

2007 Public Affairs Legislative Package with Final Status

BILL #	SUMMARY	Chamber	Status	Date
	OSB Public Affairs Committee			
HB 2355	BOG Governance Provisions	Passed Both	Ch. 59, 2007 Laws 1/1/08	4/17
HB 2356	<ul style="list-style-type: none"> ▪ Client Security Fund amends ORS 9.655 			
HB 2357	<ul style="list-style-type: none"> ▪ INS technical changes to conform to federal statutory name changes 			
HB 2358	<ul style="list-style-type: none"> ▪ E-filing committee clarify Chief Judge is authorized to designate electronic documents as the official record – Co-sponsored with OJD ▪ Allows OSB employees to participate in Oregon Savings Growth Plan 			
	OSB SECTIONS			
	Consumer Law			
SB 300	Amends ORS Ch. 18 to allow exemption for Additional Child Tax Credit		DEAD	6/28
	Debtor/Creditor			
SB 301	Allows service on occupant by mail and posting in trust deed sales, under certain circumstances and allow publication of sale in news paper of general circulation	Passed Both	Ch. 165, 2007 Laws 1/1/08	5/30
SB 302	Allows normal secured property foreclosure process to proceed against debtor's estate	Passed Both	Ch. 495, 2007 Laws 1/1/08	6/28
SB 303	Amends ORS 18.625 to render writ of garnishment ineffective when served on employer after payroll instructions have been issued to 3d party payroll company	Passed Both	Ch. 496, 2007 Laws 1/1/08	6/28
SB 304	Corrects inadvertent omission of definitional cross-reference of "security account" in Ch. 79	Passed Both	Ch. 32, 2007 Laws 1/1/08	4/17
	Elder Law			
HB 2359	Amends statute to require a waiting period for a person to claim a bank account by affidavit	Passed Both	Ch. 369, 2007 Laws 1/1/08	6/12
HB 2360	Amends Ch. 125 to allow termination of conservatorship by creation of a supplemental needs trust	Passed Both	Ch. 62, 2007 Laws 1/1/08	4/17
	Estate Planning			
SB 305	Technical changes to the Uniform Trust Code	Passed Both	Ch. 33, 2007 Laws 1/1/08	4/17
HB 2361	Technical changes to the Uniform Principal Income Act	Passed Both	Ch. 130, 2007 Laws 1/1/08	5/09
HB 2362	Amends Uniform Probate Code to allow declarations rather than affidavits in probate court	Passed Both	Ch. 284, 2007 Laws 1/1/08	6/01
	Family Law			
SB 306	Clarifies court discretion regarding reinstatement of spousal support	Passed Both	Ch. 430, 2007 Laws 1/1/08	6/22
SB 307	Technical changes to ORS 107.730 and 109.020 to conform language use. Includes change to ORS 18.180 (7) re expiration of judgments in domestic relations context	Passed Both	Ch. 22, 2007 Laws 1/1/08	4/17
HB 2363	Standing Committee on Adoption: Repeals sunset on Oregon Adoption Tax Credit		DEAD	6/28

	Indian Law			
HB 2364	Clarifies Oregon Evidence Code to ensure consistent treatment of docs. provided by tribal govts.	Passed Both	Ch. 63, 2007 Laws 1/1/08	4/17
	Real Estate & Land Use			
SB 308	Removes state and local road authorities from list of property owners whose consent is necessary for annexation under ORS 222.125		DEAD	6/28
SB 310	Allows counties to clear away old and outdated land use applications (where applicant did not supply additional requested information) by amending ORS 2 15.427 to give counties authority to determine a land use application "expired" after 180 days	Passed Both	Ch. 231, 2007 Laws 1/1/08	6/07
SB 311	Amends current statute (ORS 275.225(1)) so counties may sell excess property unsuited for construction under county and city zoning ordinances and building codes, currently only covers county codes	Passed Both	Ch. 232, 2007 Laws 1/1/08	6/07
HB 2365	Amends ORS 93.180 to clarify that a deed to a husband and wife defaults to a tenancy by the entirety	Passed Both	Ch. 64, 2007 Laws 1/1/08	4/17
	OSB COMMITTEES			
	Procedure and Practice Committee			
HB 2366	Amends ORS 12.160 to extend statute of limitations for minors' injuries to medical expenses	Passed Both	Ch. 285, 2007 Laws 1/1/08	6/01
HB 2367	Amends ORS 1.730 regarding voting quorum requirements on Council On Court Procedures	Passed Both	Ch. 65, 2007 Laws 1/1/08	4/17
HB 2368	Amends ORS 19.270 to reduce delay and costs to litigants and conserve trial and appellate court resources	Passed Both	Ch. 66, 2007 Laws 1/1/08	4/17

Enrolled House Bill 2355

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

CHAPTER

AN ACT

Relating to client security fund; amending ORS 9.655.

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

SECTION 1. ORS 9.655 is amended to read:

9.655. (1) Upon the filing of a claim, verified under oath, by a client claiming a pecuniary loss *[under ORS 9.625]* **payable from the client security fund**, the board of governors or its designated representative shall determine if the person named in the claim as the attorney whose dishonest conduct caused the loss was an active member of the Oregon State Bar engaged in the practice of law in Oregon at the time of the transaction out of which the claim arose and whether the transaction arose out of the person's practice of law in Oregon. The board or designated representative shall then determine **whether the loss was caused by the person's dishonest conduct and** if the person:

(a) Has been found guilty of a crime arising out of the *[claimed]* dishonest conduct *[which caused the loss]*;

(b) In the case of a claim of loss of \$5,000 or less, has been disbarred, suspended or reprimanded in disciplinary proceedings or has resigned from the bar due to circumstances arising out of the *[claimed]* dishonest conduct *[which caused the loss]*; or

(c) *[Has been the object of a judgment entered in any proceeding arising out of the claimed dishonest conduct which caused the loss and, if the object of a judgment for money entered in favor of the claimant, has failed to pay the judgment,]* **Is a judgment debtor under the money award portion of a judgment entered in favor of the client in a proceeding arising out of the dishonest conduct**, and execution issued on the judgment has been returned uncollected or *[that]* issuance of execution would be a useless act.

(2) *[After complying with subsection (1) of this section, if the board or representative requires additional information to determine the claim,]* **At any time after a claim is filed by a client claiming a pecuniary loss payable from the client security fund**, the board or the **board's** representative may compel by subpoena the person named in the claim as the attorney whose dishonest conduct caused the loss, or any other person having knowledge of the matter, to appear for the purpose of giving testimony, and may compel by subpoena the production of records and documents pertinent to the claim. The subpoena shall have the same force and effect as in a civil action in the circuit court, and may be enforced by order of the circuit court for the county in which the person was served.

Passed by House February 8, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate March 26, 2007

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President of Senate

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State

Enrolled
House Bill 2356

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

CHAPTER

AN ACT

Relating to attorneys; amending ORS 9.280.

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

SECTION 1. ORS 9.280 is amended to read:

9.280. (1) It shall be a violation of ORS 9.160 for any person to engage in the business or act in the capacity of an immigration consultant in this state, for compensation, unless the person is an active member of the Oregon State Bar.

(2) As used in this section, unless the context or subject matter requires otherwise:

(a) "Immigration consultant" means any person who gives advice on an immigration matter, including but not limited to drafting an application, brief, document, petition or other paper or completing a form provided by a federal or state agency in an immigration matter.

(b) "Immigration matter" means any proceeding, filing or action affecting the immigration or citizenship status of any person which arises under immigration and naturalization law, executive order or presidential proclamation, or action of the United States [*Immigration and Naturalization Service*] **Department of Homeland Security, the United States Department of Justice**, the United States Department of State or the United States Department of Labor.

(3) This section does not apply to any person or qualified designated entity authorized by federal law to represent persons before the [*Board of Immigration Appeals or the United States Immigration and Naturalization Service*] **United States Department of Homeland Security or the United States Department of Justice**.



Passed by House February 8, 2007

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Speaker of House

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Approved:

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Governor

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Secretary of State

Enrolled
House Bill 2357

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

CHAPTER

AN ACT

Relating to courts; creating new provisions; and amending ORS 1.002, 7.020, 7.090, 7.110, 7.250, 8.120, 8.225, 18.412, 19.500, 21.040, 21.110, 21.111, 21.114, 21.275, 21.310, 21.410, 21.480, 21.605, 46.570, 108.130 and 130.200 and ORCP 7 C, 9 A, 9 B, 9 E, 17 A, 17 C and 17 D.

