigation for the purpose of determining whether to pursue disciplinary action.

The Oregon Health Licensing Agency is required to delegate the authority to enter a final order to the State Board of Direct Entry Midwifery for all contested cases related to direct entry midwifery.

HB 2997 has an emergency clause, was signed by the Governor on July 25, 2013, and becomes operative on January 1, 2014. However, a person who is not licensed to practice direct entry midwifery under ORS 687.405 to 687.495 may continue to practice direct entry midwifery until January 1, 2015.

15. HB 3345 (Ch. 356) Anatomical Research Recovery Organizations

This bill requires that a non-transplant anatomical research recovery organization be licensed by the Oregon Health Authority. Section 5 of the bill authorizes the Oregon Health Authority, in accordance with ORS chapter 183, to impose a civil penalty and to suspend or revoke a license for violations of the bill's requirements. It was signed by the Governor on June 11, 2013, and becomes operative on January 1, 2014.

16. HB 3460 (Ch. 726) Medical Marijuana Facility Registration

HB 3460 directs the Oregon Health Authority to establish by rule a medical marijuana facility registration system. The registration system must require a medical marijuana facility to submit an application to the authority containing specified information, and include a criminal records check of responsible persons at the facility. The facility must meet certain qualifications for registration. The facility is also required to maintain specified records.

ORS 475.323 is amended to authorize the Oregon Health Authority to inspect a medical marijuana facility at any reasonable time to determine whether the facility is in compliance with ORS 475.300 to 475.346. The authority may revoke the registration of a medical marijuana facility for failure to comply with ORS 475.300 to 475.346, or rules adopted under ORS 475.300 to 475.346. The authority may release to the public a final order revoking a medical marijuana facility registration.

The bill has an emergency clause and was signed by the Governor on August 14, 2013. The bill's provisions creating the facility registry and amending ORS 475.302, 475.304, 475.309, 475.320, 475.323 and 475.331 become operative on March 1, 2014.

17. SB 8 (Ch. 402) Prescription Privileges

This bill amends ORS 678.390 regarding requirements for prescription privileges authorized by the Oregon State Board of Nursing. It applies to nurse practitioners and clinical nurse specialists, and eliminates certain statutory requirements currently in place for nurse prescriptive authority.

18. SB 109 (Ch. 83) Board of Naturopathic Medicine

SB 109 amends the investigatory powers of the Oregon Board of Naturopathic Medicine in ORS 685.225. Specifically, the authorizes a designee of the Oregon Board of Naturopathic Medicine to issue subpoenas for purpose of investigating alleged violations of laws relating to naturopathic medicine.

19. SB 136 (Ch. 297) Nurse Anesthetists

SB 136 allows the Oregon State Board of Nursing to authorize nurse anesthetists to prescribe prescription drugs under specified circumstances.

20. SB 626 (Ch. 717) Long-Term Care Ombudsman

This bill amends many provisions of ORS chapter 441 regarding the long-term care ombudsman and the renamed and modified Residential Facilities Advisory Committee. The bill expands the scope of the advocacy duties of the ombudsman to include all adult foster homes and care facilities serving individuals with mental illnesses or developmental disabilities. SB 626 was signed by the Governor on August 1, 2013, but the statutory changes and the repeal of ORS 441.147 become operative on July 1, 2014.

21. SB 683 (Ch. 552) Practitioners with Financial Interests in Facilities

This bill amends ORS 441.098 regarding the referral of patients by certain health practitioners to facilities in which they have financial interests and authorizes sanctions against practitioners who violate the statute. Sanctions include disciplinary action by the appropriate health professional licensing board and civil penalties of not more than $1,000.

VII. ENVIRONMENTAL AND LAND USE REGULATION

1. HB 2202 (Ch. 706) Permits for Mining on EFU Lands

This bill states policy regarding aggregate mining on resource lands and requires operator to mine substantially all of the significant aggregate resource within the boundary of an operating permit to mine on resource land. Statewide land use planning goals allow an aggregate resource site to be placed on inventory of resource sites if the aggregate resource is significant.

The bill has an emergency clause, and has an effective date of August 1, 2013. The substantive provisions become operative on January 1, 2014.

2. HB 2248 (Ch. 371) Department of Geology and Mineral Industries

This bill amends ORS chapter 517 regarding the State Department of Geology and Mineral Industries. The bill amends statutes related to mineral mining and has conforming amendments. It repeals ORS 517.935, 517.940, and 517.950. HB 2248 has an emergency clause, was signed by the Governor on June 13, 2013, and the statutory changes become operative on January 1, 2014.

3. HB 2259 (Ch. 644) Fees Imposed by Water Resources Department

This bill increases the fees imposed by the Water Resources Department. The bill increased the fee from $250 to $500 for those participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130. The bill also increases the fee for a non-applicant to obtain a copy of a proposed final order and a final order from $10 to $25 for certain water right applications or extensions.

The bill has an emergency clause, was signed by the Governor on July 25, 2013, but the section containing the fees for hearings and final orders becomes operative on July 1, 2017. Many of the fee increases and statutory amendments in other sections of the bill are retroactive to July 1, 2013.

4. HB 2427 (Ch. 724) Department of Agriculture Civil Penalties

This bill allows the Department of Agriculture to assess a civil penalty, not to exceed $25,000, against a person that raises canola in violation of the provisions in HB 2427. This section of the bill is repealed on January 2, 2019.

HB 2427 took effect on August 14, 2013.

5. HB 2807 (Ch. 656) Department of Energy

HB 2807 relates to a number of State Department of Energy issues, including energy resource supplier assessments and proceedings involving the department.

Sections 9 through 17 of the bill transfer the duties, functions and powers of the Oregon Department of Administrative Services concerning the Energy Facility Siting Council to the State Department of Energy. Accordingly, references in rules of the Oregon Department of Administrative Services to the administrative department or to an officer or employee of the department are considered to be references to the State Department of Energy or an officer or employee of the energy department. Also, any uncodified law or resolution, rule, document, record, or proceeding authorized by the legislature that references the Oregon Department of Administrative Services, or an officer or employee of the department whose duties, functions or powers are transferred by HB 2807, is considered to be a reference to the State Department of Energy or an officer or employee of the energy department charged with these responsibilities.

The bill also creates several processes that require the Department of Energy to provide better access for both energy resource suppliers and the public to its budgetary processes. Finally, the bill reduces the assessment cap against energy resource suppliers from 0.5% to 0.375% of the supplier's gross operating revenue.

VIII. CONSTRUCTION, MORTGAGES, AND REAL PROPERTY

1. HB 2239 (Ch. 268) Mortgage Loan Licensure

This bill amends ORS 86A.100 regarding mortgage loans. HB 2239 requires certain entities, which were previously exempt from licensure by the Department of Consumer and Business Services, to obtain licenses in order to make mortgage loans.

2. HB 2268 (Ch. 196) Board of Architect Examiners

This bill amends ORS chapter 671 regarding the regulation of architects by the State Board of Architect Examiners. It was signed by the Governor on May 22, 2013, and has conforming amendments of other statutory provisions.

3. HB 2524 (Ch. 378) Construction Contractors Board Licensure

This bill amends ORS 701.010 regarding the exemptions for contractor licensure by the Construction Contractors Board. For casual, minor, or inconsequential work, the bill increases the amount for the exemption from $500 to $1,000. It makes numerous changes to other sections of the statute, as well.

4. HB 2531 (Ch. 272) Appraisal Management Companies

This bill relates to registration of appraisal management companies with the Appraisers Certification and Licensure Board. HB 2531 amends ORS 674.200 to expand the definition of an appraisal management company to include companies ordering appraisals not related to mortgage transactions.

5. HB 2540 (Ch. 251) Construction Contractors Board

HB 2540 allows the Construction Contractors Board to revoke, suspend, or refuse to issue a license to a person if the board finds that the person provided false information regarding the activities of a construction contracting business. The offender must have known, or had reason to know, that the false information would result in a person evading an obligation with regard to:

(1) Any federal, state or local income tax laws;
(2) Social security contributions;
(3) Unemployment taxes;
(4) Workers' compensation premiums;
(5) Wage and hour laws;
(6) Federal or state occupational safety and health laws;
(7) Child support;
(8) Alimony;
(9) A judgment;
(10) A garnishment; or
(11) Other laws or debts identified by the board by rule.

HB 2540 also amends definitions in ORS 701.005 and ORS 701.131.

6. HB 2856 (Ch. 281) Mortgage Loan Originators

HB 2856 affects the Department of Consumer and Business Service's licensing requirements for mortgage loan originators. It amends ORS 86A.203. HB 2856 was signed by the Governor on June 4, 2013, and took effect on September 4, 2013.

7. HB 2977 (Ch. 584) Licensure of Construction Labor Contractors

This bill amends provisions in ORS chapter 658 regarding construction labor contractors. HB 2977 requires that construction labor contractors be licensed by the Bureau of Labor and Industries. The bill has an emergency clause, was signed by the Governor on July 1, 2013, and its provisions become operative on July 1, 2015.

8. HB 2978 (Ch. 324) Investigation Fees for Building Code Violations

This bill revises ORS chapter 455 and provides authority for the Department of Consumer and Business Services and municipalities enforcing specialty building codes to assess an investigation fee if the work commenced before a permit was obtained. The fee applies to persons required to obtain permits for work on the electrical, gas, mechanical, elevator, boiler, plumbing, or other systems of a building.

HB 2978 provides for rulemaking by the department and includes exemptions from the fee assessment. HB 2978 also amends ORS 446.405 and ORS 480.530.

9. SB 23 (Ch. 145) Regulation of Property Managers

This bill revises the regulation of real estate property managers by the Real Estate Agency. It amends significant regulatory functions of the agency in ORS chapter 696. SB 23 repeals ORS 696.361 and contains an emergency clause. The law took effect on July 1, 2013.

10. SB 189 (Ch. 161) Regulation of Manufactured Home Dealers

This bill allows the Department of Consumer and Business Services to disqualify persons from licensure or future employment with a licensed dealer of manufactured homes when the person's acts or omissions were material to the revocation of a dealer's license. SB 189 amends ORS 446.003 and ORS 446.741.

The bill took effect on May 16, 2013.

11. SB 207 (Ch. 300) Construction Contractors Board

This bill amends ORS chapter 701 regarding information required for licensure by the Construction Contractors Board. It also adds new provisions regarding contractor licenses for residential locksmith services, home services, and home inspectors.

12. SB 208 (Ch. 86) Engineering and Land Surveying

This bill modifies the qualifications for the examination and licensure of applicants by the State Board of Examiners for Engineering and Land Surveying and amends provisions in ORS chapter 672.

13. SB 209 (Ch. 169) Engineering and Land Surveying

SB 209 amends ORS 672.200 and the regulatory scope of the State Board of Examiners for Engineering and Land Surveying. SB 209 also repeals ORS 672.205, which specifies a right to a contested case hearing and judicial review under ORS chapter 183. Note however that the general provisions relating to licensure under the APA still apply. These provisions are substantially the same as those in the repealed statute.

14. SB 617 (Ch. 532) Appraiser Certification and Licensure Board

SB 617 adds new provisions to ORS chapter 674 regarding discipline by the Appraiser Certification and Licensure Board. The bill requires the establishment of a three-member subcommittee to make recommendations as to whether alleged violations have occurred. The bill requires that there be an objective basis, as defined in the bill, to believe that an alleged violation occurred. SB 617 authorizes the board to adopt rules to implement the bill.

Except when there is a serious danger allowing discipline pursuant to ORS 183.430(2), the board may not commence a disciplinary action without a report from the subcommittee. A report finding a violation must describe the specific violation that occurred and the facts supporting the subcommittee's recommendation.

15. SB 625 (Ch. 487) State Fire Marshall Advice on State Building Codes

This bill adds provisions to ORS chapter 455 clarifying the duties of the State Fire Marshal regarding state building codes. SB 625 allows the director of the Department of Consumer and Business Services, or a local official administering a building inspection program, to determine whether a structure meets state building code standards.

SB 625 specifies that the State Fire Marshal or local fire official may provide advice concerning state building code standards. It also requires local building officials and the department to give consideration to the advice given by State Fire Marshal or local fire officials that does not conflict with the state building code.

16. SB 783 (Ch. 718) Continuing Education for Residential Contractors

SB 783 requires the Construction Contractors Board to adopt rules establishing a continuing education system for residential contractors licensed by the board. ORS 701.123, 701.126 and 701.127 are repealed January 1, 2014. The board may adopt rules to allow continuing education credit for courses or specialized programs completed prior to January 1, 2015, which do not meet the new rule requirements.

SB 783 has an emergency clause, was signed by the Governor on August 1, 2013, and becomes operative on January 1, 2014.

IX. SMALL BUSINESSES

1. HB 2039 (Ch. 422) Outfitting and Guiding Services

HB 2039 amends ORS chapter 704 regarding outfitting and guiding services regulated by the State Marine Board. The bill amends the statutory provisions regarding definitions, registration and safety requirements, discipline, the composition of the advisory committee, and criminal penalties. HB 2039 also adds new provisions that exclude outfitting and guiding services that are not provided for compensation or monetary gain.

The bill has an emergency clause and was signed by the Governor on June 18, 2013. Sections of the bill have different operative dates: Sections 2, 3, 12, and the amendments to ORS 704.010, 704.020, 704.021, 704.030, 704.035, 704.040, 704.070, 704.525, and 704.990 become operative on January 1, 2014; however, additional amendments to ORS 704.020 by Section 7 become operative on January 1, 2018.

2. HB 2845 (Ch. 280) Self-Service Storage Facilities

HB 2845 requires the owner of a self-service storage facility to obtain a license from the Department of Consumer and Business Services prior to selling insurance for a storage unit. The law also requires a training program be provided for employees who may be selling the insurance on the licensee's behalf. The department has authority to suspend or revoke these limited licenses in certain circumstance. The bill, which adds these provisions to ORS chapter 744, has an emergency clause. HB 2845 became law on June 4, 2013.

3. HB 3409 (Ch. 290) Hair Care Regulation

HB 3409 amends provisions in ORS chapter 690 regarding the regulation of natural hair care by the Board of Cosmetology and the Oregon Health Licensing Agency. HB 3409 defines natural hair care and specifies that a person certified to practice hair design or barbering is authorized to practice natural hair care. HB 3409 took effect on June 4, 2013, but its statutory amendments become operative on January 1, 2014.

4. HB 3459 (Ch. 699) Office of Small Business Assistance

HB 3459 adds provisions to ORS chapter 56 establishing the Office of Small Business Assistance in the Office of the Secretary of State. The Office of Small Business Assistance is intended to assist small businesses in their interactions with state agencies. The office can review and investigate complaints from small businesses regarding their interactions with agencies having regulatory authority over them.

Writings and information provided to the office and communications with the office are confidential and exempt from disclosure under ORS 192.410 to 192.505, except as necessary to prepare the required report regarding small business complaints.

The office may not investigate or review complaints when the office determines that:

1) The complainant could reasonably be expected to use, or is using, an alternative remedy or recourse for the complaint;
2) The complaint relates to a matter outside the jurisdiction of the office;
3) The complaint was delayed too long to justify review and investigation;
4) The complainant does not have sufficient personal interest in, or is not personally aggrieved or affected by the subject matter of, the complaint;
5) The complaint is trivial, frivolous, vexatious or not made in good faith;
6) The resources of the office are insufficient for adequate review and investigation of the complaint;
7) The review and investigation of other complaints take precedence over the review and investigation of the complaint; or

8) The complaint is the subject of pending litigation, a pending contested case proceeding under ORS chapter 183 or an agency action that could result in a contested case proceeding under ORS chapter 183.

Upon completing the review and investigation of a complaint under this section, the office must prepare a report containing the office's conclusions and recommendations. Before finalizing and providing copies of the report, the office must provide the state agency that is the subject of the report with a preliminary report. The state agency has 15 days to comment on the report and the final report must include a section that contains the agency's comments.

The bill took effect on July 29, 2013, and generally becomes operative on January 1, 2014.

5. SB 25 (Ch. 146) Regulation of Charter Boats

SB 25 revises the regulation of charter boats by the State Marine Board. It amends several provisions of ORS chapter 830 and changes the composition of the advisory committee in ORS 704.525. The law took effect for rulemaking purposes on May 16, 2013, but most provisions of the law will become operative on January 1, 2014.

6. SB 142 (Ch. 159) Business Registry Procedures

SB 142 modifies the Secretary of State's business registry procedures. The bill took effect on May 16, 2013 for rulemaking purposes. The amendments to ORS 58.400, 60.004, 60.651, 62.025, 62.850, 63.004, 63.017, 63.094, 63.651, 65.004, 65.651, 67.520, 70.610, 554.005 and 554.305 became operative on August 15, 2013.

7. SB 387 (Ch. 409) Licensure of Massage Therapists

SB 387 creates new permit requirements for massage therapy facilities. The bill also amends ORS Chapter 687 regarding the licensure of massage therapists by the State Board of Massage Therapists.

SB 387 took effect on June 13, 2013, but substantive portions of the bill become operative on January 1, 2014.

X. PUBLIC ENTITIES

1. HB 2037 (Ch. 351) Licensure of Spouses of Servicemembers

HB 2037 authorizes health professional regulatory boards identified in ORS 676.160 to license a spouse or domestic partner of an active member of the United States military transferred to Oregon. The licensing authorization also applies to agencies with Oregon Health

Licensing Agency oversight identified in ORS 676.606. The bill establishes licensure requirements, including evidence of competency and licensure by another state.

HB 2037 also amends ORS 342.195. It requires that the Teacher Standards and Practices Commission establish an expedited licensing process for a military spouse or domestic partner who is licensed to teach in another state.

The bill took effect on June 11, 2013.

2. HB 2043 (Ch. 6) Department of Public Safety Standards and Training

This bill amends ORS 181.662 and extends the jurisdiction of the Department of Public Safety Standards and Training. HB 2043 allows the department to deny training and certification to a person no longer doing police work, if the department has issued a notice of intent to deny training or certification and the person has requested a hearing. This bill was signed by the Governor on March 18, 2013, and took effect on that date.

3. HB 2188 (Ch. 643) Civil Penalties Imposed by the State Board of Education

This bill amends ORS 345.995 regarding the civil penalties imposed by the Higher Education Coordinating Commission. A civil penalty may not exceed $500 per violation. The bill allows the commission to retain reasonable costs related to the investigation and assessment of the penalty. The cost retention provision does not apply to penalties that are required to be deposited in the Tuition Protection Fund established under ORS 345.110.

HB 2188 took effect on July 25, 2013.

4. HB 3254 (Ch. 286) Lead Teacher Licenses

HB 3254 authorizes the Teacher Standards and Practices Commission to issue a lead teacher license and amends ORS chapter 342 and other statutory provisions.

5. HB 3316 (Ch. 713) TriMet Performance Audit

This bill requires the Secretary of State to conduct a performance audit of TriMet and to report findings of the audit and recommendations to the legislature by before January 1, 2014. The bill took effect on August 1, 2013.

6. SB 37 and 38 (Ch. 149/150) Oregon Liquor Control Commission

SB 37 and SB 38 relate to the regulatory authority[5] of the Oregon Liquor Control Commission. SB 37 amends ORS 471.313 regarding license qualifications and SB 38 amends ORS 471.408 regarding alcohol provided at a raffle or auction. SB 38 has an emergency clause and took effect on May 16, 2013.

7. SB 107 (Ch. 82) Multiple Agencies

This bill affects the regulatory authority of the Nursing Home Administrators Board, the Respiratory Therapist and Polysomnographic Technologist Licensing Board, the Board of Cosmetology, and the Board of Body Art Practitioners. SB 107 also amends provisions regarding the imposition of civil penalties and the regulation of hearing aids by the Oregon Health Licensing Agency. SB 107 was signed by the Governor on May 9, 2013.

8. SB 112 (Ch. 157) Civil Penalties Imposed by the OLCC

This bill allows the Oregon Liquor Control Commission to impose civil penalties for violations related to beverage containers and require audits to determine compliance. SB 112 took effect on May 16, 2013.

9. SB 135 (Ch. 296) Wage and Hour Commission

This bill abolishes the Wage and Hour Commission and transfers its powers to the Bureau of Labor and Industries. The law amends and repeals provisions in ORS chapter 653 and contains other conforming statutory amendments. This bill took effect on June 4, 2013.

10. SB 534 (Ch. 482) Non-Attorney Representation before ODOT

This bill amends ORS 823.035 to allow non-attorney representation in certain proceedings before the Department of Transportation. The bill extends the authorization for non-attorney representation to proceedings regarding the registration of commercial motor vehicles in ORS chapter 826.

11. SB 582 (Ch. 528) Department of Consumer and Business Services

SB 582 amends ORS 455.148, 455.150 and 455.475 and includes new provisions regarding the authority of the Department of Consumer and Business Services and its director. The bill requires the department to give special consideration to the needs of rural and remote regions when adopting the state building code.

[5] There are several other laws that change the authorized activities of licensees holding particular liquor licenses issued by the Oregon Liquor Control Commission. See SB 38, HB 2443, and HB 3435.

SB 582 also clarifies the decision-making authority of fire and building officials, authorizes specified building officials to provide plans and specifications for certain structures, allows the department to enter into agreements with local governments to assist with building inspection programs, and authorizes the department to charge fees when assuming the administration of an abandoned or surrendered building inspection program.

SB 582 adds a provision to ORS 455.475 for appealing the decision of a building official to the department on any matter relating to the administration and enforcement of ORS chapter 455. The decision by the department is subject to judicial review as provided in ORS 183.484.

SB 582 took effect on June 26, 2013.

XI. OTHER LEGISLATION

1. HB 2060 (Ch. 260) Regulation of Charitable Organizations

This bill adds provisions to ORS chapter 316 regarding the regulation of charitable organizations. The bill allows the Attorney General to issue orders disqualifying charitable organization from receiving contributions that are deductible for Oregon income tax and corporate excise tax. The Attorney General may disqualify a charity if it has failed to expend at least 30 percent of its total annual functional expenses on program services when those expenses are averaged over the most recent three fiscal years. The bill was signed by the Governor on June 4, 2013, and took effect on October 7, 2013.

2. HB 2262 (Ch. 237) Commercial Drivers Licenses

HB 2262 creates new provisions and amends and repeals numerous statutory provisions regarding commercial driving licenses issued by the Department of Transportation. Section 11 of the bill applies to administrative reviews and hearings regarding these licenses. HB 2262 took effect on May 28, 2013, however many provisions will not become operative until July 8, 2015.

3. HB 3168 (Ch. 285) Criminal Background Checks

HB 3168 authorizes the Department of Administrative Services to promulgate rules regarding criminal background checks for state agencies making fitness determinations. This bill is intended to consolidate criminal background check rules and to eliminate duplicative processes. The bill authorizes DAS to promulgate these new rules in lieu of other state agency rules that are currently in place. The bill amends ORS chapter 181 and ORS 418.016.

4. HB 3489 (Ch. 444) Escrow Agents; Debt Management Services

HB 3489 amends ORS 697.005, 697.612, and 717.210 regarding escrow agents and collection and debt management services. HB 3489 has an emergency clause allowing the director of the Department of Consumer and Business Services and the Real Estate Commissioner to take necessary actions after the law's effective date of June 18, 2013. The bill's statutory amendments took effect August 17, 2013.

5. SB 22 (Ch. 36) Developmental Disability Services

SB 22 identifies the rights of persons with developmental disabilities receiving services from the Department of Human Services or paid for by DHS, and removes obsolete references to the Eastern Oregon Training Center. SB 22 expands the authority of DHS to oversee and regulate the provision of community-based developmental disability services. SB 22 requires the department to promote dispute resolution for individuals receiving developmental disability services. SB 22 conforms the statutes governing civil commitment of persons with developmental disabilities to current practice. SB 22 amends and repeals numerous statutory provisions SB 22 took effect on April 11, 2013.

6. SB 421 (Ch. 715) Civil Commitments

SB 421 adds provisions to ORS chapter 426 regarding civil commitments, including the hearings and determinations of the Psychiatric Security Review Board regarding an extremely dangerous mentally ill person in the board's jurisdiction. SB 421 also amends many provisions of the chapter and related statutes regarding these civil commitments and the board's responsibilities. The bill also amends SB 426 regarding civil commitments, which was signed by the Governor on June 11, 2013, and becomes effective on January 1, 2014.

SB 421 took effect on August 1, 2013.

7. SB 491 (Ch. 178) Licensed Professional Counselors and Therapists

This bill adds licensees of the Oregon Board of Licensed Professional Counselors and Therapists to the list of medical professions in ORS chapter 109 who can be approved to provide certain medical services to minors over 14 without parental knowledge or consent.

8. SB 589 (Ch. 183) Administrative Child Support Orders

SB 589, requested by the Attorney General, removes the requirement in ORS 416.425 for court review and approval before an administrative order regarding child support becomes effective.

For additional information about this bill, see the Domestic Relations chapter.

2

SAM SEARS

Business, Consumer, and Debtor-Creditor Law

I. INTRODUCTION

II. COMMERCIAL, CONSUMER, AND DEBTOR-CREDITOR LAW

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3.	HB 2569	(Ch. 125)	Law Firms as Trustees
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5.	HB 2662	(Ch. 317)	Nuisance Law for Vacant Foreclosed Property
6.	HB 2688	(Ch. 206)	Statement of Account upon Foreclosure Sale
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8.	HB 2929	(Ch. 465)	Recession of a Trustee's Sale
9.	HB 3389	(Ch. 625)	Resale of Property after a Short Sale
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III. BUSINESS AND CORPORATE LAW

1.	HB 2566	(Ch. 201)	Equity Compensation to Employees
2.	HB 2567	(Ch. 274)	Remote Only Shareholders Meetings

Sam Sears: 2004 Willamette University School of Law. Member of Oregon State Bar since 2004.

I. INTRODUCTION

This chapter details legislation affecting a variety of business entities in Oregon. It includes 4 bills introduced by Oregon State Bar sections: House Bills 2568 and 2569 which were introduced by the Debtor-Creditor Section, and House Bills 2566 and 2567, which were introduced by the Business Law Section. Unless otherwise noted, all bills take effect on January 1, 2014.

II. COMMERCIAL, CONSUMER, AND DEBTOR-CREDITOR LAW

1. HB 2239 (Ch. 268) State Regulation of Mortgage Banking

House Bill 2239 subjects subsidiaries of nationally owned banks and financial holding companies that engage in the business of mortgage banking and brokering to state regulation. Accordingly, these entities will now be subject to the same licensing and oversight requirements as other mortgage brokers in the state.

HB 2239 accomplishes this change by narrowing the exception from the definition of "mortgage banker" and "mortgage broker" in ORS 86A.100 so that these nationally operated entities are no longer excluded from state regulation. Specifically, Section 1(3)(b)(B) amends ORS 86A.100(3)(b)(B) to limit the exclusion under the definition of "mortgage banker" to only financial holding companies or bank holding companies "if the financial holding company or bank holding company does not do more than control a subsidiary or affiliate, as described in 12 U.S.C. 1841, and does not engage in the business of a mortgage banker or mortgage broker." A similar limitation is made to the definition of "mortgage broker" in ORS 86A.100(5)(b)(B) by Section 1(5)(b)(B).

Previously, subsidiaries of national banks that operated in Oregon were generally exempted from state regulation because they were federally regulated by the Office of the Comptroller of the Currency (OCC). Recent changes in federal law coupled with increases in consumer complaints led to a shift from federal oversight to state oversight.

2. HB 2568 (Ch. 76) Amended Notice of Sale Following Non-Judicial Foreclosure

House Bill 2568 clarifies several issues related to the duties of a trustee following the termination of a stay in a non-judicial foreclosure proceeding. Regarding the amended notice of sale, the bill amends ORS 86.755 to provide that that a trustee must provide notice of only those defaults that exist on the date that a stay is terminated on an amended notice of sale after a stay has been lifted. HB 2568, Section 1(12)(e).

Additionally, HB 2568 amends ORS 86.755 to provide that a trustee may postpone a sale for at least 60 days after a release from stay proceedings. The trustee must follow the procedural and notice requirements of ORS 86.755(2) regarding such a postponement. HB 2568, Section 1(12)(f).

Background:

Current law was ambiguous regarding what information a trustee was required to provide regarding defaults on an amended notice of sale after release from a stay. This issue often arose after dismissal of a Chapter 13 proceeding in which a debtor partially cured arrearages and/or had additional default amounts.

3. HB 2569 (Ch. 125) Law Firms as Trustees

House Bill 2569 authorizes law firms to serve as trustees under a trust deed by defining a law practice as a "professional corporation, partnership, limited liability partnership, limited liability company or sole proprietorship that is engaged in the practice of law in this state[]" and including law practices as those that may act as trustees under ORS 86.790. The bill requires that an active member of the Oregon State Bar who is a shareholder, partner, member, or employee of the law practice sign any necessary documents, and permits another member of the same law practice to sign on behalf of an attorney who is a trustee. HB 2569, Section 2(8) and (9).

Background:

Before passage of HB 2569 Oregon law provided that an individual attorney could serve as a trustee, but not the individual attorney's law firm. This had the potential to cause unnecessary delays and problems in instances where something happened to the individual attorney. Other entities authorized to serve as trustees, such as trust companies, are authorized to be listed as a corporate entity and assign duties to duly authorized individuals. This change recognizes that law firms should be listed in the same manner as other entities authorized to act as trustees under a trust deed.

4. HB 2590 (Ch. 23) Remittance Transfers

House Bill 2590 amends ORS 74A.1080 to provide that state law (UCC-Chapter 74A) applies to fund transfers that are remittance transfers unless the remittance transfer is covered by federal law under the Electronic Fund Transfer Act of 1978 (EFTA).

Remittance transfers are defined under the EFTA and are essentially wire transfers from the U.S. to overseas locales, sent through a person in the business of providing such transfers. This change is necessary because not all remittance transfers are electronic fund transfers and therefore are not all covered by federal law. This change in the UCC clarifies that when the EFTA applies to remittance transfers – those that are electronic fund transfers – state law does

not apply. Importantly, it also clarifies that when the EFTA does not apply, state law (UCC) does apply. HB 2590 took effect on April 2, 2013.

5. HB 2662 (Ch. 317) Nuisance Law for Vacant Foreclosed Property

House Bill 2662 provides a state wide nuisance law that is applicable to vacant (bank-owned) foreclosed property. It provides a means of obtaining owner information and authorizes local governments to remedy nuisances and obtain reimbursement from the owner for the costs of remediation.

This bill applies only to "foreclosed residential real properties," which are defined as properties obtained by an owner by a non-judicial or judicial foreclosure. HB 2662, Section 1 (1)(a). In addition, this bill only applies to foreclosed properties during times when they are vacant. HB 2662, Section 1(2). An owner is prohibited from neglecting the property, which is defined as allowing: 1) excessive growth of foliage that diminishes the value of adjacent properties; 2) trespassers or squatters to remain on the property; 3) mosquito larvae or pupae to grow in standing water; or 4) other conditions that cause a public nuisance. HB 2662, Section 1(1)(b). Local governments are exempted from the provisions of this bill. HB 2662, Section 1(1)(c).

An owner is required to provide contact information to a neighborhood association or a designated official of the local government and place a notice on the property with contact information. HB 2662, Section 1(2)(b) – (d). If an owner allows a subject property to become "neglected" a local government may notify the owner and provide for 30 days to remedy the violation. HB 2662, Section 1(3). A local government may allow for less time if the condition constitutes a threat to public health or safety.

If the owner does not remedy the condition of neglect a local government may do so or contract to have it done. Costs incurred for remediation may be recovered from the owner and become a lien on the property. The lien created is prior to all other liens and encumbrances, except that the lien has equal priority with a tax lien. HB 2662, Section 1(4). HB 2662 took effect on June 6, 2013.

6. HB 2688 (Ch. 206) Statement of Account upon Foreclosure Sale

House Bill 2688 increases from $250 to $1,000 the value of chattel sold at a foreclosure sale for which a person must file a statement of account to be recorded by the county. This is applicable to required filings with the county clerk under ORS 87.152 through 87.162 for possessory liens for labor or material expended on chattel, innkeeper liens, liens for the care of animals, and landlord liens for the amount of the lien, the cost of foreclosing the lien, a copy of the notice of sale, the amount received, and the persons receiving funds. When this law was originally passed in 1975 the threshold amount for filing was $250.

7. HB 2822 (Ch. 464) Notices of Sheriff's Sales

House Bill 2822 requires sheriffs to post notices of execution sales of real property both in newspapers and on the Internet. This bill also requires the establishment and maintenance of a website for the posting of the required notices. The bill requires the establishment and maintenance of a website to post notices of execution sales of real property and requires sheriffs to post on that website and through a newspaper of general circulation. HB 2822 took effect on June 24, 2013.

Background:

In 2009, HB 2393 was passed amending ORS 18.926 to allow for the establishment of electronic publication of notices if all elected sheriffs agreed to establish and maintain such a website. In 2011, HB 2692 further amended ORS 18.926 to allow for the establishment of a website for electronic notice if a majority of elected sheriffs agreed to establish and maintain such a website. Previous to the passage of HB 2822, sheriffs were authorized to post electronically or through the more traditional method – a newspaper of general circulation.

8. HB 2929 (Ch. 465) Recession of a Trustee's Sale

House Bill 2929 amends ORS 86.755 to specify guidelines for the rescission of a trustee's sale by a trustee. HB 2929, Section 1. It also amends ORS 86.790(1) to require trustees who are financial institutions or title insurance companies to obtain from the Secretary of State a certificate of authority to transact business in this state as a foreign business entity, unless the trustee has registered with or obtained authority from the Director of the Department of Consumer and Business Services. HB 2929, Section 3.

Specifically, Section 1(4) of HB 2929 provides that a trustee may only rescind a sale within 10 days of the sale date and only under certain circumstances, such as: 1) a bona fide error regarding the sale amount, the legal description of the property, or failure to comply with other legal requirements; 2) the grantor and beneficiary agree to a foreclosure avoidance measure; or 3) the beneficiary accepts funds to reinstate the trust deed. The trustee must provide notice of the rescission within 10 days of the rescission to any persons to whom the notice of sale was given and refund money received for the purchase at the sale within three days of rescission.

The notice of rescission must display the date on which the trustee mailed the notice, served the notice, or delivered the notice for service and state that, and explain why, the trustee rescinded the trustee's sale and voided the trustee's deed.

Within 21 days of the rescission the trustee must present for recording an affidavit that states that the trustee provided the required notice of rescission. The affidavit must identify the trust deed that was subject to the rescinded trustee's sale and the voided trustee's deed.

9. HB 3389 (Ch. 625) Resale of Property after a Short Sale

House Bill 3389 prohibits lenders/beneficiaries from requiring non-profit entities purchasing a property at a short sale to refrain from entering into agreements to resell the property back to the original homeowner or permit the original homeowner to continue to occupy the property. HB 3389, Section 2(2).

i. The bill creates exceptions that permit lenders/beneficiaries to bar the original homeowner from owning or occupying the property after a short sale if:

   a. The beneficiary does not receive notice before the short sale that the nonprofit entity or the grantor intends for the grantor to continue after the short sale to own or occupy the property that is the subject of the short sale;
   b. The grantor does not allow the beneficiary reasonable access to the property that is the subject of the short sale for the purpose of inspecting or appraising the property; or
   c. Offering or approving the short sale would require the beneficiary to breach a contractual obligation to another person with respect to a residential trust deed that was recorded before the effective date of this [bill]. HB 3389, Section 2(3).

Additionally, HB 3389 changes the definition of "Residential Trust Deed" so that it is defined at the time when the trust deed is recorded and not at the time of default.

Background:

The Loan Refinancing Assistance Pilot Project (LRAPP) is a publicly funded program that assists homeowners facing foreclosure. It does so by facilitating short sales where the purchaser agrees to sell back the home to the original homeowner after the short sale. This provides homeowners with a new loan, generally a reduced principal amount, and the ability to avoid a foreclosure. However, lenders generally require purchasers at short sales to sign documents that prohibit these sell-back transactions. This bill prohibits lenders from requiring non-profit entities to sign those agreements, which allows LRAPP to function as anticipated. The bill does provide the aforementioned exceptions to this prohibition. HB 3389 took effect on July 19, 2013.

The change in the definition of "Residential Trust Deed" was prompted, in part, by the provisions of the Foreclosure Mediation Bills (SB 1552, 2012 and SB 558, 2013), particularly with respect to provisions that allow a homeowner to ask for mediation procedures before a default occurs if the default is imminent. In such cases there is, technically speaking, no "residential trust deed" because that definition required a default. In addition, aligning the definition of residential trust deed to the point at which it is recorded likely provides more certainty as to whether there is a residential trust deed at the relevant times.

10. SB 396 (Ch. 597) Medical and Health Savings Accounts

Senate Bill 396 exempts from execution Health Savings Accounts that are authorized under section 220 or 223 of the Internal Revenue Code. SB 396, Sections 1-3.

Additionally, the bill provides that debtors may elect use the federal exemptions in bankruptcy. SB 396, Section 4:

- Debtors must choose to either use the federal exemptions or the state exemptions.
- The federal exemptions are available only in bankruptcy.
- SB 396 has an emergency clause and took effect upon passage. The bill was signed into law on July 1, 2013, and became effective on July 2, 2013.
- For additional information about the federal bankruptcy exemptions, including a list of federal exemptions and a comparison chart with Oregon exemptions go to: http://osb-dc.org/news.php?newsid=61

11. SB 558 (Ch. 304) Foreclosure Avoidance Mediation Program

Brief Summary:

SB 558 expands the Foreclosure Avoidance Mediation Program to require mediation between lenders and borrowers in judicial foreclosures. It also makes changes to the original foreclosure mediation bill, Senate Bill 1552, which was passed in 2012. (See *2012 Legislation Highlights*, Chapter 2, Section 1).

SB 1552 (2012) was essentially an "opt-in" program, requiring borrowers to request mediation after the lender served the required notice of mediation. SB 558 (2013), however, acts more as an "opt-out" in that the mediator ("service provider") takes active steps to schedule and set a "resolution conference" after receiving a notice from the lender. SB 558, Section 3(1). The grantor is required to take certain steps, such as paying a mediation fee, submit information, and consult a housing counselor. SB 558, Section 3(2),(3). The service provider must cancel the scheduled "resolution conference" if the borrower does not pay the required fee (not to exceed $200). SB 558, Section 3(5)(b).

The bill took effect on June 4, 2013, but most provisions of the bill became operative on August 4, 2013.

Background:

Foreclosure Avoidance Mediation Program (FAMP) (SB 1552, 2012)

The requirements of foreclosure mediation were passed during the newly established even-year short session. Not unlike many pieces of relatively new or complicated legislation, foreclosure mediation legislation required additional work. The Department of Justice conducted extensive rulemaking to implement SB 1552.[6] The basic provisions of the 2012 program are as follows:

1) Requires Lenders to notify borrowers of the Mediation Program (requires separate notice of mediation 60 days prior to the foreclosure);
2) Provides an exemption for lenders that conducted fewer than 250 foreclosures per year;
3) Requires Attorney General to appoint a mediation service provider to coordinate the mediation service program;
4) Requires lender and borrower to share cost of mediation, with the borrower's fee capped at $200;
5) Requires participating borrower to consult with housing counselor prior to mediation;
6) Requires borrower to notify lender if mediation is cancelled;
7) Requires mediator to complete and provide a certificate of compliance to the borrower, lender, and Attorney General;
8) Requires lender to record a certificate of compliance before undertaking foreclosure;
9) Requires lender to record compliance documents that it has provided notice in case of borrower ineligibility;
10) Requires lender to give notice of postponement of sale to borrower;
11) Allows borrower who is at risk of foreclosure to request mediation;
12) Requires $100 fee on lender when recording a notice of default;
13) Provides for civil penalties for failure to comply.