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

SECTION 1. ORS 1.002 is amended to read:

1.002. (1) The Supreme Court is the highest judicial tribunal of the judicial department of government in this state. The Chief Justice of the Supreme Court is the presiding judge of the court and the administrative head of the judicial department of government in this state. The Chief Justice shall exercise administrative authority and supervision over the courts of this state consistent with applicable provisions of law and the Oregon Rules of Civil Procedure. The Chief Justice, to facilitate exercise of that administrative authority and supervision, may:

- (a) Make rules and issue orders appropriate to that exercise.
- (b) Require appropriate reports from the judges, other officers and employees of the courts of this state and municipal courts.
- (c) Pursuant to policies approved by the Judicial Conference of the State of Oregon, assign or reassign on a temporary basis all judges of the courts of this state to serve in designated locations within or without the county or judicial district for which the judge was elected.
- (d) Set staffing levels for all courts of the state operating under the Judicial Department and for all operations in the Judicial Department.
- (e) Establish time standards for disposition of cases.
- (f) Establish budgets for the Judicial Department and all courts operating under the Judicial Department.
- (g) Assign or reassign all court staff of courts operating under the Judicial Department.
- (h) Pursuant to policies approved by the Judicial Conference of the State of Oregon, establish personnel rules and policies for judges of courts operating under the Judicial Department.
- (i) Take any other action appropriate to the exercise of the powers specified in this section and other law, and appropriate to the exercise of administrative authority and supervision by the Chief Justice over the courts of this state.

(2) [*Subject to all other laws governing courts and court procedures,*] The Chief Justice may make rules for the use of electronic applications in the courts, including but not limited to rules relating to:

- (a) Applications based on the use of the Internet and other similar technologies;

[(b) Filing of electronic documents in court proceedings in lieu of hard copies of those documents;]

(b) The use of an electronic document, or use of an electronic image of a paper document in lieu of the original paper copy, for a document, process or paper that is served, delivered, received, filed, entered or retained in any action or proceeding;

(c) The use of electronic signatures or another form of identification for any document, process or paper that is served, delivered, received, filed, entered or retained in any action or proceeding and that is required by any law or rule to be signed;

(d) The use of electronic transmission for the service of documents in a proceeding, other than service of a summons or service of an initial complaint or petition;

[(c)] **(e)** Payment of statutory or court-ordered monetary obligations through electronic media;

[(d)] **(f)** Electronic storage of court documents;

[(e)] **(g)** Use of electronic citations in lieu of the paper citation forms as allowed under ORS 153.770, including use of electronic citations for parking ordinance violations that are subject to ORS 221.333 or 810.425;

[(f)] **(h)** Public access through electronic means to court documents that are required or authorized to be made available to the public by law; and

[(g)] **(i)** Transmission of open court proceedings through electronic media.

(3) Rules adopted by the Chief Justice under subsection (2) of this section must be consistent with the laws governing courts and court procedures, but any person who serves, delivers, receives, files, enters or retains an electronic document, or an electronic image of a paper document in lieu of the original paper copy, in the manner provided by a rule of the Chief Justice under subsection (2) of this section shall be considered to have complied with any rule or law governing service, delivery, reception, filing, entry or retention of a paper document.

[(3)] **(4)** Rules made and orders issued by the Chief Justice under this section shall permit as much variation and flexibility in the administration of the courts of this state as are appropriate to the most efficient manner of administering each court, considering the particular needs and circumstances of the court, and consistent with the sound and efficient administration of the judicial department of government in this state.

[(4)] **(5)** The judges, other officers and employees of the courts of this state shall comply with rules made and orders issued by the Chief Justice. Rules and orders of a court of this state, or a judge thereof, relating to the conduct of the business of the court shall be consistent with applicable rules made and orders issued by the Chief Justice.

[(5)] **(6)** The Chief Judge of the Court of Appeals and the presiding judge of each judicial district of this state are the administrative heads of their respective courts. They are responsible and accountable to the Chief Justice of the Supreme Court in the exercise of their administrative authority and supervision over their respective courts. Other judges of the Court of Appeals or court under a presiding judge are responsible and accountable to the Chief Judge or presiding judge, and to the Chief Justice, in respect to exercise by the Chief Justice, Chief Judge or presiding judge of administrative authority and supervision.

[(6)] **(7)** The Chief Justice may delegate the exercise of any of the powers specified by this section to the presiding judge of a court, and may delegate the exercise of any of the administrative powers specified by this section to the State Court Administrator, as may be appropriate.

[(7)] **(8)** *[Subsections (1) to (4) of]* This section *[apply]* **applies** to justices of the peace and the justice courts of this state solely for the purpose of disciplining of justices of the peace and for the purpose of continuing legal education of justices of the peace.

SECTION 2. (1) Pursuant to ORS 8.125 (11), the State Court Administrator may establish procedures that provide for the destruction of records, instruments, books, papers, transcripts and other documents filed in a circuit court after making a photographic film, microphotographic film, electronic image or other photographic or electronic copy of each document that is destroyed.

(2) A circuit court may use procedures established under subsection (1) of this section only if at the time of making the copy the trial court administrator for the court attaches to copy, attaches to the sealed container in which the copy is placed or incorporates into the copy:

(a) A certification that the copy is a correct copy of the original, or of a specified part of the original;

(b) The date on which the copy was made; and

(c) A certification that the copy was made under the trial court administrator's direction and control.

(3) A trial court administrator using film for copies under this section must promptly seal and store at least one original or negative copy of the film in a manner and place that will ensure that the film will not be lost, stolen or destroyed.

(4) A trial court administrator using electronic images for copies under procedures established under subsection (1) of this section must ensure that the electronic images are continuously updated into commonly used formats and, if necessary, transferred to media necessary to ensure that they are accessible through commonly used electronic or computerized systems.

(5) Copies of documents created under this section must be retained in lieu of the original documents for the period established by the schedule prescribed in ORS 8.125 (11).

SECTION 3. ORS 7.020 is amended to read:

7.020. The register is a record wherein the clerk or court administrator shall enter, by its title, every action, suit or proceeding commenced in, or transferred or appealed to, the court, according to the date of its commencement, transfer or appeal. Thereafter, the clerk or court administrator shall note therein all the following:

(1) The date of any filing of any *[paper or process]* **document**.

(2) The date of making, filing and entry of any order, judgment, ruling or other direction of the court in or concerning such action, suit or proceeding.

(3) Any other information required by statute, court order or rule.

SECTION 4. ORS 7.090 is amended to read:

7.090. The files of the court are all *[papers or process]* **documents** filed with or by the clerk of the court or court administrator, in any action, suit or proceeding therein, or before the judge.

SECTION 5. ORS 7.110 is amended to read:

7.110. (1) The records and files of the court shall be *[kept in the office of]* **maintained by** the clerk or court administrator of the respective trial or appellate court, and the clerk or court administrator is the custodian of and responsible for those records and files. *[The]* **Paper** records and files *[shall]* **may not be taken out of the office, and electronic records may not be removed from any file or electronic database,** by any person except[,] when allowed by special order of the court or a judge *[thereof]* or general rule made by the court[, *by a judge of the court or an attorney*].

(2) Custody of and responsibility for records and files of the court relating to an action, suit or proceeding may be transferred to the clerk or court administrator of another court, for the purposes of storage and servicing, after the expiration of 25 years after the entry of final judgment in the action, suit or proceeding.

SECTION 6. ORS 7.250 is amended to read:

7.250. (1) The State Court Administrator and the courts of this state shall encourage persons who make **paper** filings in the courts, including all pleadings, motions, copies and other documents, to use paper that has been printed on both sides of each sheet. The courts of this state may not decline to accept any **paper** filing because the filing is printed on both sides of each sheet of paper.

(2) All **paper** filings in the courts of this state, including all pleadings, motions, copies and other documents, shall be printed on recycled paper if recycled paper is readily available at a reasonable price. The State Court Administrator and the courts of this state shall encourage persons who make **paper** filings in the courts to use recycled paper that has the highest available content of post-consumer waste, as defined in ORS 279A.010, and that is recyclable in office paper recycling pro-

grams in the community in which the filing is made. A court of this state may not decline to accept any **paper** filing because the paper does not comply with the requirements of this subsection.

SECTION 7. ORS 8.120 is amended to read:

8.120. (1) The State Court Administrator shall, for the Supreme Court and Court of Appeals:

- (a) Act as court administrator for the court.
 - (b) Keep the seal of the court, and affix it in all cases required by law.
 - (c) Record the proceedings of the court.
 - (d) Keep the records, files, books and [*papers*] **documents** pertaining to the court.
 - (e) File all [*papers*] **documents** delivered to the administrator for that purpose in any action or proceeding in the court.
 - (f) Attend the terms of the court, unless excused by the court, and administer oaths.
 - (g) Under the direction of the court enter its orders and judgments.
 - (h) Authenticate, by certificate or transcript, as may be required, the records, files or proceedings of the court, or any [*paper*] **document** pertaining thereto, and filed with the administrator.
 - (i) In the performance of duties pertaining to the court, conform to the direction of the court.
- (2) The State Court Administrator may delegate powers of the office of State Court Administrator to officers and employees of the Judicial Department designated by the State Court Administrator in writing.

SECTION 8. ORS 8.225 is amended to read:

8.225. (1) The trial court administrator for a judicial district has the duties, powers and functions prescribed by law or by rules of the circuit courts in the district.

- (2) A trial court administrator shall, for each court served by the officer:
- (a) Keep the seal of the court, and affix it in all cases required by law.
 - (b) Record the proceedings of the court.
 - (c) [*Keep*] **Maintain** the records, files, books and [*papers*] **other documents** pertaining to the court.
 - (d) File all [*papers*] **documents** delivered to the [*officer for that purpose*] **trial court administrator** in any action or proceeding in the court.
 - (e) Attend the terms of the court, administer oaths and receive the verdict of a jury in any action or proceeding therein, in the presence and under the direction of the court.
 - (f) Under the direction of the court enter its orders and judgments.
 - (g) Authenticate, by certificate or transcript, as may be required, the records, files or proceedings of the court, or any [*paper*] **document** pertaining thereto, and filed with the officer.
 - (h) In the performance of duties pertaining to the court, conform to the direction of the court.
- (3) A trial court administrator may take and certify the proof and acknowledgment of a conveyance of real property or any other written instrument authorized or required to be proved or acknowledged.
- (4) A trial court administrator may delegate powers of the office of trial court administrator to employees of the trial court administrator.
- (5) A trial court administrator shall designate a person to act as transcript coordinator for the court.

SECTION 9. ORS 18.412 is amended to read:

18.412. (1) At any time after the date of execution of an agreement to transfer the ownership of property in which a homestead exemption exists pursuant to ORS 18.395, the homestead owner or the owner's transferee may give notice of intent to discharge the property from the judgment lien to a judgment creditor. Each notice shall [*be styled as a paper in*] **bear the caption of** the action in which the judgment was recovered and shall:

- (a) Identify the property and the judgment and state that the judgment debtor is about to transfer, or has transferred, the property and that the transfer is intended to discharge the property from any lien effect of the judgment;
- (b) State the fair market value of the property on the date of the notice or of any applicable petition in bankruptcy, whichever is applicable, and list the encumbrances against the property, in-

cluding the nature and date of each encumbrance, the name of the encumbrancer and the amount presently secured by each encumbrance;

(c) State that the property is claimed by the person giving the notice to be wholly exempt from the lien of the judgment or, if the value of the property exceeds the sum of the encumbrances specified as required under paragraph (b) of this subsection that are senior to the judgment lien and \$30,000 or \$39,600, whichever amount of the homestead exemption is applicable under ORS 18.395 (1), that the amount of the excess or the amount due on the judgment, whichever is less, will be deposited with the court administrator for the court in which the judgment was entered for the use of the judgment holder; and

(d) Advise the holder of the judgment that the property may be discharged from any lien arising from the judgment, without further notice to the judgment creditor, unless prior to a specified date, which in no case may be earlier than 14 days after the date of mailing of the notice, the judgment creditor files objections and a request for a hearing on the matter as provided in ORS 18.415.

(2) Each notice described by subsection (1) of this section shall be sent by certified mail to the judgment creditor, as shown by the court records, at the judgment creditor's present or last-known address according to the best knowledge of the person sending the notice. A copy of each notice, together with proof of mailing, may be filed with the court administrator for the court in which the judgment was entered and shall be filed by the court administrator with the records and files of the action in which the judgment was recovered.

SECTION 10. ORS 19.500 is amended to read:

19.500. Except as otherwise provided in this chapter, when any provision of this chapter requires that a *[paper]* **document** be served and filed, the *[paper]* **document** shall be served in the manner provided in ORCP 9 B on all other parties who have appeared in the action, suit or proceeding and who are not represented by the same counsel as the party serving the *[paper]* **document**, and shall be filed, with proof of service indorsed thereon, with the trial court administrator.

SECTION 11. ORS 21.040, as amended by section 7, chapter 702, Oregon Laws 2005, is amended to read:

21.040. In cases of original jurisdiction in the Supreme Court, the plaintiff or moving party shall pay \$39 and the defendant or respondent shall pay \$22 on the filing of their first *[paper]* **document**.

SECTION 12. ORS 21.110, as amended by section 11, chapter 702, Oregon Laws 2005, is amended to read:

21.110. (1) Except as otherwise provided in this section, at the time of filing in the circuit court of any civil action, suit or proceeding, including appeals, the clerk of the circuit court shall collect from the plaintiff, appellant or moving party the sum of \$107 as a flat and uniform filing fee. In addition, at the time of filing any appearance in any such action, suit or proceeding by any defendant or respondent appearing separately, or upon the part of defendants or respondents appearing jointly, the clerk shall collect from the party or parties the sum of \$83 as a flat and uniform filing fee.

(2) In the following actions, the clerk of the circuit court shall collect the sum of \$68 as a flat and uniform filing fee from the plaintiff, appellant or moving party at the time the action is filed, and shall collect the sum of \$53 as a flat and uniform filing fee from any defendant or respondent appearing separately, or upon the part of defendants or respondents appearing jointly, at the time of filing any appearance in the action:

(a) Actions for the recovery of money or damages only when the amount claimed does not exceed \$10,000.

(b) Actions for the recovery of specific personal property when the value of the property claimed and the damages for the detention do not exceed \$10,000.

(c) Actions for the recovery of any penalty or forfeiture, whether given by statute or arising out of contract, not exceeding \$10,000.

(d) Actions to enforce, marshal and foreclose liens upon personal property where the amount claimed for such liens does not exceed \$10,000.

(e) Actions of interpleader, and in the nature of interpleader, when the amount of money or the value of the property involved does not exceed \$10,000.

(f) Actions for injunctive relief under ORS chapter 90 when the amount of any damages claimed does not exceed \$10,000.

(3) The clerk of the court shall collect the sum of \$300 as a flat and uniform filing fee from the petitioner in a proceeding under ORS 181.607 or 181.608, at the time the petition is filed. Fees collected under this subsection shall be deposited into the Judicial Department Operating Account established in ORS 1.009.

(4) For purposes of subsection (2) of this section, the amount claimed, value of property, damages or any amount in controversy does not include any amount claimed as costs and disbursements or attorney fees as defined by ORCP 68 A.

(5) A *[paper or]* pleading **or other document** shall be filed by the clerk only if the fee required under this section is paid by the person filing the *[paper or pleading]* **document**, or if a request for a fee waiver or deferral is granted by the court. No part of any such filing fee shall be refunded to any party. The uniform fee shall cover all services to be performed by the court or clerk in any such action, suit or proceeding, except where additional fees are specially authorized by law.

(6) Any plaintiff, appellant, moving party, defendant or respondent that files an action or appearance that is subject to the filing fees established under subsection (2) of this section must include in the caption of the pleading the following words: "Claim of not more than \$10,000."

(7) The fees imposed by this section do not apply to:

- (a) Protective proceedings under ORS chapter 125;
- (b) Proceedings for dissolution of marriage, annulment of marriage or separation;
- (c) Filiation proceedings under ORS 109.124 to 109.230;
- (d) Proceedings to determine custody or support of a child under ORS 109.103;
- (e) Probate, adoption or change of name proceedings;
- (f) Proceedings involving dwelling units to which ORS chapter 90 applies and for which the fee is provided by ORS 105.130; or

(g) Any counterclaim, cross-claim or third-party claim filed by a party who has appeared in the action or proceeding.

(8) The fees described in this section shall not be charged to a district attorney or to the Division of Child Support of the Department of Justice for the filing of any case, motion, document, stipulated order, process or other document relating to the provision of support enforcement services as described in ORS 25.080.

SECTION 13. ORS 21.111, as amended by section 15, chapter 702, Oregon Laws 2005, is amended to read:

21.111. (1) In the proceedings specified in subsection (2) of this section, the clerk of the circuit court shall collect the sum of \$99 as a flat and uniform filing fee from the petitioner at the time the petition is filed, and shall collect the sum of \$51 as a flat and uniform filing fee from the respondent upon the respondent making an appearance.

(2) The filing fee established by subsection (1) of this section shall be collected by the clerk in the following proceedings:

- (a) Proceedings for dissolution of marriage, annulment of marriage or separation.
- (b) Filiation proceedings under ORS 109.124 to 109.230.
- (c) Proceedings to determine custody or support of a child under ORS 109.103.

(3) In addition to all other fees collected, the clerk of the circuit court shall collect from the moving party a fee of \$50 at the time of the filing of a motion after entry of a judgment of marital annulment, dissolution or separation. A fee of \$35 shall be charged to the responding party at the time a response is filed to the motion. The fee provided for in this subsection does not apply to any pleading under ORCP 68, 69 or 71.

(4) A *[paper or]* pleading **or other document** shall be filed by the clerk only if the fee required under this section is paid or if a request for a fee waiver or deferral is granted by the court. No part of any such filing fee shall be refunded to any party. The uniform fee shall cover all services

to be performed by the court or clerk in any of the proceedings, except where additional fees are specially authorized by law.