Primary Changes/ Additions from SB 558, 2013

1) Expands FAMP to apply in the Judicial Foreclosure context;
2) Reduces the number of foreclosures per year under which lenders can claim an exemption to the provisions of the bill from 250 to 175;
3) Requires lenders to initiate a request for a resolution conference (mediation) and provide information regarding the loan from which the borrower may petition for a resolution conference;

[6] FAMP rules are located at Chapter 137, Divisions 110 and 120. http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_tofc.html

4) Requires lender to provide detailed itemized statement of amounts owing and true copies of trust deed and note.
5) Provides flexibility/clarification regarding in-person meeting requirements;
6) Requires service provider (mediator) to issue a certificate of compliance that the lender must file/record upon completion of resolution conference;
7) Clarifies that lender is not under an affirmative duty to determine if borrower is eligible for foreclosure avoidance measures;
8) Requires lender to provide a notice if borrower is ineligible for foreclosure avoidance measures or if borrower has not complied with mediation requirements;
9) Provides Attorney General with enforcement authority under the Unlawful Trade Practices Act;
10) Caps lender fees at $600.

General Requirements for Lender:

1) Check exemption status. File notice of exemption with Department of Justice if exempt[7] (SB 558, Section 2(1)(b));
2) Request a Resolution Conference through the Service Provider and pay the required fee (SB 558, Section 2(2));
    a. Request must include:
        i. Identification of Residential Trust Deed; and
        ii. Contact information for:
            1. Beneficiary;
            2. Agent who will attend the Resolution Conference; and
            3. Grantor
3) Submit following documents to Service Provider (SB 558, Section 3(4)(b)):
    a. Copy of the residential trust deed
    b. Copy of the promissory note that is evidence of the obligation that the residential trust deed secures and that the beneficiary or beneficiary's agent certifies is a true copy;
    c. The name and address of the person that owns the obligation that is secured by the residential trust deed;
    d. Record of the grantor's payment history for the longer of the preceding 12 months or since the beneficiary last deemed the grantor current on the obligation;
    e. An itemized statement of amount the grantor owes on the obligation, itemized to reflect the principal, interest, fees, charges and any other amounts included within the obligation;
    f. An itemized statement that shows the amount the grantor must pay to cure the grantor's default;

[7] Exemption forms and other forms can be found at: http://www.doj.state.or.us/consumer/pages/foreclosure_mediation_forms.aspx

g. A document that identifies the input values for each net present value model that the beneficiary or the beneficiary's agent uses;
h. A document that identifies the output values that each net present value model produces;
i. The appraisal or price opinion the beneficiary relied on most recently to determine the value of the property that is the subject of the residential trust deed;
j. The portion of any pooling agreement, servicing agreement or other agreement that the beneficiary cites as a limitation or prohibition on modifying the terms of the obligation together with a statement that describes the extent to which the beneficiary sought to have the limitation or prohibition waived;
k. A description of any additional documents the beneficiary requires to evaluate the grantor's eligibility for a foreclosure avoidance measure;
l. Any other information the Attorney General requires by rule.

4) If applicable, mail notice to borrower and DOJ that a determination has been made that the borrower is not eligible for foreclosure avoidance measures (Section 9);
5) At least 5 days before the sale, record an affidavit that states the beneficiary has complied with these requirements (SB 558, Section 9(2))

General Requirements for Borrowers:

1) Pay required fee for resolution conference; (SB 558, Section 3(2)(a))
2) Consult Housing Counselor before attending a resolution conference; (SB 558, Section 3(3));
3) Submit documents to Service Provider (SB 558, Section 3(2)(c))
   a. Information about the grantor's income, expenses, debts and other obligations
   b. A description of the grantor's financial hardship, if any;
   c. Documents that verify the grantor's income; and

Any other information the Attorney General requires by rule

III. BUSINESS AND CORPORATE LAW

1. HB 2566 (Ch. 201) Equity Compensation to Employees

Many Oregon businesses choose to grant equity compensation to employees of the business. Traditionally, the decision to grant equity compensation rests entirely with the Board of Directors. However, often Boards of Directors preferred to delegate this authority to corporate officers because officers often had a clearer idea of to whom performance based awards should be made. However, it was not clear that this delegation was permissible under the statutes

House Bill 2566 was introduced at the request of the Oregon State Bar Business Law Section, and provides express authority for Boards of Directors to delegate this authority to corporate officers.

2. HB 2567 (Ch. 274) Remote Only Shareholders Meetings

HB 2567 was introduced at the request of the OSB Business Law Section. This bill provides express statutory authority for corporations to conduct shareholders meetings entirely by electronic means and without a physical meeting place.

Prior to this bill it was common for shareholders meetings to be conducted in a fashion where many shareholders participated remotely. However, statutes often referred to the place or location of the shareholders meeting. This reference to a meeting location made it unclear whether it was permissible to conduct a shareholders' meeting entirely by electronic means and without any physical location.

HB 2567 clarifies that remote only shareholders meetings are permissible so long as property authorized by the board.

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JASON POSNER
MARK PETERSON

Civil Procedure and Litigation

I. INTRODUCTION

II. CIVIL ACTIONS

1.	HB 2536	(Ch. 736)	Transfers of Structured Settlement Rights
2.	HB 2596	(Ch. 461)	Rights of Action for Interference with Forest Practices
3.	SB 483	(Ch. 5)	Adverse Health Care Incidents
4.	SB 709	(Ch. 307)	Civil Actions Arising from Forest Fires

III. LEGISLATIVELY ENACTED ORCP CHANGES

1.	HB 2148	(Ch. 1)	Non-Substantive Changes to ORCP 38 C
2.	HB 2779	(Ch. 687)	Restraining Orders and Amendment to ORCP 79 E
3.	HB 2833	(Ch. 218)	Unsworn Foreign Declarations Act and Amendments to ORCP 1 E

IV. ORCP CHANGES PROMULGATED BY THE COUNCIL ON COURT PROCEDURES

1.	ORCP 17	Signing of Pleadings, Motions, and Other Papers; Sanctions
2.	ORCP 19	Responsive Pleadings
3.	ORCP 39	Depositions upon Oral Examination
4.	ORCP 55	Subpoena
5.	ORCP 57	Jurors
6.	ORCP 59	Instructions to Jury and Deliberation
7.	ORCP 68	Allowance and Taxation of Attorney Fees and Costs and Disbursements

Jason Posner: 1998 University of Oregon Law School. Member of Oregon State Bar since 1998.
Mark Peterson: 1976 University of Toledo School of Law. Member of Oregon State Bar since 1982.

I. INTRODUCTION

This chapter summarizes bills that addressed settlement rights and rights of action in civil cases, and that amended the Oregon Rules of Civil Procedure. The chapter also includes summaries of ORCP changes promulgated by the Oregon Council on Court Procedures. Unless otherwise noted, all bills take effect on January 1, 2014.

II. CIVIL ACTIONS

1. HB 2536 (Ch. 736) Transfers of Structured Settlement Rights

House Bill 2536 specifies criteria that a court or administrative authority must consider before allowing the transfer of structured settlement rights. Prior to HB 2536, Oregon law required that courts make a finding that the transfer was in the best interests of the payee, but the law did not provide courts with much guidance on how to make that ruling.

Among other provisions, the bill allows the court to require a payee to provide testimony or other evidence on a number of factors including the payee's amounts and sources of income and his/her financial obligations including child support responsibilities. The court is required to deny the transfer if the court finds that it would be contrary to the best interests of the payee.

2. HB 2596 (Ch. 461) Right of Action for Interference with Forest Practices

House Bill 2696 provides that a private entity that contracts with the State Forestry Department to perform a forest practice has a cause of action against any person who intentionally hinders, impairs, or obstructs the performance of a forest practice.

The private party may recover actual damages and attorney fees. The bill does not provide for attorney fees for a prevailing defendant. The venue for the action is considered to be proper in any county in which the private entity was contracted to perform forest practices at the time of the incident.

3. SB 483 (Ch. 5) Adverse Health Care Incidents

Senate Bill 483 is intended to better enable patients and doctors to engage in negotiation and mediation prior to the initiation of litigation in a medical malpractice case. The bill creates a process for the filing of a notice of an "adverse health care incident" with the Oregon Patient Safety Commission. The bill tolls the statute of limitations for six months after such a notice is filed, and generally provides that participation in the commission's mediation program, and the content of discussions as part of the program, are not admissible in future litigation.

The Oregon Patient Safety Commission is charged with implementing the new law. The commission is charged with establishing timelines and the process for filing notices, maintaining a panel of available mediators, establishing quality improvement techniques to reduce patient care errors, and developing evidence-based prevention practices to improve patient outcomes.

Senate Bill 483 took effect on March 18, 2013. The program becomes operative on July 1, 2014 and sunsets December 31, 2023. Sections 12, 14, and 16 are not operative until December 31, 2023.

4. SB 709 (Ch. 307) Civil Actions Arising from Forest Fires

Senate Bill 307 addresses the damages allowed in the case of a forest fire. The bill defines several terms, including "fair market value," and specifies that a plaintiff can recover double his or her actual economic and property damages if a fire originated as the result of recklessness, gross negligence, willfulness, or malice. SB 709 took effect on June 4, 2013.

III. LEGISLATIVELY ENACTED ORCP CHANGES

1. HB 2148 (Ch. 1) Non-Substantive Changes to ORCP 38 C

House Bill 2148 is a non-substantive bill that makes technical corrections to numerous area of Oregon law. The bill makes several minor and non-substantive changes or ORCP 38 C.

2. HB 2779 (Ch. 687) Restraining Orders and Amendment to ORCP 79 E

House Bill 2779 makes minor changes to ORCP 79 E to ensure that the requirements of Rule 79 do not apply to restraining orders issued under the bill. This means that restraining orders issued under the provisions of HB 2779 are not subject to the general notice and hearing requirements of Rule 79.

House Bill 2779 generally expands the abilities of individuals who have been sexually abused, or who have a reasonable fear for their personal safety, to petition a court for a restraining order against their alleged abuser. HB 2779 took effect on July 29, 2013.

3. HB 2833 (Ch. 218) Unsworn Foreign Declarations Act and Amendments to ORCP 1 E

House Bill 2833 adopts the Unsworn Foreign Declarations Act. The bill amends ORCP 1 E to provide that an unsworn declaration under the Act may be used in lieu of an affidavit required or allowed under Rule 1. The purpose of the Act is to ease the ability of persons outside the United States to provide documents that would otherwise require notarization.

The Unsworn Foreign Declarations Act is a product of the Uniform Laws Commission, and was proposed for adoption in Oregon by the Oregon Law Commission and brings the Oregon rule into conformity with the current analogous federal rule.

IV. ORCP CHANGES PROMULGATED BY THE COUNCIL ON COURT PROCEDURES

1. ORCP 17

The amendment adds language to ORCP 17 to clarify that electronic signatures on pleadings and court documents may be allowed, consistent with other ORCP and other rules of court, as the court system transitions to electronic filing. Three technical changes were also made to add clarity and consistency to the rule.

2. ORCP 19

The amendment replaces the historic affirmative defense of *res judicata* with the more modern and specific concepts of claim preclusion and issue preclusion. Three technical changes, as well as punctuation changes, were also made to add clarity and consistency to ORCP 19.

3. ORCP 39

Currently, when a deposition subpoena seeks testimony of a person (usually unknown to the party issuing the subpoena) to testify on behalf of an organization or a company, the party providing the witness is not required to disclose the witness' identity until the time of the deposition, making the conduct of the deposition inefficient. The amendment requires that the deponent's identity be disclosed no fewer than three days in advance of the deposition, absent good cause. Two technical changes were also made to add clarity and consistency to ORCP 39.

4. ORCP 55

This amendment responds to defendants' concerns that plaintiffs, in response to a subpoena for individually identifiable health information, sometimes simply assert that the information requested is privileged. Such a response requires the defense to use judicial resources in pursuing a motion to compel records which have not been identified. The amendment requires that the plaintiff identify any medical records which are not being produced in discovery, and the applicable privilege. Minor reorganization, eight technical changes, and punctuation changes were also incorporated in the amendment for clarity and consistency to ORCP 55.

5. ORCP 57

Section F is completely reorganized to allow more flexibility in selecting, seating, and using alternate jurors. Also, under the current rule, alternate jurors are discharged at the time when the jury begins to deliberate. If a juror becomes unable to serve during deliberations, the parties must agree to accept a verdict from a jury of less than six (or 12) or re-try the case. The amended rule provides that alternate jurors not be discharged until the verdict is given such that, if a juror becomes unable to continue during the deliberations, the alternate juror(s) will be available, at the judge's discretion, to deliberate with the remaining jurors and to reach a verdict. Twenty technical changes, as well as punctuation changes, were made in sections A through G of ORCP 57 for clarity and consistency.

6. ORCP 59

In current practice, jury instructions are not necessarily given at the conclusion of the evidence. The amendment authorizes the trial court to specify the appropriate time at which a party can make a concern with a jury instruction known to the trial court. The new procedure is not unduly technical, so that the court can consider giving or modifying the proposed instruction, and preserves the issue for appeal if the court does not give or modify the proposed instruction. The amendment also makes explicit that an appellate court is not precluded from reviewing errors in jury statements or instructions for legal errors that are apparent on the record. Two technical changes were also made for clarity and consistency to ORCP 59.

7. ORCP 68

The current rule requires a hearing whenever an objection to an award of attorney fees is filed, even if the documents filed are completely adequate for the court to rule. The amendment substantially reorganizes the rule and provides better procedures for informing the court of the disputed issues in the parties' filings, so that the need for a hearing in some cases is obviated. The statement of attorney fees is challenged by an objection, which under the amendment can be countered with a response to the objection (which many practitioners now file without any authority in the rule). A hearing must be conducted if requested in the caption of the objection or the newly authorized response. The amendment further clarifies that statements of attorney fees and objections thereto must explain the application of the ORS 20.075 factors to

the matter before the court. Responses should also address ORS 20.075 factors. Finally, objections and any supporting documents, e.g., declarations, must be served within 14 days of service of the statement of attorney fees; such documents cannot be served and presented for the first time at the hearing on attorney fees. Any supporting documents for the response to an objection must likewise be served at the time the response is served, and not be presented only at the hearing.

The amendment also clarifies when a right to attorney fees must be pled in cases, such as domestic relations actions, when litigation arises from a motion or a response rather than from a complaint and an answer. The amendment also makes clear that Rule 68 is the exclusive procedure for seeking, opposing, and obtaining and award of attorney fees unless (as in probate practice) the Legislature refers to Rule 68 but provides different procedures. Five technical changes, as well as punctuation changes, were also made for clarity and consistency to ORCP 68.

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ALAN MITCHELL

Construction Law

I. INTRODUCTION

II. PUBLIC WORKS PROJECTS

1.	HB 2212	(Ch. 66)	Small Procurement Threshold
2.	HB 2545	(Ch. 239)	Debarments
3.	HB 2646	(Ch. 203)	Prevailing Wage Rates
4.	HB 2800	(Ch. 4)	Interstate 5 Bridge Replacement Project
5.	SB 254	(Ch. 522)	CM/GC Regulations on Public Works
6.	SB 831	(Ch. 673)	Highway Construction Workforce Development

III. CONSTRUCTION CONTRACTORS BOARD

1.	HB 2524	(Ch. 378)	Contractor Licensing Exemptions
2.	HB 2540	(Ch. 251)	Enforcement Actions against Contractors
3.	SB 205	(Ch. 168)	Residential Construction Contracts
4.	SB 207	(Ch. 300)	CCB License Requirements
5.	SB 783	(Ch. 718)	Residential Continuing Education

IV. DESIGN PROFESSIONALS

1.	HB 2268	(Ch. 196)	Architecture Firms
2.	SB 46	(Ch. 469)	Statute of Ultimate Repose
3.	SB 208	(Ch. 86)	Engineering and Land Surveying Admissions
4.	SB 209	(Ch. 169)	Suspension of Engineers or Land Surveyors

V. MISCELLANEOUS

1.	HB 2005	(Ch. 255)	Energy Board Changes
2.	HB 2048	(Ch. 677)	Revisions to Paint Stewardship Program
3.	HB 2698	(Ch. 110)	Building Code Inspectors
4.	HB 2977	(Ch. 584)	Construction Labor Contractors
5.	HB 2978	(Ch. 324)	Building Inspections and Permits
6.	HB 3169	(Ch. 612)	Green Technology in Public Buildings
7.	HB 3245	(Ch. 328)	Inmate Labor
8.	SB 405	(Ch. 410)	Retainage

9. SB 465	(Ch. 303)	Flood Damage Records
10. SB 582	(Ch. 528)	State Building Code
11. SB 782	(Ch. 606)	Apprenticeship Task Force

Alan Mitchell: 1996 Northwestern School of Law. Member of Oregon State Bar since 1996.

I. INTRODUCTION

The 2013 Legislature took up a broad spectrum of construction law related topics. Aside from the major CM/GC public works bill (SB 254), the legislature changed the statute of ultimate repose for claims against design professionals (SB 46), changed the retainage requirement on private projects (SB 405), and made a number of revisions with the state building code enforcement programs (HB 2698, HB 2978, and SB 582). As to the Construction Contractors Board, most of the bills were not substantively significant.

Unless otherwise noted, all bills take effect on January 1, 2014.

II. PUBLIC WORKS PROJECTS

1. HB 2212 (Ch. 66) Small Procurements Threshold

This bill changes the threshold for "small procurements" under the Public Contracting Code from $5,000 to $10,000. This change applies to procurements that are conducted after January 1, 2014.

2. HB 2545 (Ch. 239) Debarments

This bill makes adjustments to the ability of the Commissioner of Bureau of Labor and Industries to debar contractors (or subcontractors) from public works contracts. Aside from adding limited liability companies to the list of entities that can be debarred, the bill also clarifies that it is the Commissioner who makes this determination. While this bill was deemed an emergency that became effective May 28, 2013, that was done to allow BOLI to adopt administrative rules prior to the bill's true effective date. The bill applies to contracts entered on or after January 1, 2014.

3. HB 2646 (Ch. 203) Prevailing Wage Rates

This bill requires prevailing wage rates to be paid on Oregon University System construction projects. While this bill was deemed an emergency that became effective May 22, 2013, that was done in order to allow the Oregon University System to adopt administrative rules prior to the bill's true effective date. The bill applies to contracts that are offered to bid or are entered on or after January 1, 2014.

4. HB 2800 (Ch. 4) Interstate 5 Bridge Replacement Project

This bill declares that it is in Oregon's interest to undertake the Interstate 5 bridge replacement project. First, the bill states that the Department of Transportation and the State Treasurer may not request or issue any financing bonds unless various conditions are met by certain deadlines. Second, the bill authorizes the Oregon Transportation Commission to enter into agreements for collecting tolls for this project. Third, the bill authorizes the appropriate state departments to address funding efforts for this project. Fourth, the bill requires that steel, iron, and related material associated with this project must be produced in the United States (with certain qualifications to that mandate). Fifth, the bill states that public contracts associated with this project must, as much as possible, focus on nondiscrimination, address disadvantaged business enterprises, and generally implement the policies in ORS 279A.100, 279A.105, and 279A.110. These same issues must also be "flowed down" into subcontracts. Sixth, the bill requires the Oregon Transportation Commission to conduct various studies about impacts of this project. Finally, the bill requires ODOT to submit reports to the legislature every calendar quarter. This bill took effect on March 12, 2013.

5. SB 254 (Ch. 522) CM/GC Regulations on Public Works

This bill addresses the construction manager/general contractor method of performing public works projects. The bill defines this construction method and sets out parameters for how this method should work. It also lists out projects and services that are not included within the CM/GC method. The bill mandates that the Attorney General will adopt model rules to set out the parameters for how CM/GC projects will be advertised and procured – and sets out criteria that the AG must meet in adopting those rules. Agencies are not permitted to adopt their own CM/GC rules.

This bill also sets out certain provisions that must be included in any contract where this method is used, as well as certain provisions that must be included in any subcontract (including that those subcontracts must be awarded competitively).

Next, the bill revises the ORS 279C.335 exemptions from the competitive bidding requirements to add a significant number of criteria that must be met by an agency seeking such an exemption.

The bill took effect on June 26, 2013. However, that was mainly for the purpose of allowing the Attorney General to adopt the required rules. Most substantive changes become operative on July 1, 2014.

6. SB 831 (Ch. 673) Highway Construction Workforce Development

This bill revises the existing provisions of ORS 184.866, which sets out requirements for ODOT to spend federal funds to increase diversity in the highway construction workforce. The bill changes the limit of funds that ODOT can spend from $1.5 million to $2.1 million. This bill was deemed an emergency and became effective July 25, 2013. It applies to funds received on or after July 1, 2013.

III. CONSTRUCTION CONTRACTORS BOARD

1. HB 2524 (Ch. 378) Contractor Licensing Exemptions

This bill amends ORS 701.010, which lists out parties who are exempt from obtaining a license from the Construction Contractors Board. First, one existing exemption is for persons doing "casual, minor or inconsequential" work. Previously, there was a $500 monetary threshold concerning such work; now, the threshold is $1,000.

Second, the existing exemption for banks and surety companies now lists out more similar companies that are exempt from licensing. The changes also clarify that this exemption only applies to properties where the lender or surety holds a security or legal interest. Third, the bill clarifies that the exemption for worker leasing companies only applies to those companies that fit the definition in ORS 656.850.

This bill only applies to construction work that is arranged for after January 1, 2014 or work performed after that date.

2. HB 2540 (Ch. 251) Enforcement Actions against Contractors

This bill expands the Construction Contractors Board's ability to revoke, suspend, or refuse to issue a contractor's license. Under the bill, the CCB can take any of those actions if it finds that a person has provided false financial information to a long list of governmental entities if doing so would result in the person providing the information or another person receiving a monetary benefit. However, under the new provisions the penalty applies only if the person providing the information knew or should have known how the information will be used.

The bill also makes a change in the definition of the term "construction debt," which is an important term under CCB laws and rules. Previously, that term only applied if there was a final judgment, a final arbitration award, or a final agency order. Now, this term also applies if the contractor owes money to its employees for unpaid wages. Although the CCB has indicated that it will not take enforcement action against a contractor unless there has first been a BOLI determination on the underlying issues, that limitation is not set out the bill.

3. SB 205 (Ch. 168) Residential Construction Contracts

This bill deletes the portions of ORS 701.305 that required specific language to be included in residential construction contracts. Because the CCB already has an administrative rule requiring that same language in those contracts (OAR 812-012-0110), this change merely makes it easier for the CCB to make future changes in mandatory contract language.

4. SB 207 (Ch. 300) CCB License Requirements

Currently, ORS 701.046 lists the specific information that applicants must provide in order to apply for a license with the Construction Contractors Board. The existing version did not address limited partnerships; this bill corrects that omission.

Next, this bill makes clarifications and revisions to the CCB license requirements for residential locksmiths, home inspection services, and home service contractors. The bill also makes a number of changes regarding worker leasing companies and how they interact with licensed contractors. Specifically, the bill provides that if a construction contractor uses one or more workers supplied by a worker leasing company, the company will be classified as non-exempt; similar to if the company had one or more employees.

5. SB 783 (Ch. 718) Residential Continuing Education

This bill creates new provisions for the existing continuing education requirements for residential-enforced contractors. It does not address the continuing education requirements for commercial-endorsed contractors.

First, the bill deletes the existing requirements of ORS 701.123 (education and training program approval), ORS 701.126 (continuing education rules and fees), and ORS 701.127 (continuing education for residential contractors). Second, the bill instructs the CCB to create a continuing education system for residential contractors. That system must meet certain minimum standards.

Third, the bill sets out specific minimum education criteria that residential contractors must satisfy; however, it also gives the CCB authority to exempt contractors from the criteria, either on a general or case-by-case basis. Fourth, the bill maintains the existing exemption from continuing education for contractors holding only the residential developer endorsement.

Fifth, the bill gives the CCB the ability to enter agreements with approved continuing education providers and sets criteria that the CCB must measure with those providers. The bill allows residential contractors to satisfy the CCB's continuing education requirements by taking a specialized education program as established by ORS 701.120.

The bill took effect on August 1, 2013. However, this is mainly to allow the CCB to prepare rules in compliance with these new directives. The substantive portions of the bill will not take effect until January 1, 2014.

IV. DESIGN PROFESSIONALS

1. HB 2268 (Ch. 196) Architecture Firms

The majority of this bill consists of minor clarification of the existing statutes. HB 2268, Section 1, adds the words "consulting architect" and "foreign architect" to the definition of "architect." In several places, the bill changes the term of holding an architect "license" to holding an architect "registration." HB 2268, Section 14, makes minor revisions to the "plead and prove" requirement. Attorneys who draft these types of pleadings should read this section carefully.

2. SB 46 (Ch. 469) Statute of Ultimate Repose

This bill revises the statute of ultimate repose against design professionals found in ORS 12.135(3). Previously, the limitation was ten years after substantial completion or abandonment of the project. Now, the limitation is six years for most large commercial structures (as defined by ORS 701.005) and ten years for all other structures. This bill applies to causes of action arising on or after January 1, 2014.

3. SB 208 (Ch. 86) Engineering and Land Surveying Admissions

This bill allows the State Board of Examiners for Engineering and Land Surveying to waive the educational requirement for admission if the applicant furnishes sufficient evidence of being enrolled in the senior year of a board-approved curriculum and then provides evidence of successful completion of that curriculum. This bill applies to applications that are pending or filed on or after January 1, 2014.

4. SB 209 (Ch. 169) Suspension of Engineers or Land Surveyors

This bill revises ORS 672.200, which sets out grounds for suspension or revocation of a certificate issued by the Board of Examiners for Engineering and Land Surveying. Those grounds now include the failure to pay civil penalties or fees or to meet any other term in a final order of the Board. This bill applies to final orders issued on or after January 1, 2014.

V. MISCELLANEOUS

1. HB 2005 (Ch. 255) Energy Board Changes

This bill revises the Construction Industry Energy Board by adding four new members, two from the State Plumbing Board and two from the Mechanical Board. The bill also expands the mechanical Board to include a tradesperson with experience in heat and frost insulation. The bill took effect on June 4, 2013.

2. HB 2048 (Ch. 677) Revisions to Paint Stewardship Program

The 2009 Oregon Legislature adopted a bill that required Oregon to establish a Paint Stewardship Program designed to address the issue of recycling leftover paint. Those provisions were placed into ORS Chapter 459A. This new bill makes a number of revisions that are designed to improve the success of that program, which is administered through the Department of Environmental Quality and operated by various stewardship organizations. The bill took effect on July 29, 2013.

3. HB 2698 (Ch. 110) Building Code Inspectors

This bill gives authority to the Director of the Department of Consumer and Business Services to certify inspectors to perform inspections throughout a building code administrative region, whether within or without a municipality (although this does not require a municipality to allow such inspections unless the inspector is employed by the municipality). This bill was designed to remove the sunset of the specialized inspector laws that was created by the 2009 Legislature.

The bill sets out factors for the Director to consider in making these decisions, including experience, training, and similar qualifications. Also, the bill revises the definition of "inspector" under ORS 455.715 to address both these new changes and the 2009 changes.

4. HB 2977 (Ch. 584) Construction Labor Contractors

This bill revises the farm labor statutes and creates a new classification of "construction labor contractor." This new label includes anyone who pays, supplies, or employs labor workers for construction projects. The label does not apply to anyone who has a construction contract with the property owner, an owner who hires persons to work on the owner's own property, labor unions, and a number of other situations. The bill took effect on July 1, 2013; however, many of the provisions do not take effect until July 1, 2015.

5. HB 2978 (Ch. 324) Building Inspections and Permits

This bill makes a number of changes to the building code regulations of the Department of Consumer and Business Services. In general, this legislation was designed to make the Building Code Division's enforcement tools more consistent across the various licensing disciplines.

First, the bill caps the authority of DCBS (or a municipality) to issue an "investigation fee" against a person who commences work before a permit is issued (these are sometimes known as "double permit" fees). Now, these fees cannot exceed the average or actual additional cost of the additional inspections required. This does not apply to emergencies or projects that are exempt. Second, the bill allows DCBS to seek injunctive relief against a party that is doing work in violation of the state building code and its associated provisions. Third, the bill expands the limitations on persons working without a license or without a proper license. It also sets out a new violation of performing inspections or plan review on structures where the inspector or a relative has a financial interest.

6. HB 3169 (Ch. 612) Green Technology in Public Buildings

This bill revises and expands the current statutes addressing the use of "green technology" in public buildings. ORS 279C.527 and 279C.528. It expands the obligation for contracting agencies to keep records of these issues and to report those records to the State Department of Energy, who will then report them to the Legislature.

This bill took effect on July 2, 2013. Its provisions apply to any project that either was first advertised after that date or, if not advertised, was entered after that date.

7. HB 3245 (Ch. 328) Inmate Labor

This bill prohibits the Department of Corrections from using inmate labor for electrical or plumbing work unless performed under the direct supervision of a regular DOC employee who is a licensed electrician or plumber. It also directs that such work may only be performed on buildings owned or leased by the DOC. This bill took effect on June 6, 2013.

8. SB 405 (Ch. 410) Retainage

This bill revises the retainage provisions for private construction contracts. Now, no more than five percent may be withheld as retainage (which is currently the restriction for public contracts). This bill applies to contracts entered into on or after January 1, 2014.

9. SB 465 (Ch. 303) Flood Damage Records

This bill allows local governments with land use jurisdiction to record a "notice of designation of substantial damage" caused by flooding. When the affected structures are brought into compliance with applicable regulations, the local government shall records a "notice of remedy" that declares void the previous notice. This bill was deemed an emergency and took effect on June 4, 2013. The bill's provisions apply to any structure that was substantially damaged before, on, or after that effective date.

10. SB 582 (Ch. 528) State Building Code

This bill makes a number of revisions to the State Building Code, which is administered by the Director of the Department of Consumer and Business Services. First, the bill sets out broad policies in support of various aspects of the state building code regulations.

Second, the bill requires the Director to give special consideration to the unique needs of construction in rural or remote areas of the state.

Third, the bill allows for coordination between building officials and fire code officials in plan review and inspections of structures.

Fourth, the bill allows building officials to provide typical plans and specifications for various specific types of structures.

Fifth, the bill allows municipalities to request that the Director enter into an agreement to administer and enforce all or a portion of a building inspection program within a specified area. The bill limits the ability to challenge such agreements and also addresses the fees associated with these agreements.

Sixth, the bill allows the Director to take actions to ensure there are sufficient staff and resources to enforce the state building code. The bill lists a number of powers and limitations on the Director in taking these actions. It also addresses the fees the department may charge when a code program has been surrendered or abandoned by a municipality.

Finally, the bill creates a new appeal right under ORS 455.475 where a building permit applicant may appeal the decision of a local building official directly to the Director. The Director's decisions on these appeals is subject to judicial review as provided in ORS 183.484.

The bill took effect on June 26, 2013.

11. SB 782 (Ch. 606) Apprenticeship Task Force

This bill creates a State Task Force on Apprenticeship in State Contracting to make recommendations about apprenticeship utilization standards for state contracting agencies. The bill details the nature of the 14 members of the Task Force as well as its goals and issues to be considered. The Task Force must submit its final report no later than November 1, 2014. This bill took effect on July 1, 2013.

5

MICHAEL SCHMIDT

Criminal Law

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Michael Schmidt: 2008 Northwestern School of Law. Member of Oregon State Bar since 2008.

I. INTRODUCTION

Criminal law was again a major focus of the Legislature's work this session. Arguably the most significant bill passed was HB 3194 put forward by the Governor's Task Force on Public Safety. It's a bill that is touted to change the landscape of how heavily Oregon uses its prison system. In the end it passed one vote shy of two-thirds support in both chambers, and represents a bipartisan effort to curb prison growth. The other major focuses of the criminal changes in the 2013 regular session were generally around DUI and traffic law, civil commitment law, drugs, animal law, and sex trafficking.

Except where otherwise noted, bills take effect on January 1, 2014.

II. DUI / TRAFFIC LAW

1. HB 2116 (Ch. 315) Ignition Interlock Devices and Diversion

HB 2116 amends ORS 813.602, which outlines the requirements of installing an ignition interlock device after a conviction or diversion for driving under the influence of intoxicants. Specifically, HB 2116:

- Exempts defendants participating in a Driving under the Influence of Intoxicants (DUII) Diversion program (diversion) from having to operate a motor vehicle with an ignition interlock device (IID) where they have a valid medical reason why they cannot do so.
- Exempts defendants in diversion from having to use an IID while operating an employer's vehicle while in the scope of their employment after following the appropriate procedures.

The use of IIDs was added as a requirement of the DUII Diversion statute in 2011. Medical and employment exemptions already existed for people convicted of DUII, but not for the newly added diversion participants required to install the IID. HB 2116 gives diversion participants the same exemptions available to people who have been ordered to install an IID post-conviction.

2. HB 2117 (Ch. 642) The "McNeeley Fix"

HB 2117 does two things. First, it clarifies that the implied consent laws do not limit law enforcement from obtaining a warrant for a blood test even after a person has refused a breath test in order to gather evidence for purposes of a criminal or civil proceeding.

ORS 813.100 has been amended to state that a warrant or any other lawful means may be used to obtain a chemical analysis of the breath or blood to be used as evidence in a criminal or civil proceeding. This is despite the fact that ORS 813.100(2) states that no chemical analysis of the breath or blood should be given if the person refuses to provide such evidence after having been read the implied consent rights and consequences.

This bill was passed in response to the U.S. Supreme Court case *Missouri v. McNeely*, decided April 17, 2013, which has made it necessary to obtain more warrants in simple DUII cases than in the past.

The second part of HB 2117 amends ORS 813.140 to allow an officer to ask for express consent for a breath test without violating implied consent (the law previously only allowed for express consent for blood and urine tests). This is necessary as officers are asking for express consent for a breath test prior to reading implied consent so that a person's consent is a viable option for the admission of breath test evidence.

This bill took effect on July 25, 2013.

3. HB 2384 (Ch. 374) Driving While Suspended Vehicle Forfeiture

HB 2384 allows law enforcement agencies to seize a vehicle and serve notice of possible forfeiture proceedings on a driver who is pulled over and cited for Driving While Suspended (DWS) or aggravated DWS, when the DWS is a criminal offense and is preceded by a conviction within the last three years for:

- Criminal DWS under ORS 811.182; or
- Aggravated DWS under ORS 163.196.

HB 2384 gives agencies the ability to utilize the criminal forfeiture statute or the civil forfeiture statute. It also requires law enforcement agencies to adopt policies and procedures for implementation.

4. HB 2542 (Ch. 124) Increased ODL Suspension for Serious Physical Injury

HB 2542 directs the Department of Transportation to revoke a license for three years where the defendant is convicted of failure to perform the duties of a driver to injured persons under ORS 811.705, and the court notes on the record that a person sustained serious physical injury. Serious physical injury is defined in ORS 161.015.

Previously, ORS 809.409 (3) provided for a one year revocation, unless the court noted on the record that there was a death involved in the accident, in which case the revocation would be for five years. This creates a three year revocation when a court notes on the record that a person suffered serious physical injury. If the court makes no findings as to injury or death of a person involved in the accident, the statute would still require a one year revocation of driving privileges.

This bill took effect May 16, 2013.

5. HB 2601 (Ch. 428) Red Light Photo Evidence Now Admissible in Criminal Trials

HB 2601 allows the use of red light photo camera pictures in criminal judicial proceedings of Class A misdemeanors and felonies. The bill also allows their use in prosecutions for "Failure to obey traffic control device," but not for other violations.

Prior to the effective date of this bill, red light traffic photos could only be used to enforce ORS 811.265 (failure to obey traffic control device).

6. HB 2627 (Ch. 78) Restitution Can Be Ordered in DUI Diversion and Payment of Fees Can Be Made at Final Hearing

HB 2627 allows a diversion participant to pay off the balance of diversion fees at the show cause or revocation hearing, even where that hearing is held beyond the allotted time the court initially gave the defendant to pay all of the fees, so long as the amount owed is less than $500 and all other requirements of diversion have been satisfied.

HB 2627 also allows courts to order restitution as a condition of the diversion agreement which creates a money judgment which survives beyond the diversion period, even where the underlying DUII offense is dismissed per successful completion of diversion.

According to the prior statutory scheme for diversion, if all court and treatment fees are not paid after the first year of diversion, the court may give defendants an one time 180 day extension (ORS 813.225) to finish any requirements that were unfinished to that point. After the 180 day extension, if all fees are not paid, a defendant must be terminated from diversion and a conviction for DUII entered, even if the defendant has completed the treatment requirements of the diversion program, and otherwise complied with program requirements.

This change will give defendants a little more time to come up with the money, so long as they have completed all other requirements of the diversion program.

This Bill took effect May 9, 2013.

7. HB 2773 (Ch. 134) Diversion Allowed after Previous MIP/Possession of Less than an Ounce of Marijuana

HB 2773 removes the "prior treatment" disqualifier (ORS 813.215(d)) from the diversion statute in cases of treatment ordered pursuant to a minor in possession of alcohol conviction (ORS 471.430), or a conviction for possession of less than an ounce of marijuana (ORS 475.864(3)).

HB 2773 allows defendants the benefit of the DUII diversion program even if they have previously been ordered to participate in treatment for one of the two listed offenses. Before the effective date of HB 2773, if an individual had been ordered to attend an alcohol awareness class or marijuana awareness class for minor in possession of alcohol, or possession of less than an ounce of marijuana charge within the last 15 years from the date of the DUII charge, they would not be eligible for the DUII diversion program.

8. SB 444 (Ch. 361) No Smoking in Vehicle with Children Inside

SB 444 makes smoking in a vehicle with a minor a Class D traffic violation. This violation is enforceable only as a secondary offense, meaning that an officer could not use violation of this new statute as the grounds for stopping a vehicle. If an individual has previously been convicted under this section, the violation severity increases to a class C traffic violation requiring a larger base fine.

III. CIVIL COMMITMENT

1. HB 2594 (Ch. 737) Outpatient Assisted Treatment

HB 2594 creates new standards for courts to order people to engage in outpatient assisted treatment.

Under the bill, a person may be ordered to engage in outpatient assisted treatment when the court finds that they are suffering from a mental illness and that they are deteriorating to the point that the person will predictably become a person with a mental illness as defined in ORS 426.005. HB 2594 lists a non-exclusive list of factors that a court shall consider when making such a determination. Under this new standard the court may order people who would not meet the higher standard required for inpatient commitment to engage in outpatient treatment in the community in which they live.

Currently the Oregon statutes, as interpreted by the courts, place a very high bar on the findings that a court has to make for a person to be civilly committed. Current statute and case law requires that the courts find by clear and convincing evidence that a person is imminently a danger to his/herself, others, or on the precipice of expiration due to an inability to care for their basic needs. House Bill 2594 creates a new standard for those who do not meet the high standard required for inpatient commitment. A person meeting this new standard would be under jurisdiction of the court, and would be required to participate in outpatient assisted treatment as directed by the court.

2. SB 421 (Ch. 715) Commitment of Extremely Dangerous Offenders

SB 421 creates a new standard of civil commitment for "extremely dangerous" people. This law requires that a person meeting this new standard be supervised by Psychiatric Security Review Board (PSRB). The committed person will have an initial review hearing six months after the time of initial commitment to have their status reviewed, as well as whenever it is requested by the hospital or treatment facility, or every two years, whichever comes first.

Additionally, Senate Bill 421 has the following effects:

- Allows the prosecuting attorney to petition the court for a commitment hearing under this statute.
- Directs the hospital superintendent to petition for early termination of commitment where the committed person no longer suffers from a disease or defect, or is no longer extremely dangerous.
- Instructs the supervisory agency to notify parties before the commitment period ends, and hold a hearing determining whether or not a new period of commitment should be set.
- Tolls the statute of limitations for the duration of the commitment if there is a pending underlying crime.
- Allows the prosecuting attorney to request an aid and assist evaluation to be done in advance of any hearing where the person may be released from the jurisdiction of the PSRB.

Currently, the maximum time a defendant may be held when the defendant is initially found to be unfit for trial is three years or until the court determines that he or she is permanently unable to aid and assist counsel in their defense, whichever comes first. Further, a defendant is discharged at the end of a period equal to the maximum term which could be imposed if the defendant were convicted of the offense with which the defendant was charged, or three years, whichever is less. If the defendant is unlikely to gain or regain capacity to stand trial, the charges must be dismissed and the defendant released, or civil commitment proceedings must begin. A civil commitment period lasts for 180 days. In order for the commitment to continue, the defendant must either: stipulate to meeting the standards required for the court to commit the person to the state hospital, or return for a new hearing every 180 days.

This legislation was proposed in response to the case of Cheryl Kidd. Ms. Kidd allegedly killed Eugene Police Department Officer Chris Kilcullen. Because she is unable to aid and assist her counsel in her defense, she has not been brought to trial. The state hospital is attempting to treat her so that she can aid and assist her counsel. IF unsuccessful, the charges against Ms. Kidd will have to be dropped without prejudice and it is likely that the civil commitment process will begin. Under the standards laid out in this bill if Ms. Kidd is determined to be an extremely dangerous person she will be subject to supervision by the PSRB and would be eligible for a hearing six months after her initial commitment and every two years afterwards to determine her status.

Senate Bill 421 took effect on August 1, 2013.

IV. DRUGS

1. HB 2554 (Ch. 75) Diversion for Prescription Drugs

HB 2554 adds possession of prescription drugs to the list of crimes in ORS 475.245 that are eligible for dismissal following completion of certain conditions. This "diversion" statute gives courts and district attorneys flexibility in handling charges where all parties agree that the person being charged would benefit from completing conditions such as treatment, rather than having a conviction on their record.

If the defendant does not successfully complete the conditions of the diversion, a guilty finding will be entered, and the case would proceed as it normally would after a guilty finding.

The bill took effect May, 9 2013.

2. SB 40 (Ch. 591) Marijuana Reclassification

SB 40 makes the following changes to ORS 475.856 and ORS 475.752:

- Distinguishes between "marijuana" and "marijuana product," a newly defined term ins ORS 475.864;
- Reduces the delivery or manufacture of marijuana from a Class A felony to a Class B felony;
- Reduces possession of 1 to 4 ounces of marijuana to a Class B misdemeanor;
- Reduces possession of an amount greater than 4 ounces of marijuana to a Class C felony;

- Makes possession of less than ¼ ounce marijuana product a Class B misdemeanor;
- Makes the possession of a greater amount of marijuana product a Class C felony.

The bill took effect July 1, 2013.

3. SB 82 (Ch. 592) No ODL Suspension for Less than an Ounce of Marijuana

SB 82 eliminates the presumptive Oregon Driver's License (ODL) suspension as punishment for a conviction of possession of less than an ounce of marijuana for persons age 18 and older. However, for persons less than 18 years of age SB 82 gives the judge discretion to impose a license suspension.

The bill took effect July 1, 2013.

V. ANIMAL LAW

1. HB 2783 (Ch. 382) Unlawful Tethering

HB 2783 creates the offense of unlawful tethering and makes it a Class B violation if a person tethers a domestic animal within the person's custody or control:

- With a tether that is not a reasonable length;
- With a collar that pinches or chokes;
- For more than 10 hours in a 24 hour period; or
- For more than 15 hours in a 24 hour period if the tether is attached to a running line.

HB 2783 does provide exceptions for domestic animals in the physical presence of owner, pursuant to campground or recreational area regulations, or those engaged in licensed activities like hunting. Tethering that results in serious injury or death of an animal is punishable by first degree animal neglect, a Class A misdemeanor. Tethering that results in physical injury becomes punishable as second degree animal neglect, a Class B misdemeanor.

2. SB 6 (Ch. 719) Increases Punishments for Animal Crimes

SB 6 changed Oregon's animal neglect and abuse statutes significantly, created regulations for "animal rescue entities," and created new procedures for pre- and post-trial forfeiture of abused and neglected animals.

Cruelty Statutes

The most dramatic changes in SB 6 were to the animal abuse and neglect statutes, specifically Animal Abuse 1, Aggravated Animal Abuse 1, Animal Neglect 1, Animal Neglect 2, and ORS 167.332, which outlaws the ownership of animals for a certain period of time following an animal cruelty conviction.

Animal Abuse 1 (ORS 167.320) previously became a felony when a defendant had two or more prior domestic violence or minor assault convictions. SB 6 makes it a felony after one such prior conviction. (Alternately, a defendant commits Felony Animal Abuse 1 when they commit Animal Abuse 1 in the presence of a minor child.)

SB 6 also created new felonies for Animal Neglect 2 and Animal Neglect 1. **Animal Neglect 2** (ORS 167.325) becomes a felony if: 1) a defendant has two or more prior Animal Neglect 1 or 2 convictions, 2) a defendant neglects 11 or more animals in a criminal episode, or 3) the neglect happens in the immediate presence of a minor child and the defendant has a prior domestic violence conviction.

Animal Neglect 1 (ORS 167.330) becomes a felony if: 1) a defendant has one or more prior Animal Neglect 1 or 2 convictions, 2) a defendant neglects 10 or more animals in a criminal episode, or 3) the neglect happens in the immediate presence of a minor child. The crime seriousness score for these crimes can be dependent upon the number of animals neglected.

ORS 167.332 previously prohibited the ownership of domestic animals for five to fifteen years for defendants convicted of animal cruelty charges. Under SB 6, the law also prohibits those defendants from owning any animal of the same genus against which the underlying crime was committed. The new language also carves out a "first time conviction" exception for "commercial livestock operators" under some very specific parameters, and allows for a convicted defendant to petition the sentencing court for relief from the prohibition (as to livestock only).

Forfeiture/Lien Statutes

ORS 167.347 allows a court to order the forfeiture of a victim animal while a cruelty case is pending trial. SB 6 gives petitioners an alternative form of service upon defendants who cannot be personally served. It also allows the defendant "or any other claimant" an opportunity to be heard at the forfeiture hearing. Under SB 6, "any other claimant" is also now entitled to post a security deposit or bond to avoid forfeiture.

ORS 167.348 allows a court to place a forfeited animal with a new owner. The law previously required courts to give placement preference to persons who had prior contact with the animal; SB 6 makes that preference discretionary. SB 6 also clarifies that a court cannot place a forfeited animal with persons who aided or abetted the underlying cruelty, or a person who had knowledge of the cruelty and failed to intervene.

ORS 87.159 defines the lien that exists when an animal has been impounded pursuant to ORS 167.345. SB 6 creates a method by which an animal's owner can challenge the impoundment, and explains how a court should rule on that issue.

Animal Rescue Entities

SB 6 created multiple new regulations for "Animal Rescue Entities," including licensing and record-keeping requirements. It also allows for inspections of these entities, and creates civil penalties for any entity that violates the law.

This bill took effect on August 1, 2013

VI. PROSTITUTION / SEX OFFENSES

1. HB 2334 (Ch. 271) Compelling Prostitution

HB 2334 adds "attempted prostitution" as conduct that is a material element in a prosecution of Compelling Prostitution (ORS 167.017) when force or intimidation is used or the victim is under eighteen.

(1) A person commits the crime of Compelling Prostitution if the person knowingly:
   a) Uses force or intimidation to compel another to engage in prostitution or ***attempted prostitution;***
   b) Induces or causes a person under the age of 18 to engage in prostitution;
   c) Aids or facilitates the commission of prostitution or ***attempted prostitution*** by a person under 18 years of age;
   d) Induces or causes a spouse, child or stepchild to engage in prostitution.

(2) Compelling Prostitution is a Class B felony.

HB 2334, Section 1. HB 2334 took effect on June 4, 2013.

2. HB 2549 (Ch. 708) Sex Offender Tiering

HB 2549 creates a three-tier system for ranking sex offenders based on their risk as established by a designated risk assessment tool. It also requires all offenders currently in the system to be assessed and classified according to risk.

Offenders ranked in the first tier are the low risk offenders and are eligible for relief from reporting obligations five years after the end of their supervision. Offenders ranked in the second tier are the medium risk offenders and are eligible to apply for reclassification into tier one 10 years after the end of their supervision. Offenders classified in the third tier are the high risk offenders and are eligible to apply to be moved into tier two 10 years after their supervision has ended. Tier 3 offenders are not ever eligible to apply for total relief from reporting obligations. Offenders convicted of Rape 1, Sodomy 1, Unlawful Sexual Penetration 1, Kidnap 1 or Burglary 1 will never be eligible for relief from the obligation to register as a sex offender.

HB 2549 also creates requirements for notification of the public by Oregon State Police. Relief hearings are a critical stage that victims must be notified of, and that victims may attend.

The bill took effect on August 1, 2013.The tiering system is to be in place by January 1, 2017. The classification of all registrants is to begin upon the effective date of this bill.

3. HB 3253 (Ch. 437) Sex Offender Parity with Other States

SB 3253 requires persons convicted of crimes in a court of the United States that required sex offender registration to also register in Oregon, even if the crime they were convicted of does not require registration in Oregon. The person required to register will carry the registration requirements from the state or jurisdiction of the conviction.

This bill took effect on June 18, 2013, and applies only to crimes committed after the passage of this act.

4. SB 673 (Ch. 720) Trafficking Children

SB 673 creates the new crime of purchasing sex with a minor. Under this new criminal statute the first offense is a Class C felony, but allows the defendant to use the affirmative defense that the defendant reasonably believed that the person that they solicited was eighteen years of age or older (ORS 163.325) where the minor was at least 16 years old. This defense is not allowed for second or third convictions, and it is not allowed where the minor is under 16 years of age.

At sentencing:

- The court has discretion to require the offender to register as a sex offender.
- Mandates "john school."
- If a defendant has one or more prior convictions, sets the penalty as a Class B felony with mandated sex offender registration.
- Requires a fine of at least $10,000.
- Requires a minimum amount of jail time to be imposed.

Apart from "purchasing sex with a minor," SB 673 also modifies the crime of trafficking in persons by creating different felony classifications for:

- Benefiting financially from trafficking and knowing that another person will be subjected to involuntary servitude – Class B felony;
- Knowing that a person will be coerced into commercial sex acts by force or fraud and disregarding the fact that trafficked person is a minor – Class A felony.

SB 673 also makes the following modifications to other related statutes:

- Includes these crimes under the "rape shield" laws for evidentiary purposes.
- Allows application by the prosecuting attorney for use of technology to intercept wire, oral, or electronic communication to investigate these crimes.
- Allows victims of these crimes to apply to the court for restitution awards within 90 days of the sentencing, and to the criminal victims' compensation fund for covering of certain related expenses.
- Adds these crimes under definition of crimes covered by racketeering statute.
- Adds these crimes in definition of sex crimes, making these offenses for which registration is required.
- Adds these crimes to definition of sexual exploitation.
- Grants Department of Public Safety Standards and Training the ability to require advanced training in sex trafficking.

SB 673 took effect on August 1, 2013.

VII. OMNIBUS CRIMINAL BILLS

1. HB 2962 (Ch. 431) Statutory Speedy Trial

HB 2962 adds an April 1, 2014 sunset to ORS 135.747 (statutory speedy trial).

Currently Oregon has what is known as a "statutory speedy trial" law, which requires the state to provide explanations for any delay in bringing forth the prosecution. If the court finds that there was excessive delay in bringing the case to trial, the court shall order the dismissal of the case without prejudice. Statutory speedy trial is a docket management tool, because cases are dismissed if not brought to trial in a timely manner. However, in certain situations, statutory speedy trial could negatively impact a victim's rights in a criminal case because the state was unable to process the case in a timely manner.

This change in the law would remove the statutory speedy trial scheme and leave intact the constitutional standard. The constitutional standard requires a different showing by the defendant and requires dismissal of the case with prejudice.

This bill took effect on June 18, 2013

2. HB 3194 (Ch. 649) Public Safety Package

House Bill 3194 makes many changes to existing criminal laws, as well as adding to the criminal statutes. The main thrust of the bill is to reduce usage of prison beds by the counties by trimming some non-violent sentences modestly, and then taking the money that would have been spent on those prison beds and giving it back to the counties for local criminal justice investment that is targeted at reducing recidivism. So long as prison growth is curbed, and there is actual savings from implementation of HB 3194, the savings will be passed on to the counties for programs, services, and sanctions that will impact prison growth.

Key Provisions of HB 3194:

1) **Reduce prison sentences in 5 key areas**
   a) Probation for all Marijuana offenses
      i) Exceptions: Manufacture or Delivery within 1000 feet of a School and Delivery to a Minor.
   b) Probation for Felony Driving While Suspended
      i) Exceptions: Murder; Manslaughter; Criminally Negligent Homicide; Assault with Serious Physical Injury; Aggravated Vehicular Homicide; Aggravated Driving While Suspended
   c) Robbery 3 and Identity Theft
      i) Presumptive sentence reduced to 18 months in prison from 24 months in prison.

d) Return judicial discretion to Drug Delivery and Manufacturing sentences.
   i) ORS 475.933 repealed until 2023.
   ii) Gives judges ability to give optional probation on drug offenses even where the person has previous convictions for the same or similar drug offenses.
e) Transitions Leave
   i) The final 90 days of a prison sentence may be served in the community under certain circumstances.
   ii) Department of Corrections identifies eligible offender and works with community to which they will be released to set rules and a transition plan.

2) Earned Discharge
a) Department of Corrections writes the rules for earned discharge.
b) Granted in exchange for compliance with the terms of supervision, payment of restitution, and participation in recidivism reducing programs.
c) A person sentenced to probation for a felony conviction may have the length of their supervisory sentence reduced by up to 50% so long as they have been on supervision for at least six months.

3) Reentry Courts
a) May be created in participating counties where a steering committee of local criminal justice leadership agrees to implementation of reentry courts.
b) A reentry court establishes concurrent jurisdiction with the post prison supervising authority, and may impose sanctions for violation of that supervision.

4) Correctional Costs
a) The Department of Corrections shall submit a report to the Public Safety Task Force on how the Department intends to reduce per-inmate incarceration costs by five percent in the next decade while maintaining public safety and programs.

5) Justice Reinvestment Program
a) Reduce statewide reliance on prison resources by:
   i) Reinvesting money not spent on prison into community based sanctions, services and programs that are based on:
      (1) Offender assessments;
      (2) Cost-benefit analysis of programs;
      (3) Evidenced-based best practices to reduce recidivism.
   ii) Legislative leadership will provide between $10 and $15 million for this program in the 2013-2015 biennium.

6) Measuring Outcomes

a) Programs must be "cost effective" utilizing a cost-benefit analytical tool under ORS 182.515(2)
b) Creates the Public Safety Task Force to:
   i) Review implementation of the bill, and to report back to the legislature and the Governor on the progress made.
   ii) Consider changes to Juvenile Measure 11 sentences.
   iii) Review the prison costs report and give recommendations.
c) Creates the Grant Review Committee to:
   i) Write the rules for counties to apply for Justice Reinvestment Grants in the future.
   ii) Review Grant applications in the next biennium.

As mentioned above, House Bill 3194 establishes the Task Force on Public Safety. The bill directs Oregon Criminal Justice Commission (OCJC) to collect best practices applicable to specialty courts, establishes a definition of "recidivism" and requires correctional forecast to include a margin of error. The bill modifies requirements related to fiscal impact statements and use of evidence-based practices, and directs the DOC to identify cost-containment solutions. Finally, the bill creates Justice Reinvestment Grant Program and directs OCJC to administer grants in conjunction with an advisory committee.

The bill took effect on July 25, 2013.

3. SB 492 (Ch. 525) Brady Bill

Based on the landmark United States Supreme Court case *Brady v. Maryland*, SB 492 requires disclosure to the defendant of material information in possession or control of the district attorney that tends to exculpate the defendant, negate or mitigate defendant's guilt or punishment, or impeach a witness. SB 492 also prohibits conditioning a plea bargain on waiver of right. The legislative history on this was made clear in committee and on the House floor in a speech that was given upon its passage that the intent was to codify the current constitutional *Brady* standard from case law.

In *Brady v. Maryland*, the U.S. Supreme Court recognized that prosecutors must disclose material exculpatory evidence to defendants. That requirement extends to state prosecutors through the Due Process Clause of the 14th Amendment. Though mainly defined by court cases, certain disclosures are required by the Oregon Revised Statutes. In 2005, the disclosure of a witness' personal information was required by statute. In 2007, the legislature specified disclosure requirements for information pertaining to a test for blood alcohol content.

6

RYAN CARTY
SHANNON STOREY

Domestic Relations and Juvenile Law

I. INTRODUCTION

II. ADMINISTRATIVE SUPPORT PROCEEDINGS

1. SB 589	(Ch. 183)	Entry of Administrative Support Modifications
2. SB 591	(Ch. 185)	Impact of Dismissal of Pending Domestic Action on Administrative Support Order between the Same Parties

III. NAME CHANGES

1. HB 2226	(Ch. 316)	Removes Public Notice Requirement of Name Change Proceedings Involving Survivors of Domestic Violence
2. SB 406	(Ch. 341)	Permits Additional Changes to a Party's Name When Entering into Marriage or Registered Domestic Partnership

IV. PROTECTIVE PROCEEDINGS

1. HB 2378	(Ch. 71)	Permits a Parent or Guardian of a Minor to File a Petition for a Protective Proceeding within 90 Days before the Minor Will Attain Majority
2. HB 2570	(Ch. 99)	Attorney Fees in Protective Proceedings
3. HB 3249	(Ch. 436)	Grandparent Rights in Dependency Proceedings
4. HB 3363	(Ch. 439)	Requires DHS Case Plan Disclosure to Parties

V. OTHER DOMESTIC RELATIONS BILLS

1.	HB 2205	(Ch. 352)	Elder Abuse Reporting Requirement
2.	HB 2433	(Ch. 72)	Prohibits Court from Considering Party's Disability in Determining Child Custody or Establishing an Appropriate Parenting Plan unless Court Finds Behaviors or Limitations Related to Party's Disability Endanger or Will Endanger Health, Safety, or Welfare of Child
3.	HB 2571	(Ch. 126)	Changes Recommended by OSB Family Law Section
4.	HB 2572	(Ch. 127)	Changes Recommended by OSB Family Law Section
5.	HB 3263	(Ch. 613)	Paid Leave for State of Oregon Employees Who Are Victims of Domestic Violence, Harassment, Sexual Assault, or Stalking
6.	SB 239	(Ch. 171)	Addition of Documentation Evidencing VIN to ORS 107.089 Discovery Request
7.	SB 444	(Ch. 361)	Smoking in a Vehicle with a Minor Present Is a Ticketable Offense
8.	SB 491	(Ch. 178)	Permits Minor Child to Consent to Outpatient Mental Health and Chemical Dependency Treatment Services
9.	SB 601	(Ch. 231)	Authorizes Relative Caregiver to Consent to Medical Treatment and Education Services for Minor Child
10.	SB 622	(Ch. 417)	Juvenile Court Records

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Shannon Storey: 2003 Vermont School of Law. Member of Oregon State Bar since 2003.

I. INTRODUCTION

The 2013 legislative session resulted in numerous statutory changes impacting the family law practice area. The process for entry of administrative support orders has been streamlined. Dismissal of a pending domestic action will no longer disrupt administrative support orders between the same parties. Parties now have more options for making changes to their names when marrying or registering for a domestic partnership, which impacts (but does not change) the court's authority in a judgment of marital annulment, dissolution, or separation to change the name of either spouse to a name the spouse held before the marriage (or domestic partnership) if requested by that party. Survivors of domestic violence seeking to change their names are no longer subject to the mandatory public notice posting requirement. Parents and guardians are now explicitly authorized to file petitions for protective proceedings within 90 days before the minor in that person's care will attain majority. Payment of attorney fees is authorized in protective proceedings. Grandparents are entitled to notice of dependency proceedings in certain cases. DHS is now required to disclose case plans to all parties, generally within 10 days. The statutory discovery required in separation or dissolution proceedings now includes documents evidencing VINs for vehicles covered by the statute. Smoking in a vehicle with a minor present is now a ticketable offense. Minor children (14 years of age or older) may now consent to outpatient mental health and chemical dependency treatment services. Relative caregivers may now provide consent to medical treatment and education services for a minor child in that person's care. Courts are prohibited from considering a party's disability in determining custody or an appropriate parenting plan unless there is a specific finding that behaviors or limitations related to the party's disability endanger (or will endanger) the health, safety, or welfare of the child. Spousal support now terminates as a matter of law upon the death of either party, unless the support judgment specifies otherwise. The statutory order of restraint that applies automatically once an ORS chapter 109 case is filed is now specific to the issues relevant to unmarried parent cases. Attorney fee awards are now statutorily authorized in actions relating to enforcement of life insurance provisions in support judgments. ORS chapter 109 has been updated to make the life insurance provisions of ORS chapter 107 applicable to unmarried parents. State of Oregon employees who are victims of domestic violence, harassment, sexual assault, or stalking are now able to utilize additional paid leave after exhausting other avenues for time off from work. Attorneys are now mandatory reporters of elder abuse.

All bills are effective January 1, 2014, unless stated otherwise.

II. ADMINISTRATIVE SUPPORT PROCEEDINGS

1. SB 589 (Ch. 183) Entry of Administrative Support Modifications

ORS Chapter 440 provides authority for the Oregon Child Support Program to establish and modify child support orders utilizing administrative procedures. Current law requires that a judge must review a proposed administrative modification and sign a separate order approving it before it takes effect, *but only if the previous order was determined in court*. This procedure deviates from modifications of orders that were originally issued by the Child Support Program, which are simply filed in court without any need for judicial approval.

SB 589 removes the requirement for separate judicial approval of administrative modifications. The result of this bill is that administrative modifications will become effective upon filing with the court, regardless of how the original child support order originated (i.e., administrative process or court-ordered). The bill makes no change to each party's right to appeal the administrative order and request a hearing in circuit court within 60 days of the date the order was entered.

2. SB 591 (Ch. 185) Impact of Dismissal of Pending Domestic Action on Administrative Support Order between the Same Parties

SB 591 clarifies that a general judgment of dismissal of a judicial proceeding filed under ORS chapter 107, 108 or 109 for lack of prosecution by the parties does not dismiss an administrative support order that was entered before the date of the dismissal so long as the parties involved in the judicial proceeding are the same as those affected by the administrative support order. No part of this bill changes the court's authority to supersede an administrative order.

III. NAME CHANGES

1. HB 2226 (Ch. 316) Removes Public Notice Requirement of Name Change Proceedings Involving Survivors of Domestic Violence

ORS 33.410, *et. seq*. provides the framework for name changes that do not occur as part of a marriage, registration of domestic partnership, dissolution or annulment. ORS 33.420(1) previously provided that in all instances a party requesting a name change would be required to post public notice of the application and subsequently post another public notice of the change after entry of the judgment changing the party's name. HB 2226 amended ORS 33.410 to mandate that courts waive the public notice requirement upon request of an applicant if that

person is a certified adult program participant in the Address Confidentiality Program under ORS 192.826, unless the court issues an order requiring public notice pursuant to a finding of good cause.[8] Oregon's Address Confidentiality Program was created to help survivors of domestic violence avoid attempts from abusers to locate them. HB 2226 essentially provides assistance to survivors of domestic violence who wish to change their names so those name changes are not made public and accessible to their abusers.

This bill took effect on June 6, 2013.

2. SB 406 (Ch. 341) Permits Additional Changes to a Party's Name When Entering into Marriage or Registered Domestic Partnership

ORS 106.220 provides authority for a party entering into marriage to make changes to that party's name. The statute specifies various naming options, including retaining a party's surname, changing a surname to the other's party's surname, or combining surnames with a hyphen. ORS 106.335 sets forth similar authority and rules in the context of registered domestic partnerships.

SB 406 amends both ORS 106.220 and 106.335 to provide expanded naming options, largely relating to retention of or changes to middle names. The new options include retaining a party's middle name, removing a middle name, changing the party's middle name to the party's surname at birth or prior to the marriage, or adding to the party's middle name the party's surname at birth or prior to the marriage and simultaneously changing the party's surname to the surname of the other party.

Any name changes requested after marriage or registration of a domestic partnership must still follow the procedure set forth in ORS 33.410, *et. seq*. SB 406 makes no change to the court's authority in a judgment of marital annulment, dissolution or separation to change the name of either spouse to a name the spouse held before the marriage (or domestic partnership) if requested by that party.[9]

This bill became effective as of June 6, 2013.

[8] Good cause, for purposes of this statute, is defined by ORS 192.848. That statute essentially provides that disclosure may occur when it is sought for a lawful purpose that outweighs the risk of disclosure, or in cases where disclosure is required as part of a registration for sex offenders.

[9] ORS 107.105(h).

IV. PROTECTIVE PROCEEDINGS

1. HB 2378 (Ch. 71) Permits a Parent or Guardian of a Minor to File a Petition for a Protective Proceeding within 90 Days before the Minor Will Attain Majority

ORS chapter 125 provides a comprehensive framework for creating and maintaining guardianships, conservatorships, and other protective proceedings. ORS 125.055 sets forth the procedure for preparing and filing a petition in such proceedings. That statute was non-specific as to whether a parent could file a petition seeking appointment as guardian of an adult child *prior* to the child reaching the age of majority. HB 2378 clarifies that it is permissible for a parent or guardian of a minor to file a petition that seeks the appointment of a guardian for the minor as an adult at any time within 90 days before the date the minor will attain majority or at any other time determined by the court to be necessary and appropriate to ensure the minor's ongoing protection, safety and welfare. A guardianship filed for a minor who will soon become an adult is not effective until the date the minor attains majority.

This bill took effect on May 9, 2013.

2. HB 2570 (Ch. 99) Attorney Fees in Protective Proceedings

In 2012, the Oregon Court of Appeals ruled that ORS 125.095 does not authorize the payment of attorney fees incurred before a protective order has been entered for services rendered in a financial abuse case brought on the protected person's behalf.[10] In other words, attorneys cannot be paid for the pre-order work they undertake on a potential protected person's behalf (e.g., legal research, drafting petitions and other paperwork, court appearances, etc.), even if that person is subsequently deemed by the court to be in need of protection.

HB 2570 modifies ORS 125.095 to provide the court specific authority to use the funds of a person subject to a protective proceeding to pay for attorney fees incurred prior to the court declaring the person protected. The bill also makes clear that the procedures set forth in ORCP 68 do not apply to requests for approval and payment of attorney fees under ORS 125.095.

[10] *In re Derkatsch*, 248 Or App 185, 273 P2d 204 (2012).

3. HB 3249 (Ch. 436) Grandparent Rights in Dependency Proceedings

HB 3249 amends ORS 419B.875 to provide that the Department of Human Services (DHS) must exercise due diligence to locate grandparents of a child who is before a court in a dependency matter where (1) there is an allegation of abuse and neglect and (2) the court is considering placing the child outside the home. The new portions of the statute provide grandparents a specific right to be heard in dependency proceedings involving their grandchildren. It also permits the court to order visitation or other contact or communication between the grandparent and the grandchild if the grandparent makes such a request.

4. HB 3363 (Ch. 439) Requires DHS Case Plan Disclosure to Parties

HB 3363 amends ORS 419B.881 to require that the Department of Human Services (DHS) provide to all parties in a dependency proceeding the case plan or the modification of the case plan for a child before a court on an abuse and neglect matter. Disclosure of the case plan by DHS must occur within 10 days of completion or modification of the plan *and* receipt by DHS of the written material or information about services provided under the case plan.

V. OTHER DOMESTIC RELATIONS BILLS

1. HB 2205 (Ch. 352) Elder Abuse Reporting Requirement

HB 2205 amends ORS 124.050 to include members of the Oregon Legislative Assembly, attorneys, dentists, optometrists, and chiropractors to the list of individuals who must report elderly abuse. The statute exempts attorneys and members of the clergy from reporting elderly abuse if the information was obtained pursuant to their respective professional capacities. The duty to report extends to all hours, not just when working in a professional capacity.

The Oregon State Bar is required by the bill to adopt minimum training standards for lawyers regarding elder abuse. The reporting requirement becomes operative on January 1, 2015.

This bill became effective as of June 11, 2013.

2. HB 2433 (Ch. 72) Prohibits Court from Considering Party's Disability in Determining Child Custody or Establishing an Appropriate Parenting Plan unless Court Finds Behaviors or Limitations Related to Party's Disability Endanger or Will Endanger Health, Safety, or Welfare of Child

HB 2433 amends ORS 107.137 to specifically provide that if a party has a disability (as defined by the Americans with Disabilities Act of 1990[11]), the court may not consider that party's disability in determining custody *unless* the court makes a finding that the party's behaviors or limitations that are related to the party's disability are presently endangering or will in the future likely endanger the child's health, safety, or welfare. HB 2433 makes a similar amendment to ORS 107.105(1)(b) relating to establishing parenting time and parenting time rights for noncustodial parents.

3. HB 2571 (Ch. 126) Changes Recommended by OSB Family Law Section

A. Termination of Spousal Support Obligation upon the Death of Either Party

The first portion of HB 2571 specifically terminates, as a matter of law, spousal support upon the death of either party *unless otherwise expressly provided in the judgment.* The change is consistent with Oregon case law and federal tax law.[12] Practitioners and parties can still include provisions in a judgment that will make payments continue after death, if they desire to do so, and courts would still retain the authority to do so if appropriate.

B. Financial Orders of Restraint and ORS Chapter 109

ORS 109.103 provides that only those provisions of ORS 107.093 that relate to custody, support and parenting time apply to the custody proceeding. The insurance terms of ORS 107.093 presumably apply because health insurance directly relates to support via the ORS 25.275 computation. Life insurance also relates to support because of the provisions of ORS 107.810:

[11] 42 U.S.C. 12101, *et seq.*

12 See, for example, Miller and Miller, 207 Or App 198, 203, 140 P3d 1172 (2006); IRC § 71(b)(1)(D).

> *"It is the policy of the State of Oregon to encourage persons obligated to support other persons as the result of a dissolution or annulment of marriage or as the result of a legal separation to obtain or to cooperate in the obtaining of life insurance adequate to provide for the continued support of those persons in the event of the obligor's death."*

ORS 107.820 provides that, "A court order for the payment of [...] child support [...] constitutes an insurable interest in the party awarded the right to receive the support."

The provisions of ORS 107.093(c) presumably do not apply because they deal with transferring, encumbering, concealing or disposing of property in which the other party has an interest. An unmarried parent who has an interest in the other parent's property would presumably file a Dissolution of Domestic Partnership proceeding under ORS Chapter 106, rather than a Petition for Custody, Parenting Time, and/or Child Support under ORS Chapter 109.

The provisions of ORS 107.093(d) might apply. This part of the statute restrains each party from making extraordinary expenditures without providing written notice and an accounting of such expenditures of the other party. Extraordinary expenditures would theoretically impact the obligor's ability to pay support and the obligee's need for support. These two factors would be most applicable in determining whether a rebuttal is appropriate. Both factors, therefore, arguably do relate to support, although most practitioners would say unmarried couples need not be restrained from making extraordinary expenditures because the question is typically one of income, not of resources.

Because ORS 107.093 is unclear as to what provisions apply to ORS 109 proceedings, the Oregon State Bar Family Law Section proposed legislation to clarify this issue. The second portion of HB 2571 excludes ORS 107.093 from the ORS chapter 107 provisions that apply to ORS chapter 109 cases. The bill concurrently creates new provisions in ORS chapter 109 that impose specific restrictions on parties in a custody and parenting time case that are more appropriate for the dynamics of a case involving unmarried parents who have no legal interest in the other party's property and where there is no legal basis for a division of either party's property. The amendment specifically restrains both parties in an ORS chapter 109 proceeding from the following actions after the petition is filed and served:

1) Canceling, modifying, terminating or allowing to lapse for nonpayment of premiums any policy of health insurance that one party maintains to provide coverage for the other party or a minor child of the parties, or any life insurance policy that names either of the parties of a minor child of the parties as a beneficiary; and
2) Changing beneficiaries or covered parties under any policy of health insurance that one party maintains to provide coverage for a minor child of the parties, or any life insurance policy.

Any party to an ORS chapter 109 proceeding has the ability to request temporary orders from the court that include modification or revocation of the statutory restraining orders.

4. HB 2572 (Ch. 127) Changes Recommended by OSB Family Law Section

A. Permits an Award of Attorney Fees in Actions Relating to Enforcement of Life Insurance Provisions

As currently written, ORS 107.810 through 107.830 establish the court's authority to order a payor of support to obtain life insurance to provide continuing support in the event of the obligor's death when parents were married. There is no present authority for the court to award attorney fees if court action is necessary to obtain the benefits of such a policy in the event the obligor dies without the ordered amount of coverage or if the obligee is not named as a beneficiary. The first section of HB 2572 provides courts with the authority to make an award of attorney fees in an action to enforce a court-ordered requirement that the obligor maintain life insurance.

B. Rights and Responsibilities of Unmarried Parents

As currently written, ORS 109.103 cross references provisions of ORS chapter 107 that pertain to custody, support and parenting time. During the 2009 session, the legislature passed HB 2686 (at the OSB Family Law Section's request), which updated ORS 109.103's references to chapter 107. That bill overlooked ORS 107.810 through 107.830, which establish the court's authority to order a payor of support to obtain life insurance to provide continuing support in the event of the obligor's death when parents were married. Such a requirement is appropriate for unmarried parents as well as formerly married parents. The second portion of HB 2572 extends existing policy equally to parents that were married and those who were unmarried.

5. HB 3263 (Ch. 613) Paid Leave for State of Oregon Employees Who Are Victims of Domestic Violence, Harassment, Sexual Assault, or Stalking

HB 3263 creates a new law that permits an employee of the State of Oregon who is a victim of domestic violence, harassment, sexual assault or stalking to take up to 160 hours of leave with pay each calendar year after exhausting all other forms of paid leave available to the employee. The bill requires a number of affirmative actions on the part of the State of Oregon, as an employer, pertaining to notification of employees.

This bill became effective as of July 2, 2013.

6. SB 239 (Ch. 171) Addition of Documentation Evidencing VIN to ORS 107.089 Discovery Request

A party in a suit for legal separation or for dissolution has the option of serving on the other party a copy of ORS 107.089 (statutory discovery). If a copy of the statute is served on the other party, the party upon whom it was served must provide the following documents, generally within 30 days of the date of service[13]: 1) Tax returns for the last three years; 2) If no tax returns were filed, then all W-2 statements, year-end payroll statements, interest and dividend statements, and all other records showing income earned; 3) Financial statement of net worth and credit card and loan applications for the previous two years; 4) Deeds of property and real estate contracts, appraisals, and most recent statement of assessed value that either party has an interest in; 5) Documents showing the debts of either party; 6) Documents showing stocks, bonds secured notes, mutual funds, and other investments; 7) Retirement plans; and 8) Financial institution or brokerage accounts.

SB 239 amends ORS 107.089 to include documentation evidencing the vehicle identification number (VIN) or other unique identifying number (e.g., hull identification number for boats) for all automobiles, motor vehicles, and boats covered by the statutory discovery request.

[13] The party served with a copy of the statute shall provide the required discovery no later than 30 days after service. If a support hearing is pending fewer than 30 days after service, however, the party upon whom a copy of the statute was served is required to provide tax returns, income information, financial statements, statements of net worth and credit card and loan applications no later than three judicial days before the hearing. The remaining documents are still due within the 30 day time frame. ORS 107.089.

7. SB 444 (Ch. 361) Smoking in a Vehicle with a Minor Present Is a Ticketable Offense

SB 444 makes smoking inside a vehicle with a minor present a Class D traffic violation. Smoking is defined by the bill as inhaling, exhaling, burning or carrying a lighted cigarette, cigar, pipe, weed, plant, regulated narcotic or other combustible substance. This is a secondary offense, which means a police officer may enforce the law only if the officer has already stopped and detained the driver operating the motor vehicle for a separate traffic violation or other offense.

8. SB 491 (Ch. 178) Permits Minor Child to Consent to Outpatient Mental Health and Chemical Dependency Treatment Services

ORS 109.675 currently allows a minor child 14 years of age or older to obtain, without parental knowledge or consent, outpatient diagnosis or treatment of mental or emotional disorders or chemical dependency by a physician, psychologist, nurse practitioner, and licensed clinical social worker. SB 491 adds to that list of treatment professionals professional counselors or marriage and family therapists licensed by the Oregon Board of Licensed Professional Counselors and Therapists. The bill also exempts professional counselors and marriage and family therapists from civil liability for certain disclosures and provision of diagnosis or treatment to minors.

9. SB 601 (Ch. 231) Authorizes Relative Caregiver to Consent to Medical Treatment and Education Services for Minor Child

SB 601 creates new law providing legal authority for relative caregivers[14] of minor children to consent to medical treatment and education services for minor children left in their care. In order to act under the authority granted by this new law, the individual seeking to attain the legal designation of relative caregiver must first complete an affidavit that contains the following information:

1) The name of the minor child;
2) The minor child's date of birth;
3) The relative caregiver's name and date of birth and the address at which the relative caregiver lives with the minor child;
4) The relationship of the relative caregiver to the minor child;

[14] A relative caregiver is defined as:

> *[A] competent adult who is 18 years of age or older, who is related to a minor child by blood, marriage or adoption, who is not the legal parent or guardian and who represents in the affidavit described in section 4 of this 2013 Act that the minor child lives with the adult and that the adult is responsible for the care of the minor child.*

5) The Oregon driver license or identification card number of the relative caregiver;
6) The contact information of the legal parent or guardian;
7) A description of any attempts the relative caregiver has made to advise the legal parent or guardian of the relative caregiver's intent to consent to medical treatment or educational services for the minor child and of any response provided by the legal parent or guardian;
8) If applicable, the reason why the relative caregiver is unable to contact the legal parent or guardian to advise the legal parent or guardian of the relative caregiver's intent to consent to medical treatment or educational services for the minor child;
9) The date the relative caregiver signed the affidavit; and
10) A declaration under penalty of perjury that the named minor child lives with the relative caregiver, that the relative caregiver is a competent adult and 18 years of age or older and that the information provided in the affidavit is true and correct.

Upon completion of the required affidavit, the relative caregiver may:

1) Consent to medical treatment, including developmental screening, mental health screening and treatment, ordinary and necessary medical, dental and optical examination and treatment and preventive care including ordinary immunizations, tuberculin testing and well-child care, and includes the examination for and treatment of any injury, symptom, disease or pathology that is, in the judgment of the treating health care provider, reasonably necessary; and
2) Enroll a minor child in a school; and
3) Consent for a minor child to participate in any school activities, including extracurricular activities.

The language set forth in the bill contemplates that the relative caregiver may only act after reasonable efforts have been made to obtain the consent of the legal parent or guardian to the specific treatment or services, and only if such consent cannot be obtained. That means the relative caregiver needs to make reasonable efforts to obtain the consent of the legal parent or guardian before each instance of taking action pursuant to the authority set forth in this law. There is no requirement that the relative caregiver complete a new affidavit on every such occasion, merely that he or she make an attempt to obtain consent.

SB 601 provides the following provisions that define responsibilities and liabilities for actions taken pursuant to the relative caregiver's authority:

1) A relative caregiver is liable to the health care provider or school for payment for services provided pursuant to the relative caregiver's consent. A relative caregiver may seek reimbursement from the legal parent or guardian.
2) Consent of a relative caregiver is immediately superseded by any contravening decision of the legal parent or guardian, provided the decision does not threaten the life, health or safety of the minor child.