(5) Any petitioner or respondent that files a petition or appearance that is subject to the filing fees established under subsection (1) of this section must include in the caption of the pleading the following words: "Domestic relations case subject to fee under ORS 21.111."

(6) The fees described in this section shall not be charged to a district attorney or to the Division of Child Support of the Department of Justice for the filing of any case, motion, document, stipulated order, process or other document relating to the provision of support enforcement services as described in ORS 25.080.

SECTION 14. ORS 21.114, as amended by section 19, chapter 702, Oregon Laws 2005, is amended to read:

21.114. (1) In a court having jurisdiction, the clerk of the court shall charge and collect:

(a) In an adoption proceeding, a first appearance fee of \$39 from the party filing the petition for adoption, and a first appearance fee of \$23 from an objecting party appearing separately or objecting parties appearing jointly.

(b) In a change of name proceeding, a first appearance fee of \$39 from the party filing the application for change of name, and a first appearance fee of \$23 from an objecting party appearing separately or objecting parties appearing jointly.

(2) A [*paper* or] pleading **or other document** shall be filed by the clerk only if the fee required under this section is paid or if a request for a fee waiver or deferral is granted by the court.

(3) In any adoption or change of name proceeding in a court having jurisdiction, the clerk of the court shall charge and collect in advance from the party having the affirmative of the issue, at the time the proceeding comes on for trial or hearing upon the issues of fact or law involved therein, a trial or hearing fee of \$39.

SECTION 15. ORS 21.275, as amended by section 27, chapter 702, Oregon Laws 2005, is amended to read:

21.275. (1) In any civil action, suit or proceeding in the circuit court, other than a protective proceeding under ORS chapter 125 or a probate, adoption or change of name proceeding, hearing fees for reported hearings shall be collected as provided in this section. There is no hearing fee under this section for a hearing not reported.

(2) As used in this section:

(a) "Hearing" means an actual appearance of one or more parties before the court for an examination by the court without a jury, other than a trial or during a trial for which a trial fee is required, of issues of fact or law arising from a motion, application, petition or other [*paper*] **document** filed with the court by a moving party, but does not include a conference solely for the purpose of case settlement or case scheduling.

(b) "Moving party" means a party who files with the court a motion, application, petition or other [*paper*] **document** referred to in paragraph (a) of this subsection.

(c) "Nonmoving party" means a party other than a moving party.

(3) The clerk of the circuit court shall collect the hearing fees. The fee for a reported hearing is \$33 if the hearing period is not more than three hours or \$77 if the hearing period is more than three hours. The fee does not include the preparation of transcripts of a report.

(4) If a hearing in respect to the [*paper*] **document** filed by the moving party is required by statute or rule, the [*paper*] **document** shall indicate whether the moving party requests that the hearing be reported, and if reporting is requested, shall contain an estimate of the hearing period. If the moving party requests reporting, the moving party shall pay the applicable hearing fee, based upon the estimate of the hearing period, when the [*paper*] **document** is filed. If the moving party does not request reporting and a nonmoving party files a request for reporting with the court, the request shall contain an estimate of the hearing period, and the nonmoving party shall pay the applicable hearing fee, based upon the estimate of the hearing period, when the request is filed.

(5) If a hearing in respect to the [*paper*] **document** filed by the moving party is not required by statute or rule, the [*paper*] **document** shall indicate whether the moving party requests a hear-

ing. The *[paper]* **document** also shall indicate whether the moving party requests that the hearing be reported, and if reporting is requested, shall contain an estimate of the hearing period. If the moving party requests reporting, the moving party shall pay the applicable hearing fee, based upon the estimate of the hearing period, when the *[paper]* **document** is filed. If the moving party does not request reporting and a nonmoving party files a request for reporting with the court, the request shall contain an estimate of the hearing period, and the nonmoving party shall pay the applicable hearing fee, based upon the estimate of the hearing period, when the request is filed.

(6) If a hearing in respect to the *[paper]* **document** filed by the moving party is not required by statute or rule or requested by the moving party and a nonmoving party files a request for hearing with the court, the request also shall indicate whether the nonmoving party requests that the hearing be reported, and if reporting is requested, shall contain an estimate of the hearing period. If the nonmoving party requests reporting the nonmoving party shall pay the applicable hearing fee, based upon the estimate of the hearing period, when the request is filed. If the nonmoving party does not request reporting and the moving party files a request for reporting with the court, the request shall contain an estimate of the hearing period, and the moving party shall pay the applicable hearing fee, based upon the estimate of the hearing period, when the request is filed.

(7) If a hearing in respect to the *[paper]* **document** filed by the moving party is not required by statute or rule or requested by a party, but the court on its own motion orders a hearing and a party files a request that the hearing be reported with the court, the request shall contain an estimate of the hearing period, and the party shall pay the applicable hearing fee, based upon the estimate of the hearing period, when the request is filed. If the court on its own motion orders a hearing, no party requests reporting and the court on its own motion orders that the hearing be reported, the court order shall contain an estimate of the hearing period, and each party shall pay an equal proportionate share of the applicable hearing fee, based upon the estimate of the hearing period, before the hearing is held.

(8) No *[paper]* **document** containing a request for reporting or other request for reporting referred to in subsections (4) to (7) of this section shall be deemed filed unless the fee required by those subsections of the filing party is paid by the party.

(9) The fees provided for in this section that are paid by a party shall be considered costs and disbursements and may be taxed and collected as other costs and disbursements by the prevailing party.

SECTION 16. ORS 21.310, as amended by section 31, chapter 702, Oregon Laws 2005, is amended to read:

21.310. (1) Except as provided in ORS 114.515, in a court having probate jurisdiction, the clerk of the court shall charge and collect the following fees for the filing of the initial *[papers]* **documents** in any probate proceeding, including petitions for the appointment of personal representatives, probate of wills and contest of wills, or in any conservatorship proceeding:

Where the amount of the estate is:

1. Not more than \$10,000-a fee of \$23.
2. More than \$10,000 and not more than \$25,000-a fee of \$77.
3. More than \$25,000 and not more than \$50,000-a fee of \$154.
4. More than \$50,000 and not more than \$100,000-a fee of \$231.
5. More than \$100,000 and not more than \$500,000-a fee of \$308.
6. More than \$500,000 and not more than \$1,000,000-a fee of \$385.
7. More than \$1,000,000-a fee of \$462.

(2) In determining fees under subsection (1) of this section in a probate proceeding, the amount of a settlement in a wrongful death action brought for the benefit of the decedent's surviving spouse or dependents is not part of the estate.

(3) In a court having probate jurisdiction, the clerk shall charge and collect a fee of \$23 for the filing of the initial [*papers*] **documents** in any guardianship proceeding.

(4) In a court having probate jurisdiction, the clerk shall charge and collect a fee of \$8 at the time of filing a will without a petition for probate.

(5) At the time of filing any answer, motion or objection in a probate proceeding or protective proceeding under ORS chapter 125, the party filing the answer, motion or objection shall pay a fee of \$19 to the clerk.

(6) A [*paper or*] pleading **or other document** shall be filed by the clerk only if the fee required under this section is paid or if a request for a fee waiver or deferral is granted by the court.

(7) In any probate proceeding or protective proceeding under ORS chapter 125 in a court having probate jurisdiction, the clerk shall charge and collect in advance from the party having the affirmative of the issue, at the time the proceeding comes on for trial or hearing upon the issues of fact or law involved therein, a trial or hearing fee of \$39.

SECTION 17. ORS 21.410 is amended to read:

21.410. (1) The sheriff of a county shall collect the following fees in civil actions, suits and proceedings for each case delivered to the office of the sheriff:

(a) \$28 for serving summons, subpoena, citation, order, notice, including notice of seizure and sale of personal or real property, notice of restitution and notice of seizure under writ of attachment or execution, or similar documents, including small claims or writ of execution, directed to not more than two parties at the same address. If service is requested for more than two parties at the same address, the fee is \$15 for each party at the same address. The fee authorized by this paragraph shall not be charged to the state in civil actions, suits and proceedings where one party is a person who has been appointed counsel at state expense.

(b) For seizure and sale of personal or real property, enforcement of writ of execution of judgment of restitution, or other enforcement or seizure under writ of attachment or execution, or other process or proceeding, \$47, and, in addition, such sums as may be reasonable and necessary to secure each keeper or custodian of property in custody, the expense of inventory of property in custody and expense incurred in newspaper advertising required by law in the execution of process.

(c) For making a conveyance of real property sold on any process, \$15, to be paid by, or for, the grantee.

(d) For making a copy of any process, order, notice or other instrument in writing, when necessary to complete the service thereof, for each folio, \$3; but no charge shall be made for copy of complaint or other [*paper*] **document** not actually made by the sheriff.