3) If the minor child stops living with the relative caregiver, the relative caregiver has an immediate obligation to notify any health care provider or school that has been given a relative caregiver affidavit of the change in residence. The affidavit is invalid immediately upon receipt by the health care provider or school of the notice.
4) A relative caregiver affidavit expires automatically one year after the date it is given to a health care provider or school by a relative caregiver. If the date the affidavit is given to a health care provider or school is unknown or uncertain, it shall expire one year after the date the relative caregiver signs the affidavit.
5) A health care provider or school may, but is not required to, rely on the representations or affidavit of a person claiming to be a relative caregiver if the health care provider or school does not have actual notice of the falsity of any of the statements or documentation made or provide by the person claiming to be a relative caregiver.
6) A health care provider or school may, but is not required to, request documentation of a person's claimed status as a relative caregiver and of attempts made to obtain the consent of the legal parent or guardian.
7) A relative caregiver acting in good faith with reasonable grounds to provide consent for medical treatment or education services pursuant to a relative caregiver affidavit is not subject to criminal or civil liability that might otherwise be incurred or imposed for giving consent to such services.

This bill took effect on May 23, 2013.

10. SB 622 (Ch. 417) Juvenile Court Records

SB 622 was a product of the Juvenile Records Work Group of the Oregon Law Commission. The bill clarifies what materials in the court's possession are disclosable to the public by defining the "record of the case", which is the normal court file, and a "supplemental confidential file" (previously known as the "social file").

Under the bill, the "Record of the Case" is defined as including:

- The summons and other processes, as well as pleadings, answers, motions, affidavits, and supporting documentation;
- Petitions;
- Local citizen review board findings;
- Guardianship report summaries;
- Orders and Judgments of the court;
- Other documents that become part of the record by operation of law.

These documents are part of the public court record and are open for inspection by the public.

The "supplemental confidential file" is defined to include reports and other materials relating to the child's history and prognosis. These materials are not part of the record of the case and are not received into evidence. The bill specifies in some detail who has access to the confidential supplemental file and under what conditions.

The bill takes effect on January 1, 2014, but some provisions have later operative dates. Practitioners should examine the bill text for operative dates relevant to their practice.

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HILARY NEWCOMB

Estate Administration, Elder Law and Trust Law

I. INTRODUCTION

II. LEGISLATION

1.	HB 2046	(Ch. 190)	Claims of the Oregon Department of Veterans Affairs
2.	HB 2205	(Ch. 352)	Elder Abuse
3.	HB 2570	(Ch. 99)	Attorney Fees in Protective Proceedings
4.	SB 592	(Ch. 529)	Uniform Trust Code Revisions

Hilary Newcomb: 2000 Santa Clara University School of Law. Member of Oregon State Bar since 2006.

I. INTRODUCTION

2013 saw a modest number of bills effecting estate planning and elder law. The most significant were HB 2205, which expanded Oregon's elder abuse reporting requirements, and SB 592, which made significant revisions to Oregon's Trust Code. This later bill originated in part with the OSB Estate Planning and Administration Section, before becoming a project of the Oregon Law Commission.

Unless otherwise noted, all bills take effect on January 1, 2014.

II. LEGISLATION

1. HB 2046 (Ch. 190) Claims of the Oregon Department of Veterans Affairs

Under current law, the Oregon Department of Veterans Affairs (ODVA) is allowed to recoup costs from the estates of veterans who were served by the ODVA Conservatorship Program. However, the ODVA generally waives claims against the estates of destitute veterans and waives claims if the claim would deplete the estate.

House Bill 2046 allows the department to retract such a waiver if it finds that the claim would not in fact pose a hardship or deplete the estate. The bill also addresses the priority the ODVA claim should receive if estate assets are insufficient to pay all expenses.

2. HB 2205 (Ch. 352) Elder Abuse

This bill makes a number of important changes to Oregon law aimed at addressing the problem of elder abuse.

First, the bill adds members of numerous professions – including attorneys – to the list of "public or private officials" who are required to report elder abuse. Under the bill, attorneys are not required to make a report if the relevant information about the abuse was communicated to the attorney in the course of client representation, and disclosure of the information would be detrimental to the client. Additionally, the bill requires the Oregon State Bar to adopt training requirements for all bar members regarding their statutory duty to report elder abuse. The mandatory reporting requirements go into effect on January 1, 2015.

The bill also adds several new members to the Oregon Elderly Abuse Work Group, and requires the work group to report back to the legislature by February 1, 2014 regarding recommendations for improvements to the law.

HB 2205 took effect on June 11, 2013.

3. HB 2570 (Ch. 99) Attorney Fees in Protective Proceedings

House Bill 2570 makes two major changes regarding the awards of attorney fees in protective proceedings.

First, the bill clarifies that ORCP 68 does not apply to protective proceedings. Many attorneys and courts have proceeded as though Rule 68 does not apply all along, but by its terms it appears to. HB 2570 corrects this inconsistency.

Secondly, the bill designates several criteria for the court to consider when making a determination of whether attorney fees will be allowed; and additional criteria for determining the amount of attorney fees to be awarded. This later provision is intended to create more consistency in the awards of attorney fees around the state by providing the court with additional guidance in making these determinations.

4. SB 592 (Ch. 529) Uniform Trust Code Revisions

Senate Bill 592 modifies Oregon's Uniform Trust Code. Initial work on the bill began in a subcommittee of the Estate Planning Section of the Oregon State Bar. The subcommittee developed a proposal that then became a project of the Oregon Law Commission (the Commission.)

This new bill was originally intended as a technical amendment, yet in time developed to include some substantive changes. The bill is intended to clarify and modernize the law, make the law more relevant and effective, as well as coordinate trust matters with the probate code.

The more significant amendments in the bill are summarized as follows:

- **Beneficiary Definitions. ORS 130.010.** Two new definitions of more remote classes of beneficiaries are added, titled "remote interest beneficiary" and "secondary beneficiary." A remote interest beneficiary is "a beneficiary of a trust whose beneficial interest in the trust, at the time the determination is made, is contingent upon the successive terminations of both the interest of a qualified beneficiary and the interest of a secondary beneficiary whose interests precede the interest of the beneficiary." A remote interest beneficiary is a beneficiary that is at least third in line and sometimes fourth in line. A secondary beneficiary is "a beneficiary, other than a qualified beneficiary, whose beneficial interest in the trust, at the time the determination of interest is made, is contingent solely upon the termination of all qualified beneficiary interests that precede the interest of the secondary beneficiary." The definition of secondary beneficiary is necessary to create the desired definition of remote interest beneficiary. The goal here is to clarify that in some circumstances notice need not be given to beneficiaries whose interest is so remote that they will likely never benefit from

the trust. Streamlining the notice and consent requirements will help to more reasonably accomplish trust settlements, modifications, and terminations.

- **Nonjudicial Settlement Agreements. ORS 130.045.** The necessary parties to a valid nonjudicial settlement agreement are clarified to specify that the Attorney General will represent all charitable trust beneficiaries who are subject to change by the settlor (and the charities are not necessary parties). The bill also adds clarifying language that a settlement agreement does not need to be filed with the court to be binding on the parties to the agreement. The notice period for a valid agreement is also reduced from 120 days to 60 days.

- **Charitable Trusts. ORS 130.170.** The definition of a charitable trust is expanded to clarify what a charitable trust is and is not. The amendment adds that a charitable trust includes a trust that "expressly designates one or more charitable organizations, or one or more classes of charitable organizations, to receive distributions as beneficiaries of the trust unless the combined interests of all charitable beneficiaries do not constitute more than the interest of a remote interest beneficiary." The modification intends to clarify two things. First, a trust that simply makes distributions to other charities will, itself, be a "charitable trust." Second, if charitable interests are negligible or if the charitable beneficiaries have very remote interests, then the portion of the trust held by the charitable beneficiaries will not be considered a charitable trust.

- **Notice of Proposed Action.** A new section is added that releases a trustee of liability, but only after full disclosure by the trustee and no objections by a beneficiary. The specific notice of a pending action by the trustee must be in writing, contain all material terms of the proposed action, and be properly noticed to the appropriate beneficiaries. If 45 days elapse following the notice, and there are no objections by a beneficiary, then the beneficiaries are deemed to have consented to the proposed action and the trustee is thereafter protected from liability regarding the specifically noticed action that is pending. If a beneficiary objects to the proposed action, then the trustee can negotiate a resolution with the objecting party, re-notice the proposed action with modifications, or petition the court for instructions. If a trustee proceeds with a proposed action following an objection, then the trustee will not be held harmless regarding the previously noticed proposed action. This new section promotes trustee communications with the beneficiaries and encourages beneficiary participation. This new provision also helps a trustee resolve high risk actions prior to the annual accounting and limits the statute of limitations against a trustee sooner than the one year, six year or ten year provisions provided in ORS 130.820.

- **Abatement.** A new abatement statute is included that provides rules on the priority of payment of gifts from a revocable trust when the trust assets are unable to pay the gifts in full due to insufficient funds following the payment of creditor's claims and expenses. For example, the new section clarifies that real and personal property distributions that are specific gifts are given priority over general gifts, and general gifts are given priority over gifts from the residual estate. This new provision also provides definitions of a specific gift, general gift and residual gift. Due to the need to finish Senate Bill 592 in time for this legislative session, the abatement statute does not address the issue of how payments to creditors are apportioned between the probate estate and trust assets. The priority of payment of creditor's claims between a probate estate and trust estate is a complex issue that will require further analysis and coordination with the probate code, and may be addressed in a future legislative session.

- **Trustee Removal. ORS 130.625.** A decision to remove a trustee cannot be inconsistent with a material purpose of the trust. If a settlor's choice in a trustee is considered a material purpose, removal will be difficult. Under current law, a trustee can argue the selection of trustee by the settlor is a material purpose of the trust and thereby possibly avoid removal. The amendment to this section requires the trustee "to establish by clear and convincing evidence that removal is inconsistent with a material purpose of the trust." Thus, the amendment makes more difficult an argument that the settlor's choice of trustee is a reason not to remove the trustee.

- **Former Trustee Accounting. ORS 130.630.** This amendment specifies the court or a successor trustee may require a trustee that has resigned or been removed to account for the time they acted as trustee. Reasonable trustee's fees and costs for the preparation of the former trustee's account may be paid by the new trustee of the trust. The intent here is to encourage and expedite former trustees to account, when having that accounting will be useful for the trust.

- **Compensation. ORS 130.635.** Two new subsections are added to this section. The first subsection clarifies that trustee compensation must reflect the total services provided to the trust by all co-trustees. The second subsection includes third parties who are also performing trustee tasks and taking a fee from the trust assets. So if a financial advisor is also performing trustee tasks, then the fees of the trustee and the financial advisor must be taken into account when cumulatively determining reasonable trustee fees. Trustee compensation is construed broadly here so that the trust is not paying duplicative fees on behalf of the singular position of the trusteeship.

- **Appointment of Advisors. ORS 130.735.** The new section is proposed regarding court removal of an advisor. The bill states a court may remove an advisor if it finds the advisor has committed a serious breach of trust or removal best serves the interests of the beneficiaries, because the advisor is unfit or unwilling, or has persistently failed to timely and effectively advise the trustee in trust administration matters. A new sentence is also added to this statute indicating the trust may provide for succession of advisers to the trustee and may provide for a process for the removal of advisers.

The more technical revisions in the bill range from clarifications to cross referencing the new sections, and includes the addition of a new section stating a newly created administrative trust or subtrust is an individual trust that follows the terms and likely the termination of the originating trust instrument.

Senate Bill 592 took effect on June 26, 2013.

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KENNETH SHERMAN, JR.

Financial Institutions Law

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I. INTRODUCTION

The 2013 Oregon Legislative assembly enacted a number of measures that impact banks and other financial institutions and organizations doing business in Oregon. Of particular importance are the bills that modify the residential foreclosure avoidance program established by the 2012 Oregon Legislature.

Unless otherwise noted, all bills take effect on January 1, 2014.

II. ACTIVITIES OF FINANCIAL INSTITUTIONS

1. HB 3489 (Ch. 444) Escrow Agents – Debt Management Services

This bill clarifies that a licensed escrow agent will not be deemed to be a "collection agency" by virtue of its collection or billing activities involved in closing an escrow or related to a collection escrow, or its service as trustee on a trust deed. The bill also carves out a limited exception for licensed escrow agents to the requirement that persons who perform "debt management services" must be registered with the Department of Consumer and Business Services (DCBS). So long as the escrow agent is licensed as such, the agent will not be required to be registered with DCBS to engage in activities related to closing escrows or collection escrows.

HB 3489 took effect on June 18, 2013.

2. SB 23 (Ch. 145) Regulation of Real Estate Activities

This bill makes a number of changes to ORS chapter 696, which governs real estate and escrow activities. The focus of the bill is on the management of rental real estate. The bill adds a definition of "property management agreement" (a written contract for management of rental real estate between a real estate property manager and the owner of the property); makes real estate licensees subject to the requirements of chapter 696 while managing rental real estate; provides for delegation in writing of certain management activities to unlicensed persons; imposes conditions on the re-licensing of real estate property managers and real estate brokers and principal brokers whose licenses have been revoked; and authorizes the Real Estate Agency to issue new rules pertaining to registration of business names.

The bill also adds new provisions regarding client trust accounts for property managers and brokers who are engaged in the management of rental real estate. The bill also modifies provisions governing the Real Estate Board.

SB 23 took effect on May 16, 2013.

III. STRUCTURE, OPERATION OF FINANCIAL INSTITUTIONS

1. HB 2070 (Ch. 104) Amendments to Oregon Bank Act

This bill enacts four amendments to the Oregon Bank Act:

(1) ORS 707.670 governs the frequency with which bank boards of directors must meet. This bill replaces a general fixed once a month requirement with a mandate that the Director of the Department of Consumer and Business Services establish minimum frequency requirements for bank board meetings by rule.
(2) ORS 707.740 is revised to provide that a copy of a bank's audit report must be transmitted to the DCBS Director only upon the Director's request; and to delete the requirement that the copy be certified.
(3) ORS 708A.120 permits banks to invest in certain corporations. HB 2070 broadens this statute to permit investments in membership interests of limited liability companies of the types described in this section.
(4) ORS 708A.410 is amended to permit "inadvertent overdrafts" on bank savings accounts, so long as the overdraft results from events or circumstances beyond the bank's reasonable control and is eliminated within 14 days after the bank becomes aware of the overdraft.

2. HB 2207 (Ch. 369) Direct Deposit – Public Employees

This bill amends ORS 292.026 to provide that as a general rule, officers and employees who are compensated under the state payroll system will receive payment through direct electronic deposit to a financial institution specified by the officer or employee. Departments are required to electronically provide itemized statements of payroll deductions to officers and employees.

The bill provides two exceptions to this general rule:

(1) If the officer's or employee's department determines that electronic payment is not practicable or efficient, payment may be made by paper check or credit to a bank-issued payroll card if the employee consents to payment by this means.
(2) If the officer or employee wants to receive payment by check, or to receive a paper statement itemizing deductions, the officer or employee must request payment by check or paper statements pursuant to rules adopted by the department.

Interestingly, the bill the bill merely implies but does not expressly say that if an officer or employee wants to be paid by paper check, the department will make payment in that form.

HB 2207 took effect on June 13, 2013.

3. HB 2683 (Ch. 380) Direct Deposit – Private Employees

Current law (ORS 652.110) permits private employers to pay wages to their employees by direct deposit into the employee's financial institution account, provided that the employee and employer agree to that means of payment. HB 2683 revises this provision to allow such electronic payments absent an agreement with the employee, so long as the employer honors employee requests for payment by check.

4. SB 183 (Ch. 298) Department of Revenue Notices

This bill adds a new provision to ORS chapter 305, granting the Department of Revenue new flexibility in providing notices in cases where the department is required to give notice by regular mail. It permits the department to enter into notification agreements with intended recipients, so long as other law does not expressly prohibit the use of other means of notification. The agreement must provide that the department may use another means of notification, and must allow the recipient to change or cancel the agreement.

SB 183 took effect on October 7, 2013.

5. SB 184 (Ch. 472) Service of Notice of Garnishment

Generally, under ORS 18.652, garnishment documents must be sent by certified mail or personally delivered to the garnishee by the sheriff or a person who is not a party or attorney in the action. SB 184 creates an exception concerning delivery of garnishment documents where the garnishor is a state agency or the county tax collector. In those cases, the notice of garnishment and other garnishment documents may be delivered by any employee of the state agency or county tax collector; or may be mailed to the garnishee by either first class or certified mail; or the documents may be sent to the garnishee by other means if the garnishee has agreed to the different delivery method. However, the state agency or county tax collector can't seek sanctions against a non-complying garnishee unless the garnishment documents are either personally delivered to the garnishee or mailed by certified mail.

SB 184 took effect on June 24, 2013.

6. SB 185 (Ch. 405) Department of Revenue Garnishments

Under prior law, state agencies authorized to issue warrants for tax and debt collections (including the Department of Revenue) and county tax collectors could issue garnishments by delivering a notice of garnishment, a warrant or true copy thereof, a garnishee response form, the instructions to garnishee form, a wage exemption calculation form and the garnishee's search fee to the garnishee. This bill provides that the Department of Revenue will not be required to provide the garnishee with a copy of its warrant. In addition, the Department's notice of garnishment will not need to be signed by the person who issued it.

SB 185 took effect on June 13, 2013.

7. SB 520 (Ch. 480) Amendments to Credit Union Chapter

This bill makes a number of changes to Oregon's credit union law (ORS chapter 723), providing for the chartering, regulation and supervision of state-chartered credit unions. It makes slight changes in the formula under which the amount of a state-chartered credit union's fiduciary bond or irrevocable letter of credit is calculated; and revises the "wild card" rule of ORS 723.156, under which a state-chartered credit union may exercise powers available to federal credit unions or credit unions chartered by other states that do business in Oregon. In addition, the bill deletes from ORS 723.296 a general requirement that a credit union's board perform other duties mandated by the institution's members and perform or authorize any action consistent with chapter 723 and not specifically reserved to the membership. Authority for a credit union's supervisory committee to suspend members of the credit committee is deleted from ORS 723.326.

Current law limits credit union loans to members to the greater of 15% of the credit union's equity or $15,000. This dollar amount is increased to $100,000. As before, these limits do not apply to loans that are fully guaranteed by shares or deposits.

ORS 723.840, limiting personal liability for good faith actions or omissions, is augmented with provisions drawn from ORS 707.660 in the Oregon Bank Act, shielding directors and officers from personal liability to the credit union or members for damages resulting from the director's or officer's exercise of judgment or discretion or in rendering services to the credit union unless the director or officer fails to act in good faith and as a prudent person; and permitting officers and directors to rely on certain information.

Finally, SB 520 repeals ORS 723.332, authorizing credit union supervisory committees to call special meetings to consider violations of chapter 723 or the credit union's articles or bylaws, or any practice which the committee deems unsafe or unauthorized

IV. TAXATION OF FINANCIAL INSTITUTIONS

1. HB 3477 (Ch. 614) Taxation of Out-of-State Institutions

This bill repeals ORS 317.057, which provides that generally, certain out-of-state financial institutions that make, hold and foreclose upon real estate loans pursuant to ORS 713.300 without being authorized to do a "banking business" (taking deposits) in Oregon are exempt from Oregon taxation. ORS 317.057 currently applies to "out-of-state banks" and "extranational institutions" (both defined in the Oregon Bank Act), as well as "foreign associations" (corporations organized to transact savings and loan business under federal law or the law of another state). HB 3477 repeals ORS 317.057.

V. REAL ESTATE LENDING

1. HB 2239 (Ch. 268) Licensing of Mortgage Lenders

This bill amends the provisions of ORS chapter 86A (Mortgage Lending) to broaden somewhat the definitions of "mortgage banker" and "mortgage broker" with respect to bank holding companies and financial holding companies. These entities will escape the "mortgage banker" - "mortgage broker" net only if they do not "do more than control a subsidiary or affiliate (as described in 12 U.S.C. 1841) and do not engage in the business of a mortgage banker or mortgage broker." The Department of Consumer and Business Services sought the enactment of this bill on the basis that in some cases, holding companies may be actually directly engaging in mortgage banking or brokerage activities.

2. HB 2489 (Ch. 31) Property Tax Deferral – Reverse Mortgage Properties

Oregon's program for deferring real property taxes for seniors and disabled persons was tightened up in 2011 by HB 2543, which made requirements for participation more stringent. As a result, about half the program's participants were disqualified. In 2012, the legislature passed HB 4039, which granted a two-year reprieve to participants who had been in the program and who had been disqualified solely due to having a reverse mortgage on their property.

HB 2480 indefinitely extends the exception for such participants. It also makes a number of technical changes to clarify the operation of the program.

HB 2480 took effect October 7, 2013.

3. HB 2528 (Ch. 200) Interest on Lender's Security Protection Provision Payments

Currently, Oregon law (ORS 86.205) provides that on real estate loans of $100,000 or less on residential real property, if the loan agreement requires the borrower to pay taxes, insurance premiums or similar charges through the lender, the lender must pay interest on the amounts so paid. This bill removes the $100,000 cap, making the requirement to pay interest applicable to all loan agreements on residential real property.

4. HB 2856 (Ch. 281) Licensing of Mortgage Loan Originators

ORS 86A.200 – 86A.239 generally require that persons who work as "mortgage loan originators" must be licensed as such by the Department of Consumer and Business Services. HB 2856 exempts from this licensing requirement those individuals who, as a seller during any 12-month period, offer or negotiate terms for not more than three residential mortgage loans secured by dwellings that did not serve as the individual's residence. However, the bill qualifies this exemption by providing that it will not apply if the US Consumer Financial Protection Bureau determines that "loan originator" as used in section 1503 of Title V of the Housing and Economic Recovery Act of 2008 includes such an individual.

The bill further provides that individuals who claim this exemption may not at any time hold more than eight residential mortgage loans unless they comply with the licensing requirement.

HB 2856 took effect on June 4, 2013, however the changes are operative 91 days after the effective date.

VI. APPRAISALS

1. HB 2061 (Ch. 364) Appraisal Management Company Payments to Appraisers

This bill shortens from 60 to 45 days the time within which an appraisal management company must make payment to an independent contractor appraiser following completion of an appraisal or appraisal review.

2. HB 2531 (Ch. 272) Appraisal Management Company Definition

This bill broadens the application of the definition of "appraisal management company" found in ORS 674.200. Currently, the definition applies only "in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization", leaving it unclear as to what constitutes an appraisal management company in other contexts.

3. HB 3013 (Ch. 325) Public Records Disclosures of Appraisals

Currently under ORS 192.501 (21), certain records, communications, and information submitted to a housing authority or urban renewal agency by applicants for loans, grants, and tax credits are exempt from public disclosure unless the public interest requires disclosure. One of these records is "project appraisals." HB 3013 narrows this exemption with respect to appraisals that are obtained in the course of transactions involving interests in real estate acquired, leased, rented, exchanged, transferred, or otherwise disposed of as part of the project. However, under the bill, these appraisals would be subject to disclosure only after the transactions have close and are concluded.

VII. COLLECTION ACTIVITIES

1. HB 2568 (Ch. 76) Trust Deed Foreclosures – Amended Notices of Sale

ORS 86.755 (12)(a) provides for the continuance of trust deed foreclosure proceedings that were stayed by court order, bankruptcy proceedings or for other lawful reason, following the release of the stay. The trustee must send an amended notice of sale to certain persons. HB 2568 provides that if there has been a change in the default situation during the period the stay was in effect (either prior defaults cured or new ones added), then the amended notice must describe only the defaults in effect on the date the stay was terminated.

The bill also provides that after a stay is released, the trustee or agent may further postpone the sale one or more times, provided that the periods of postponement do not total more than the greater of 60 days or that part of the 180-day period generally allowed for postponements that remained just before the stay began.

2. HB 2569 (Ch. 125) Law Firms as Trustees

This bill permits "law practices" as well as individual active members of the Oregon State Bar to be named as trustees on deeds of trust.

3. HB 2662 (Ch. 317) Neglect of Vacant Foreclosed Residential Real Property

This bill prohibits "owners" of "foreclosed residential real property" from "neglecting" such properties that they obtained by foreclosing a trust deed or obtaining a judgment foreclosing a lien on the property.

An "owner" is a person (other than a local government) that forecloses a trust deed. It may be argued that a person who was not the beneficiary or trustee under the trust deed but who merely bought the property at the foreclosure sale will not be an "owner" subject to this Act.

"Foreclosed residential real property" means "residential property" as defined in ORS 18.901 (1-4 dwelling unit structures, condominium units, manufactured dwellings and floating homes) that an owner obtained by foreclosing a trust deed or received a judgment foreclosing a lien on the property.

"Neglect" is defined as:

i. failure to maintain buildings, grounds or appurtenances in such a way as to allow excessive growth of foliage that diminishes the value of adjacent properties; trespassers or squatters to remain on the property; or mosquito larvae or pupae to grow in standing water on the property; or

ii. failure to monitor the property's condition by inspecting once every 30 days

Specifically, owners are prohibited from neglecting such property during any periods in which the property is vacant.

Owners are required to provide the name and contact information for the owner or agent the neighborhood association or an official designated by the local government. This information must also be posted on the property.

Local governments are directed to notify owners regarding any violations and specify a time for remediation (at least 30 days unless there is a threat to public health or safety). If the owner doesn't cure the violation, the local government may remedy the situation and impose a lien on the property for the costs incurred. The lien takes priority over all other liens, except it has equal priority with tax liens.

HB 2662 took effect on June 6, 2013.

4. HB 2688 (Ch. 206) Chattel Foreclosures – Filing Statement of Account

This bill increases from $250 to $1,000 the value of a chattel for which a person that forecloses a lien on the chattel by sale must file a statement of account with the recording officer of the county in which the sale takes place.

5. HB 2822 (Ch. 464) Notice of Execution Sales

This bill revises ORS 18.924 and 18.926, pertaining to the notice to be given prior to the conduct of an execution sale of real property. The bill requires Oregon sheriffs to establish and maintain a website for posting legal notices. Notices of execution sale must be both posted on the website and published in a newspaper that meets the requirements of ORS 193.010 in the county where the property is located.

HB 2822 took effect on June 24, 2013 and applies to execution sales on or after August 1, 2013.

6. HB 2929 (Ch. 465) Trust Deed Foreclosure – Rescission of Trustee's Sale

HB 2929 creates new authority for a trustee who has completed the non-judicial foreclosure of a trust deed to rescind the trustee's sale and void the trustee's deed if within 10 days after the sale the trustee asserts that a bona fide error occurred during the sale in setting the opening bid amount, providing a correct legal description or complying with a legally mandated requirement or procedure. In addition, the sale can be set aside if the beneficiary and grantor have agreed to a foreclosure avoidance measure providing for the postponement or discontinuation of the sale, or if the beneficiary has accepted funds to reinstate the trust deed.

Notice of the rescission must be given within 10 days after the sale to both the purchaser and all to whom the notice of sale was given. (It is not clear how this is to work with respect to persons who got notice through the newspaper or an on line post.)

The trustee is required to refund the purchase price to the buyer within three calendar days after the date of the rescission notice. (It is not clear how the trustee is to do this where the buyer at the sale was the holder of the note and the beneficiary on the trust deed, and "purchased" the property by bidding in the amount of the note and costs at the sale.) There is no provision in the bill for the reinstatement of the note and trust deed.

The bill also amends ORS 86.790 to require that certain trustees obtain Secretary of State certificates of authority to transact business in Oregon as foreign business entities.

7. HB 3389 (Ch. 625) Conditions for Approval of Short Sales

This bill makes two additional revisions to the residential foreclosure avoidance mediation program established in 2012 and modified in 2013 by SB 558 (see discussion above). First, it revises the definition of "residential trust deed". The 2012 legislation provided that a trust deed was a "residential trust deed" if the grantor or certain family members were residing in the property as their principal residence when the default resulting in foreclosure first occurred. Under HB 3389, the status of a trust deed as a "residential trust deed" is determined by whether or not the grantor or family member is residing on the property as their principal residence at the time the trust deed is recorded, or in the case of a purchase money loan, whether the grantor or family member intended to make the property the principal residence.

SB 558 (discussed above) provides that a certificate of compliance issued to a foreclosing residential trust deed beneficiary remains effective for one year after it is issued. HB 3389 clarifies that the certificate only need be valid and unexpired at the time a notice of default is recorded. The later expiration of the certificate will not interfere with the completion of the foreclosure.

Finally, HB 3389 generally prohibits beneficiaries on residential trust deed from requiring nonprofit corporations to enter into agreements limiting or barring the grantor from owning or occupying the property after a short sale. This prohibition would not apply where:

i. the beneficiary is not notified before the short sale that the nonprofit or grantor intends for the grantor to continue to own or occupy the property;
ii. the grantor does not allow the beneficiary reasonable access to the property for inspection or appraisal;
iii. the trust deed was recorded prior to the effective date of the bill and offering or approving of the short sale would require the beneficiary to breach a contractual obligation to another person; or
iv. offering or approving the short sale would require the beneficiary to breach a legal obligation that is not based on a contract.

HB 3389 took effect on July 19, 2013.

8. SB 558 (Ch. 304) Mediation Requirement – Residential Trust Deed Foreclosures

This bill modifies and broadens the scope of the mandatory mediation program for trust deed foreclosures on residential properties. The program was established by the enactment in 2012 of SB 1552 (chapter 112, Oregon Laws 2012). The 2012 measure required non-exempt beneficiaries to submit to mediation only if they opted for non-judicial foreclosure. Certain beneficiaries that had commenced 250 or fewer residential trust deed foreclosures during the previous year could claim exemptions from the mediation requirement. Under SB 558, all beneficiaries will be entitled to exemption from the mediation requirement, but only if they commence 175 or fewer foreclosures of residential trust deeds per year; and non-exempt beneficiaries must request mediation (now termed a "resolution conference") before they begin either judicial or non-judicial foreclosure of a residential trust deed. In place of "mediators", the bill now refers to "facilitators". The program will continue to be administered by a single "service provider" selected by the Attorney General.

The "at risk grantor" provisions of SB 1552, which allowed residential trust deed grantors who deemed themselves at risk of default to request mediation, are replaced by a provision allowing grantors to request a resolution conference where the beneficiary has not done so, provided that the grantor first obtains written certification from a housing counselor that the grantor is more than 30 days delinquent or has a financial hardship that the counselor believes may qualify the grantor for a foreclosure avoidance measure. SB 558 clarifies that beneficiaries that have claimed an exemption are not required to go through a resolution conference process with a grantor who requests a conference. However, a beneficiary that has claimed an exemption may request a resolution conference without waiving the exemption.

Grantors are now required to "go first" in paying the conference fee (not more than $200) and submitting required documents and information to the service provider. The beneficiary must pay its conference fee (not more than $600) and submit its required documents within 25 days after the service provider makes the grantor's documents and information available to the beneficiary. The lists of documents and information that must be submitted by the grantor and the beneficiaries have been revised.

SB 558 modifies the requirement in the 2012 legislation that if the beneficiary determines that the grantor is not eligible for a foreclosure avoidance measure or has not complied with a measure previously agreed to, the beneficiary must provide the grantor a notice of this determination at least 30 days prior to the date set for a trustee's sale. The bill clarifies that this notice requirement applies only to residential trust deeds, and provides that the notice must be sent whether or not the beneficiary participates in a resolution conference. But the bill also provides that the law does not impose an affirmative duty on the beneficiary to determine if the grantor is eligible for a foreclosure avoidance measure. The implication is that beneficiaries are not required to provide this notice where they have not made the determination of ineligibility or non-compliance; but given the beneficiary's potential liability for non-compliance with this section, beneficiaries may elect to give the notice even where no determination of grantor eligibility has been made.

Beneficiaries that comply with the Act are entitled to receive a certificate of compliance, which must be recorded prior to the commencement of foreclosure proceedings.

Violations by beneficiaries of various provisions of SB 558 are made unlawful practices under ORS 646.607. However, beneficiary violations of those provisions do not give rise to a private right of action under the Unlawful Trade Practices Act.

SB 558 took effect on June 4, 2013, but most substantive changes made in the bill became operative on August 4, 2013.

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JEREMY VANDEHEY

Health Law

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Jeremy Vandehey: 2007 University of North Dakota School of Law. Member of Oregon State Bar since 2009.

I. INTRODUCTION

Despite the state being in the middle of implementing major health reform legislation passed in 2011 and 2012—including implementing coordinated care organizations and Cover Oregon—the health care agenda was very active. More than twice as many health law related bills were passed this session than in 2011. There was a particular focus on health care provider regulation, coverage mandates, insurance regulation, and pharmacy. There were also several significant measures implementing the federal Affordable Care Act and aligning state statutes with federal regulations. As health reform hits full swing in 2014—when key components of the federal Affordable Care Act become operative—health care will continue to be at the forefront of legislative focus.

Unless otherwise noted, all bills take effect on January 1, 2014.

II. HEALTH CARE PROVIDERS

1. HB 2020 (Ch. 362) Mental Health and Chemical Dependency Program On-Site Assessments

HB 2020 requires that the Oregon Health Authority (OHA) adopt rules governing periodic on-site quality assessments of organizations that provide mental health or chemical dependency treatment. It requires OHA to convene an advisory committee that includes insurers accredited by the National Committee on Quality Assurance (NCQA) and requires that the rules take into account national accreditation standards for organizational provider assessments. The bill requires that coordinated care organizations (CCO) accept assessments conducted by OHA in lieu of conducting their own on-site assessment. The bill optionally allows health insurers to accept OHA's assessment. A CCO, health insurer, or health care service contractor that relies in good faith on OHA's on-site assessment is immune from civil liability.

House Bill 2020 took effect on June 13, 2013. The OHA must adopt rules for the assessments by January 1, 2014 and report to the Legislature on progress in September 2013.

2. HB 2037 (Ch. 351) Licensure of Spouses of Members of Armed Forces

HB 2037 is intended to allow a military spouse or domestic partner who is a health professional and relocates to Oregon as a result of a military transfer to obtain a fast-tracked authorization to practice. The bill requires a health professional regulatory board to issue an authorization to practice a health profession to a spouse or domestic partner who provides the board with (1) evidence of marriage or domestic partnership with an active member of the Armed Forces who is assigned to Oregon; (2) evidence that the military spouse or domestic

partner is authorized by another state or territory of the United States to provide services regulated by the board; and (3) evidence that the military spouse or domestic partner has provided services or taught the subject matter regulated by the board for at least one year in the last three years and has demonstrated competency.

House Bill 2037 took effect on June 11, 2013.

3. HB 2074 (Ch. 568) Moves OLHA into OHA

HB 2074 changes the name of the Oregon Health Licensing Agency (OHLA) to the Health Licensing Office and moves the agency within the Oregon Health Authority (OHA). The OHA director is responsible for appointing the director of the Health Licensing Office.

This bill takes effect on January 1, 2014. Substantive changes in the bill become operative July 1, 2014.

4. HB 2081 (Ch. 59) Practice of Psychology without a License

HB 2081 changes the exemption language for individuals who are exempt from the prohibition against practicing psychology without a license, eliminating a loophole that existed for certain students. The bill exempts from licensure teachers, students, and individuals not supervising or treating individuals.

5. HB 2101 (Ch. 314) OHLA License Renewals

HB 2101 consolidates and creates uniform provisions relating to Oregon Health Licensing Agency's (OHLA) authority over certificates, permits, licenses and registrations and fees collected for certificates, permits, licenses and registrations. The bill provides that an authorization issued by OHLA becomes not current on the last day of the month, one year after the date of issuance. A certificate becomes not current on the last day of the month, two years after the date of issuance. The bill prescribes requirements for renewing an authorization or certificate, including fee authority. The bill clarifies that OHLA is responsible for continuing education requirements; granting exemptions to authorizations; setting requirements for provisional authorizations; carrying out all investigatory duties and conducting hearings for the boards and councils in the agency. The bill requires nursing home administrators licensed after January 1, 1983 to have a baccalaureate degree.

Effective: June 6, 2013. Substantive provisions become operative January 1, 2014.

Note: HB 2074 (2013) renames OHLA as the Health Licensing Office and moves it into the Oregon Health Authority.

6. HB 2124 (Ch. 367) Impaired Health Professional Program

The impaired health professional program currently provides monitoring of health professionals licensed by the Oregon Medical Board, Board of Dentistry, Board of Nursing, and Board of Pharmacy who are ordered by their respective licensing board to undergo mental health or chemical dependency treatment. HB 2124 removes the requirement that employers of licensees in the program establish minimum training requirements for supervisors of participants. The bill replaces that provision with a requirement that the Oregon Health Authority assess the ability of the licensee's direct supervisor to supervise the licensee and provide documentation of specialized training. The bill clarifies events that are considered substantial noncompliance with the program, including removal of a hospital admission for mental illness from the list. The bill allows professionals to self-refer to program only if the licensing board adopts rules allowing self- referrals. The bill authorizes licensing boards to contract with a third party for provision of therapeutic services to participants in the program.

HB 2124 took effect on June 13, 2013.

7. HB 2182 (Ch. 20) First Responder Appreciation Day

HB 2181 declares that September 27 of each year is First Responder Appreciation Day.

8. HB 2195 (Ch. 65) Provider Reports of Impaired Drivers

HB 2195 provides that a physician or health care provider may at any time report to the Department of Transportation that a person's cognitive or functional impairment affects the person's ability to safely operate motor vehicle, without regard to whether report is required by the department. The bill provides civil immunity if the report is made in good faith.

9. HB 2205 (Ch. 352) Reports of Elder Abuse

HB 2205 adds members of Legislative Assembly, attorneys, dentists, optometrists and chiropractors to list of public or private officials required to report abuse of person 65 years of age or older. An attorney is not required to make a report by reason of information communicated to the attorney in the course of representing a client if disclosure of the information would be detrimental to the client. The bill requires minimum training requirements for all active members of the bar relating to the duties of attorneys.

The bill adds five new members to the Oregon Elder Abuse Work Group, including a union member, a member of the Oregon Patient Safety Commission, a designee of the Attorney General, a lawyer who concentrates in elder law, and a criminal defense lawyer. The bill requires that the work group align definitions of abuse of vulnerable persons and define abuse of vulnerable persons for purposes of investigations and data reporting systems.

The bill changes provisions relating to financial institution records obtained during an elder abuse investigation. It requires that copies provide by a financial institution must be accompanied by an affidavit or declaration of a custodian of records.

This bill took effect on June 11, 2013. Substantive provisions related to the Oregon Elder Abuse Work Group become operative on passage and sunset on June 30, 2015. The new abuse reporting provisions and the establishment of training requirements by the Oregon State Bar become operative on January 1, 2015.

10. HB 2611 (Ch. 240) Cultural Competence Continuing Education

HB 2611 authorizes health care profession licensing boards to adopt rules requiring licensees to receive cultural competency continuing education. The Oregon Health Authority must adopt a list of approved continuing education opportunities for the boards to use.

HB 2611 took effect on May 28, 2013. OHA must adopt the approved list of courses by January 1, 2015. The licensing boards may adopt requirements beginning January 1, 2017.

11. HB 2622 (Ch. 129) Physician Definition to Include Podiatrist

HB 2622 changes the definition of "physician" to include podiatrist, if the context in which term "physician" is used does not authorize or require a person to practice outside the scope of practice of podiatry.

12. HB 2678 (Ch. 79) Physical Therapy

HB 2678 authorizes a person licensed in practice of physical therapy in another jurisdiction to provide physical therapy services for not more than 60 days in a calendar year to an individual employed by or affiliated with touring theater company, performing arts company, athletic team, or athletic organization.

13. HB 2684 (Ch. 80) Physical Therapy Referrals

HB 2684 removes a requirement that an individual who self-refers to a physical therapist must be referred to another provider by the physical therapist within 60 days. It requires that the physical therapist make a referral if the patient exhibits symptoms that require diagnosis and treatment by another provider.

14. HB 2691 (Ch. 207) Non-Resident Volunteer Nurses

HB 2691 exempts a nonresident nurse from Oregon licensing requirement if the nurse is licensed and in good standing in another state, is practicing in Oregon without compensation on no more than two temporary assignments not to exceed five days in any 12-month period, and if the assignments are for the general public benefit.

HB 2691 takes effect on January 1, 2014, and sunsets January 1, 2020.

15. HB 2768 (Ch. 211) Licensed Counselors

HB 2768 modifies definitions and licensure requirements for professions regulated by Oregon Board of Licensed Professional Counselors and Therapists. It defines clinical experience.

Effective: January 1, 2014. The provisions apply to a person who applies to become a licensed professional counselor or a licensed marriage and family therapist on or after January 1, 2014.

16. HB 2946 (Ch. 245) Dental Service Contracts

HB 3665 (2010) defined dental services contracts as contracts between an insurer and providers to provide dental health services for enrollees, and prohibited these contracts from restricting the price that a provider may charge for services not covered by the insurer. That bill included a sunset of January 2, 2015. HB 2946 repeals the sunset.

17. HB 2948 (Ch. 114) Foreign Dental Providers

HB 2948 authorizes dentists licensed in other countries to participate in educational activities related to dentistry that occur in this state and to practice dentistry without compensation for up to five consecutive days in a 12-month period.

18. HB 2997 (Ch. 657) Direct Entry Midwifery Licensure

HB 2997 defines licensure requirements for direct entry midwifery. Licensure is required by January 1, 2015 to practice direct entry midwifery unless the person (1) is a licensed health care practitioner or (2) does not use legend drugs or devices, does not advertise that the person is a midwife, and discloses lack of licensure and other specified information to each client on a form to be prescribed by the state. The form must include:

- That the person does not possess a professional license issued by the state;
- That the persons' education and qualification have not been reviewed by the state;
- That the person is not authorized to carry and administer potentially life-saving medications;

- That the risk of harm or death to a mother or newborn may increase as a result of lack of licensure or qualifications;
- A plan for transporting the client to the nearest hospital if a problem arises during labor or childbirth;
- That the client will not have recourse through a complaint process; and
- The types of midwives who are licensed by the state.

The bill requires that State Board of Direct Entry Midwifery adopt rules for licensure. It requires that the Oregon Health Licensing Agency delegate to the board the authority to enter final orders on contested cases relating to practice to direct entry midwifery. The bill requires licensure for reimbursement under Medicaid.

Effective: July 25, 2013. The delegation of authority to the State Board of Direct Entry Midwifery takes effect January 1, 2014.

19. HB 3407 (Ch. 752) Traditional Health Workers Commission

HB 3650 (2011) requires that members of coordinated care organizations have access to community health workers, personal health navigators, and peer wellness specialists to facilitate culturally and linguistically appropriate care. HB 3407 establishes the Traditional Health Workers Commission within the Oregon Health Authority (OHA) and requires that OHA, in consultation with the commission, establish rules for regulation of community health workers, personal health navigators, peer wellness specialists, and doulas.

20. SB 2 (Ch. 511) Tuition Waiver for Working in Underserved Communities

SB 2 establishes the Scholars for a Healthy Oregon Initiative at OHSU to provide free tuition and fees for certain students in health care disciplines in exchange for the student's commitment to work in underrepresented locations after graduation. Oregon residents entering OHSU programs leading to degrees as physicians, dentists, nurse practitioners, physician assistants, and certified registered nurse anesthetists will be eligible for the program. Priority is to be given to students from a rural heritage, first generation college students, or students from diverse or underrepresented communities. The Legislature appropriated $2.5 million to the program for the 2014-15 academic year, which is expected to fund 21 students.

21. SB 8 (Ch. 402) Prescription Drug Dispensing by Certain Nurses

SB 8 authorizes any certified nurse practitioner or certified clinical nurse specialist to apply to the Board of Nursing for approval to dispense prescription drugs. Prior to SB 8, Oregon law only allowed certified nurse practitioners or certified clinical nurse specialists to apply for approval to dispense drugs at higher education institutions or areas that lacked readily available pharmacy services.

22. SB 106 (Ch. 514) Fees Established by Chiropractic Examiners and Pharmacy Boards

SB 106 allows the State Board of Chiropractic Examiners and State Board of Pharmacy to establish certain fees by rule. Previously, fees set by those boards were prescribed in statute.

Effective: June 26, 2013. Substantive provisions became operative July 1, 2013.

23. SB 107 (Ch. 82) OHLA Technical Changes

SB 107 makes technical changes to some of the licensing boards under the Oregon Health Licensing Agency (OHLA). The bill allows Nursing Home Administrators Board, Respiratory Therapist and Polysomnographic Technologist Licensing Board, Board of Cosmetology, Board of Body Art Practitioners in the Oregon Health Licensing Agency to establish specific requirements for examination, licensing, and temporary licensing.

Note: HB 2074 (2013) renames OHLA as the Health Licensing Office and moves it into the Oregon Health Authority.

24. SB 109 (Ch. 83) Issuance of Subpoenas in Naturopathic Medicine Investigations

SB 109 authorizes a designee of the Oregon Board of Naturopathic Medicine to issue subpoenas for purpose of investigating alleged violations of laws relating to naturopathic medicine.

25. SB 136 (Ch. 297) Prescribing by Certified Registered Nurse Anesthetists

SB 136 authorizes the Oregon State Board of Nursing to allow certified registered nurse anesthetist to prescribe drugs, including Schedule II, III, III N, IV and V controlled substances, for a supply of not more than 10 days without refills for established clients or patients. The bill authorizes the board to determine the scope of the authority, educational requirements, assess a fee for application or prescription authority, and to suspend or revoke prescription authority.

26. SB 210 (Ch. 406) Certified Nurse Anesthetists Scope of Practice

SB 210 authorizes certified registered nurse anesthetists to deliver the following services without medical collaboration at the location at which services are rendered, other than in ambulatory surgical centers or hospitals:

- Assessment of the health status of the patient as that status relates to the relative risks associated with anesthetic management of the patient;
- Determination and administration of an appropriate anesthesia plan, including selecting, ordering and administering anesthetic agents, managing and monitoring airways and recording information related to vital signs, life support, mechanical support, fluid management, and electrolyte and blood component balance;
- Any action necessary to counteract problems that may develop during implementation of an anesthesia plan; and
- Necessary or routine post-anesthesia care.

27. SB 440 (Ch. 177) Primary Care Loan Repayment Program

SB 440 creates the primary care provider loan repayment program which replaces the primary care services program that was intended to be administered by the Office of Rural Health but was not funded. The program authorizes loan repayment assistance to providers who commit to serving medical assistance recipients in rural or medically underserved areas of the state. The bill requires the Oregon Health Authority to transfer $4 million from the Oregon Health Authority Fund to the program, no later than June 30, 2015. The OHA must prescribe by rule the terms and conditions for participating in the program.

The bill also requires the Oregon Health and Science University to reserve up to 15% of admissions for students who demonstrate an interest in practicing medicine in rural or underserved areas. For those who fill the reserved admissions, the university must provide additional resources and opportunities.

SB 440 took effect on May 16, 2013.

28. SB 483 (Ch. 5) Patient Safety and Defensive Medicine

SB 483 creates a process for the early disclosure of adverse events, offers of settlement, and mediation before litigation in medical negligence cases. The Oregon Patient Safety Commission is charged with implementing the new law. The process begins with filing a notice of adverse event. The commission is charged with establishing timelines and the process for filing notices, maintaining a panel of available mediators, establishing quality improvement techniques to reduce patient care errors, and developing evidence-based prevention practices to improve patient outcomes. The bill also includes a task force to evaluate the effectiveness of the new law and report to the Legislature annually.

SB 483 took effect on March 18, 2013. The program becomes operative on July 1, 2014 and sunsets December 31, 2023.

29. SB 491 (Ch. 178) Minors Outpatient Consent

SB 491 permits a minor 14 years of age or older to obtain, without parental knowledge or consent, outpatient diagnosis or treatment of mental or emotional disorder or chemical dependency from professional counselors and marriage and family therapists licensed by Oregon Board of Licensed Professional Counselors and Therapists.

30. SB 548 (Ch. 413) Dentistry Practice

SB 548 resolves an issue relating to the definition of "campus" in statute when OHSU's school of dentistry is moved to its new location on the south waterfront.

SB 548 took effect on June 13, 2013.

31. SB 604 (Ch. 603) Credentialing Database

SB 604 requires the Oregon Health Authority (OHA) to create a database for primary source verification for credentialing. The bill requires all health care professionals in the state who must be credentialed, all credentialing organizations and all licensing boards to use the database. The bill prohibits credentialing organizations from requesting information from providers that is available in the database. It provides civil immunity to a credentialing organization that relies on information in the database. Providers and credentialing organizations will be required to pay a fee to use the database.

The bill takes effect on January 1, 2014. Substantive requirements of the bill become operative January 1, 2016. A work group will be convened to advise OHA on rules and must provide interim reports to the Legislature on February 1, 2014, October 1, 2014, and February 1, 2015.

32. SB 683 (Ch. 552) Provider Referrals

SB 683 requires that a health practitioner's decision to refer a patient to a facility for a diagnostic test or health care treatment or service shall be based on the patient's clinical needs and personal health choices. The bill prohibits health care practitioners from limiting referrals of patients to health care entities in which practitioner or practitioner's family member has financial interest. It requires full disclosure of financial interests or an employment relationship of the health care practitioner. The bill requires practitioners to inform patients regarding patient choice in a form and manner prescribed by the Oregon Health Authority. The bill prescribes a civil penalty up to $1,000 for failure to disclose interest, relationship or notice of patient choice in conjunction with a referral. The bill authorizes the Oregon Health Licensing Agency or the appropriate health professional regulatory board to investigate and discipline violations of the bill.

33. SB 802 (Ch. 310) Dentist of Record

SB 802 provides that an accredited dental institution or program (i.e. dental school) does not need to name an actively licensed dentist as its dental director but must provide a list of dentists of record to the Board of Dentistry.

III. HEALTH INSURANCE

1. HB 2118 (Ch. 678) Health Plan Quality Metrics

HB 2118 creates the health plan quality metrics work group to make recommendations on appropriate health outcomes and quality measures to be used by the Oregon Health Insurance Exchange Corporation (Cover Oregon), the Oregon Health Authority, the Oregon Educators Benefit Board (OEBB) and the Public Employees' Benefit Board (PEBB). The bill requires a final a report to be submitted to the Legislature by May 31, 2014.

Effective: July 29, 2013. The work group sunsets upon convening of the 2015 legislative session.

2. HB 2240 (Ch. 681) Omnibus ACA Alignment Bill

HB 2240 is an Affordable Care Act (ACA) alignment bill, aimed at aligning the Insurance Code with the ACA and federal regulations implementing the ACA. It makes program changes to the Healthy Kids program and it abolishes the Family Health Insurance Assistance Program (FHIAP) and the Office of Private Health Partnerships (OPHP) to reflect the availability of coverage through the Medicaid expansion and Cover Oregon in 2014.

Commercial Insurance

- Defines "essential health benefits."
- Allows the Department of Consumer and Business Services (DCBS) to create by a rule a risk adjustment program consistent with 42 USC 18063.
- Links definition of "student health benefit plan" to federal definition. Allows DCBS to adopt requirements for student health benefit plans.
- Permits DCBS to require insurers to provide written notice to an insured to effectuate any law that DCBS is responsible for enforcing including enrollment periods, termination of coverage, availability of coverage outside open enrollment, and rights of insureds.
- Allows insurers to increase rates once during the 2014 calendar year by an amount that reflects the ACA provider fee and federal reinsurance program assessment.
- Defines group health insurance and defines employees. Defines associations that qualify under the definition of group health insurance.

- Changes the definition of "transact insurance" to include offering multi-state plans.
- Removes references to portability health benefit plans.
- Requires policies to be printed in 12-point font type.
- Exempts health benefit plan from requirement that policy contain statutory reinstatement language.
- Requires that DCBS establish by rule guidelines for coordination of benefits for individual and small group health insurance.
- Allows insurer to prescribe the time that a request for continuation of coverage must be submitted, provided it is at least 10 days after the qualifying event.
- Amends definition of "bona fide association."
- Includes new definition of individual health plan which includes coverage through a trust, association or similar group, regardless of situs of the policy or contract.
- Defines and prohibits preexisting condition exclusions except for in grandfathered health plans.
- Exempts carrier from requirement to annually determine the number of employees in the group for plans offered in the Exchange.
- Deletes reference to basic health plan.
- Deletes authorization of use of health statements to enforce preexisting exclusion.
- Requires coverage of essential health benefits for small employer plans except for grandfathered plans. Limits group eligibility waiting period to 90 days.
- Prohibits carrier from denying a small employer's application for coverage based on participation or contribution requirements, but a carrier may require employers that do not meet the carrier's requirements to enroll during the open enrollment period.
- Only allows rating adjustments for adults based on age, tobacco use, family composition, plan design, and geographic area.
- Authorizes DCBS to require carriers and producers offering plans to individuals and small employers to use open and special enrollment periods prescribed by DCBS by rule.
- Allows carriers to collect health-related information for health care management, but not to deny coverage.
- Requires all non-grandfathered individual plans to be included in one risk pool and all grandfathered individual plans to be in a separate risk pool.
- Prohibits a carrier from imposing limits, exclusions~~,~~ or additional conditions on coverage of routine costs for items and services, or from imposing conditions that discriminate on the basis of an individual's participation in an approved clinical trial.

- Allows premium discounts or rebate if in conjunction with a federally authorized health promotion or disease prevention program, health behaviors program allowed under state law, or a wellness program as defined by DCBS.
- Eliminates portability coverage after December 31, 2013.

Health Care for All Oregon Children Program (Healthy Kids)

- Clarifies that coverage terminates at 19 years of age.
- Allows the Department of Human Services (DHS) and Oregon Health Authority (OHA) to specify additional eligibility requirements as required for federal financial participation.
- Requires DHS and OHA to determine eligibility based on documentation readily available to the child or child's caretaker.

Office of Private Health Partnerships (OPHP)

- Abolishes OPHP on January 1, 2014. OPHP—which was moved into OHA in 2009 (HB 2009)—operates the Family Health Insurance Assistance Program (FHIAP) for low-income families and the private insurance portion of the Healthy Kids program for children over 200% of the federal poverty level.
- FHIAP is discontinued as of January 1, 2014.
- Coverage under Healthy Kids for children over 300% of the federal poverty level (unsubsidized coverage) is discontinued as of January 1, 2014.
- HB 2091 (2013), as further amended by HB 2087, eliminates the premium assistance program for children with family incomes between 200-300% of the federal poverty level and the Oregon Health Authority must transfer them into the Oregon Health Plan by June 30, 2015.

The bill took effect on July 29, 2013. Most substantive provisions become operative either January 1 or January 2, 2014.

3. HB 2241 (Ch. 370) NAIC Model Law Alignment

HB 2241 aligns the Oregon Insurance Code with model laws adopted by the National Association of Insurance Commissioners (NAIC) relating to, among other things, acquisitions.

- Allows documents submitted to DCBS which are otherwise confidential or privileged to be shared with chief insurance regulatory official and NAIC if they enter into confidentiality agreement.
- If two or more jurisdictions must approve an insurer acquisition, the entity that must file notice of the acquisition with DCBS may request a joint hearing before all chief regulatory officials who must approve the acquisition.

- With exceptions, an acquiring insurer must notify DCBS of acquisition subject to regulation and wait for 30 days before proceeding. DCBS may request additional information once to determine if the acquisition would substantially diminish competition in the line of business or may tend to create a monopoly.
- Allows DCBS to issue a cease and desist order prohibiting an acquisition from proceeding, or withdraw an insurer's certificate of authority to transact insurance, if the director has prima facie evidence that an acquisition would substantially diminish competition in the line of business or may tend to create a monopoly.
- Requires insurers that are part of an insurance holding company system to file an enterprise risk report each year identifying material risks to the insurer.
- Permits the director of DCBS to establish or participate in a supervisory college with other federal, state, international, or other regulatory agencies that supervise the insurer or its affiliates.
- Allows DCBS to presume that a person controls another person if the person has voting power or proxy for voting power for 10% or more of the voting securities of the other person.
- Defines eligible member of a domestic mutual insurer for purpose of conversion or reorganization of domestic mutual insurer.
- Amends civil penalties for violations of the Insurance Code. Allows penalty for director or officer or an insurance holding company system that engages in a transaction or makes an investment that is not properly recorded under statutory requirements.
- Makes violation of acquisitions and merger statutes, insurance holding system company statutes, and conversion/reorganization of domestic mutual insurer statutes a Class C felony. Makes false statements by officers, directors or employees a Class C felony.
- Amends definition of acquiring party, acquisition and domestic insurer for purposes of insurance acquisitions and mergers statutes.
- Requires confidential notice of proposed divestiture to be filed with DCBS and domestic insurer at least 30 day before a person ceases to own or hold a controlling interest in the domestic insurer. Requires director of DCBS to determine when an acquisition or divestiture of control will require a person to file for and obtain approval of the transaction.
- Adds requirements to the notice of acquisition which must be filed with DCBS to include information on securities transferred as part of the acquisition, including number and types of shares, terms of the acquisition of security, method by which acquiring party determined the fairness of the proposal.
- Amends provisions related to hearings requested by party to an acquisition; requires hearing to be conducted in accordance with the Administrative Procedures Act.
- Aligns existing requirements for director to determine whether activity substantially diminishes competition with new provisions in section 6 of the bill.

- Amends definitions related to acquisitions, mergers and holding company systems. Defines enterprise risk.
- Amends filings required for insurance holding companies to include financial statements and affidavits that state board of directors has oversight of governance and internal controls and that officers and senior management have approved and implemented corporate governance and internal control procedures.
- Exempts applicability of existing acquisition and merger notice and approval statutes for mergers or consolidations between two or more insurers.
- Amend disclosure requirements for disclaimers of affiliation; allows for hearing if requested.
- Requires that a transaction within an insurance holding company system by an insurer required to register must include in cost-sharing agreements and management agreements any provisions that DCBS requires by rule. Notices for a transaction that is an amendment or modification of an affiliate agreement that was previously filed must include a statement of reasons for the change and estimate of financial impact.
- Amends provisions related to prohibitions on extraordinary dividends and distributions in certain situations.
- Changes requirements for board of directors and board's committees of a domestic insurer part of an insurance holding company system. Requires 1/3 of board to be people who are not officers or employees of any entity that controls or is under common control of the insurer or beneficial owners of a controlling interest.
- When doing a financial exam, allows director of DCBS to determine the extent to which the insurance holding company system or another entity in the holding company system may cause enterprise risk to the insurers. Allows DCBS to require an insurer to produce information that the insurer does not possess but might have access to by reason of a contractual relationship or statutory obligation; allows for civil penalty or suspension or revocation of insurer's certificate of authority if insurer does not produce the requested information and the director finds there is not merit to the basis for not producing it.
- Allows director of DCBS to disapprove a dividend or place an insurer under supervision if the director determines that a violation of certain statues prevents director from fully understanding the enterprise risk that an insurance holding company system affiliate presents to an insurer.

Effective: June 13, 2013. Substantive provisions become operative January 2, 2014.

4. HB 2385 (Ch. 375) Court Ordered Treatment

HB 2385 removes an exemption in current statute that prevents a health insurer from being required to cover court ordered chemical dependency screening or treatment. The bill permits an insured to utilize health benefit plan coverage as a third party payer of costs of treatment.

Effective: June 13, 2013. The bill applies to policies issued on or after that date.

5. HB 2432 (Ch. 682) Cost Share for Maternal Diabetes Management

HB 2432 prohibits cost-sharing for health services, medications and supplies medically necessary for management of diabetes during pregnancy through six weeks postpartum.

Effective: July 29, 2013. It applies to health benefit plans issued or renewed after January 1, 2014.

6. HB 2737 (Ch. 581) Mental Health Provider Reimbursement

HB 2737 requires that the Oregon Health Authority (OHA) adopt standards and procedures to certify mental health providers who are not otherwise licensed or certified to qualify for insurance reimbursement.

Effective: July 1, 2013.

7. HB 2902 (Ch. 430) Physician Assistant and Nurse Practitioner Reimbursement Rates

HB 2902 requires insurers to reimburse physician assistants and nurse practitioners in independent practices at the same rate as physicians for the same services. The requirement applies to in-network providers beginning with contracts entered into on or after January 1, 2014 and to out-of-network providers for services provided on or after January 1, 2014. The requirement sunsets January 2, 2018. The bill creates the Task Force on Primary and Mental Health Care Reimbursement to study and make recommendations to the 2014 and 2015 regular sessions of Legislative Assembly on payment structures for primary care and mental health care workforce in Oregon.

Effective: June 18, 2013. The task force sunsets upon convening of 2016 legislative session.

8. HB 2969 (Ch. 91) Ambulance Indemnification

HB 2969 requires insurers that provide coverage of ambulance care and transportation to indemnify a provider of ambulance care and transportation directly.

9. HB 3458 (Ch. 698) Individual Market Stabilization

HB 3458 creates a temporary state reinsurance program to minimize insurers' costs and stabilize premiums as high-risk individuals move into the individual market in 2014. The three-year program will be funded through an assessment that replaces the current Oregon Medical Insurance Pool (OMIP) assessment. The bill wraps around the federal reinsurance program and provides reinsurance for carriers providing coverage to enrollees who transfer from the Oregon Medical Insurance Pool, federal temporary high-risk pool, children's reinsurance program, and portability coverage. The assessment and reinsurance levels are capped and decrease in 2015 and 2016. The program ends December 31, 2016. The program will be administered by the Oregon Medical Insurance Pool Board. The bill terminates coverage through the Oregon Medical Insurance Pool December 31, 2013.

HB 3458 took effect on July 29, 2013. Most substantive provisions take effect January 1, 2014.

Note: HB 2322 (2013) made a technical change to this bill allowing insurers to submit reinsurance claims for individuals who were enrolled in the federal temporary high-risk pool on June 30, 2013, rather than December 31, 2013. The amendment was necessary because the federal government discontinued funding for the temporary high-risk pool program as of July 1, 2013.

10. SB 166 (Ch. 160) Electronic Communications with Insured Persons

SB 166 requires insurers that elect to communicate with insured persons electronically to allow the insured to opt out of electronic communication in favor of regular mail when applying for or renewing coverage. The bill prohibits notices of cancellation or nonrenewal to be communicated electronically.

Effective: October 1, 2013.

11. SB 365 (Ch. 771) Coverage of Autism Spectrum Disorder

SB 365 has two components: coverage of Autism Spectrum Disorder (ASD) and regulation of providers of Applied Behavior Analysis (ABA).

ASD Coverage: SB 365 requires health benefit plans to cover screening, diagnosis and medically necessary treatment for ASD, including ABA therapy. ASD coverage is required for Public Employee' Benefit Board (PEBB) and Oregon Educators Benefit Board (OEBB) health plans that renew on or after January 1, 2015. ASD coverage is required in all other health plans

beginning January 1, 2016. SB 365 exempts the Oregon Health Plan (OHP) from the coverage mandate, but requires that the Health Evidence Review Commission complete a new review of ABA therapy to determine whether it should be covered for OHP. If the commission updates the Prioritized List to include coverage of ABA, coverage must begin October 1, 2014 if no changes in medical coding are needed, or April 1, 2015 if changes in coding are needed.

ABA Providers: SB 365 establishes the Behavior Analysis Regulatory Board (BARB) within the Oregon Health Licensing Agency (OHLA) to provide licensure and regulatory oversight for practitioners of ABA. The bill grandfathers in current providers of ABA therapy and allows them to claim reimbursement from a commercial health plan, PEBB, or OEBB without a license until January 1, 2016.

Note: HB 2074 (2013) renames OHLA as the Health Licensing Office and moves it into the Oregon Health Authority.

Effective: August 14, 2013. Certain provisions have delayed operation as mentioned above.

12. SB 382 (Ch. 596) Uniform Prior Authorization Form for Prescriptions

SB 382 directs the Department of Consumer and Business Services and the Oregon Health Authority to jointly develop a form that providers must use to request a prior authorization for prescription drug benefits. The form must be uniform for all providers, may not exceed two pages, must be electronically available and transmissible, and include a provision under which additional information may be requested and provided. The bill provides that any person that requires prior authorization for prescription drugs must allow use of the form.

Effective: July 1, 2013. Provisions requiring use of the form become operative July 1, 2015.

13. SB 414 (Ch. 618) Restitution from Insurers

SB 414 allows the Director of the Department of Consumer and Business Services to seek restitution and other equitable relief for consumers for actual damages caused by an insurer's violation of the Insurance Code, a breach of contract or policy, or a violation of applicable federal law.

The bill took effect on July 3, 2013. The new authority for the department becomes operative January 1, 2014.

14. SB 539 (Ch. 484) ACA Wellness Program Pilot

SB 539 requires the Department of Consumer and Business Services to apply to U.S. Secretary of Health and Human Services to participate in the ACA wellness program demonstration project. The pilot program, if awarded, would allow health plans to offer a discount to members who participate in wellness programs.

IV. HEALTH CARE FACILITIES

1. HB 2612 (Ch. 109) Placenta Removal from Health Care Facility

HB 2612 clarifies that a postpartum mother may remove a placenta from a health care facility pursuant to rules adopted by the Oregon Health Authority (OHA).

2. HB 3345 (Ch. 356) Distribution of Anatomical Material

HB 3345 provides for the regulation of persons that engage in recovery or distribution of anatomical material from donors for research or education. The bill exempts hospitals, health care facilities, and state-licensed clinical laboratories.

Effective: June 11, 2013.

3. HB 3448 (Ch. 89) Hospital Biofuel Exemption

HB 3448 exempts diesel fuel sold to facilities that store more than 50 gallons of fuel for use in emergency power generation (e.g. hospitals) from the requirement that it contain a certain percentage of biodiesel.

4. SB 172 (Ch. 334) Newborn Screening for Congenital Heart Defects

SB 172 directs the Oregon Health Authority to adopt rules requiring birthing facilities to perform a pulse oximetry screening to check for congenital heart defects on each newborn delivered at the facility before the newborn is discharged.

Effective: June 6, 2013. Rules must be adopted by January 1, 2014.

5. SB 284 (Ch. 175) Newborn Screening for Lysosomal Storage Disorders

SB 284 directs the Oregon Health Authority to conduct a study on the feasibility of requiring all infants born in this state to be screened for lysosomal storage disorders.

Effective: January 1, 2014. The report is due to the Legislature by March 1, 2015.

6. SB 387 (Ch. 409) Permit for Massage Facilities

SB 387 requires a permit from the State Board of Massage Therapists to operate a massage facility. The board may exempt by rule a type of massage facility from the permit requirement if the board finds that requiring a permit for the type of facility is not necessary to regulate the practice of massage therapy or to protect the health and safety of the public.

Effective: June 13, 2013. Substantive provisions of the bill become operative January 1, 2014.

7. SB 420 (Ch. 411) Mammogram Results

SB 420 requires that a facility where a mammogram is performed notify a patient of results and possible increased risk of breast cancer if the mammogram shows dense breast tissue, and to advise the patient to contact the patient's health care provider regarding appropriateness of supplemental testing. OHA shall define the term “dense breast tissue” by rule.

8. SB 568 (Ch. 27) Hospital Contracting and Dispute Resolution

SB 568 extends the coordinated care organization dispute resolution process to termination, extension or renewal of a contract between a health care entity and a coordinated care organization. The bill also extends to January 2, 2016 the sunset on provisions governing reimbursement that CCOs must pay non-participating hospitals.

Effective: April 2, 2013.

9. SB 569 (Ch. 414) Telemedicine Credentialing

SB 569 requires that the Oregon Health Authority (OHA) establish rules on the documentation and information that may be required by hospitals in credentialing telemedicine providers. If the originating-site hospital (where the patient is) does not have a delegated credentialing agreement with a distant-site hospital (where the provider is), then the originating-site hospital may only request information and documentation allowed by OHA’s rules when credentialing a telemedicine provider. The credentialing limitations apply only to originating-site and distant-site hospitals located in Oregon.

Effective: June 13, 2013. Substantive provisions of the bill become operative October 1, 2013.

V. MEDICAL ASSISTANCE AND OTHER PUBLIC PROGRAMS

1. HB 2087 (Ch. 640) Medicaid Applications by Jail Staff

HB 2087 authorizes the designee of a local correctional facility, Department of Corrections institution, or youth correction facility to apply for medical assistance on behalf of a person residing in a facility or institution to qualify the person for medical assistance coverage for a hospitalization occurring outside the facility or institution. The bill also requires that local mental health authorities coordinate their local planning with the development of coordinated care organization community health improvement plans and removes the requirement that local plans be revised biennially.

Effective: July 25, 2013.

2. HB 2089 (Ch. 14) Lay Representatives for OHA/DHS

HB 2009 (2009) created the Oregon Health Authority (OHA) and moved certain programs from the Department of Human Services (DHS) into OHA. OHA and DHS share certain joint and administrative functions. HB 2089 identifies the evolving responsibilities of each agency following the implementation of HB 2009 (2009). It authorizes lay representatives of OHA and DHS to represent either agency at contested case hearings. It allows a small estate affidavit to be filed with either OHA or DHS, according to agency administrative rules. It authorizes both OHA and DHS to determine eligibility for medical assistance. It allows information obtained by OHA or DHS to be exchanged with the Oregon Health Insurance Exchange Corporation (Cover Oregon) for specified purposes. It prohibits OHA from purchasing prescription drugs directly or indirectly through the Oregon Prescription Drug Program for recipients of medical assistance. It clarifies that OHA, rather than DHS, is responsible for negotiating drug rebates for medical assistance programs. It clarifies that OHA, in collaboration with DHS, is responsible for the statewide child fatality interdisciplinary team. It also updates the reference to Board of Licensed Dieticians to reflect that dieticians are licensed by the Oregon Health Licensing Agency.

Effective: March 21, 2013.

Note: HB 2074 (2013) renames OHLA as the Health Licensing Office and moves it into the Oregon Health Authority. Section 96 of HB 2859 supersedes section 10 of HB 2089, relating to cross-delegation of duties between OHA and DHS.

3. HB 2090 (Ch. 569) Medicaid Preferred Drug List Extension

HB 2126 (2009) allows the Oregon Health Authority to enforce the Practitioner-Managed Prescription Drug Plan (commonly referred to as the preferred drug list), which requires that certain lower cost drugs be prescribed instead of higher priced equivalents. The authority to enforce the list was scheduled to sunset January 2, 2014. HB 2090 extends the authority to January 1, 2018.

4. HB 2091 (Ch. 365) Transitioning the Healthy Kids Connect Program

HB 2091 repeals the private health option component of the Health Care for All Oregon Children program (commonly referred to as Healthy Kids Connect), which provides insurance premium assistance for children with family incomes between 200 and 300% of the federal poverty level. The bill requires the orderly transfer of children enrolled in Healthy Kids Connect to the Oregon Health Plan (OHP) by June 30, 2015. The bill requires that the Oregon Health Authority (OHA) seek federal approval for the transition.

Effective: June 13, 2013. The OHA budget (HB 5030) assumes the transfer of Healthy Kids Connect enrollees to OHP will be completed by the end of December 2013.

5. HB 2122 (Ch. 234) Transfer of Members between Medicaid Managed Care Organizations

HB 2122 prohibits the Oregon Health Authority from approving the transfer of a provider's Medicaid enrollees from one prepaid managed care health services organization (managed care organization, dental care organization or coordinated care organization) to another prepaid managed care health services organization if the organization notifies the authority that the provider's contract with the transferring organization was terminated for just cause.

A provider is entitled to a contested case hearing to dispute the Oregon Health Authority's denial of a transfer. The authority may award attorney fees and costs to the prevailing party.

Effective: May 28, 2013.

6. HB 2132 (Ch. 368) Medicaid "Churn"

HB 2132 requires that Cover Oregon and the Oregon Health Authority report quarterly to the Legislature on efforts to coordinate eligibility and enrollment procedures for qualified health plans and medical assistance programs.

The bill took effect on June 13, 2013. The reporting requirement sunsets July 1, 2017.

7. HB 2134 (Ch. 264) OHA/DHS Data Collection

HB 2134 requires that the Oregon Health Authority (OHA), in collaboration with the Department of Human Services (DHS), adopt by rule uniform standards for collection of race, ethnicity, preferred spoken and written languages, and disability status. It requires that OHA and DHS, to the great extent practicable, use the standards in surveys and in all programs in which OHA or DHS collects, records or reports such data. The standards must be updated at least once every two years, and the agencies must report to the Legislature no later than June 1, 2014 and every two years thereafter on the implementation of the standards.

Effective: June 4, 2013.

8. HB 2216 (Ch. 608) Hospital Tax Extension

HB 2216 extends the sunset on the collection of the hospital assessment to September 30, 2015. The assessment was scheduled to sunset September 30, 2013. Funds collected through the assessment are used to help pay for Medicaid. The bill creates a performance payment pool. Half of the funds in the pool will be paid to hospitals that are in compliance with data submission requirements. The remainder will be paid to hospitals that achieve performance standards established by the newly created hospital performance metrics advisory committee. The bill also extends the long-term care facility assessment to July 1, 2020.

The bill took effect October 7, 2013.

9. HB 2280 (Ch. 69) Multi-Share Program Technical Changes

HB 2280 makes technical changes to the community-based health care improvement programs, commonly referred to as multi-share programs. The bill requires a "qualified employer" to have no more than 50 full-time equivalent employees, reduces from twelve to two months the period of uninsurance necessary to qualify and authorizes continuation coverage for an employee who was enrolled in the program and whose employment terminates.

10. HB 2445 (Ch. 683) School Based Health Centers

HB 2445 requires that the Oregon Health Authority (OHA) Public Health Division adopt by rule procedures and criteria for certification, suspension and decertification of school-based health centers. The bill requires OHA to convene a work group to make recommendations regarding use of school-based health centers for children who qualify for medical assistance and report on the progress of the work group to the Legislature by December 31, 2013. The bill appropriates $4 million to fund grants to school based health centers and to provide technical assistance to centers.

Effective: July 29, 2013.

11. HB 2859 (Ch. 688) Medical Assistance Statutory Alignment

HB 2859 removes "medical assistance" from the definition of "public assistance," and aligns Oregon Medicaid statutes with federal Medicaid statutes and regulations. The bill also provides for final technical changes to clarify the relationship between the Oregon Health Authority (OHA) and the Department of Human Services (DHS) regarding administration of Medicaid. Specifically, the bill:

- Requires applicants and recipients of medical assistance to be treated in a courteous, fair and dignified manner by OHA. Allows an individual to file a grievance over alleged discourteous, unfair or undignified treatment, or if the individual alleges that an OHA employee has provided incorrect or inadequate information.
- Requires OHA and DHS to accept an application for medical assistance over the Internet, by telephone by mail, in person, and through commonly available electronic means. Requires OHA and DHS to promptly exchange information with the Oregon Health Insurance Exchange Corporation (Cover Oregon) as necessary to determine eligibility for purchasing insurance through Cover Oregon, premium tax credits, or cost-sharing reductions. Requires OHA and DHS to accept an application submitted to Cover Oregon to determine eligibility for medical assistance.
- Requires DHS and OHA to verify eligibility for medical assistance consistent with federal requirements and to accept self-attestation as verification of specified eligibility factors.
- Aligns state statutes with new federal eligibility requirements for Medicaid and State Children's Health Insurance Program (SCHIP).
- If OHA or DHS determines that an individual no longer qualifies for the medical assistance program in which the individual is enrolled, the agency must determine eligibility for other medical assistance programs. If the individual does not qualify for other medical assistance programs, the agency must determine potential eligibility for purchasing insurance through Cover Oregon and for premium tax credits and cost-sharing reductions. The agency must promptly transfer to Cover Oregon the record of an individual that is potentially eligible to purchase insurance through Cover Oregon.
- Deletes definition and references to categorically needy.
- Allows OHA to purchase insurance coverage through Cover Oregon in lieu of paying for the service directly.
- Allows the director of DHS, director of OHA and executive director of Cover Oregon to delegate to each other by interagency agreement any duties, functions or powers necessary for the efficient and effective operation of the agencies.

- Requires OHA to establish a program to provide grants to coordinated care organizations to fund pilot projects designed to improve patient engagement and patient accountability.
- Create the Task Force on Individual Responsibility and Health Engagement. The Task Force must submit recommendation to the Legislature by November 1, 2013.

Effective: July 29, 2013. Substantive provisions of the bill become operative January 1, 2014.

12. HB 2947 (Ch. 113) Dental Pilot Projects Program Clean Up

SB 738 (2011) allows the Oregon Health Authority (OHA) to approve pilot projects to serve low-access populations. A review by the Attorney General's office determined that certain provisions of the bill are invalid. HB 2947 repeals the invalid provisions.

Effective: May 14, 2013. Substantive changes in the bill become operative January 1, 2014.

13. SB 21 (Ch. 590) Long-Term Care System Plan

SB 21 requires that the Department of Human Services (DHS) develop a plan to improve and strengthen Oregon's publicly funded long-term care system. The plan must include strategies to serve seniors and persons with disabilities in their own homes and community settings of their own choosing; strategies designed to support independence and delay the entry of individuals into publicly funded long term care; and strategies to serve individuals equitably in a culturally and linguistically responsive manner. DHS must convene a planning committee to assist in developing the plan. DHS must report to the Legislature during the 2014 legislative session on the progress of development of the plan. The final report must be submitted to the Legislature no later than February 1, 2015.

SB 21 took effect on July 1, 2013 and the bill sunsets January 2, 2016.

14. SB 436 (Ch. 598) CCO Community Health Improvement Plan

SB 436 requires that a community health improvement plan adopted by a coordinated care organizations (CCO) must include a strategy for the CCO to work with the Early Learning Council, the Youth Development Council, and school based health centers to coordinate the effective and efficient delivery of health care to children and adolescents in the community.

SB 436 takes effect on July 1, 2013. The bill sunsets upon convening of the 2015 legislative session.

15. SB 559 (Ch. 602) Placement Options for Adults with Developmental Disabilities

SB 559 requires that the Department of Human Services (DHS) provide adults with developmental disabilities needing comprehensive services at least three options for placement prior to initial placement or transfer, subject to exceptions. It also requires that DHS ensure that all adults with developmental disabilities receiving comprehensive services have an equal opportunity for job placements. A provider of developmental disability services that offers job placement may not give preference to an adult with disabilities who is a resident of a facility owned or operated by the provider when determining eligibility for a job placement. The residence of an adult with developmental disabilities may not be the exclusive factor in determining eligibility for a job placement.

Effective: July 1, 2013.

16. SB 724 (Ch. 534) CCO Alternative Accounting Codes; CCO Global Budgets; Payments to ASCs

SB 724 requires the Oregon Health Authority (OHA) to establish an alternative accounting method for tracking innovative, non-traditional services in a coordinated care organization's (CCO) global budget. OHA must develop the methodology by August 1, 2013. This part of the bill is aimed at addressing how expenditures are tracked for services that do not have a traditional billing code. Currently those services are categorized as administrative costs even if they were expenses for services provided to members.

SB 724 also requires OHA and the Department of Human Services (DHS) to provide a statement of costs when OHA or DHS require a CCO to assume responsibility for providing services out of the CCO's global budget that were previously reimbursed directly by OHA or DHS on a fee-for-service basis. If OHA or DHS requires a CCO to assume the cost of new service, OHA or DHS must report it to the Legislature not later than February 1 of the following year.

Finally, SB 724 requires an insurer or third party administrator to reimburse an out-of-network ambulatory surgical center (ASC) by either paying the ASC directly or issuing a check made payable to both the center and the insured or beneficiary of the service, or to the ASC and the policyholder or certificate holder if the insured or beneficiary is a dependent.

Effective: June 26, 2013. The alternative accounting code provisions become operative July 1, 2013. The ASC provisions apply to payments made on claims presented on or after January 1, 2014.

17. SB 725 (Ch. 535) CCO Contract Duration; CCO Public Meetings

SB 725 requires contracts entered into between the Oregon Health Authority (OHA) and coordinated care organizations (CCO) to be for a term of five years. A contract may not be amended more than once a year unless OHA and the CCO mutually agree to the amendment or it is necessitated by changes in federal or state law.