(e) For entering and processing distraint warrants for state agencies, \$6.25 each.

(2) Persons other than a sheriff serving process and other documents may charge any fee agreed to between the server and the person requesting service.

(3) Fees collected for service by the sheriff shall be retained for the benefit of the county where the party to be served cannot be found.

(4) No mileage or commission shall be collected by a sheriff for service of any document or process but in any service involving travel in excess of 75 miles round trip an additional fee not to exceed \$25 may be billed and collected by a sheriff. Mileage shall be measured from the location at which the service is made to the circuit court in that county.

(5) Amounts paid for service of process and other documents may be recovered as costs and disbursements to the extent provided by ORS 20.115.

(6) A sheriff may not collect a fee under this section for serving a foreign restraining order or an order that only grants relief under ORS 107.095 (1)(c).

(7) As used in this section:

(a) "Folio" means 100 words, counting two figures as one word. Any portion of a folio, when the whole paper contains less than a folio, or when such portion is an excess over the last folio, shall be deemed a folio.

(b) "Foreign restraining order" means a restraining order that is a foreign judgment as defined by ORS 24.105.

SECTION 18. ORS 21.480 is amended to read:

21.480. (1) In all counties wherein legal representation is provided for the poor without fee by a nonprofit legal aid program operating under the Legal Services Program established pursuant to ORS 9.572, the clerk of the circuit court shall collect the fees provided for in subsection (2) of this section to assist in defraying the operating costs of the legal aid program and to fund mediation programs offered through the State Department of Agriculture. The fees provided for in subsection (2) of this section are in addition to all other fees collected by the clerk of the court and shall be collected by the clerk in the same manner that other fees are collected by the clerk.

(2) The clerk shall collect the following fees from the plaintiff or other moving party in each civil suit, action or proceeding in the circuit court when the plaintiff or party files the first [paper] **document** in the suit, action or proceeding, and from a defendant or respondent when the defendant or respondent files an appearance in the suit, action or proceeding:

(a) \$9.50, for filings in the small claims department of a circuit court.

(b) \$18, upon the filing of a complaint that is subject to the filing fee established under ORS 105.130 (2). If the defendant demands a trial, the clerk shall collect a fee of \$38 from the defendant, and an additional fee of \$21 from the plaintiff. In no event shall the plaintiff in an action subject to the filing fee established under ORS 105.130 be required to pay a total fee of more than \$39 under the provisions of this subsection.

(c) \$33, if the action, suit or proceeding is subject to the filing fees established by ORS 21.111.

(d) \$30, if the action, suit or proceeding is subject to the filing fees established by ORS 21.110 (2).

(e) \$38, for any other filings in a circuit court not specifically provided for in this subsection, including all probate proceedings, protective proceedings under ORS chapter 125, adoption proceedings and change of name proceedings.

(3) In addition to the fees provided for in ORS 21.010, the State Court Administrator shall collect a fee of \$55 from an appellant or petitioner whenever a filing fee is collected under ORS 21.010 and a fee of \$15 from each respondent whenever an appearance fee is collected under ORS 21.010.

(4) All fees collected by the clerk under this section shall be deposited with the State Court Administrator. All fees collected under this section shall be distributed in the manner provided by ORS 9.574.

(5) Ten percent of the funds deposited with the State Court Administrator under this section shall be transferred by the State Court Administrator on a monthly basis to the State Department of Agriculture, until such time as the amount specified under subsection (6) of this section has been transferred to the State Department of Agriculture for the biennium. Moneys transferred to the State Department of Agriculture under this section are continuously appropriated to the department and may be used by the department only for the purpose of funding mediation programs established by the department. Moneys appropriated to the department under this subsection may not be used by the department to fund the costs of conducting individual farm credit mediations. The department shall consult with the director of the Mark O. Hatfield School of Government in establishing and operating mediation programs funded under this subsection.

(6) The amount transferred by the State Court Administrator to the State Department of Agriculture under subsection (5) of this section may not exceed \$150,000 in any biennium.

SECTION 19. ORS 21.605 is amended to read:

21.605. (1)(a) The Chief Justice of the Supreme Court, the Chief Judge of the Court of Appeals, a judge of a circuit or county court, the judge of the Oregon Tax Court, a tax court magistrate or a justice of the peace may waive in whole or in part, defer in whole or in part, or both, all fees and court costs payable by a party to a particular civil action or proceeding in the court of the justice, judge or magistrate, upon application by the party, if the justice, judge or magistrate finds that the party is unable to pay all or any part of the fees and costs. Waiver or deferral of an inmate's fees and court costs is subject to ORS 30.642 to 30.650.

(b) A fee may not be charged for filing an application under paragraph (a) of this subsection.

(c) All amounts deferred under this subsection constitute a monetary obligation payable to the public body to which the fees and court costs are owed, and may be made part of the judgment or other final written disposition of the action or proceeding by the clerk of the court or by the State Court Administrator without further notice to the debtor or further order of the court.

(d) The judgment or other final written disposition of the action or proceeding may provide that all or part of deferred amounts be waived if the court determines that the person is unable to pay the deferred amounts or may require the payment of the deferred amounts not later than a date certain. A default in payment by the person so ordered to pay shall subject the person to a contempt proceeding.

(e) A judgment or other final written disposition rendered under this subsection may be filed and entered as a judgment in any county in this state.

(2) If fees and court costs payable by a party to a civil action or proceeding have been waived or deferred under subsection (1) of this section, that party is not required to pay any fees or costs so waived or deferred except as provided in subsection (1) of this section and ORS 30.642 to 30.650, and any pleading, petition, application, request, motion, claim, demand, exception or other *[paper]* **document** or appearance presented by that party for filing or acceptance in the action or proceeding shall be filed or accepted without the payment of any such fees or costs.

(3)(a) In a civil action or proceeding, the court to which an appeal is taken may waive in whole or in part, defer in whole or in part, or partially waive and partially defer the expense of preparing a transcript on appeal, if:

(A) The party requesting the transcript is unable to pay the expense of preparing the transcript; and

(B) The party requesting the transcript makes a prima facie showing that the transcript is necessary to prosecute the appeal and would reveal reversible error in the action or proceeding.

(b) In any civil action or proceeding in which the court waives or defers any part of the expense of preparing a transcript on appeal, the court shall authorize preparation of only so much of the transcript as is necessary to prosecute the appeal.

(c) To the extent that the court waives or defers any part of the expense of preparing a transcript on appeal, the State Court Administrator shall pay the expense out of funds appropriated for that purpose.

(d) If the court defers payment of any part of the expense of preparing a transcript, and any part of the deferred expense remains unpaid at the conclusion of the appeal, the unpaid amounts may be made part of the judgment or other final written disposition of the action or proceeding in the manner provided by subsection (1) of this section.

(e) If costs on appeal are awarded to a party who has obtained a waiver or deferral under this subsection, any portion of the costs awarded for the expense of preparing the transcript on appeal shall be ordered paid to the State Court Administrator to the extent that the waived or deferred expense was paid by the State Court Administrator.

(f) Waiver or deferral of an inmate's expenses under this subsection is subject to ORS 30.642 to 30.650.

(4) In any case in which fees and court costs have been waived or deferred under this section, a judgment or other final written disposition shall be rendered as in other cases, but the state is not liable for the payment of any fees or costs awarded against a party whose fees or costs have been waived or deferred.

(5) In the exercise of the authority granted by ORS 1.002, the Chief Justice of the Supreme Court may provide by rule standards and practices for waiver or deferral of fees, court costs and expenses under this section.

SECTION 20. ORS 46.570, as amended by section 51, chapter 702, Oregon Laws 2005, is amended to read:

46.570. (1) In the small claims department of circuit court there shall be charged and collected in civil cases by the clerk of the court the following fees for the following purposes and services:

(a)(A) Plaintiff filing a claim, \$26 when the amount or value claimed does not exceed \$1,500, and \$55 when the amount or value claimed exceeds \$1,500; and

(B) Defendant demanding a hearing, \$21 when the amount or value claimed by plaintiff does not exceed \$1,500, and \$43 when the amount or value claimed by plaintiff exceeds \$1,500.

(b) Transcription of judgment from small claims department, \$7.

(c) Transfer of cause to circuit court on counterclaim, \$12.

(2) Except as otherwise provided in subsection (1) of this section, fees provided for in this section shall be collected in advance. A [*paper or*] pleading **or other document** shall be filed by the clerk only if the required fee is paid or if a request for a fee waiver or deferral is granted by the court. Fees provided for in this section may not be refunded.