SB 725 also changes requirements for CCO public meetings. It requires the CCO governing body to establish standards for publicizing activities of the CCO and the CCO's community advisory council necessary to keep the community informed. The community advisory council must post reports of its meetings on the CCO's website. If the council's meetings are not open to the public with an opportunity for written and oral public comment, the council must hold semiannual (quarterly beginning January 1, 2015) public meetings to report on the CCO's and council's activities and provide an opportunity for written and oral public comment.

Effective: June 26, 2013.

VI. PUBLIC PURCHASERS AND HEALTH CARE FINANCING

1. HB 2128 (Ch. 421) OEBB Participation in Insurance Exchange

HB 4164 (2012) allows school districts, community colleges, and education service districts that provide insurance coverage through the Oregon Educators Benefit Board (OEBB) to choose between coverage through OEBB or Cover Oregon for benefit years beginning October 1, 2015, unless precluded by federal law. HB 2128 requires that Cover Oregon consult with OEBB, and representatives of school district administrators, school board members, and school employees on plans offered through Cover Oregon to educators. The bill requires that all plans offered through the exchange be underwritten based upon the entire risk pool of eligible school districts and their employees, and be comparable to plans offered by OEBB.

2. HB 2279 (Ch. 731) Local Government Participation in PEBB/OEBB

HB 2279 allows local governments to participate in a health plan offered by either the Public Employees' Benefit Board (PEBB) or the Oregon Educators Benefit Board (OEBB). The bill requires that the Governor appoint additional voting members to PEBB or OEBB if local governments elect to participate in plans offered by the boards. The decision of a local government to participate in a plan offered by PEBB and OEBB is permissive and subject to collective bargaining. If a local government elects to participate in PEBB or OEBB, the local government may elect only one time to withdraw and participate instead in a health plan offered through Cover Oregon. The bill also provides that the executive director of PEBB reports to the director of the Oregon Health Authority.

3. HB 3260 (Ch. 712) Health Care Financing Study

HB 3260 requires that the Oregon Health Authority (OHA) contract with a third party to study and recommend the best option for financing health care in the state. OHA must report on the progress of the study to the Legislature during the 2014 session and submit a final report by November 1, 2014.

Effective: August 1, 2013.

4. SB 169 (Ch. 333) Diabetes Study

SB 169 requires the Oregon Health Authority (OHA) to report to the Legislature by February 1, 2015 on the prevalence and cost of diabetes in Oregon and develop a strategic plan to address pre-diabetes, diabetes and diabetes-related complications.

Effective: June 6, 2013.

5. SB 789 (Ch. 780) Actuarial Analysis for Exception from OEBB

SB 789 clarifies that self-insured districts, districts with independent health insurance trusts, and community college districts do not need to complete an actuarial analysis in order to offer health plans other than Oregon Educators Benefit Board (OEBB) plans. For districts that must complete an actuarial analysis in order to maintain an exception from offering OEBB plans, the bill removes the current requirement that the analysis be performed at least once every two years; one actuarial analysis will suffice to claim the exemption.

Effective: January 1, 2014. The bill applies to districts claiming an exception before, on, or after the effective date.

6. SB 843 (Ch. 538) Work Group on Corrections Health Care Costs

SB 843 creates the Work Group on Corrections Health Care Costs to recommend legislation in 2014 to reduce health care costs for the Department of Corrections.

Effective: June 26, 2013. The work group sunsets upon convening of the 2014 regular session.

VII. PUBLIC HEALTH AND HEALTH PROMOTION

1. HB 2092 (Ch. 313) Injury and Violence Prevention Program

HB 2092 requires the Oregon Health Authority (OHA) to establish and administer an injury and violence prevention program. OHA currently runs this program; the bill is meant to clarify OHA's statutory authority for the program that already exists. The bill continuously appropriates moneys received by gift, grant or donation to OHA to administer the program.

Effective: June 6, 2013.

2. HB 2093 (Ch. 366) Vital Records Model Law Alignment

HB 2093 aligns Oregon's vital records and statistics statutes with a national model law adopted in 2011. The bill updates terms used in statute and promotes electronic transactions.

Effective: June 13, 2013. The substantive changes in the bill become operative January 1, 2014.

3. HB 2094 (Ch. 61) Public Health Technical Clean Up

HB 2094 authorizes the Public Health Officer to carry out specified duties under federal Ryan White CARE Act. It updates terminology and agency references in statute.

Effective: May 9, 2013.

4. HB 2104 (Ch. 87) Commercial Medical Imaging

HB 2104 addresses concerns regarding unregulated commercial photo studios in Oregon. The bill prohibits a person from performing medical imaging procedure on another person unless the procedure serves a medical purpose and is ordered and interpreted by a licensed physician, nurse practitioner or physician assistant acting within scope of a licensee's authority. The bill includes an exemption for research and education.

5. HB 2131 (Ch. 19) Information Related to Bedbugs

HB 2131 require that certain information reported by a pest control operators to a public health authority is confidential and not subject to public records laws, including the location where a pesticide intended to prevent, destroy, repel or mitigate an infestation of bedbugs has been or will be applied; the identity of any person who owns, rents or leases

property at the site where the pesticide has been or will be applied; and any information describing or pertaining to the infestation. The bill does not prevent a public health authority from publishing statistical compilations or reports relating to reportable disease investigations if the compilations or reports do not identify individual cases or sources of information.

Effective: April 2, 2013.

6. HB 2329 (Ch. 70) Chronic Obstructive Pulmonary Disease Awareness Month

Designates November of each year as Chronic Obstructive Pulmonary Disease Awareness Month.

Effective: May 9, 2013

7. HB 2348 (Ch. 609) Future of Public Health Task Force

HB 2348 creates the Task Force on Future of Public Health Services to study regionalization, consolidation, and the future of public health services in Oregon. The task force is required to submit a report to the Legislature by October 1, 2014.

Effective: July 2, 2013. The task force sunsets upon convening of the 2016 legislative session.

8. HB 3460 (Ch. 726) Medical Marijuana Registry

HB 3460 requires that the Oregon Health Authority (OHA) establish by rule a medical marijuana facility registration system for transfer of usable marijuana between grow-sites and registry identification card holders.

Effective: August 14, 2013. Registry requirements in the bill become operative March 1, 2014.

9. SB 132 (Ch. 516) Immunizations

SB 132 changes certain documentation that must be submitted to school administrator for purpose of opting out of immunizations. The bill requires that the parent sign a form stating that the parent is declining one or more immunizations on behalf of the child. The form must include the reason for declining the immunization, including whether the parent is declining the immunization because of a religious or philosophical belief. The form must also include either (1) a signature from a health care practitioner verifying that the health care practitioner has reviewed with the parent information about the risks and benefits of immunization, or (2) a certificate verifying that the parent has completed a vaccine educational module approved by the Oregon Health Authority.

Effective: June 26, 2013. Substantive provisions become operative March 1, 2014. The bill applies to children who, on or after March 1, 2014, enter kindergarten or a children's facility; transfers to a school or children's facility if the school or children's facility does not have on a file a statement that complies existing requirements for filing a declination form; or changes or resubmits a declination form to a school or children's facility.

10. SB 281 (Ch. 337) Medical Marijuana for Post-Traumatic Stress Disorder

SB 281 adds post-traumatic stress disorder to the definition of "debilitating medical condition" for purposes of statutes authorizing medical use of marijuana.

11. SB 375 (Ch. 339) Stroke Advisory Committee

SB 375 establishes the Stroke Care Committee in the Oregon Health Authority (OHA), appointed by the OHA director. The committee must recommend a plan for achieving continuous improvement in quality of stroke care. In accordance with the committee's recommendations, OHA will designate a statewide or national stroke database. Hospitals certified as Comprehensive Stroke Centers or Primary Care Stoke Centers by the Joint Commission must submit stroke data to the database. Other hospitals may optionally submit stroke data to the database. OHA must submit a report to the Legislature every odd-numbered year on progress of the work.

12. SB 384 (Ch. 340) Naloxone for Opiate Overdose

SB 384 requires the Oregon Health Authority (OHA) to develop and prescribe criteria for training on treatment of opiate overdose and specifies training requirements. The bill allows a person, upon successful completion of training, to possess and administer naloxone for treatment of opiate overdose. A person who has successfully completed the training and been granted authority to provide the treatment by OHA is immune from civil liability for any act or omission committed during the course of treatment, if the person is acting in good faith and the act or omission does not constitute wanton misconduct.

Effective: June 6, 2013.

13. SB 722 (Ch. 348) HPV Plan

SB 722 directs the Oregon Health Authority (OHA) to prepare human papillomavirus and comprehensive related cancer control plan as addendum to the Oregon Comprehensive Cancer Plan.

Effective: June 6, 2013. The plan is due to the Legislature by September 1, 2014.

14. SB 728 (Ch. 605) State Trauma Care Advisory Board

SB 728 creates the 17-member State Trauma Advisory Board (STAB) to advise the Oregon Health Authority (OHA) on trauma care and emergency medical services. The STAB will be appointed by the OHA director.

Effective: July 1, 2013.

VIII. PHARMACY

1. HB 2123 (Ch. 570) Pharmacy Benefit Manager Regulation

HB 2123 requires an entity to obtain a license from the Department of Consumer and Business Services in order to act as pharmacy benefit manager (PBM). The bill imposes limits on audits of pharmacies, including prohibiting payment to a third-party auditor based on a percentage of overpayment recovery. The bill limits drugs that can be placed on a maximum allowable cost (MAC) list and requires PBMs to establish a process for network pharmacies to request an adjustment of a MAC price.

2. HB 2714 (Ch. 94) Tests Performed by Pharmacies

HB 2714 authorizes pharmacies to perform a test that has been cleared by the U.S. Food and Drug Administration to be performed in a pharmacy if the pharmacy obtains a waiver from the U.S. Department of Health and Human Services.

3. HB 2740 (Ch. 95) Waivers under the Charitable Drug Program

The Charitable Prescription Drug Program provides donated prescription drugs to needy or uninsured individuals and those with limited access to pharmaceuticals. A Charitable Pharmacy that is registered with the Board of Pharmacy may accept donated drugs for distribution when the pharmacist can reasonably be assured of the purity and integrity of the drug. Those drugs can be distributed if they meet certain specified criteria. HB 2740 allows the board to waive the criteria and approve the donated drugs for distribution if the board determines that issuing the waiver is in the interest of public health and safety.

4. SB 167 (Ch. 332) Administration of Vaccines by Pharmacists to Children in Emergency

SB 167 allows the Public Health Director to authorize pharmacists to administer vaccines to persons three years of age or older during a disease outbreak or public health emergency. The bill allows the Governor to make the authorization during a public health emergency.

5. SB 460 (Ch. 342) Substitution of Biosimilar Products

SB 460 restricts the substitution of a biosimilar product for a prescribed biological product to only biosimilar products approved by the U.S. Food and Drug Administration. The bill requires notification to the patient and the prescribing provider when a substitution is made. The provider notification requirement sunsets on January 1, 2016.

Effective: June 6, 2013, operative on January 1, 2014.

6. SB 470 (Ch. 550) Prescription Drug Monitoring Program

SB 470 allows the prescription drug monitoring program to collect additional data points, including:

- Sex of the patient for whom the prescription drug was prescribed;
- Prescription number assigned to the prescription drug;
- Number of days for which the prescription drug was dispensed;
- Number of refills of the prescription authorized by the practitioner; and
- Number of refills that the pharmacy dispensed.

The bill authorizes system users to delegate use of their account to persons within the prescriber's office so the system can be better integrated into the normal workflow of a clinic. The bill protects data from a public records request and makes additional clarifications about when information may be released. The bill allows physicians and prescribers in California, Idaho, and Washington to access data on Oregon patients.

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VANESSA NORDYKE
AMBER HOLLISTER

Judicial Administration and Attorney Regulation

I. INTRODUCTION

II. COURT FEES, RECORDS, AND PROCEDURES

1.	HB 2562	(Ch. 685)	Filing Fee Increases and eCourt Implementation
2.	HB 2833	(Ch. 218)	Unsworn Foreign Declarations Act
3.	HB 2944	(Ch. 221)	Uniform Electronic Legal Material Act
4.	HB 3282	(Ch. 224)	Victims' Rights Rulings Must Be in Writing
5.	HB 3294	(Ch. 587)	Email Addresses Exempt from Disclosure
6.	SB 49	(Ch. 154)	Court Security Personnel

III. ATTORNEYS AND THE PRACTICE OF LAW

1.	HB 2205	(Ch. 352)	Elder Abuse
2.	HB 2565	(Ch. 3)	Law Practice Custodians and OSB Member Notification
3.	HB 2573	(Ch. 77)	Unlawful Practice of Law in Immigration Cases
4.	SB 534	(Ch. 482)	Non-Attorney Representation Before ODOT

Vanessa Nordyke: 2008 University of Oregon Law School. Member of Oregon State Bar since 2008.
Amber Hollister: 2003 University of Washington School of Law. Member of Oregon State Bar since 2003.

I. INTRODUCTION

There were numerous bills in 2013 that affected the operation of the Oregon Judicial Department and the regulation and practice of lawyers. Two of the most significant for attorneys are HB 2562, which increases and redistributes a number of filing fees to facilitate eCourt implementation, and HB 2205 which creates new reporting and training requirements for lawyers related to elder abuse. Unless otherwise noted, all bills take effect on January 1, 2014.

II. COURT FEES, RECORDS, AND PROCEDURES

1. HB 2562 (Ch. 685) Filing Fee Increases and eCourt Implementation

House Bill 2562 had several important components related to Oregon Judicial Department operations.

First, the bill expanded the Chief Justice's rulemaking authority regarding the use of electronic applications in the court. Specifically, the bill provides rulemaking authority regarding electronic service, electronic filing of documents, and for providing certified electronic copies of those documents. These changes are intended to facilitate the ongoing eCourt implementation.

Additionally, the bill makes a number of changes to both the amounts and the distribution of some court fees. These include:

- The bill reduces the amount of criminal fines collected by justice or municipal courts which are paid into the Criminal Fine Account from $60 to $45.
- The bill designates that when a justice or municipal court collects a criminal fine, $16 of that amount is to be split 60/40 between local drug and alcohol programs and the local court facilities security account.
- The bill increases a number of filing fees, fees on writes of garnishment, fees on marriage solemnizations, and prevailing party fees. All of these fees are raised by approximately 5%.

Additionally, the bill creates the State Court Technology Fund. The purpose of this fund is to receive all ongoing OJIN revenue and revenue on other electronic court applications. Monies in the fund are intended to be used for the purpose of "developing, maintaining and supporting state court electronic applications, services and systems" as well as for providing access to those services and systems.

Between October 1, 2013 and July 1, 2014, the State Court Administrator is directed to transfer 4.75% of designated filing fees into the account. This process is intended as a stopgap funding mechanism to facilitate the ongoing eCourt Implementation. Additional legislation is anticipated in the 2014 session.

House Bill 2562 took effect on July 29, 2013.

2. HB 2833 (Ch. 218) Unsworn Foreign Declarations Act

HB 2833 creates new provisions enumerating the requirements and form of unsworn foreign declarations. The bill also amends ORCP 1 E and several statutes which reference declarations under penalty of perjury to include the new unsworn foreign declaration provisions of this bill. The amended statutes are ORS 18.887, 45.010, 45.130, 111.205, 116.083, 116.253, 125.325, 136.583, 162.055, 162.065, and 162.075.

For additional details about this bill see the Civil Procedure and Litigation Chapter.

3. HB 2944 (Ch. 221) Uniform Electronic Legal Material Act

House Bill 2944 adopts the Uniform Electronic Legal Material Act (UELMA). This act was a product of the national Uniform Laws Commission, and provides a process for treating an electronic version of legal materials as the official version of that record.

The bill defines "legal materials" as the Oregon Constitution, the Session Laws, the Oregon Revised Statutes, and the Oregon Administrative Rules. Under the bill, the publisher of legal materials (either Legislative Counsel or the Secretary of state depending on the record) may designate an electronic version as "official". If they do, the bill requires the publisher to provide for the preservation and security of the record, for continual public access to the record, and for backup and disaster recovery of the record.

The bill does not require that electronic records be designated as "official."

HB 2944 took effect on May 23, 2013.

4. HB 3282 (Ch. 224) Victims' Rights Rulings Must Be in Writing

HB 3282 amends ORS 147.515 et seq., which effectuates crime victims' constitutional rights.

The bill requires that orders granting, denying, or dismissing victims' claims be in writing, and allows for the filing of an interlocutory appeal by a party who was not provided a copy of the order. The bill also specifies that the Attorney General shall appear for the state for the purposes of all appeals, as well as making non-substantive clarifying changes.

HB 3282 took effect on May 23, 2013.

5. HB 3294 (Ch. 587) Email Addresses Exempt from Disclosure

HB 3294 amends ORS 192.502 which exempts certain public records from disclosure. This bill exempts from disclosure electronic mail addresses in the possession or custody of an agency or subdivision of the executive department, local government or local service district, or special government body. However, electronic mail addresses assigned by the public body to public employees for use in the ordinary course of employment are not exempt from disclosure under the bill.

6. SB 49 (Ch. 154) Court Security Personnel

Senate Bill 49 makes several changes to HB 4163 (2012). The bill renames the judicial security officer as Chief Judicial Marshall, and other deputy security personnel as Deputy Judicial Marshalls. The bill expands their prevue from state court security and emergency preparedness to also include the physical security of judges and court staff. All of these Marshalls continue to serve at the appointment of the Chief Justice.

The bill also specifies that those Judicial Marshalls who are trained as police officers by the Department of Public Safety Standards and Training (DPSST) are authorized to act as peace officers subject to the direction and policies of the Chief Justice. The bill does not require that Judicial Marshalls have such training.

SB 49 took effect on May 16, 2013.

III. ATTORNEYS AND THE PRACTICE OF LAW

1. HB 2205 (Ch. 352) Elder Abuse

This bill makes a number of important changes to Oregon law aimed at addressing the problem of Elder Abuse.

First, the bill adds members of numerous professions – including attorneys – to the list of "public or private officials" who are required to report elder abuse. Under the bill, attorneys are not required to make a report if:

1. The relevant information about the abuse was communicated to the attorney in the course of client representation, and disclosure of the information would be detrimental to the client, and
2. The relevant information is attorney-client privileged pursuant to ORS 40.225.

Additionally, the bill requires the Oregon State Bar to adopt training requirements for all bar members regarding their statutory duty to report elder abuse.

The bill also adds several new members to the Oregon Elderly Abuse Work Group, and requires the work group to report back to the legislature by February 1, 2014 regarding recommendations for improvements to the law.

HB 2205 took effect on June 11, 2013. The new elder abuse reporting requirement for attorneys takes effect on January 1, 2015.

2. HB 2565 (Ch. 3) Law Practice Custodians and OSB Member Notifications

House Bill 2565 addressed two issues of concern to the Oregon State Bar – compensation for custodians of law practices and member notification procedures.

In cases where a lawyer becomes incapacitated or abandons their law practice, the Oregon State Bar may petition to court to appoint a custodian to take over that lawyer's practice in order to protect the lawyer's clients. In these cases the custodian may take steps to help clients find new representation and take other steps to wind down the practice. In exchange for their services, the custodian is entitled to a judgment for reasonable compensation and expenses.

Prior to HB 2565, the custodian's lien for expenses was "subordinate to nonpossessory liens and security interest[s] created prior to its taking effect." ORS 9.735. In the case of a failing law practice, this often meant there would be no assets left from which to satisfy the custodian's lien. House Bill 2565 addresses this problem by specifying that the custodian's lien has priority over general unsecured creditors.

Secondly, HB 2565 aligns the due dates for OSB membership fees, Professional Liability Fund payments, and certification of compliance with the IOLTA program. The bill also enables the bar to send notice of nonpayment or noncompliance with these requirements by email, instead of only by registered or certified mail, if the member is required to have an email address on file with the bar.

This bill took effect on March 11, 2013.

3. HB 2573 (Ch. 77) Unlawful Practice of Law in Immigration Cases

House Bill 2573 addresses the ability to enforce the existing prohibition on the unlawful practice of law in immigration cases.

The Oregon State Bar is authorized to enforce the prohibition on the unlawful practice of law by seeking injunctive relief. However, the bar does not have the resources to pursue every alleged violation.

HB 2573 addresses this situation by amending the Unlawful Trade Practices Act (UTPA) to make the unlawful practice of law as an immigration consultant a violation of the act. The major effect of this change is that it creates a private right of action for victims of illegal immigration consultants. The remedy in UTPA cases includes both punitive damages and attorney fees. The bill also enables the Oregon Department of Justice to prosecute illegal immigration consultant cases, including by assessing civil penalties – a remedy which is not available when the bar prosecutes violators.

The bill is effective January 1, 2014 and applies to violations which occur on or after that date.

4. SB 534 (Ch. 482) Non-Attorney Representation Before ODOT

Under current law, non-attorneys are permitted to represent individuals before the Oregon Department of Transportation regarding matters arising under ORS 825, which covers the regulation of commercial vehicles. However, non-attorneys are not permitted to appear in similar matters arising under ORS 826, which covers registration matters, even though these are often lesser violations.

SB 534 eliminates this conflict by permitting non-attorneys to appear on ORS 826 matters as well.

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RICH MENEGHELLO
ALYSSA ENGELBERG

Labor and Employment Law

I. INTRODUCTION

II. WAGES AND PAYMENT OF WAGES

1.	HB 2683	(Ch. 380)	Direct Deposit
2.	SB 135	(Ch. 296)	Abolishment of the Wage and Hour Commission
3.	SB 184/185	(Ch. 472/405)	Garnishment
4.	SB 677	(Ch. 347)	Payment of Final Wages to Seasonal Farmworker

III. UNEMPLOYMENT INSURANCE AND BENEFITS

1.	HB 2242	(Ch. 101)	Alternate Base Year Determination
2.	SB 849	(Ch. 311)	Limits the Definition of "Employment" under ORS 657.044
3.	SB 191/192	(Ch. 703/704)	Overpayment of Unemployment Benefits

IV. WORKERS' COMPENSATION

1.	SB 678	(Ch. 488)	Extension of Exclusive Remedy Protections to LLC Owners and Member

V. INQUIRY INTO SOCIAL MEDIA ACCOUNTS

1.	HB 2654	(Ch. 204)	Bar on Accessing the Personal Social Media Accounts of Employees and Applicants
2.	SB 344	(Ch. 408)	Bar of Accessing the Personal Social Media Accounts of Students and Prospective Students

VI. CIVIL RIGHTS

1.	HB 2111	(Ch. 105)	Expanded Definition of Disability
2.	HB 2669	(Ch. 379)	Anti-Discrimination and Harassment Protections Extended to Interns
3.	SB 148	(Ch. 519)	Provides Whistleblower Protection to Petition Circulators

VII. EMPLOYEE LEAVE LAWS

1. HB 2903/3263 (Ch. 321/613) Expansion of Oregon's Domestic Violence Leave Law
2. HB 2950 (Ch. 384) Bereavement Leave under OFLA
3. SB 1 (Ch. 28) Time Off on Veterans Day for Employees Who Are Veterans

VIII. PORTLAND PAID SICK LEAVE ORDINANCE

1. Local City Ordinance

Rich Meneghello: 1996 Georgia State University College. Member of Oregon State Bar since 1996.
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I. INTRODUCTION

Employment law was once again a major focus of this year's legislative session. Two of the most closely followed bills were HB 3390 and SB 801, which together proposed a statewide mandate which would have required all employers to offer paid sick leave to their employees. These bills did not survive the legislative session. Another bill that failed, HB 2672, would have extended certain workplace protections to domestic workers performing their work in the residence of another. Although these controversial bills did not pass this session, there is little doubt that bills promoting similar concepts will be proposed in the next legislative session. That said, several noteworthy bills did pass and are summarized below.

Except where otherwise noted, all laws will take effect on January 1, 2014.

II. WAGES AND PAYMENT OF WAGES

1. HB 2683 (Ch. 380) Direct Deposit

This law allows employers to implement direct deposit payroll at their discretion. It eliminates the current requirement mandating that employers obtain written consent from an employee before that employee could receive his or her wages via direct deposit. However, employees are still allowed to affirmatively opt-out of direct deposit payroll. HB 2683 also allows employers and employees to agree on wage payment through a payroll card system (as an alternative to depositing wages into the employee's bank account).

2. SB 135 (Ch. 296) Abolishment of the Wage and Hour Commission

This law abolished the Wage and Hour Commission, which had been charged with administering and carrying out the provision of the child labor laws, and transferred its duties, functions and powers to the Oregon Bureau of Labor and Industries (BOLI).

This bill took effect on June 4, 2013.

3. SB 184/185 (Ch. 472/405) Garnishment

SB 184 allows notice of garnishments to be served by first class mail or, in certain circumstances, other methods. Additionally, SB 185 establishes that the Oregon Department of Revenue is not required to deliver a warrant (or true copy of the warrant) with the notice of garnishment. Therefore, both bills have the effect of making it easier for the State to issue notices of garnishment.

SB 184 took effect on June 24, 2013. SB 185 took effect on June 13, 2013.

4. SB 677 (Ch. 347) Payment of Final Wages to Seasonal Farmworker

SB 677 creates an exception to the former requirement that wages due to a seasonal farmworker were to be paid immediately upon termination of employment. Payment is now allowed to occur by noon the day after the termination if (1) the termination occurs at the end of the harvesting season, (2) the employer is a "farmworker camp operator," and (3) the farmworker is provided housing that complies with ORS 658.705 to 658.850.

III. UNEMPLOYMENT INSURANCE AND BENEFITS

1. HB 2242 (Ch. 101) Alternate Base Year Determination

This law allows for a different definition of "base year" (the last four completed calendar quarters preceding the benefit year) if the use makes the claimant eligible for unemployment benefits. In other words, the alternate definition of "base year" will only allowed for the benefit of the claimant.

HB 2242 took effect on May 13, 2013.

2. SB 849 (Ch. 311) Limits the Definition of "Employment" under ORS 657.044

For purposes of unemployment taxation and benefits, SB 849 excludes from the definition of "employment" services performed for a corporation by an individual (1) with a substantial ownership in the corporation (2) who is the sole corporate officer and director of the corporation. The exclusion requires an election in writing by the corporation.

This bill took effect on October 7, 2013, but an election is not effective until January 1 following the first date that unemployment tax rates are determined under schedule V or lower.

3. SB 191/192 (Ch. 703/704) Overpayment of Unemployment Benefits

The legislature passed two bills focused on stemming the overpayment of benefits to unemployment claimants:

- SB 191 authorizes the Employment Department to impose a penalty of up to 30% on overpayment of unemployment insurance benefits due to a false statement, misrepresentation, or nondisclosure of a material fact by a claimant. Additionally, the time frame in which the Department may recover overpayments for a claimant has been extended to five years.

- SB 192 requires a charge of benefits to the employer's account if (1) the employer fails to respond to a claim in a timely manner or adequately request information pertaining to an Unemployment Insurance claim, (2) that failure causes the overpayment of benefits, and (3) the employer has a pattern of failing to respond in timely matter of adequately request information.

In sum, SB 191 aims to limit overpayment by focusing on the actions of the claimant, while SB 192 seeks to address overpayment by exposing employers to financial consequences if they repeatedly fail to properly respond to claims.

SB 191 took effect on July 29, 2013 and applies to decisions issued on or after October 1, 2013. SB 192 took effect on October 7, 2013.

IV. WORKERS' COMPENSATION

1. SB 678 (Ch. 488) Extension of Exclusive Remedy Protections to LLC Owners and Member

This law extends the exclusive remedy protections of the workers' compensation statutes to partners, LLC members, general partners, LLPs, and limited partners. This new law was enacted in direct response to an Oregon Court of Appeals decision (*Cortez v. Nacco Materials Handling Group, Inc., 248 Or App 435 (2012)*) that held that LLC owners could be held personally liable for damages stemming from workplace injuries.

SB 678 became effective June 24, 2013.

V. INQUIRY INTO SOCIAL MEDIA ACCOUNTS

1. HB 2654 (Ch. 204) Bar on Accessing the Personal Social Media Accounts of Employees and Applicants

HB 2654 generally prohibits employers from requiring employees and applicants to disclose their personal social media content. Specifically, the law bars employers from requiring or requesting that that the employee or applicant: (1) provide access to his or her personal social media account (e.g., disclosing a username and password), (2) add the employer (or employer's representative) to a social media contact list (e.g., "friend" the employer), or (3) allow the employer to view the individual's personal social media account. The law also prohibits an employer from retaliating against an employee or applicant from refusing to provide access to an account. Additionally, the law makes a violation an unlawful employment practice and provides employees or applicants with a private cause of action against the employer.

However, the law does have certain explicit limitations. First, an employer may view the public portions of an employee or applicant's social media content without violating the law. Secondly, employers do not violate the law when they inadvertently come across information that would provide them access to personal social media content (e.g., during the monitoring of sites an employee accesses from a work computer). Lastly, the law also provides that an employer may direct an employee to share his or social media as part of an investigation into alleged misconduct or harassment involving social media.

2. SB 344 (Ch. 408) Bar on Accessing the Personal Social Media Accounts of Students and Prospective Students

Similarly to HB 2642, SB 344 generally prohibits public or private educational institutions from requiring students or prospective students to provide access to personal social media accounts. The bill provides that certain exceptions to this rule may apply (e.g., an investigation into student misconduct involving social media).

VI. CIVIL RIGHTS

1. HB 2111 (Ch. 105) Expanded Definition of Disability

This law changes the definition of "disability" to make it more consistent with the federal Americans with Disabilities Act (ADA) and thereby lowers the threshold for determining whether an individual "disabled" under Oregon law. Specifically, Oregon law now defines a disability as an impairment that "restricts" (rather than "materially restricts") one or more major life activities of an individual. As federal law already uses the "restricts" standard, this change will primarily affect small employers (i.e., those with six to fourteen employees) that fall only under the provisions of Oregon's law.

2. HB 2669 (Ch. 379) Anti-Discrimination and Harassment Protections Extended to Interns

This law extends protection against discrimination, harassment and retaliation to interns. Thus, an intern who believes he or she was unlawfully discriminated against may now file a civil complaint against the employer or file an agency charge with the BOLI. HB 2669 explicitly defines which individuals qualify as interns for the purposes of this law. The law does not create an employment relationship or affect the wage or workers' compensation laws.

HB 2669 took effect on June 13, 2013.

3. SB 148 (Ch. 519) Provides Whistleblower Protection to Petition Circulators

The primary purpose of SB 148 is to ensure that criminal background checks are conducted for paid election petition circulators. However, the law also amends ORS 659A.199 to make it an unlawful employment practice for certain employers to discriminate or retaliate against an employee for having good faith information that the individual believes is evidence of a violation of a state or federal election law, rule or regulation. The practical effect of this amendment is likely to be minimal as it is explicitly restricted to people, including employers, who pay money or other valuable consideration for collection of signatures of the electorate.

This bill took effect on June 26, 2013.

VII. EMPLOYEE LEAVE LAWS

1. HB 2903/3263 (Ch. 321/613) Expansion of Oregon's Domestic Violence Leave Law

Since 2007, Oregon law has required covered employers (those with six or more employees) to provide victims of domestic violence, sexual assault, harassment or stalking with unpaid leave. The leave also extends to guardians of minor victims.

- HB 2903 amends the law so that any employee of a covered employer will be eligible to take leave for domestic violence, sexual assault, harassment or stalking from the first day of his or her employment. It does this by abolishing the prior requirement that an employee seeking to utilize such leave have worked more than 25 hours per week for the 180 days preceding the leave.
    - This law also requires that employers post on its premises, in a conspicuous and accessible location, a summary of statues and rules related to rights of victims domestic violence, harassment, sexual assault or stalking. BOLI has indicated appropriate summaries may be obtained directly from the agency.
- HB 3263 requires the State of Oregon to grant paid leave to eligible employees who are victims of domestic violence, harassment, sexual assault or stalking. HB 3263 took effect on July 2, 2013.

2. HB 2950 (Ch. 384) Bereavement Leave under OFLA

This law allows for eligible employees to take leave under the Oregon Family Leave Act (OFLA) to deal with the death of family member. Specifically, an employee is allowed to take up two weeks of leave per death of a family member (for a yearly maximum of twelve weeks)

for the following reasons: (1) to attend a memorial service, (2) to make arrangements, and/or (3) to grieve the death of a family member. The employee's bereavement leave must be completed within sixty (60) days of the date on which the eligible employee received notice of the death of a family member.

3. SB 1 (Ch. 28) Time Off on Veterans Day for Employees Who Are Veterans

This law requires an employer to give all employees who are veterans of the armed services the option of taking a paid or unpaid day off on Veterans Day if the employee would otherwise be required to work that day. The law also provides that an employee must provide the employer with (1) at least three weeks notice that he or she intends to take Veterans Day off and (2) documents showing that he or she is a veteran as defined by Oregon statute. However, an employer is not required to grant Veterans Day off if the employer can show undue hardship.

SB 1 took effect on April 4, 2013.

VIII. PORTLAND PAID SICK LEAVE ORDINANCE

Local City Ordinance

Portland's paid sick leave ordinance requires all businesses with employees working within Portland, regardless of size, to provide up to 40 hours of accrued "sick time" and "safe time" per calendar year. The requirement to provide paid sick and safe time is triggered when an employer employs at least six employees and each of those six employees have (1) worked at least 240 hours in a calendar year and (2) performed that work within Portland's geographic boundaries. Thus, although the state-wide effort at mandating paid sick leave (HB 3390/SB 801) failed, many Oregon employers will now be required to provide paid sick leave for their employees.

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Land Use

I. INTRODUCTION

II. AGGREGATE

1. HB 2202	(Ch. 706)	States Policy Regarding Balancing Natural Resource Uses on Certain High-Value Farmland in Willamette Valley

III. ANNEXATIONS

1. HB 2618	(Ch. 277)	Relating to Withdrawal of Part of a District

IV. COASTAL MANAGEMENT

1. SB 605	(Ch. 416)	DLCD Findings Requirements for Terrestrial Sea Plan and Oregon Ocean Resource Management Plan
2. SB 737	(Ch. 776)	Establishes Oregon Ocean Science Trust

V. COMPOST AND DISPOSAL SITES

1. SB 462	(Ch. 524)	Disposal Sites for Composting

VI. EFU/FOREST USE

1. HB 2393	(Ch. 197)	Slaughterhouses on EFU Lands
2. HB 2441	(Ch. 73)	Allows Agricultural Buildings on Land Zoned Forest and Mixed Farm and Forest
3. HB 2746	(Ch. 462)	Alteration, Restoration, or Replacement of Dwellings
4. HB 2788	(Ch. 319)	Farm Use Special Assessment
5. HB 2898	(Ch. 725)	Portland Community College Public Safety Training Facility
6. HB 3098	(Ch. 711)	Eastern Oregon Youth Camp
7. HB 3125	(Ch. 88)	Minimum Lot or Parcel Sizes for Farm or Forest Zoned Land
8. SB 841	(Ch. 554)	Wineries on EFU or Mixed Farm and Forest Land

VII. ENERGY

1. HB 2105	(Ch. 107)	Standards for Siting, Construction, Operation and Retirement of Energy Facilities
2. HB 2106	(Ch. 345)	Modifies EFSC Provisions
3. HB 2203	(Ch. 235)	Notifications Required for Transmission Line Applications
4. HB 2694	(Ch. 208)	Requires Shared Information Regarding Development of Ocean Energy Sources
5. HB 2704	(Ch. 242)	Requires Showing that Transmission Line in Area Zoned EFU Is Necessary for Public Service
6. HB 2820	(Ch. 320)	Modifies Definition of Energy Facility for Purposes of Site Certificates Issued by EFSC
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1. HB 2253	(Ch. 574)	Portland State University to Issue Population Forecasts
2. HB 2254	(Ch. 575)	Provides Option for Cities Outside Metro Area to Revise UGB and Includes 18-Month Time Period for DLCD Rulemaking

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I. INTRODUCTION

The 2013 Oregon Legislature produced new legislation in a number of areas involving land use, but especially in natural resources (8 bills enacted) and energy (7 bills enacted). However, much of the legislation dealt with the immediate needs of the moment. The most significant land use legislation for 2013 is found in HB 2253 and 2254, which deal with the contentious issues of the responsibility and process for population forecasting (which has a significant effect on the receipt of federal and state funds) and with amendments to urban growth boundaries respectively.

Unless otherwise noted, all bills take effect on January 1, 2014.

II. AGGREGATE

1. HB 2202 (Ch. 706) States Policy Regarding Balancing Natural Resource Uses on Certain High-Value Farmland in Willamette Valley

This bill declares that high-value farmland composed predominately of Class I and Class II soils in the Willamette Valley should not be available for mining unless there is a significant volume of high-quality aggregate and other minerals and other subsurface resources available for extraction. The Bill declares that state agencies and local governments should balance competing resource uses and should not restrict removal of the full depth of aggregate unless public health and safety concerns necessitate the restriction of mining activity. HB 2202 appropriate money from the General Fund to the Department of Land Conservation and Development (DLCD) for the purpose of carrying out the policies.

HB 2202 took effect on August 1, 2013 with Sections 1, 3, and 5 operative on January , 2014.

III. ANNEXATIONS

1. HB 2618 (Ch. 277) Relating to Withdrawal of Part of a District

This bill makes minor amendments to the language of ORS 222.520 related to annexations of a part less than the entire area of a district. This bill was passed as a legislative "fix" to a Marion County court decision in 2012. Under the revised statute, a city can only withdraw the area from the service district if the city will provide the service previously provided by the district.

The bill took effect on October 7, 2013.

IV. COASTAL MANAGEMENT

1. SB 605 (Ch. 416) DLCD Findings Requirements for Terrestrial Sea Plan and Oregon Ocean Resource Management Plan

Senate Bill 605 makes several amendments to ORS 196.471 which governs terrestrial sea planning. The changes set forth procedures for the Land Conservation and Development Commission to request more information to support the Terrestrial Sea Plan from the Ocean Policy Advisory Council. The Council may be asked to make additional findings to justify or amend the plan. Further, the Council is given 155 days to make the necessary findings and consider any amendments recommended by LCDC. If the Council fails to act, then LCDC can make the necessary amendments to the Terrestrial Sea Plan without Advisory Council action.

SB 605 took effect on June 13, 2013.

2. SB 737 (Ch. 776) Establishes Oregon Ocean Science Trust

This bill establishes Oregon Ocean Science Trust and generally specifies that the duties of the trust are to promote research and monitoring of Oregon's costal and ocean resources.

Members of the Trust are appointed by the State Land Board. The bill also requires that the Department of State Lands provide administrative support to the Trust.

SB 737 took effect on August 14, 2013.

V. COMPOST AND DISPOSAL SITES

1. SB 462 (Ch. 524) Disposal Sites for Composting

Sections 1 and 2 of this bill establish requirements that must be met before an applicant may submit an application to a city or county for land use approval to establish or modify certain disposal sites for composting. These sections also require a city or county with land use jurisdiction over a proposed disposal site for composting to inform the applicant of permitting requirements to establish and operate the proposed disposal site for composting. These sections apply to applications for permits submitted on or after the effective date of this Act.

Section 5 of this bill prohibits DEQ from issuing a permit for a commercial disposal site for composting located within 1,500 feet of a school that is within an exception area for rural residential uses, when the proposed disposal site also requires approval from Metro under ORS 268.318. This section applies to applications pending on or filed on or after January 1, 2013.

SB 462 took effect on June 26, 2013.

VI. EFU/FOREST USE

1. HB 2393 (Ch. 197) Slaughterhouses on EFU Lands

HB 2393 allows up to 1,000 poultry per calendar year to be slaughtered, processed, and sold as an outright permitted use on land zoned for exclusive farm use.

The bill adds the use to the list of allowed uses in ORS 215.213(1) and 215.283(1) and takes effect with the 2014 calendar year.

2. HB 2441 (Ch. 73) Allows Agricultural Buildings on Land Zoned Forest and Mixed Farm and Forest

An agricultural building customarily provided in conjunction with farm use or forest use is now an authorized use on land zoned for forest use or mixed farm and forest use and such allowance is now codified as part of ORS 215.700 to 215.780. A person may not convert an agricultural building authorized by this bill to another use.

Agricultural buildings are defined in ORS 455.315 and the bill amends that statute to allow the use of such buildings for the preparation and storage of forest products and the disposal, by marketing or otherwise of farm produce or forest products.

3. HB 2746 (Ch. 462) Alteration, Restoration, or Replacement of Dwellings

House Bill 2746 modifies requirements to alter, restore, or replace a dwelling on a lot or parcel zoned for exclusive farm use (EFU). It requires that a dwelling to be replaced must be assessed as a dwelling for purposes of ad valorem taxation and have been for the previous five property tax years. Additionally, a dwelling must have: intact exterior walls and roof, indoor plumbing, wiring for interior lights, and heating system.

Dwelling can meet criteria for replacement even if not assessed as a residential dwelling for tax purposes if the applicant can establish that the dwelling was improperly removed from the tax roll by a person other than the current owner.

For a dwelling that is habitable and has been assessed as a dwelling for purposes of ad valorem taxation for the previous five tax years, the replacement dwelling may be sited on any part of same lot or parcel unless the dwelling to be replaced is not located on land zoned for EFU. The bill requires that if the dwelling to be replaced is located on land not zoned for EFU, a deed restriction prohibiting the siting of another dwelling on the same portion of the lot or parcel shall be recorded, and is irrevocable, unless the planning director places a release in the deed records of the county.

The dwelling to be replaced must be removed, demolished, or converted to allowable nonresidential use within one year after the date that the replacement dwelling is certified for occupancy. If dwelling to be replaced is in such disrepair that the structure is unsafe for occupancy or is an attractive nuisance, the dwelling to be replaced must be removed, demolished, or converted in less than 90 days after the replacement permit is issued.

The amendments to the replacement dwelling statutes are in effect for 10 years, to allow property owners who were previously denied a replacement dwelling permit one decade to obtain a permit and replace a dwelling. On January 2, 2024, the amendments contained in the bill will sunset, and the original law will again be in effect.

4. HB 2788 (Ch. 319) Farm Use Special Assessment

ORS Chapter 308A establishes special assessment tax programs to reduce property taxes for forest and farm lands that meet certain criteria. Properties eligible for a farm use special assessment included those that used the land exclusively for specified farm uses for the primary purpose of obtaining a profit in money. This bill amends the chapter to add the disposal of farm products by donation to a local food bank or school into the definition of farm uses that qualify for farm use special assessment.

This bill took effect on October 7, 2013 and applies to tax years beginning on or after July 1, 2013.

5. HB 2898 (Ch. 725) Portland Community College Public Safety Training Facility

Section 3 of this bill creates new provisions allowing Portland Community College (PCC) to establish a public safety training facility as an outright permitted use on up to 300 acres of exclusive farm use-zoned land that is within a community college district in Columbia County, notwithstanding the Statewide Land Use Planning goals and administrative rules adopted by the Land Conservation and Development Commission. Such a facility may be approved under this bill only if PCC applies for land use approval on or before December 31, 2015.

Section 3(6) of this bill states that when making decisions approving the public safety training facility authorized by this section, a local government is not required to amend its acknowledged comprehensive plan or land use regulations in order to implement this section, and shall apply only procedural provisions and objective standards in its land use regulations that apply to uses permitted outright under ORS 215.283(1). Section 3(7) provides that before approving such a facility, the local government is required to hold at least one public hearing to allow interested persons to testify regarding the location of the facility. Finally, Section 3(8) states that a local government decision to approve the facility authorized by this section is not a land use decision or limited land use decision, and is not subject to review by LUBA.

These provisions do not appear to contemplate the possibility that a local government might do anything other than approve an application for a facility authorized by this section.

This bill took effect on August 14, 2013.

6. HB 3098 (Ch. 711) Eastern Oregon Youth Camp

Section 1 of this bill amends ORS 215.457 to authorize establishment of a youth camp on a lawfully established unit of land of at least 1,000 acres, zoned for exclusive farm use and composed predominantly of class VI, VII, or VIII soils, and that is not within an irrigation district or within three miles of an urban growth boundary. Section 2 of the bill requires the Land Conservation and Development Commission to adopt, within one year, rules establishing criteria for implementation of this Act.

The bill includes an emergency clause and took effect on August 1, 2013. However, the bill also provides that the amendments to ORS 215.457 by Section 1 "become operative" on the effective date of the rules adopted by LCDC under Section 2, and that a local government may not authorize the establishment of a youth camp under the amended ORS 215.457 before the effective date of the rules adopted by LCDC under Section 2.

7. HB 3125 (Ch. 88) Minimum Lot or Parcel Sizes for Farm or Forest Zoned Land

This bill amends ORS 215.780(2) to eliminate the prohibition on the creation of a parcel smaller than the minimum lot or parcel size standard of ORS 215.780(1), when allowing a division of forestland in order to facilitate a forest practice, because a dwelling is involved.

HB 3125 also rearranges other provisions of ORS 215.780(2) to eliminate ambiguity and to improve clarity and readability.

8. SB 841 (Ch. 554) Wineries on EFU or Mixed Farm and Forest Land

Senate Bill 841 amends ORS 215.452, 215.453 and related provisions of ORS Ch 215, under which local governments may authorize wineries on land zoned for exclusive farm use, or mixed farm and forest use, including agri-tourism and other commercial events, if certain criteria are satisfied.

SB 841 allows food service at a winery on land zoned for exclusive farm use, or mixed farm and forest use, under specified conditions, and also authorizes bed and breakfast facilities associated with such wineries to serve two meals per day and to serve bed and breakfast guests at the winery.

This bill includes an emergency clause and took effect on June 28, 2013.

VII. ENERGY

1. HB 2105 (Ch. 107) Standards for Siting, Construction, Operation and Retirement of Energy Facilities

House Bill 2105 charges the Oregon Department of Energy (ODOE) with reviewing several matters related to the Oregon Energy Facility Siting Council (EFSC). It directs ODOE to examine:

- the means to encourage consistency between EFSC siting standards and state and federal siting standards;
- a mechanism to enhance the participation of local governments;
- the means to encourage public participation in facility design and siting;
- the means to ensure construction and effective participation by local governments, state agencies, and Indian tribes; and
- the means to ensure cost-effective recovery of fees.

The bill also requires ODOE to review the ORS 469.300 definition of "energy facility" and generate recommendations to clarify the definition for purposes of determining which public body has authority relating to the siting of facilities. Finally, the bill provides that ODOE may review "other matters deemed relevant by the department."

ODOE is required to submit a report with the results of its study, including recommendations for legislation, to the legislative committees related to environmental and natural resources on or before November 1, 2013. The bill itself took effect on May 14, 2013.

2. HB 2106 (Ch. 263) Modifies EFSC Provisions.

HB 2106 requires the Energy Facility Siting Council (EFSC) to identify by rule specific criteria to be used when the Council makes a determination that "public benefit" of a facility outweighs adverse effects that would otherwise violate EFSC siting standards.

This bill took effect on June 4, 2013.

3. HB 2203 (Ch. 235) Notifications Required for Transmission Line Applications

This bill requires persons who apply for a permit to build a transmission line with either the Energy Facility Siting Council or with a county to notify the people's utility district, municipal utility, electric cooperative, and public utility in whose service territory the transmission line will be constructed. For purposes of this requirement, "transmission line" is defined as a "linear facility by which a utility provider transmits or transfers electricity from a point of origin of generation or between transfer stations."

The bill also provides that persons subject to the Public Utility Commission's (PUC) authority under ORS 757.035 who engage in the operation of an electric power line as described in ORS 757.035 must provide the PUC with the following information every other year: (a) the name and contact information for the persons responsible for the operation and maintenance of the electric power line; and (b) the name and contact information of the person responsible for responding to conditions that present an imminent threat to the safety of employees, customers and the public. In the event the contact information changes, the person who engages in the operation of the electric power line must notify the PUC as soon as practicable, but not later than within 90 days.

4. HB 2694 (Ch. 208) Requires Shared Information Regarding Development of Ocean Energy Sources

House Bill 2694 provides that persons who are authorized by a public body to develop energy resources in Oregon's territorial sea must share geological and geophysical data with the Oregon territorial sea mapping project at Oregon State University. The bill authorizes the Director of the Department of State Lands to adopt rules, as necessary, to implement this requirement.

The bill took effect May 22, 2013, but the information sharing requirement takes effect on January 1, 2014.

5. HB 2704 (Ch. 242) Requires Showing that Transmission Line in Area Zoned EFU Is Necessary for Public Service

HB 2704 establishes requirements by which persons applying to establish an "associated transmission line" on land zoned for exclusive farm use may demonstrate that the associated transmission line is necessary for public service.

Under ORS 469.300, an "associated transmission line" is a transmission line constructed to connect an energy facility to the first point of junction of such transmission line or lines with either a power distribution system or an interconnected primary transmission system or both or to the Northwest Power Grid. Under the new requirements, an associated transmission line is necessary for public service if it meets one of the following requirements:

- the associated transmission line is not located on high-value farm land, as defined in ORS 195.300, or on arable land;
- the associated transmission line is co-located with an existing transmission line;
- the associated transmission line parallels an existing transmission line corridor with the minimum separation necessary for safety; or
- the associated transmission line is located within an existing right of way for a linear facility, such as a transmission line, road or railroad, that is located above the surface of the ground.

Alternatively, if an applicant presents findings on how the applicant will mitigate and minimize impacts to farm lands, a governing body may determine that an associated transmission line is necessary for public service if the applicant demonstrates that the entire route of the transmission line meets two or more of the following factors:

- technical and engineering feasibility;
- the associated transmission line is locationally dependent;
- lack of an available existing right of way;
- public health or safety; or
- other requirements of state or federal agencies.

6. HB 2820 (Ch. 320) Modifies Definition of Energy Facility for Purposes of Site Certificates Issued by EFSC

This bill modifies the definition of "energy facility" for purposes of site certificates issued by the Energy Facility Siting Council (EFSC) to clarify which solar facilities fall under EFSC's jurisdiction. The bill defines "energy facility" to include solar thermal power plants, and solar photovoltaic power generation facilities using more than (1) 100 acres on high-value farmland as defined in ORS 195.300; (2) 100 acres on land predominantly cultivated or that, if not cultivated, is predominantly composed of soils in capability classes I to IV; or (3) 320 acres on any other land.

The bill provides that "energy facility" does not include a solar thermal power plant or solar photovoltaic power generation facility established on the site of a decommissioned United States Air Force facility that has adequate transmission capacity to serve the energy facility.

The bill took effect June 6, 2013.

7. SB 606 (Ch. 345) Financial Assurance Regarding Closure of Wave Energy Facility or Device

SB 606 requires owners and or operators of wave energy facilities and devices to demonstrate evidence of financial assurance for costs of closure and post-closure maintenance of facilities or devices. The bill requires cost estimates to be prepared by qualified persons, and for owners or operators to provide a decommissioning plan for the facility or device. The decommissioning plan must include, among other things, information regarding the anticipated useful life of the facility and a description of the anticipated methods that will be used to close the facility. The bill requires the owner or operator to initiate removal of all equipment related to the facility or device within 12 months after permanent cessation of use of the facility or device for the conversion of the kinetic energy of waves into electricity.

The bill also charges the Oregon Department of Energy (ODOE) with studying issues related to the transmission of electricity from wave energy facilities and devices, including opportunities for the ownership and financing of transmission structures; barriers to the development of transmission structures; construction and maintenance of transmission structures; the costs and benefits of establishing consolidated transmission capacity for multiple wave energy projects; and risk management and decommissioning issues related to wave energy facilities and devices and to transmission capacity.

The bill requires ODOE to report the results of its study to the legislative committees related to environment and natural resources by November 1, 2014. The bill took effect June 6, 2013.

VIII. INDUSTRIAL LANDS

1. SB 246 (Ch. 763) Oregon Industrial Site Readiness Program

SB 246 creates Oregon Industrial Site Readiness Program, established and administered by the Oregon Business Development Department in consultation with the Department of Revenue.

The purpose of the program is to enter into tax reimbursement arrangements with qualified project sponsors and provide loans to qualified sponsors. The Oregon Business Development Department will certify regionally significant industrial sites for inclusion in the program. For the purposes of this program, the bill requires that regionally significant sites are planned and zoned for industrial use.

SB 246 took effect on October 7, 2013.

2. SB 253 (Ch. 764) Oregon Industrial Site Readiness Assessment Program

This bill provides that Oregon Business Development Department establish and administer the Oregon Industrial Site Readiness Assessment Program and the Oregon Industrial Site Readiness Assessment Program Fund.

The program will provide grants to perform due diligence assessments of regionally significant industrial sites, to create detailed development plans to move sites to state of market-readiness and to conduct regional industrial land inventories. The fund will consist of money appropriated, allocated, deposited or transferred by the Legislative Assembly.

IX. LAND USE BOARD OF APPEALS

1. SB 77 (Ch. 513) Land Use Review Statistics

This bill requires LUBA to track and report a series of statistics on its website:

- The number of reviews commenced
- The number of reviews commenced for which a petition is filed
- In relation to each of those numbers, the rate at which the reviews result in a decision of the board to uphold, reverse or remand the land use decision or limited land use decision.
- A list of petitioners, the number of reviews commenced and the rate at which the petitioner's reviews have resulted in decisions of the board to uphold, reverse or remand the land use decision or limited land use decision.
- A list of respondents, the number of reviews involving each respondent and the rate at which reviews involving the respondent have resulted in decisions of the board to uphold, reverse or remand the land use decision or limited land use decision.
- Additionally, when a respondent is the local government that made the land use decision or limited land use decision, the board shall track whether the local government appears before the board.
- A list of reviews, and a brief summary of the circumstances in each review, under which the board exercises its discretion to require a losing party to pay the attorney fees of the prevailing party.

The bill took effect on June 26, 2013.

X. MEASURE 49

1. HB 2839 (Ch. 279) Amendments Regarding Industrial Rezoning

Under this bill the reach of Measure 49 is restricted so that no compensation is available for those land use regulations that either 1) plan and rezone land to an industrial zoning classification for inclusion within an urban growth boundary; or 2) that plan and rezone land within an urban growth boundary to an industrial zoning classification. These additions are codified at ORS 195.305(3).

XI. TRANSPORTATION PLANNING

1. SB 260 (Ch. 765) Provides that Qualifying Bicycle and Pedestrian Projects May Receive Loans from Multimodal Transportation Fund.

SB 260 adds bicycle and pedestrian projects to those that may receive loans from the Multimodal Transportation Fund. Prior to selecting bicycle and pedestrian projects, the Oregon Transportation Commission will solicit recommendations from the Bicycle Lane and Path Advisory Committee (created by ORS 366.112).

Additionally, the bill prohibits railroad companies from receiving grants or loans from the fund if the railroad company charges a landowner for easement to cross the railroad located wholly within Linn and Benton County if crossing is necessary to enter the landowner's property.

SB 260 took effect on August 14, 2013.

2. SB 408 (Ch. 476) Approach Permits for ODOT Right-of-Way

SB 408 establishes the presumption that certain existing unpermitted approach roads have the Department of Transportation's (ODOT's) written permission, and provides that such written permission qualifies as an approach permit. The bill requires a property owner that has an approach permit to be responsible for the cost and performance of maintaining the approach road.

The bill also provides requirements for the development of facility plans and directs ODOT to develop access management strategy for each highway modernization or improvement project. In addition, the bill provides a definition for access management strategy.

XII. URBAN GROWTH BOUNDARIES

1. HB 2253 (Ch. 574) Portland State University to Issue Population Forecasts

HB 2253 requires that within four year of July 1, 2013, the Portland State University Population Research Center must prepare the population forecasts for all local service districts, all cities (except those within Metro), and counties (except those portions of Clackamas, Multnomah and Washington within Metro). When preparing the population forecasts, the Center is to consider a variety of sources of information, including information from the local governments and members of the public. The Center's population forecast, which must be prepared every four years, is not a land use decision. Under the bill, local governments will no longer have the responsibility of creating population forecasts.

Metro is to issue a population forecast for the local governments within its boundaries. Its forecasts, however, are not exempt from being classified as a land use decision.

If a local government "initiates a periodic review, or any other legislative review of its comprehensive plan that concerns the urban growth boundary, on or before the date the [C]enter issues a final population forecast for the urban growth boundary [the local government] may continue its review under a population forecast that" complies with the statutes in effect immediately prior to July 1, 2013.

The Center must provide notice "to all affected local governments and to members of the public that have provided a written request for notice to the center." Thus, local governments must request notice. But, the bill does not specify what is to be the subject of the notice and does not specify whether the notice is to be of the initiation of the forecast study, the final forecast decision or something else.

Additionally, while the bill provides for the opportunity to object to the forecast within 45 days of the Center issuing the proposed population forecast, the bill does not tie that 45-day objection period to the issuance of notice to the affected local governments. Thus, the forecast could become final at the end of that objection period without the affected local governments having received notice in time to submit an objection.

The bill also allocated $250,000 to the Department of Land Conservation and Development to operate the population forecast program. The Land Conservation and Development Commission is to adopt rules for implementing the population forecast program and consult with the Board of Education to aid in developing rules governing the forecast methodology.

HB 2253 took effect on July 1, 2013.

2. HB 2254 (Ch. 575) Provides Option for Cities Outside Metro Area to Revise UGB and Includes 18-Month Time Period for DLCD Rulemaking

HB 2254 directs the Land Conservation and Development Commission to adopt rules to simplify the method for cities outside of Metro to "evaluate or amend" their urban growth boundaries. Cities with a population of less than 10,000 have different rules than cities with a population of 10,000 or more. Under the bill, the new methods can be used if any city has grown by 50 percent of its population forecast or 50 percent of its buildable lands has been developed.

A city that elects to use the new method must first provide the Department of Land Conservation and Development notice of the election. The city, however, may opt out of its election so long as it does so before it makes a final decision on its UGB amendment and notifies DLCD of the same.

The LCDC rules must provide that a city with a population of under 10,000 must determine its buildable land needs for housing and employment over a fourteen year period, the UGB amendment must not reduce the efficient use of the land and must not result in a faster conversion of farm and forest land to urban uses "in any major region in the state." The new rules must be based upon empirical data and allow for a variety of polity choices for the cities.

A city under 10,000 that uses the new method, in determining its housing and employment land needs, must do so based on the population forecasts, now affected by HB 2253 (above). The city must include land that has adequate water, sewer and transportation facilities for the next seven (7) years and includes land that can all be serviced with those facilities within fourteen (14) years. The land to be included in the amended UGB must "avoid significantly affecting a state highway, a state highway interchange or a freight route designated in the Oregon Highway Plan" or mitigate such affects.

If the lands included in the city's buildable lands inventory are not serviced with water, sewer and transportation facilities within 20 years, the lands must be removed from the UGB or the planned development capacity of the lands must be reduced if there are significant increases in the cost of making the lands serviceable.

A city with a population of over 10,000 has similar requirements but must "consider a range or combination of measures identified by rule of the commission to accommodate future need for land within the urban growth boundary and implement at least one measure or satisfy an alternate performance standard established by the commission"

The city can use the alternate performance standard established by LCDC if it can demonstrate that its land use regulations encourage development of land for needed housing and its land has been developed at a rate faster than the median rate for the cities in the Willamette Valley outside of Metro, if the city is within the Willamette Valley, or faster than the median rate for cities outside the Willamette Valley if the city is outside the Willamette Valley.

When a city evaluates or amends its UGB, it must send notice that it is doing so to each domestic water supply, parks and recreation, sanitary and rural fire protection district within its boundaries as well as the county that also "has land use jurisdiction over any portion of the study area." The district will have 60 days to respond to the notice if it intends to enter into or amend an urban services agreement. Before executing an urban services agreement, the city and district must consult the "community planning organization." If the district does not respond within 60 days of the city's notice, the city may withdraw from the district the territory within the city limits.

If the district and city enter into negotiations for an urban services agreement but cannot come to terms within 180 days, they may seek mediation. If they still are not able to reach an agreement after 180 days of mediation, they may seek arbitration.

For a city outside Metro, Section 7 of the bill overrides ORS 197.298 as to the priority of land designations to be included in amending a city's UGB. The city must evaluate all contiguous land outside the UGB for a distance to be specified by LCDC rule unless it would be impracticable to provide urban services to the land, the land has "significant development hazards," the land includes significant "scenic, natural, cultural or recreational resources," or the land is "owned by the federal government and managed primarily for rural uses."

The city must first "evaluate the land within the study area that is designated as an urban reserve under ORS 195.145 in an acknowledged comprehensive plan, land that is subject to an acknowledged exception under ORS 197.732 or land that is nonresource land and select as much of the land as necessary to satisfy the need for land using criteria established by the commission and criteria in an acknowledged comprehensive plan and land use regulations." Only if that land is not sufficient can a city look to farm and forest land and only if that land is "not predominantly high-value farmland, as defined in ORS 195.300, or does not consist predominantly of prime or unique soils, as determined by the United States Department of Agriculture Natural Resources Conservation Service." Even then, the city can evaluate only as much land as is necessary.

The LCDC rules must allow for the inclusion of farm and forest lands even if it includes the high-value farm land and/or prime or unique soils if they are a small part of or completely surrounded by higher priority land and will not affect commercial agricultural uses in the area. The city may also limit its study area if it is for a specific industrial or public facility use that needs specific site characteristics and only a few sites can accommodate that use.

The Land Use Board of Appeals has review jurisdiction over a city's evaluation or amendment of its urban growth boundary. That review must defer to the local government's interpretation "of its comprehensive plan and land use regulations unless that interpretation is clearly erroneous." Additionally, LUBA may not review a city's use of numbers or range of numbers prescribed by LCDC rule.

A city no longer has to engage in periodic review when evaluating or amending its UGB. LCDC is to create new rules as to when a city is to re-evaluate its comprehensive plan and land use regulations for compliance with the Statewide Planning Goals.

The last section appropriated $250,000 to DLCD to help cover the cost of complying with the new law.

HB 2254 took effect on July 1, 2013 with many of the sections becoming operative on January 1, 2016.

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MARK RONNING

Military and Veterans Law

I. INTRODUCTION

II. BILLS EFFECTING VETERANS AND SERVICEMEMBERS

1.	HB 2037	(Ch. 351)	Licensure of Spouses of Servicemembers
2.	HB 2083	(Ch. 423)	Relief from Long Term Contracts
3.	HB 2158	(Ch. 460)	Tuition for Veterans and Children of Purple Heart Recipients
4.	HB 2417	(Ch. 646)	Fees for Housing Related Services for Veterans
5.	SB 1	(Ch. 28)	Veterans Day Holiday
6.	SB 32	(Ch. 81)	Oregon Code of Military Justice
7.	SB 124	(Ch. 331)	Veterans Status as a Mitigating Factor
8.	SB 125	(Ch. 295)	Servicemembers Civil Relief Act

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I. INTRODUCTION

There were an unusually large number of bills introduced during the 2013 session that had a specific impact on veterans and active service members, including Senate Bills 124 and 125 which originated with the Oregon State Bar's Military Assistance Panel, and the OSB Military and Veterans Law Section. This chapter reviews some of the more significant pieces of legislation. Unless otherwise noted, all bills take effect on January 1, 2014.

II. BILLS EFFECTING VETERANS AND SERVICEMEMBERS

1. HB 2037 (Ch. 351) Licensure of Spouses of Servicemembers

HB 2037 authorizes health professional regulatory boards identified in ORS 676.160 to license a spouse or domestic partner of an active member of the United States military transferred to Oregon. The licensing authorization also applies to agencies with Oregon Health Licensing Agency oversight identified in ORS 676.606. The bill establishes licensure requirements, including evidence of competency and licensure by another state.

HB 2037 also amends ORS 342.195. It requires that the Teacher Standards and Practices Commission establish an expedited licensing process for a military spouse or domestic partner who is licensed to teach in another state.

The bill took effect on June 11, 2013.

2. HB 2083 (Ch. 423) Relief from Long Term Contracts

House Bill 2083 provides consumer protections to Servicemembers under provisions of telecommunications, internet, television and health club / spa contracts when called to active federal service. These protections are Oregon-specific and are in addition to the federal protections provided under the Servicemembers Civil Relief Act.

The Servicemembers Civil Relief Act (SCRA) remains an important federal protection for military personnel transitioning from active federal status to Guard and Reserve status. It can apply to the Oregon National Guard as well as the Coast Guard, Oregon Marine, Army, Navy and Air Force Reserves and officers in the Public Health Services and National Oceanic and Atmospheric Administration while in support of the Armed Forces. The SCRA is found at 50 U.S.C. App. Sections 501-596.

Supplementing the SCRA, Oregon has enacted state-specific protections for Servicemembers, many of which are located in Chapter 399. House Bill 2083 was introduced at the request of Governor Kitzhaber, M.D. on behalf of the Oregon Military Department. Servicemembers brought this issue to the attention of military leadership and a draft proposal was submitted for legislative consideration.

Although members of the National Guard and Reserves may intend to remain in Oregon and fulfill contractual obligations, on occasion they are prevented from doing so when called to active federal service by the President. Ordered to leave their jobs and families, Servicemembers may face a choice between fees and penalties for early contract termination or continuing monthly expenses for a service which they can no longer use. This law will provide a unique protection to Servicemembers which allows for modification of long term contracts where the need to cancel or suspend arises as the result of call to duty.

Signed into law on June 18, 2013, HB 2083 allows for suspension and reinstatement of contractual obligations without fee, penalty, loss of deposit or additional cost. The law applies to telecommunications services, internet services, health spa services, exercise or athletic activities offered by a health club and certain television services.

3. HB 2158 (Ch. 460) Tuition for Veterans and Children of Purple Heart Recipients

House Bill 2158 requires public universities and community colleges to charge veterans the resident tuition rate, so long as they received an honorable discharge, or general discharge under honorable conditions, and have been physically present in Oregon within 12 months of enrollment.

Additionally, the bill requires eligible post-secondary institutions to waive tuition altogether for children of Purple Heart recipients, again so long as the recipient received an honorable discharge or general discharge under honorable conditions, and was awarded the Purple Heart in 2001 or later.

HB 2158 took effect on June 24, 2013.

4. HB 2417 (Ch. 646) Fees for Housing Related Services for Veterans

House Bill 2417 raises the statutory fee for the recording of instruments with a county clerk by $5. The bill further dedicates the increased revenue to expanding the states supply of homeownership housing for low and very low income veterans and families of veterans.

According to the Department of Housing and Urban Development, veterans are considerably more likely to suffer from homelessness than the general population, and the causes are often rooted in the circumstances surrounding their military service.

5. SB 1 (Ch. 28) Veterans Day Holiday

Senate Bill 1 requires an employer to provide an employee with paid or unpaid time off for Veterans Day if the employee requests the day off with at least 21 days notice and provides the employer with documentation that the employee is a veteran as defined in ORS 408.225.

The employer is not required to provide time off to the employee if, as a result of the time off, the employer would experience undue hardship, as described in ORS 659A.121, or significant economic or operational disruption. The employer must notify the employee of its decision no less than 14 days prior to Veterans Day. If the employer determines that it is unable to provide time off to all the employees who requested time off under the law, then the employer shall deny time off to all employees or deny time off to the minimum number of employees needed to avoid significant economic or operational disruption, or undue hardship as described in ORS 659A.121.

An employer who denies time off for Veterans Day to an employee who is eligible for the time off under the law shall allow the employee a mutually agreeable day off during the following year as a replacement for Veterans Day to honor the employee's service.

Senate Bill 1 took effect on April 4, 2013.

6. SB 32 (Ch. 81) Oregon Code of Military Justice

Senate Bill 32 is a housekeeping measure requested by the Oregon Military Department. The Legislature authorized the Oregon National Guard (ORNG) to promulgate the Oregon Code of Military Justice (OCMJ) by agency administrative regulation. The OCMJ Regulation is based on the Model Code of Military Justice recommended by the National Guard Bureau to create a seamless military justice system which enables Servicemembers to transition from State to Federal jurisdiction when called to Active Duty. To the extent allowed under Oregon law, the Oregon Code of Military Justice mirrors the punitive standards and organizational systems of the Uniform Code of Military Justice (UCMJ). The OCMJ now enables Servicemembers to transition from Guard status to Active Duty status without varying standards or expectations. It also modifies statutes of limitation to match federal standard and eliminates redundant or contradictory statutory language. Senate Bill 32 completes the process of transitioning the OCMJ to an administrative regulation which is capable of quickly adapting to the federal military standards promulgated by Congress under the UCMJ.

Senate Bill 32 became effective May 9, 2013

7. SB 124 (Ch. 331) Veteran Status as a Mitigating Factor

Senate Bill 124 permits a court to consider a defendant's status as a veteran or servicemember at sentencing for the purposes of mitigation. The bill does not require a court to impose a more lenient sentence on a veteran, nor does the bill permit the defendant's veteran status to be used as an enhancement factor.

As with other mitigating factors, the burden is on the defendant to demonstrate at sentencing that their status as a veteran supports a more lenient sentence.

Senate Bill 124 took effect on June 6, 2013.

8. SB 125 (Ch. 295) Servicemembers Civil Relief Act

SB 125 amends ORS 183.413 and ORS 183.415. SB 125 requires agencies to comply with the federal Servicemembers Civil Relief Act by giving notice in contested cases that active duty servicemembers have a right to stay proceedings. In its notice, the agency must also provide the toll-free telephone numbers for the Oregon State Bar and the Oregon Military Department, and the website address of the United States Armed Forces Legal Assistance Legal Services Locator.

The bill took effect on September 1, 2013; however, in an effort to minimize the fiscal impact of the bill agencies are permitted to give notice using their current forms until their existing inventories of preprinted forms are exhausted.

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DINA ALEXANDER

Real Property

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I. INTRODUCTION

Included in this chapter are bills affecting purchase, transfer and use of real property. Also included are major bills dealing with the taxation of real property. For additional information on tax issues, see the Taxation Chapter. Unless otherwise noted, all bills take effect on January 1, 2014.

II. MORTGAGES AND FORECLOSURES

1. HB 2239 (Ch. 268) Mortgage Banker and Mortgage Broker Qualifications

This bill amends ORS 86A.100 to add further qualifications for financial holding companies and bank holding companies to be excluded from the definitions of "Mortgage Banker" and "Mortgage Broker." Specifically, such holding companies will only be excluded from these definitions (and thus be exempt from licensing) if the financial holding company or bank holding company does "not do more than control a subsidiary or affiliate, as described in 12 U.S.C. 1841, and does not engage in the business of a mortgage banker or mortgage broker."

2. HB 2528 (Ch. 200) Real Estate Loan

HB 2528 amends ORS 86.205 to remove the requirement that a loan must be $100,000 or less to qualify as a "real estate loan" for the purposes of ORS 86.205 to 86.275. Under the bill the new definition is simply a loan on residential property occupied by the borrower and secured by such property.

3. HB 2568 (Ch. 76) Duties of Trustee in Nonjudicial Foreclosure

House Bill 2568 applies to all issuances of notices of sale, amended notices of sale, and notices of postponed trustee's sale for foreclosure sales conducted pursuant to nonjudicial foreclosures.

For notices of sale, the bill removes various references to "conducting the sale," where that phrase modified trustee, attorney or an agent, to clarify that the party doing the act addressed in each such provision of the law does not have to be the same party who conducts the trustee's sale.

For notices of postponed trustee's sale, the law allows the notice delivery options applicable to the original notice of sale in lieu of requiring personal service of a postponement of sale notice. This includes the provision that the notice of postponed trustee's sale may be "mailed by both first class and certified mail with return receipt requested." The law retains all

other postponement notice requirements, such as who must receive a postponement notice (grantor and occupants who may be residential tenants), the 15-day advance notice requirement, and ability to postpone once for no more than 2 days without giving the written postponement notice.

For rescheduling a sale date following bankruptcy stay, the law now requires that the amended notice of sale state only those defaults that existed on the date on which the stay was terminated (i.e., the amended notice of sale following a bankruptcy stay must exclude defaults cured during bankruptcy and include defaults arising during bankruptcy and remaining uncured after the stay is lifted). The law will also allow a minimum of 60 days to postpone a sale date set after the stay is lifted, regardless of the portion of the 180-day period allowed for postponement that remained on the day the bankruptcy stay was imposed. For example, if the grantor declared bankruptcy one (1) day before a sale scheduled on the 180th day, the beneficiary will have a 61-day window in which to conduct a re-noticed postponed trustee's sale. These are new subsections governing how to reschedule when a bankruptcy stay is lifted.

4. HB 2662 (Ch. 317) Neglect of Foreclosed Property

HB 2662 requires owners of residential real property who took title by nonjudicial or judicial foreclosure to avoid neglecting the property during any period in which the foreclosed property is vacant.

Under the bill "neglect" means: (A) actually failing to maintain the improvements and grounds such that (i) excessive foliage growth diminishes the value of adjacent property, (ii) trespassers or squatters occupy the house or other structures on the property, (iii) mosquitoes develop in standing water on the property, or (iv) other conditions cause or contribute to causing a public nuisance; or (B) failing to monitor the condition of the property by inspecting it at least once every 30 days in sufficient detail to prevent any such conditions.

The owner by foreclosure must provide the owner's or an owner's agent's name and contact information (telephone number or other) to any relevant neighborhood association. The owner by foreclosure must provide the owner's name and contact information to a designated official of the local government with jurisdiction over the property.

The owner by foreclosure must post a durable notice in a conspicuous location on the property that lists a telephone number for the local government contact or the owner that a person may call to report neglect [this provision does not allow for "owner's agent"]. The owner must replace the notice if it is removed. The bill does not specify a time limit for replacement, but one might assume replacement must occur in no longer than the 30-day inspection cycle.

If a local government finds the owner has neglected the property, then the local government must notify the owner in writing specifying a time within which the specific neglect must be remedied. The deadline must allow the owner at least 30 days to cure unless the condition constitutes a threat to public health or safety. The owner may contest the notice within 10 days following notification.

If the owner fails to cure, the local government may do so, the owner must reimburse reasonable costs, the amount owed represents a lien pari passu with a tax lien, and the lien attaches when the local government files a claim of lien with the county clerk. The local government may sue to foreclosure the lien.

This bill took effect on June 6, 2013.

5. HB 2688 (Ch. 206) Chattel Lien – Foreclosure by Sale

HB 2688 provides that a statement of account filed by a party foreclosing a chattel lien must be verified under oath if the chattel sold has a fair market value of $1,000 or more (increased from $250). The statement of account must be sent by registered or certified mail to the "last known address of the" owner (revised to add the quoted language).

HB 2688 applies to chattel foreclosures that occur on or after January 1, 2014.

6. HB 2822 (Ch. 464) Notices of Execution Sale of Real Property

HB 2822 amends ORS 18.924 to require publication of notice of execution sale of real property in a newspaper of general circulation and online. The bill requires elected sheriffs to establish and maintain a website for posting of such legal notices.

HB 2822 changes the content of the notice required to be published in a newspaper, and adds a requirement that newspaper notice must include instructions for locating the more detailed information posted on the sheriff's website.

This bill took effect on June 24, 2013 and applies to execution sales on or after August 1, 2013.

7. HB 2856 (Ch. 281) Use of Mortgage Loan Originator - Exemptions

House Bill 2856 amends ORS 86A.203 to add an exemption to acts that constitute engaging in the business of a mortgage loan originator ("MLO"). By definition, a MLO is a properly licensed individual who may make offers of residential mortgage loans.

As of June 4, 2013, the requirement to have an MLO license identified in the Nationwide Mortgage Licensing System and Registry does not apply to an individual seller of residential property who, in any rolling 12-month period, offers or negotiates terms of not more than

three (3) residential mortgage loans, unless and until the federal Consumer Financial Protection Bureau expressly determines that the definition of MLO includes an individual conducting the activities described in this exemption.

The law's effect is to exempt seller carry-back loans from the requirement that an MLO offer the loan terms when the offer comes from an individual seller who meets the criteria of not doing more than three (3) such loan offers in any rolling 12-month period. It is not clear if the seller's offer may be for other than a carry-back loan (e.g., for a brokered loan available through another person such as a private lender, which then would not need an MLO involved in the transaction). (MLOs work for brokers or lenders.)

This exemption is not available to an individual offering a mortgage loan to facilitate sale of the seller's own personal residence, which is already allowed by ORS 86A.203(2)(c).

This exemption is not helpful to most small developers or landlords who wish to offer carry-back residential mortgage loans, or broker such loans, to facilitate sales of newly built homes or homes that have been rental properties. Most such property owners conduct their real estate operations through limited liability companies and this exemption is only available to individuals selling up to three (3) residential properties in any given 12-month period.

This bill took effect on June 4, 2013 and became operative 91 days later.

8. HB 2929 (Ch. 465) Rescission of Trustee's Sale

HB 2929 requires a trustee of a trust deed to obtain from the Secretary of State a certificate of authority to transact business in Oregon as a foreign business entity, if the trustee is a financial institution, trust company, or title insurance company, unless the trustee has registered with or obtained a certificate of authority from the Director of the Department of Consumer and Business Services.

The bill amends ORS 86.755. A trustee is now permitted to rescind the trustee's sale and void the trustee's deed within 10 calendar days after the date of the trustee's sale only if:

- The trustee asserts that during the trustee's sale a bona fide error occurred in:
  - (1) Setting, advertising or otherwise specifying the opening bid amount for the property that is the subject of the trustee's sale;
  - (2) Providing a correct legal description of the property that is the subject of the trustee's sale; or
  - (3) Complying with a requirement or procedure that is imposed by law;
- The grantor and the beneficiary agreed to a foreclosure avoidance measure that would postpone or discontinue the trustee's sale; or
- The beneficiary accepted funds to reinstate the trust deed and obligation in accordance with ORS 86.753, even if the beneficiary did not have a legal duty to do so.

The bill also requires the trustee to provide notice of rescission of the sale within ten (10) calendar days after the date of the trustee's sale to all persons to whom notice of the sale was given. The trustee has to mail or serve notice of the rescission in the manner provided for serving or mailing the notice of sale under ORS 86.740 (1). The notice of rescission has to display the date the notice was mailed, served or delivered, and state and explain why the trustee rescinded the trustee's sale and voided the trustee's deed.

In addition, the trustee must refund the amount the purchaser paid for the property not later than three (3) calendar days after the date displayed on the notice of rescission. Finally, the trustee has to record an affidavit stating that the trustee provided the notice of rescission, and identifying the trust deed and the voided trustee's deed, no later than 21 days after the trustee's sale.

9. HB 3389 (Ch. 625) Residential Trust Deeds

HB 3389 facilitates the ability of non-profit 501(c)(3) entities that comply with certain rules to acquire residential properties in foreclosure by short sale and rent them back to the former grantor, under certain defined limits and restrictions.

The bill changes the determination of whether a trust deed is a "residential trust deed" to turn on whether the house was owner-occupied when the trust deed was recorded or, for a purchase money mortgage, if the grantor, grantor's spouse or grantor's minor or dependent child(ren) intended the house to be their principal residence at the time the trust deed was recorded. The meaning of "owner-occupied" continues to include occupancy by the grantor's spouse or minor dependent children.

The bill also amends SB 558, passed this session, to clarify that documentation a beneficiary must produce under a residential trust deed prior to commencing foreclosure includes a certificate of compliance with the resolution conference process that is unexpired (less than 12 months old) when the notice of default is recorded or a copy of the affidavit of exemption filed with the DOJ that is likewise unexpired.

HB 3389 took effect on July 19, 2013.