SECTION 21. ORS 130.200 is amended to read:

130.200. (1) An irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. The Attorney General must consent to any modification or termination of a charitable trust, unless contingencies make the charitable interest negligible. A settlor's power to consent to a trust's modification or termination may be exercised by:

(a) An agent or attorney-in-fact under a power of attorney only to the extent expressly authorized by the terms of the trust;

(b) The settlor's conservator with the approval of the court supervising the conservatorship if an agent or attorney-in-fact is not authorized by the terms of the trust; or

(c) The settlor's guardian with the approval of the court supervising the guardianship if an agent or attorney-in-fact is not authorized by the terms of the trust and a conservator has not been appointed.

(2) An irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. An irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that the modification is not inconsistent with a material purpose of the trust. The Attorney General must consent to any modification or termination of a charitable trust, unless contingencies make the charitable interest negligible.

(3) For the purposes of subsections (1) and (2) of this section, a spendthrift provision in the terms of the trust is rebuttably presumed to constitute a material purpose of the trust.

(4) Upon termination of a trust under subsection (1) or (2) of this section, the trustee shall distribute the trust property as agreed to by the beneficiaries and, in the case of a charitable trust requiring the Attorney General's consent, as agreed to by the Attorney General.

(5) If all of the required parties do not consent to a proposed modification or termination of the trust under subsection (1) or (2) of this section, the modification or termination may be approved by the court if the court finds that:

(a) If all of the required parties had consented, the trust could have been modified or terminated under this section; and

(b) The interests of any beneficiary who does not consent will be adequately protected.

(6)(a) A trustee, or any other person interested in the trust, may file an agreement entered into under subsection (1) or (2) of this section, or a memorandum summarizing the provisions of the agreement, with the circuit court for any county where trust assets are located or where the trustee administers the trust.

(b) After collecting the fee provided for in subsection (8)(a) of this section, the clerk shall enter the agreement or memorandum of record in the court's register.

(c) Within five days after the filing of an agreement or memorandum under this subsection, the person making the filing must serve a notice of the filing and a copy of the agreement or memorandum on each person interested in the trust whose address is known at the time of the filing. Service may be made personally, or by registered or certified mail, return receipt requested. The notice of filing shall be substantially in the following form:

CAPTION OF CASE NOTICE OF FILING
 OF AGREEMENT OR
 MEMORANDUM OF
 AGREEMENT

You are hereby notified that the attached document was filed by the undersigned in the above entitled court on the _____ day of _____, _____. Unless you file objections to the agreement within 120 days after that date, the agreement will be approved and will be binding on all persons interested in the trust.

If you file objections within the 120-day period, the court will fix a time and place for a hearing. At least 10 days before the date of that hearing, you must serve a copy of your objections and give notice of the time and place of the hearing to all persons interested in the trust. See ORS 130.200.

Signature

(d) Proof of mailing of the notices required under this subsection must be filed with the court. Proof of service may be made by a certificate of service in the form provided by ORCP 7 F, by a signed acceptance of service or by a return receipt from the postal authorities.

(e) If no objections are filed with the court within 120 days after the filing of the agreement or memorandum, the agreement is effective and binding on all persons interested in the trust.

(7)(a) If objections are filed with the court within 120 days after the filing of an agreement or memorandum under this section, the clerk of the court shall collect the fee provided in subsection (8)(a) of this section. Upon the filing of objections, the court shall fix a time and place for a hearing. The person filing the objections must serve a copy of the objections on all persons interested in the trust and give notice to those persons of the time and place fixed by the court for a hearing. Service must be made at least 10 days before the date set by the court for the hearing. Service of the objections may be made personally or by registered or certified mail, return receipt requested.

(b) Proof of mailing of objections must be filed with the court. Proof of service may be made by a certificate of service in the form provided by ORCP 7 F, by a signed acceptance of service or by a return receipt from the postal authorities.

(c) The court shall approve an agreement entered into under subsection (1) or (2) of this section after a hearing upon objections filed under this subsection unless:

(A) The agreement does not reflect the signatures of all persons required by subsection (1) or (2) of this section;

(B) The agreement is not authorized by subsection (1) or (2) of this section; or

(C) Approval of the agreement would not be equitable.

(d) An agreement approved by the court after a hearing is binding on all persons interested in the trust.

(e) Persons interested in the trust may waive the notice required under subsection (6) of this section. If all persons interested in the trust waive the notice, the agreement is effective and binding on all persons interested in the trust upon filing of the agreement or memorandum with the court.

(8)(a) The clerk of the circuit court shall collect in advance a fee of \$65 for the filing of an agreement or memorandum of agreement under subsection (6) of this section, and a fee of \$32.50 for the filing of objections under subsection (7) of this section.

(b) In addition to the filing fees provided for in paragraph (a) of this subsection, the clerk shall charge and collect in proceedings under this section all additional fees authorized by law for civil actions, suits or proceedings in circuit court.

(c) A *[paper or]* pleading **or other document** is not considered filed unless the fees required by this subsection are paid. Filing fees may not be refunded to any party.

SECTION 22. ORS 108.130 is amended to read:

108.130. At the time of filing the petition for an order of support, the petitioner shall pay to the clerk of the court a fee of \$6, which shall cover all charges incident to the filing of [papers] **documents** necessary to a complete determination of the matter and no part of which shall be applied toward the library fund of the county. Payment of the fee is subject to the provisions of ORS 21.605 applicable to waiver, deferral and payment of fees.

SECTION 23. ORCP 7 C is amended to read:

C(1) Contents. The summons shall contain:

C(1)(a) Title. The title of the cause, specifying the name of the court in which the complaint is filed and the names of the parties to the action.

C(1)(b) Direction to defendant. A direction to the defendant requiring defendant to appear and defend within the time required by subsection (2) of this section and a notification to defendant that in case of failure to do so, the plaintiff will apply to the court for the relief demanded in the complaint.

C(1)(c) Subscription; post office address. A subscription by the plaintiff or by an active member of the Oregon State Bar, with the addition of the post office address at which papers in the action may be served by mail.

C(2) Time for response. If the summons is served by any manner other than publication, the defendant shall appear and defend within 30 days from the date of service. If the summons is served by publication pursuant to subsection D(6) of this rule, the defendant shall appear and defend within 30 days from the date stated in the summons. The date so stated in the summons shall be the date of the first publication.

C(3) Notice to party served.

C(3)(a) In general. All summonses, other than a summons referred to in paragraph (b) or (c) of this subsection, shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:
READ THESE PAPERS
CAREFULLY

You must “appear” in this case or the other side will win automatically. To “appear” you must file with the court a legal [paper] **document** called a “motion” or “answer.” The “motion” or “answer” must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff’s attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff.

If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar’s Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

C(3)(b) Service for counterclaim. A summons to join a party to respond to a counterclaim pursuant to Rule 22 D (1) shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:
READ THESE PAPERS
CAREFULLY

You must “appear” to protect your rights in this matter. To “appear” you must file with the court a legal [paper] **document** called a “motion” or “reply.” The “motion” or “reply” must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in

proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the defendant.

If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

C(3)(c) Service on persons liable for attorney fees. A summons to join a party pursuant to Rule 22 D(2) shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:
READ THESE PAPERS
CAREFULLY

You may be liable for attorney fees in this case. Should plaintiff in this case not prevail, a judgment for reasonable attorney fees will be entered against you, as provided by the agreement to which defendant alleges you are a party.

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal [*paper*] **document** called a "motion" or "reply." The "motion" or "reply" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the defendant.

If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

SECTION 24. ORCP 9 A, as amended by the Council on Court Procedures on December 9, 2006, is amended to read:

A Service; when required. Except as otherwise provided in these rules, every order; every pleading subsequent to the original complaint; every written motion other than one which may be heard ex parte; and every written request, notice, appearance, demand, offer of judgment, designation of record on appeal, and similar [*paper*] **document** shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 7.

SECTION 25. ORCP 9 B, as amended by the Council on Court Procedures on December 9, 2006, is amended to read:

B Service; how made. Whenever under these rules service is required or permitted to be made upon a party, and that party is represented by an attorney, the service shall be made upon the attorney unless otherwise ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to such attorney or party, by mailing it to such attorney's or party's last known address or, if the party is represented by an attorney, by telephonic facsimile communication device or e-mail as provided in sections F or G of this rule. Delivery of a copy within this rule means: handing it to the person to be served; or leaving it at such person's office with such person's clerk or person apparently in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at such person's dwelling house or usual place of abode with some person over 14 years of age then residing therein. A party who has appeared without providing an appropriate address for service may be served by [*placing*] **filing** a copy of the pleading or other [*papers in the court file*]

documents with the court. Service by mail is complete upon mailing. Service of any notice or other *[paper]* **document** to bring a party into contempt may only be upon such party personally.