10. SB 558 (Ch. 304) Foreclosure and Foreclosure Resolution Conferences

Senate Bill 558 took effect June 4, 2013 and became operative on August 4, 2013 (61 days after the effective date). As of August 4, 2013, the law applies to:

- requests for resolution conferences (formerly "mediations") that a beneficiary or grantor submits,
- notices of sale that a trustee or beneficiary or agent of trustee or beneficiary sends in a nonjudicial foreclosure, and
- lawsuits to foreclose a residential trust deed that commence on or after that date.

The amendments contained in the law completely replace the foreclosure mediation program provisions of Sections 2a and 3, Chapter 112, Oregon Laws 2012, which are repealed.

The bill adds the modifier "residential" to trust deed to clarify that only residential trust deeds are subject to the resolution conference program.

The $100 fee to the country clerk due with each nonexempt creditor's notice of default is rescinded and replaced by resolution conference participation fees.

To be exempt from the resolution conference requirements, lenders are still required to submit an affidavit to the Attorney General annually by January 31st of each calendar year or with each recording of a notice of default for nonjudicial foreclosure and each filing of a judicial foreclosure lawsuit. To qualify for the exemption, the aggregate number of judicial and nonjudicial foreclosures by affiliates, subsidiaries and agents of the beneficiary must not exceed 175 in the preceding calendar year. The right to the exemption must be recalculated, and the exemption renewed, annually. An exempt beneficiary that has submitted an annual exemption affidavit may use the resolution conference program without waiving its exemption and without paying the processing fee.

Nonexempt beneficiaries must request resolution conferences for each identified trust deed foreclosure. The grantor may request a resolution conference if the beneficiary has not submitted an annual exemption affidavit, the beneficiary or its trustee has not yet recorded a notice of default and not filed a foreclosure lawsuit against the grantor, and the grantor submits to the service provider a housing counselor's written certification that the grantor is more than 30 days in default or has a financial hardship which the housing counsel believes may qualify the grantor for a foreclosure avoidance measure.

The law specifies many operational aspects of the resolution conference process and preparation for it:

(1) Timeframes within which the service provider must schedule a requested resolution conference and notify the parties;
(2) The content of the service provider's notices, which may include additional information the Attorney General requires by rule;
(3) Cost and fee payments, including fee caps, due from beneficiary and grantor;
(4) Requirements that the service provider deposit all fees it collects from beneficiaries and grantors into the Foreclosure Avoidance Fund;
(5) Preparation information the grantor must submit;
(6) Preparation information the beneficiary and trustee must submit;
(7) The grantor's housing counseling requirements in preparation for the conference;

(8) Conditions governing ability to postpone, reschedule and/or cancel a conference; and

(9) Certain conditions of the resolution conference itself, such as who may and who should attend, a requirement that the beneficiary have an attendee or a participant by remote communication with complete authority to negotiate and commit the beneficiary to a foreclosure avoidance measure, the requirement of a signed writing of the agreed avoidance measure if agreed during or as a result of the conference, and the facilitator's post resolution tasks.

The law requires the Attorney General to enter into an agreement with a service provider to coordinate and manage the program as described, acquire the appropriate information technology goods and services, and receive the submitted exemption affidavits, specify facilitator qualifications, specify conference procedures, and pay for program resources from the Foreclosure Avoidance Fund.

The law substantially modifies conditions governing the notice to a grantor of ineligibility for foreclosure avoidance measures. This section is revised to clearly apply to residential trust deeds. It applies to exempt as well as nonexempt beneficiaries and applies whether or not there was a resolution conference. Instead of at least 30 days before the sale date, an ineligibility notice must be sent to the grantor and simultaneously to the Department of Justice within 10 days of the ineligibility decision. Instead of delivering by service, the notice need only be mailed. The notice must explain in plain language why the beneficiary made the decision. The provision applies if the beneficiary made an ineligibility determination, and does not impose an affirmative duty to determine ineligibility. However, at least five (5) days before the actual sale date, all residential trust deed beneficiaries must record an affidavit of compliance with the ineligibility notice section of the law. A beneficiary who fails to give proper notice if the ineligibility determination was made, or who fails to properly record the affidavit about how ineligibility was addressed, is liable for $500 plus the grantor's actual damages.

ORS 86.735 is amended to add more conditions that must be met to foreclose nonjudicially. The beneficiary must have recorded a certificate of compliance with the Attorney General's resolution conference program or an exemption affidavit. If applicable, the beneficiary must be able to show the grantor failed to comply with any foreclosure avoidance measure on which beneficiary and grantor agreed.

ORS 88.010 is amended to require that certain resolution conference program compliance documents be filed with the initial complaint to commence a judicial foreclosure. The court may dismiss without prejudice or may stay proceedings in a case filed without the requisite paperwork, either on its own motion or in response to a defendant's motion. The court may award a defendant prevailing on such a motion reasonable costs and attorney fees for the motion and any other relief the court deems proper.

A resolution conference conducted according to this law does not replace any mediation that a court or another provision of law requires.

In addition to any other applicable penalties for violating this law, a beneficiary's violation is an unlawful practice under ORS 646.607 and is subject to enforcement under ORS 646.632.

Senate Bill 558 took effect June 4, 2013 and became operative on August 4, 2013.

III. PROPERTY TAXATION AND OTHER FEES

1. HB 2227 (Ch. 193) Elimination of Certain Property Tax Exemptions

HB 2227 eliminates certain exemptions from ad valorem real property taxes beginning July 2017. These exemptions include sports and convention facilities (ORS 263.290), federal property in the hands of a contractor under defense or space contract (ORS 307.065), railroad property temporarily used for alternate public transportation (ORS 307.205), property of nonprofit mutual or cooperative telephone association (ORS 307.220), telephonic properties of persons not engaged in public telephone service (ORS 307.230-.240), and aircraft undergoing major work (ORS 308.559).

The bill also modifies some requirements for qualification and filing for other exemptions, most notably "vertical housing developments." The bill requires an applicant to obtain verifications required for farm labor camp and child care facility exemption programs, and adds application requirements to the exemption for property held or operated by a housing authority.

This bill took effect on October 7, 2013.

2. HB 2349 (Ch. 426) Extension of Property Tax Exemption in Distressed Residential Areas

HB 2349 extends the sunset on property tax exemptions granted to structures built for the purpose of providing single family dwelling units for owner occupancy in distressed residential areas (ORS 307.651-687) from 2015 to 2025.

The bill also removes the requirement for exemption that single-unit housing be constructed in a distressed area. This exemption, intended to encourage home ownership for low and moderate income families, has been made subject to limits that require cooperation

between some or all taxing entities affected by the exemption. With the expansion, special design district requirements have been dropped but a city's ability to adopt design requirements and control extensions of public benefits beyond the period of exemption remain.

This bill took effect on October 7, 2013.

3. HB 2417 (Ch. 646) Increased Recording Fees

HB 2417 increases recording and filing fees charged by county clerks by an amount of $5 in connection with documents and instruments recorded or filed pursuant to ORS 205.130 (which includes deeds, mortgages, liens, and powers of attorney).

Those fees will be deposited into the applicable County Assessment and Taxation Fund created under ORS 294.187, and 25% of the moneys deposited will be dedicated to assistance to veterans who are homeless or at risk of becoming homeless.

4. HB 2489 (Ch. 31) Homestead – Property Tax Deferral Notice of Liability

HB 2489 provides that a taxpayer's failure to respond to Department of Revenue ("DOR") notice requiring taxpayer to certify eligibility renders homestead property ineligible only for the next following property tax year and does not preclude qualifying for deferral in subsequent tax years for which taxpayer files timely application.

After conveyance of homestead to transferee who is ineligible to claim deferral, the Department of Revenue will issue notice of liability by mail. Within 30 days, the transferee must pay the deferred amounts or object to the DOR's notice of liability. If payment or objection is not received by DOR within 30 days following notice of liability, the notice becomes final. An objecting transferee may request a conference. After conference, or if no conference is requested by the objecting transferee, DOR will send a letter affirming, canceling, or adjusting the notice of liability; any amounts due must be paid within 90 days or appeal taken to tax court.

The Department can require jointly and severally liable transferees to appear for a joint determination of liability.

This bill took effect October 7, 2013.

For additional analysis of HB 2489, see the Taxation Chapter.

5. HB 2510 (Ch. 494) Homestead – Property Tax Deferral Reactivation

This bill provides that prior 2011 amendments to ORS 311.700 relating to reverse mortgages do not apply to homesteads that had been granted deferral for any property tax years beginning before July 1, 2011.

The Department of Revenue ("DOR") will send notice to all taxpayers with inactive deferral accounts advising them that their inactive accounts may be reactivated by filing deferral claim for property tax years beginning on or after July 1, 2014. The Department must create and maintain a list of homesteads determined to be eligible for reactivation. Homesteads will appear in the order in which owners filed claims. Determination of eligibility reactivates the deferral beginning with the first property tax year after the determination and continues for all subsequent property tax years for which the property and owners remain eligible. Note, however, that the cumulative maximum number of homesteads appearing on the reactivation list is 700 for the property tax year beginning July 1, 2014. The cumulative maximum increases by 5% each year.

ORS 311.670(2)(a) applies to a reactivated homestead if, as of April 15 of the year in which the deferral claim is filed, the taxpayers have continuously owned and lived in the homestead less than seven years. ORS 311.670(2)(a) provides that "a homestead is not eligible for deferral … if the real market value of the homestead entered on the last certified assessment and tax roll is equal to or greater than 100 percent of county median RMV if, as of April 15 of the year in which a claim is filed, the taxpayers have continuously owned and lived in the homestead at least five years but less than seven years."

This bill took effect October 7, 2013, but many provisions have special operative dates.

For additional analysis of HB 2510, see the Taxation Chapter.

6. HB 2676 (Ch. 205) Manufactured Dwellings

In 2010, the Oregon legislature passed HB 3640. That law required the county assessor in a county with a population of more than 340,000 to cancel the ad valorem tax assessment for manufactured structures for the year, when the total assessed value of all manufactured structures taxable as personal property under ORS 308.875 of any taxpayer was less than $12,500. This requirement for mandatory cancellation of property tax assessments was due to expire on January 1, 2014.

HB 2676 eliminates the sunset, and the mandatory cancellation of property tax assessments will now continue with no expiration.

7. SB 505 (Ch. 447) Special Assessments

SB 505 allows a property owner, subject to special circumstances, to claim a refund or have unpaid taxes abated if they incorrectly requested disqualification of their property from a special assessment when the property was in fact qualified for that assessment. The special circumstance to which the owner is subject is having acted on incorrect written advice from a county body stating that the disqualification was necessary. If the written notice was the sole cause of the disqualification, the taxpayer must provide the tax assessor with adequate written notice of the error within 90 days of the effective date of the bill to qualify for the relief.

SB 505 took effect on October 7, 2013, and sunsets in 2016.

IV. BUILDING AND CONSTRUCTION

1. HB 2524 (Ch. 378) Construction Contractors Board Licensure

This bill amends ORS 701.010 relating to the exemptions from licensure with the CCB, including increasing the aggregate price of work under a certain contract that is exempt from licensing from $500 to $1000. The bill also broadens the exemption for commercial lending institutions and surety companies to holding companies and subsidiaries if such companies have a legal or security interest in a property and are having work performed by licensed contractors.

2. HB 2540 (Ch. 251) Construction Contractors Board Licensure

HB 2540 permits the Construction Contractors Board ("CCB") to revoke, suspend, or refuse to issue a license to persons found by the CCB to have engaged in dishonesty by enabling the evasion of obligations relating to tax laws, social security contributions, unemployment taxes, workers' compensation premiums, wage and hour laws, occupational safety and health laws, child support, alimony, a judgment, a garnishment or other laws or debts identified by the CCB by rule.

The bill also amends portions of the Construction Contractors Licensing Act (ORS 701 et. seq.) to expand the definition of "construction debt" to include amounts owed to employees of a construction contracting business for unpaid wages.

3. HB 2978 (Ch. 324) State Building Codes

House Bill 2978, with some exceptions, allows state or local governments to assess investigation fees for failure to obtain permits for work on certain building systems. The bill allows state to enjoin a person or entity for failure to comply with state building codes, and

prohibits a person or entity from performing certain safety work without the appropriate Specialty Code License. The bill expands sanctions for violation of state building codes, including one prohibiting inspections on work performed on a relative's property.

4. SB 46 (Ch. 469) Statute of Ultimate Repose – Design Professionals

Senate Bill 46 reduces the statute of ultimate repose for actions against design professionals involving certain large commercial structures from 10 years to six (6) years.

Unlike statutes of limitations, a statute of ultimate repose is a firm deadline when a plaintiff must bring a suit, generally without regard to the date of discovery or other equitable considerations. Currently, actions against architects, landscape architects, or engineers must be brought within two (2) years after the date the injury or damage is first discovered or should have been discovered. This two-year time period is a statute of limitation. However, an action must be brought, regardless of the date of discovery, within 10 years after substantial completion or abandonment of the construction, alteration or repair. This 10-year period is the statute of ultimate repose, and up until Senate Bill 46, it applied to structures of all types and sizes, whether residential or commercial.

With the passage of this Senate Bill, the statute of ultimate repose for actions against persons registered to practice architecture, landscape architecture, and engineering is reduced to six (6) years, but only for suits involving "large commercial structures" (as defined in ORS 701.005) that are not owned or maintained by a homeowners association or condominium association. For all others, including small commercial structures, residential structures, or large commercial structures owned or maintained by a homeowners or condo association, the statute of ultimate repose remains 10 years.

5. SB 205 (Ch. 168) Construction Contract Requirements

Senate Bill 205 amends the portion of the Construction Contractors Licensing Act (ORS 701.305(2)) that requires the Contraction Contractors Board to adopt rules regarding the language used in contracts. The bill deletes express requirements that such contracts contain any of the following:

- a statement that the contractor is licensed by the CCB;
- the contractor's contact information, as shown on CCB records as of the date of the contract;
- an acknowledgement of a written offer of a warranty, where such offer is required by statute, and an acknowledgement of the acceptance or rejection of the offer;
- a list of various statutory notices; and
- an explanation of the property owner's rights under the contract.

6. SB 207 (Ch. 300) Construction Contractor Licensing

SB 207 requires that if a limited partnership applies for a construction contractor license, the application must contain the names and addresses of limited partners, general partners, joint venturers, managers, members and officers of any entity that is the general partner of such limited partnership. The bill requires reporting of money judgments, final orders issued by administrative agencies, and convictions or indictments against those general partners or their constituents, and requires reporting of changes in names and addresses of certain general partners. The bill also deletes some redundant disclosure requirement.

The bill also creates a residential locksmith services contractor license and a home inspector services contractor license. The bill imposes bond, insurance and responsible managing individual requirements for residential locksmith services contractors and home inspector services contractors, and imposes bond and insurance requirements for home services contractors. It exempts residential locksmith services contractors, home inspector services contractors and home services contractors from residential contractor continuing education requirements and testing by the Construction Contractors Board.

The bill adds companies that utilize workers supplied by a worker leasing company to the category of nonexempt independent contractor, and imposes penalties and sanctions for exempt independent contractors that utilize such workers.

7. SB 408 (Ch. 476) Highway Management – Approach Roads

Senate Bill 408 establishes presumption that, in certain specified circumstances, an owner of real property abutting a state highway with existing approach roads has the Oregon Department of Transportation's written permission for use of the approach road for a then existing right of access.

The bill also requires that new State Transportation Plans balance the needs of adjacent property owners, cities and counties with the State's objectives for the Plan, and provides regulations for the procedures involved.

V. OTHER LEGISLATION

1. HB 2093 (Ch. 366) Recordation of Death Certificates

House Bill 2093 substantially revises vital statistics laws to reflect 2011 revisions to the Model State Vital Statistics Act. The bill appropriates fees collected under certain provisions of the law to the Oregon Health Authority to cover administration costs.

Section 34 of the law states that a document recording a death (i.e., a death certificate) filed in conjunction with owning or having a claim or interest in land may not include medical information related to the cause of death. Interestingly, Section 36(8) of the law prohibits the issuance of certified copies of death records containing the cause of death except as follows: (i) upon the request of an immediate family member; (ii) when a documented need for the cause of death to establish a legal right has been demonstrated; or (iii) upon an order from a court of competent jurisdiction.

This bill took effect on June 13, 2013.

2. HB 2131 (Ch. 19) Confidentiality of Pest Control Reports

HB 2131 requires a local public health authority, local health district and the Oregon Health Authority to maintain as confidential certain information reported by pest control operators, and provides that the information is not subject to disclosure under ORS 192.410 to 192.505 (public records law request). The bill defines a bedbug as a "member of the Cimicidae [flat-bodied wingless blood sucking bugs] family of parasitic insects." The information that must be kept confidential includes the following:

(1) The location of a site where a pesticide intended to prevent, destroy, repel or mitigate an infestation of bedbugs has been applied or is to be applied;
(2) The identity of any person who owns, rents or leases property described above; and
(3) Any information describing or pertaining to the infestation or suspected infestation.

The bill does not prevent a public health authority from publishing statistical compilations or reports relating to reportable disease investigations if the compilations or reports do not identify individual cases or sources of information.

This bill took effect on April 2, 2013 and becomes operative January 1, 2014.

3. HB 2565 (Ch. 3) Priority of Certain Judgment Liens

ORS Chapter 9 deals with regulation of the practice of law. HB 2565 makes two major changes to ORS Chapter 9.

(1) The law previously required notice by registered or certified mail of delinquency of membership fees. The new law permits the executive director of the Oregon State Bar to send the notices to members by electronic mail.

(2) Changes the priority of a judgment lien awarded as compensation and expenses to an attorney who acts as a custodian of a nonperforming attorney's practice under ORS Section 9.705 through 9.755. The judgment lien awarded to the custodian of the practice now has priority over all general unsecured creditors, non-possessory liens and security interests that were unperfected on the date the court assumed jurisdiction. Previously, the judgment lien was subordinate to non-possessory liens and security interests created prior to the judgment taking affect. This lower priority had often resulted in assets being exhausted prior to the custodian being compensated for their work.

HB 2565 took effect on March 11, 2013.

4. HB 2569 (Ch. 125) Law Practice as Trustee under Trust Deed

HB 2569 provides that a law practice may serve as trustee under a trust deed, as an alternative to a named attorney and other persons who have traditionally been able to serve as trustee. The "law practice" must be a professional corporation, partnership, limited liability partnership, limited liability company, or sole proprietorship engaged in the practice of law in this state and must include an attorney who is an active member of the Oregon State Bar.

Two new subsections of ORS 86.705 provide alternatives for attorney signatures on any document required or permitted to be signed in connection with trust deeds:

(1) If a law practice is the trustee, an individual attorney with an active Oregon bar license must sign the particular document. The signing attorney must be a shareholder, partner, member or employee of the law practice acting as trustee. The document being signed must state the signing attorney's name, Oregon bar number, and that the law practice-trustee has authorized the attorney to sign on the trustee's behalf.

(2) If an attorney is the trustee, a different attorney with an active Oregon bar license rather than the trustee-attorney may sign the particular document. The signing attorney must be a shareholder, partner, member or employee of same law practice as the attorney acting as trustee. The document being signed must state the signing attorney's name, Oregon bar number, and that the attorney-trustee has authorized the attorney to sign on the trustee's behalf.

5. HB 2639 (Ch. 740) Residential Landlord/Tenant – Housing Assistance Programs

House Bill 2639 creates a "Housing Choice Landlord Guarantee Program" and a "Statewide Housing Advisory Committee." Both of these new programs are under the direction of the Housing and Community Services Department.

The Housing Choice Landlord Guarantee Program allows eligible landlords, who are providing housing to tenants who receive certain housing assistance, to apply to the state for reimbursement of certain housing related damages and unpaid rent caused by those tenants. The landlord must obtain a judgment against the tenant and apply for reimbursement within a year to the Housing and Community Services Department. If the landlord's petition is accepted, the Department will pay for damages of more than $500 but less than $5,000.00 per tenancy. The Department will then attempt to collect reimbursement for those payments from the tenants who caused the damages. Repaid monies will be added to the "Housing Choice Landlord Guarantee Program Fund." Tenants may apply to the Department to waive reimbursement or appeal a determination that they have not made a good faith effort to make payments. Landlords and Local Housing Authorities may review material regarding tenant's compliance with the Department's attempts to collect funds. The bill also allows landlords to take into account a tenant's "past actions" and income, including housing assistance, when determining whether to rent a property to a particular tenant. The bill requires local housing authorities to comply with additional reporting requirements. The Housing and Community Services Department has been delegated the authority to create further rules to implement this program.

The "Statewide Housing Advisory Committee" is to be appointed by the Director of the Housing and Community Services Department. It is to include members from throughout the state and to have roughly equal representation from local housing authorities, landlords, and tenants or their advocates. The role of the committee is to advise the Housing and Community Services Department and the legislature about the use of housing assistance programs and how to create greater participation and impact with those programs. The Housing and Community Services Department has authority to make rules to implement this program.

HB 2639 takes effect on January 1, 2014 and becomes operative July 1, 2014.

6. HB 3067 (Ch. 326) Transfer of Property from Multnomah to Washington County

HB 3607 transfers an area (Area 93 in Metro urban growth boundary 2002) of Multnomah County to Washington County and modifies the legal description of the respective counties. The bill provides for members of the governing body to establish terms for plan of transfer. The bill took effect on June 6, 2013.

7. HB 3172 (Ch. 435) Real Estate Disclosures

HB 3172 modifies the seller's property disclosure statement (ORS 105.464) to include representations regarding sewage and septic systems. The new disclosure requirements apply to written offers to purchase real property tendered on or after January 1, 2014, the effective date of the bill.

8. HB 3301 (Ch. 438) Electric Vehicle Charging Stations

Notwithstanding provisions in a declaration or bylaws to the contrary, the bill amends the Planned Community Act and Oregon Condominium Act to allow electric vehicle charging stations for personal non-commercial use to be installed and used in compliance with the statutes.

A homeowners or condominium association may require an owner to submit an application to the association before installing the charging station, may require the station to meet applicable architectural standards, may impose reasonable charges for review and permitting, and may impose reasonable restrictions on installation and use that do not significantly increase the cost or significantly decrease the efficiency. The homeowners or condominium association has 60 days to approve the application unless delay is a result of a reasonable request for additional information.

Installation may be in a parking space assigned to the lot, unit, or owner and, with respect to a condominium, also in a limited common element with written approval of the unit owner of each unit for which the limited common element is reserved.

Under the bill, the cost of installation and use is responsibility of the owner. In the case of a planned community, the owner is responsible for any cost of damage to common property and to areas subject to exclusive use of other owners. In the case of condominiums, the owner is responsible for the cost of damage to general common elements, limited common elements, and areas subject to exclusive use of other unit owners. If additional infrastructure improvements are necessary to provide the community with a sufficient supply of electricity, the costs may be assessed by the homeowners or condominium association against the lot or unit of each owner that has or will install a charging station.

The existence of the charging station must be disclosed to prospective buyer of the lot or unit. If not a certified electrical product, minimum insurance requirements are mandated. The bill provides for attorney fees to a prevailing party in an action to enforce compliance.

9. SB 23 (Ch. 145) Real Estate Licensing and Regulation

SB 23 modifies provisions related to regulation of real estate activities. The bill makes numerous changes in Chapter 696 relating to the Real Estate Agency in the general categories of property management, licensing, business name registry, exemptions from licensing requirements, continuing education, and client trust accounts.

The changes in the bill are primarily clarifications; however, there is an added requirement that a property manager may engage in the management of rental real estate only pursuant to a written property management agreement. The bill also requires principal real estate broker who receives client trust funds to maintain trust accounts or deposit funds into a neutral escrow account.

SB 23 took effect on May 16, 2013.

10. SB 91 (Ch. 294) Residential Landlord/Tenant – Insurance

SB 91 allows landlords to require tenants to obtain and maintain renter's liability insurance, unless the household income of the tenant is less than 50% of the area median income or the dwelling unit has been subsidized with public funds. The bill restricts landlords from considering (a) prior eviction action(s) when evaluating an applicant if such action was dismissed or (b) certain previous arrests if the arrest did not result in a conviction.

11. SB 406 (Ch. 341) Marriage/Domestic Partnership – Name Change

SB 406 provides that upon entering into marriage or registered domestic partnership, either party may retain or remove the party's middle name, change the party's surname to one or more of the parties' surnames with or without hyphenation, add the party's surname to his or her middle name, or change his or her surname to the surname of the other party.

SB 406 took effect on June 6, 2013.

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ROBERT MANICKE

Taxation Law

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Robert Manicke: 1992 University of Illinois School of Law. Member of Oregon State Bar since 1995.

I. INTRODUCTION

This chapter covers major bills related to income and property taxation in Oregon. Many bills in this chapter have special implementation dates, which are noted in the description. Unless so noted, all bills take effect on January 1, 2014.

II. INCOME TAX

1. HB 2060 (Ch. 260) Denial of Deduction for Contributions to Certain Listed Charities

House Bill 2060 allows the Oregon Attorney General to issue an order disqualifying a charitable organization from receiving contributions that are deductible for purpose of Oregon income tax and corporate excise tax if the Attorney General finds that the charitable organization has failed to expend at least 30 percent of total annual functional expenses on program services when those expenses are averaged over most recent three fiscal years.

The Attorney General may decline to issue a disqualification order if certain mitigating circumstances exist, including payments made to affiliates that should be counted as program services expenses, or a need to accumulate revenue for purposes disclosed to potential donors.

The bill specifies organizations that are exempt, including private foundations, certain community trusts or foundations, charitable remainder trusts, organizations not required to file a Form 990, organizations receiving less than 50 percent of annual revenues from contributions or grants identified in accordance with a Form 990 or equivalent and organizations in existence less than four years.

HB 2060 imposes mandatory disclosure requirements for charitable organizations that are subject to a disqualification order, and requires the Attorney General to publish on the Internet and otherwise make available a list of charitable organizations that are subject to disqualification orders.

Additionally the bill denies property tax exemption under ORS 307.130 starting with the tax year following the tax year in which the order goes into effect.

The bill requires a donor to add back to Oregon taxable income the amount deducted for a contribution to an entity that received a disqualification order, if the contribution was made more than 30 days after the Attorney General published the order on the Internet. A donor can avoid the addback by providing the DOR a contribution receipt on which the organization failed to include the disclosure of the order.

HB 2060 took effect on October 7, 2013.

2. HB 2230 (Ch. 194) Personal Income Tax: Military Pay

House Bill 2230 is a housekeeping bill that simply restructures the statutes governing income tax subtractions allowable for military pay to taxpayers. The bill consolidates provisions of three different statutes into one location, but is not intended to result in any change to allowable subtractions.

The bill applies to tax years beginning on or after January 1, 2014.

3. HB 2316 (Ch. 270) Personal Income Tax: Individual Development Accounts

HB 2316 excludes holdings in pension accounts valued at less than $60,000 from determinations of income and net worth for purposes of qualification to be the account holder of an individual development account.

4. HB 2460 (Ch. 707) Corporate Taxpayers: "Tax Havens"

House Bill 2460 requires a corporation that is required to file an Oregon corporation excise tax return to include the income of a unitary corporation that is incorporated in a listed jurisdiction on the taxpayer's Oregon tax return.

The final list of jurisdictions is:

> Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda, the British Virgin Islands, the Cayman Islands, the Cook Islands, Cyprus, Dominica, Gibraltar, Grenada, Guernsey-Sark-Alderney, the Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, Malta, the Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, the Netherlands Antilles, Niue, Samoa, San Marino, Seychelles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, the Turks and Caicos Islands, the U.S. Virgin Islands and Vanuatu.

The bill directs the Department of Revenue to report to the legislature on or before January 1 of each odd-numbered year on recommended changes to the list.

Additionally, the bill directs the Department of Revenue to report to the legislature on the use of out-of-state tax shelters and to make recommendations for addressing noncompliance attributable to out-of-state tax shelters.

HB 2460 applies to tax years beginning on or after January 1, 2014.

5. HB 2464 (Ch. 734) New Oregon Penalties for Missing, Incomplete, or Incorrect Forms 1099 and W-2 and Other Information Returns

House Bill 2464 imposes Oregon-only penalties for failure to file an information return with the Department of Revenue, or for incomplete or incorrect returns. This includes Forms 1099, W-2 and annual and quarterly withholding returns.

Under the bill the penalty is generally $50 per return, unless the failure to file or incorrect filing was done knowingly, in which case the penalty is $250 per return.

HB 2464 applies to payments made in tax years beginning on or after January 1, 2013.

6. HB 2492 (Ch. 377) Reconnection to Internal Revenue Code

House Bill 2492 generally updates Oregon's date of connection to federal tax law from December 31, 2011 to January 3, 2013 so as to take into account the federal Affordable Care Act. The bill applies to certain provisions for which "rolling reconnection" is not applicable.

The bill updates statutes pertaining to the tax qualification status of the Public Employees Retirement System plans, to unemployment insurance, and to the Oregon 529 College Savings Network. Includes income tax provisions pertaining to the definition of charitable organizations, federal Adjusted Gross Income (for the purposes of Oregon's Elderly Rental Assistance), rules defining an S corporation for purposes of representation before magistrate, the Department of Revenue, and the Oregon Tax Court.

Reconnection for purposes of the earned income tax credit is achieved separately, through HB 3367. The bill took effect on October 7, 2013.

7. HB 2511 (Ch. 123) Kicker Changes

HB 2511 modifies the provision relating to the issuance of surplus kicker refunds to taxpayers who filed returns for the tax year on which the credit is computed (as opposed to those who filed in that year) and who are not required to file returns for the year in which the credit could be claimed.

Note the specific change in terminology in the bill:

> (8) The Department of Revenue may adopt rules specifying the manner for issuing refunds under this section to taxpayers who filed returns [*in*] **for** the tax year on which the credit is computed but who are not required to file returns [*in*] **for** the year in which the credit could be claimed.

The bill took effect on October 7, 2013 and applies to tax years beginning on or after January 1, 2012.

8. HB 2871 (Ch. 583) Tax Compliance by Licensed Professionals

HB 2871 directs the Department of Revenue, no later than February 1, 2014, to report to the legislature on progress in implementing a 2009 pilot project that requires persons with state-issued business or professional licenses to demonstrate and maintain tax compliance as condition of issuance or renewal of their license.

The bill directs the Department to include in its report plans for development and improvement of the project and recommendations for expansion.

HB 2871 took effect on October 7, 2013.

Reference: HB 3082, 2009 Or Laws ch 576.

9. HB 3069 (Ch. 467) Corporate Taxpayers: Payments to Certain Foreign Entities

House Bill 3069 amends, and then repeals, ORS 314.296, which requires an addback to Oregon taxable income for certain expenses related to intangible property and paid to a "related member."

The bill provides an exception for expenses paid for a valid business purpose to a person that is not a related member or to a foreign corporation not connected with a United States trade or business. The bill allows the Department of Revenue to apply ORS 314.295 (similar to IRC § 482) to transactions with related members located in a foreign country.

These provisions of the bill apply to tax years beginning on or after January 1, 2010 and before January 1, 2013.The bill repeals ORS 314.296 entirely for tax years beginning on or after January 1, 2013. The bill took effect on October 7, 2013.

10. HB 3367 (Ch. 750) Tax Credits

House Bill 3367 extends the earned income tax credit in ORS 315.266 to tax years beginning before January 1, 2020 and reconnects to the Internal Revenue Code pursuant to the general reconnection provision in ORS 315.004(2) (as of January 3, 2013 pursuant to HB 2492).

The bill extends the following additional tax credits for six years: political contributions (with an income cap of $200,000 for married taxpayers filing jointly and $100,000 for all other returns), cultural trust, pension income, rural EMT, employer scholarships, farmworker housing construction (including references to agricultural workers), and the manufactured home park closure.

The bill also extends the rural medical practice tax credit (with modifications to the eligibility requirements) for two years, and extends the subtraction for manufactured dwelling park capital gains for six years.

Additionally, the bill makes the following important changes:

- Clarifies the double deduction prohibition for the research and development tax credit.
- Disallows the biomass tax credit for canola grown in the Willamette Valley.
- Clarifies the three-year structure of the University Venture Development Fund tax credit.
- Requires a revenue impact statement prepared for a tax expenditure bill to provide estimates for three biennia and include a public policy purpose statement.
- Creates a default six-year sunset date for tax expenditures enacted after January 1, 2014.
- Sunsets the workers' compensation tax credit.
- Makes a technical correction to the tax credit for livestock killed by wolves.
- Increases the annual cap on film and video tax credit from $6 million to $10 million per year (including other reimbursement policy changes).
- Restricts the additional senior medical deduction to the expenses of taxpayers who are age eligible for the program (at least age 62).
- Restricts the maximum federal tax subtraction for married-filing-separate taxpayers to 50 percent of the amount allowed for other taxpayers.

The bill took effect on October 7, 2013. However various section of the bill have different operative dates and apply to different tax years. Practitioners should refer to the bill itself for the operative date for sections of interest to them.

11. HB 3477 (Ch. 614) Corporate Taxpayers: Out-of-State Banks

By repealing ORS 317.057, House Bill 3477 removes certain exemptions from fees and taxation for out-of-state banks, extranational institutions or foreign associations that engage in limited mortgage activities within this state.

12. SB 185 (Ch. 405) Notice of Department of Revenue Garnishments

Senate Bill 185 eliminates the requirement that the Department of Revenue deliver a warrant or a true copy of the warrant with a notice of garnishment. Instead, the bill requires that a notice of garnishment issued by the Department bear the name of the individual issuing the notice on behalf of the Department, but need not be signed by that person.

SB 185 took effect on June 13, 2013.

13. SB 307 (Ch. 407) Business Taxpayers: Withdrawal from Multistate Tax Compact

SB 307 withdraws Oregon from the Multistate Tax Compact (ORS 305.655) by repealing the compact and re-enacting it without those articles applicable to income tax and apportionment of business income for corporate tax purposes.

The bill took effect on October 7, 2013.

References: ORS 305.655 (Multistate Tax Compact) Art X ("No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.")

Health Net Inc. v. DOR, Or Tax Ct No. 5127
Gillette Co. v. FTB, Cal Supreme Ct No. 206587

III. PROPERTY TAX

1. HB 2227 (Ch. 193) Exemption Cleanup and Deadwood Bill, Including "Big Look" at Housing Programs

House Bill 2227 repeals the following property tax exemptions, beginning with the tax year commencing July 1, 2017: ORS 263.290, 307.065, 307.205, 307.220, 307.230, 307.240 and 308.559.

These are described as little-used provisions and generally targeted specific kinds of economic development projects (such as nonprofit telephone associations and aircraft refurbishment facilities).

The bill creates notice requirements and consistent deadlines for application of certain property tax exemptions and limited assessment programs for housing (low-income rental housing under ORS 307.515 to 307.537, nonprofit corporation low-income housing under ORS 307.540 to 307.548, multiple-unit housing under ORS 307.600 to 307.637, single-unit housing under ORS 307.651 to 307.687, vertical housing development zones under ORS 307.841 to 307.867 and rehabilitated residential property under ORS 308.450 to 308.481). These changes apply to property tax years beginning on or after July 1, 2014.

The bill amends ORS 307.166 by eliminating the application requirement, and substituting a notice requirement, for property owned by the state or federal government, Indians or Indian tribes if the property also is leased or subleased to (or use or possession is granted to) a state or federal government entity or to an Indian tribe. These provisions apply to interests already in place on October 7, 2013, as well as to later leases, subleases and grants of use or possession.

The bill creates or amends 10-year clawback provisions for the nonprofit corporation low income housing exemption program and vertical housing exemption programs, intended to be consistent with other housing exemption programs. Operative dates for this section vary.

ORS 307.485 governs exemption for certain farm labor camps and child care facilities. HB 2227 modifies the requirements for an applicant to obtain verifications of compliance with certain fire and health requirements. This applies to exemption claims for calendar years beginning on or after January 1, 2014.

The bill amends ORS 307.162 by adding an application requirement to exemption for property held or operated by housing authority. This applies to claims for exemption for tax years beginning on or after July 1, 2014.

Clarifies that the exemption for alternative energy property sunsets, i.e. no longer applies, for tax years beginning on or after July 1, 2017.

A minority report would have increased the ceiling amount of total countywide assessed value of taxable personal property for purposes of cancellation of property taxes from $12,500 to $25,000. That provision did not pass.

HB 2227 took effect on October 7, 2013. As noted above, operative dates for different sections vary considerably. Practitioners should consult the text of the bill for the operative dates of specific provisions.

2. HB 2349 (Ch. 426) Single-Unit Housing

HB 2349 extends the completion-of-construction sunset date from 2015 to 2025 for the single-unit housing property tax exemption under ORS 307.651 to 307.687. The bill removes the requirement for exemption that single-unit housing be constructed in a distressed area, and revises the local government opt-in requirements.

HB 2349 took effect on October 7, 2013. Operative dates of different sections of the bill vary. Practitioners should consult the text of the bill for the operative dates of specific provisions.

3. HB 2489 (Ch. 31) Prospective Relief Regarding Reverse Mortgages; Transferee Liability for Deferred Amount

House Bill 2489 permanently extends the exception for certain homesteads pledged as security for reverse mortgages, thus allowing continued qualification for deferral.

The bill clarifies that transferee liability for deferred amounts is limited to any positive amount remaining after subtraction of liens prior to Department of Revenue's liens from the real market value of the homestead. The bill requires department to issue a notice of liability to a transferee, and provides a process for collection and appeal of deferred amounts to which a transferee notice of liability relates.

The bill authorizes Department of Revenue to determine the joint and several liability of multiple transferees.

HB 2489 took effect on October 7, 2013.

4. HB 2510 (Ch. 494) Reactivation of Certain Previously Disqualified Homesteads

HB 2510 provides that the five-year minimum requirement and reverse mortgage prohibition do not apply to homesteads that had been granted deferral for any property tax years beginning before July 1, 2011.

The bill requires the Department of Revenue to provide notice to individuals with inactive deferral accounts that they may be eligible to have their account reactivated for property tax years beginning on or after July 1, 2014.

The bill requires a claim for reactivation to be filed, and caps the number of homesteads reactivated for property tax year beginning July 1, 2014, at 700. The bill then increases the number of homesteads eligible to be reactivated each subsequent year by five percent.

Finally, the bill provides that unpaid taxes assessed against homestead during the period when the homestead was temporarily inactivated for deferral are not subject to foreclosure once the homestead is reactivated for deferral.

HB 2510 took effect on October 7, 2013, but has various operative dates with retroactive effects. Practitioners should consult the text of the bill for the operative dates of specific provisions.

5. HB 2676 (Ch. 205) Exclusion for Certain Manufactured Homes

HB 2676 eliminates the sunset for mandatory cancellation of property tax assessment for manufactured structures with total value less than $12,500 in a county with a population of more than 340,000. With the elimination of the sunset date, the current rule will continue in place indefinitely.

6. HB 2735 (Ch. 210) Food Processing Machinery and Equipment

HB 2735 extends the sunset date for the property tax exemption for food processing machinery and equipment.

Under current law, the first year of exemption must be a tax year commencing on or before July 1, 2013. The bill substitutes 2020 for 2013.

HB 2735 took effect on October 7, 2013.

7. HB 2788 (Ch. 319) Farm Use Special Assessment

This bill Includes disposing of food by donation to a local food bank or school as a “farm use” for purposes of property tax special assessment.

HB 2788 applies to property tax years beginning on or after July 1, 2013.

8. HB 2904 (Ch. 213) Cargo Containers

House Bill 2904 simply extends the sunset for property tax exemption for cargo containers. The new exemption will apply to tax years prior to July 1, 2020.

HB 2904 took effect on October 7, 2013.

9. SB 261 (Ch. 336) Power Transmission Property Leased to United States

Senate Bill 261 exempts from property taxation certain high-voltage electrical transmission property installed on real property interests of the United States and leased to the United States, if the United States has an option to buy the property for a nominal price following the lessor's payoff of its acquisition debt.

The bill applies to property tax years beginning on or after July 1, 2008; provides a refund mechanism for taxes paid with respect to prior years.

The bill took effect on October 7, 2013.

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