SECTION 26. ORCP 9 E, as amended by the Council on Court Procedures on December 9, 2006, is amended to read:

E Filing with the court defined. The filing of pleadings and other *[papers]* **documents** with the court as required by these rules shall be made by filing them with the clerk of the court or the person exercising the duties of that office. The clerk or the person exercising the duties of that office shall endorse upon such pleading or *[paper]* **document** the time of day, the day of the month, the month, and the year. The clerk or person exercising the duties of that office is not required to receive for filing any *[paper]* **document** unless the name of the court, the title of the cause and the *[paper]* **document**, the names of the parties, and the attorney for the party requesting filing, if there be one, are legibly endorsed on the front of the document, nor unless the contents thereof are legible.

SECTION 27. ORCP 17 A is amended to read:

A Signing by party or attorney; certificate. Every pleading, motion and other *[paper]* **document** of a party represented by an attorney shall be signed by at least one attorney of record who is an active member of the Oregon State Bar. A party who is not represented by an attorney shall sign the pleading, motion or other *[paper]* **document** and state the address of the party. Pleadings need not be verified or accompanied by affidavit or declaration.

SECTION 28. ORCP 17 C is amended to read:

C Certifications to court.

C(1) An attorney or party who signs, files or otherwise submits an argument in support of a pleading, motion or other *[paper]* **document** makes the certifications to the court identified in subsections (2) to (5) of this section, and further certifies that the certifications are based on the person's reasonable knowledge, information and belief, formed after the making of such inquiry as is reasonable under the circumstances.

C(2) A party or attorney certifies that the pleading, motion or other *[paper]* **document** is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

C(3) An attorney certifies that the claims, defenses, and other legal positions taken in the pleading, motion or other *[paper]* **document** are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law.

C(4) A party or attorney certifies that the allegations and other factual assertions in the pleading, motion or other *[paper]* **document** are supported by evidence. Any allegation or other factual assertion that the party or attorney does not wish to certify to be supported by evidence must be specifically identified. The attorney or party certifies that the attorney or party reasonably believes that an allegation or other factual assertion so identified will be supported by evidence after further investigation and discovery.

C(5) The party or attorney certifies that any denials of factual assertion are supported by evidence. Any denial of factual assertion that the party or attorney does not wish to certify to be supported by evidence must be specifically identified. The attorney or party certifies that the attorney or party believes that a denial of a factual assertion so identified is reasonably based on a lack of information or belief.

SECTION 29. ORCP 17 D is amended to read:

D Sanctions.

D(1) The court may impose sanctions against a person or party who is found to have made a false certification under section C of this rule, or who is found to be responsible for a false certification under section C of this rule. A sanction may be imposed under this section only after notice and an opportunity to be heard are provided to the party or attorney. A law firm is jointly liable for any sanction imposed against a partner, associate or employee of the firm, unless the court determines that joint liability would be unjust under the circumstances.

D(2) Sanctions may be imposed under this section upon motion of a party or upon the court's own motion. If the court seeks to impose sanctions on its own motion, the court shall direct the party or attorney to appear before the court and show cause why the sanctions should not be imposed. The court may not issue an order to appear and show cause under this subsection at any time after the filing of a voluntary dismissal, compromise or settlement of the action with respect to the party or attorney against whom sanctions are sought to be imposed.

D(3) A motion by a party to the proceeding for imposition of sanctions under this section must be made separately from other motions and pleadings, and must describe with specificity the alleged false certification. A motion for imposition of sanctions based on a false certification under subsection C(4) of this rule may not be filed until 120 days after the filing of a complaint if the alleged false certification is an allegation or other factual assertion in a complaint filed within 60 days of the running of the statute of limitations for a claim made in the complaint. Sanctions may not be imposed against a party until at least 21 days after the party is served with the motion in the manner provided by Rule 9. Notwithstanding any other provision of this section, the court may not impose sanctions against a party if, within 21 days after the motion is served on the party, the party amends or otherwise withdraws the pleading, motion, *[paper]* **document** or argument in a manner that corrects the false certification specified in the motion. If the party does not amend or otherwise withdraw the pleading, motion, *[paper]* **document** or argument but thereafter prevails on the motion, the court may order the moving party to pay to the prevailing party reasonable attorney fees incurred by the prevailing party by reason of the motion for sanctions.

D(4) Sanctions under this section must be limited to amounts sufficient to reimburse the moving party for attorney fees and other expenses incurred by reason of the false certification, including reasonable attorney fees and expenses incurred by reason of the motion for sanctions, and upon clear and convincing evidence of wanton misconduct amounts sufficient to deter future false certification by the party or attorney and by other parties and attorneys. The sanction may include monetary penalties payable to the court. The sanction must include an order requiring payment of reasonable attorney fees and expenses incurred by the moving party by reason of the false certification.

D(5) An order imposing sanctions under this section must specifically describe the false certification and the grounds for determining that the certification was false. The order must explain the grounds for the imposition of the specific sanction that is ordered.

Passed by House February 26, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate March 29, 2007

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President of Senate

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State

Enrolled
House Bill 2358

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

CHAPTER

AN ACT

Relating to Oregon State Bar; amending ORS 9.010.

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

SECTION 1. ORS 9.010 is amended to read:

9.010. (1) An attorney, admitted to practice in this state, is an officer of the court[; *and*].

(2) The Oregon State Bar is a public corporation and an instrumentality of the Judicial Department of the government of the State of Oregon [*and*]. **The bar** is authorized to carry out the provisions of ORS 9.005 to 9.755.

(3) The bar is subject to the following statutes applicable to public bodies:

- (a) ORS 30.210 to 30.250[.].
- (b) **ORS 30.260 to 30.300[.].**
- (c) **ORS 30.310, 30.312, 30.390[.] and 30.400[.].**
- (d) The Oregon Rules of Civil Procedure[.].
- (e) ORS 192.410 to 192.505[.].
- (f) **ORS 192.610 to 192.690[.].**
- (g) **ORS 243.401 to 243.507.**
- (h) **ORS 244.010 to 244.040[.].**
- (i) **ORS 297.110 to 297.230[.].**
- (j) ORS chapters 307, 308 and 311[.].
- (k) ORS 731.036 and 737.600.

(4) [*However,*] **Except as provided in subsection (3) of this section,** the bar is not subject to any [*other*] statute applicable to a state agency, department, board or commission or public body unless [*such*] **the** statute expressly provides that it is applicable to the Oregon State Bar.

[(2)] (5) The Oregon State Bar has perpetual succession and a seal, and [*it*] may sue and be sued. Notwithstanding the provisions of ORS 270.020 and 279.835 to 279.855 and ORS chapters 278, 279A, 279B and 279C, [*it*] **the bar** may, in its own name, for the purpose of carrying into effect and promoting its objectives, enter into contracts and lease, acquire, hold, own, encumber, insure, sell, replace, deal in and with and dispose of real and personal property.

[(3)] (6) No obligation of any kind incurred or created under this section shall be, or be considered, an indebtedness or obligation of the State of Oregon.

Passed by House February 8, 2007

.....
Chief Clerk of House

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Speaker of House

Passed by Senate March 26, 2007

.....
President of Senate

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2007

.....
Secretary of State

Senate Bill 300

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Oregon State Bar Consumer Law Section)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Exempts from execution debtor's right to receive additional child tax credit under federal tax laws and any moneys that are traceable to payment of additional child tax credit.

A BILL FOR AN ACT

1
2 Relating to exemptions from execution; creating new provisions; and amending ORS 18.345, 18.845
3 and 18.896.

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

5 **SECTION 1.** ORS 18.345 is amended to read:

6 18.345. (1) All property, including franchises, or rights or interest therein, of the judgment
7 debtor, *shall be liable to an* **is subject to** execution, except as provided in this section and in other
8 statutes granting exemptions from execution. The following property, or rights or interest therein
9 of the judgment debtor, except as provided in ORS 18.305, shall be exempt from execution:

10 (a) Books, pictures and musical instruments to the value of \$600.

11 (b) Wearing apparel, jewelry and other personal items to the value of \$1,800.

12 (c) The tools, implements, apparatus, team, harness or library, necessary to enable the judgment
13 debtor to carry on the trade, occupation or profession by which the judgment debtor habitually
14 earns a living, to the value of \$3,000.

15 (d) A vehicle to the value of \$2,150. As used in this paragraph "vehicle" includes an automobile,
16 truck, trailer, truck and trailer or other motor vehicle.

17 (e) Domestic animals and poultry kept for family use, to the total value of \$1,000 and food suf-
18 ficient to support such animals and poultry for 60 days.

19 (f) Household goods, furniture, radios, a television set and utensils all to the total value of
20 \$3,000, if the judgment debtor holds the property primarily for the personal, family or household use
21 of the judgment debtor; provisions actually provided for family use and necessary for the support
22 of a householder and family for 60 days and also 60 days' supply of fuel.

23 (g) All property of the state or any county or incorporated city therein, or of any other public
24 or municipal corporation of like character.

25 (h) All professionally prescribed health aids for the debtor or a dependent of the debtor.

26 (i) Spousal support, child support, or separate maintenance to the extent reasonably necessary
27 for the support of the debtor and any dependent of the debtor.

28 (j) The debtor's right to receive, or property that is traceable to, an award under any crime
29 victim reparation law.

30 (k) The debtor's right to receive, or property that is traceable to, a payment or payments, not

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 to exceed a total of \$10,000, on account of personal bodily injury of the debtor or an individual of
2 whom the debtor is a dependent.

3 (L) The debtor's right to receive, or property that is traceable to, a payment in compensation
4 of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent,
5 to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

6 (m) Veterans' benefits and loans.

7 (n) The debtor's right to receive an earned income tax credit **or additional child tax credit**
8 under the federal tax laws and any moneys that are traceable to a payment of an earned income tax
9 credit **or additional child tax credit** under the federal tax laws.

10 (o) The debtor's interest, not to exceed \$400 in value, in any personal property. However, this
11 exemption may not be used to increase the amount of any other exemption.

12 (2) If the property claimed by the judgment debtor as exempt is adjudicated by the court out of
13 which the execution issued to be of a value in excess of that allowed by the appropriate paragraph
14 of subsection (1) of this section, the officer seizing the property shall proceed to sell such property.
15 Out of the proceeds of such sale, the officer shall deduct costs of sale and shall pay to the judgment
16 debtor an amount equivalent to the value declared to be exempt by any of the paragraphs of sub-
17 section (1) of this section and shall apply the balance of the proceeds of sale on the execution. A
18 sale may not be made under such execution unless the highest bid made exceeds the appropriate
19 exemption claimed and allowed plus costs of sale. If no bid is received in excess of the value allowed
20 by the appropriate paragraph of subsection (1) of this section, the costs of sale shall be borne by the
21 judgment creditor.

22 (3) If two or more members of a household are joint judgment debtors, each judgment debtor
23 shall be entitled to claim the exemptions in subsection (1)(a), (b), (c), (d) and (o) of this section in
24 the same or different properties. The exemptions provided by subsection (1)(a), (b), (c), (d), (j), (k) and
25 (o) of this section, when claimed for jointly owned property, may be combined at the option of the
26 debtors.

27 (4) Notwithstanding any other provision of law except ORS 657.855, if a writ of garnishment or
28 other execution is issued to collect past due support as defined in ORS 18.600, 75 percent of unem-
29 ployment compensation benefits, workers' compensation benefits and other benefits paid to the
30 debtor by the United States, by the state or by a political subdivision of the state are exempt. The
31 exemption related to unemployment compensation benefits provided by this subsection is subject to
32 ORS 657.855. The exemption provided by this subsection applies without regard to whether the
33 payment is made on a periodic basis or in a lump sum, including any lump sum payable pursuant to
34 a settlement or judgment. Notwithstanding subsection (1)(k) of this section, if a payment is made
35 under a settlement or judgment on account of personal bodily injury and the garnishment or other
36 execution is issued to collect past due support as defined in ORS 18.600, the lesser of 75 percent of
37 the payment or \$7,500 is exempt.

38 **SECTION 2.** ORS 18.845 is amended to read:

39 18.845. A notice of exemptions form must be in substantially the form set forth in this section.
40 Nothing in the notice form described in this section is intended to expand or restrict the law re-
41 lating to exempt property. A determination as to whether property is exempt from execution, at-
42 tachment and garnishment must be made by reference to other law. The form provided in this
43 section may be modified to provide more information or to update the notice based on subsequent
44 changes in exemption laws.

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NOTICE OF EXEMPT PROPERTY
AND INSTRUCTIONS FOR
CHALLENGE TO GARNISHMENT

Property belonging to you may have been taken or held in order to satisfy a debt. The debt may be reflected in a judgment or in a warrant or order issued by a state agency. Important legal papers are enclosed.

YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CAREFULLY.

State and federal law specify that certain property may not be taken. Some of the property that you may be able to get back is listed below.

(1) Wages or a salary as described in ORS 18.375 and 18.385[. *Whichever of the following amounts is greater*] **in an amount not to exceed the greater of:**

- (a) 75 percent of your take-home wages; or
- (b) \$170 per workweek.
- (2) Social Security benefits.
- (3) Supplemental Security Income (SSI).
- (4) Public assistance (welfare).
- (5) Unemployment benefits.
- (6) Disability benefits (other than SSI benefits).
- (7) Workers' compensation benefits.

(8) Exempt wages, Social Security benefits (other than SSI), welfare, unemployment benefits and disability benefits when placed in a checking or savings account (up to \$7,500).

(9) Spousal support, child support or separate maintenance to the extent reasonably necessary for your support or the support of any of your dependents.

(10) A homestead (house, mobile home or houseboat) occupied by you, or occupied by your spouse, parent or child. The value of the homestead is exempt up to the following amounts:

- (a) For a mobile home or houseboat located on land that is not owned by you, \$20,000. If you jointly own the mobile home or houseboat with another person who is also liable on the debt, \$27,000.
- (b) For a mobile home or houseboat located on land that is owned by you, \$23,000. If you jointly own the mobile home or houseboat with another person who is also liable on the debt, \$30,000.
- (c) For any other homestead, \$30,000. If you jointly own the homestead with another person who is also liable on the debt, \$39,600.

(11) Proceeds from the sale of a homestead described in item 10, up to the limits described in item 10, if you hold the proceeds for less than one year and intend to use those proceeds to procure another homestead.

(12) Household goods, furniture, radios, a television set and utensils with a combined value not to exceed \$3,000.

*(13) An automobile, truck, trailer or other vehicle with a value not to exceed \$2,150.

*(14) Tools, implements, apparatus, team, harness or library that are necessary to carry on your occupation, with a combined value not to exceed \$3,000.

*(15) Books, pictures and musical instruments with a combined value not to exceed \$600.

*(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed

1 \$1,800.

2 (17) Domestic animals and poultry for family use with a combined value not to exceed \$1,000
3 and their food for 60 days.

4 (18) Provisions and fuel for your family for 60 days.

5 (19) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt
6 may not exceed \$1,000.

7 (20) Public or private pensions.

8 (21) Veterans' benefits and loans.

9 (22) Medical assistance benefits.

10 (23) Health insurance proceeds and disability proceeds of life insurance policies.

11 (24) Cash surrender value of life insurance policies not payable to your estate.

12 (25) Federal annuities.

13 (26) Other annuities to \$250 per month (excess over \$250 per month is subject to the same ex-
14 emption as wages).

15 (27) Professionally prescribed health aids for you or any of your dependents.

16 *(28) Elderly rental assistance allowed pursuant to ORS 310.635.

17 (29) Your right to receive, or property traceable to:

18 (a) An award under any crime victim reparation law.

19 (b) A payment or payments, not exceeding a total of \$10,000, on account of personal bodily in-
20 jury suffered by you or an individual of whom you are a dependent.

21 (c) A payment in compensation of loss of future earnings of you or an individual of whom you
22 are or were a dependent, to the extent reasonably necessary for your support and the support of
23 any of your dependents.

24 (30) Amounts paid to you as an earned income tax credit **or additional child tax credit** under
25 federal tax law.

26 *(31) Interest in personal property to the value of \$400, but this cannot be used to increase the
27 amount of any other exemption.

28 (32) Equitable interests in property.

29 (33) Security deposits or prepaid rent held by a residential landlord under ORS 90.300.

30 (34) If the amount shown as owing on the Debt Calculation form exceeds the amount you actu-
31 ally owe to the creditor, the difference between the amount owed and the amount shown on the Debt
32 Calculation form.

33
34 Note: If two or more people in your household owe the claim or judgment, each of them may
35 claim the exemptions marked by an asterisk (*).

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38 SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND
39 SPOUSAL SUPPORT. Some property that may not otherwise be taken for payment against the debt
40 may be taken to pay for overdue support. For instance, Social Security benefits, workers' compen-
41 sation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but
42 only 75 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support
43 obligation.

44
45 YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK.

1 You may seek to reclaim your exempt property by doing the following:

2 (1) Fill out the Challenge to Garnishment form that you received with this notice.

3 (2) Mail or deliver the Challenge to Garnishment form to the court administrator at the address
4 shown on the writ of garnishment, and mail or deliver a copy of the form to the Garnishor at the
5 address shown on the writ of garnishment. If you wish to claim wages or salary as exempt, you must
6 mail or deliver the form within 120 days after you receive this notice. If you wish to claim that any
7 other money or property is exempt, or claim that the property is not subject to garnishment, you
8 must mail or deliver the form within 30 days after you receive this notice. You have the burden of
9 showing that your challenge is made on time, so you should keep records showing when the chal-
10 lenge was mailed or delivered.

11 (3) The law only requires that the Garnishor hold the garnished money or property for 10 days
12 before applying it to the Creditor’s use. You may be able to keep the property from being used by
13 the Creditor by promptly following (1) and (2) above.

14
15 You should be prepared to explain your exemption in court. If you have any questions about the
16 garnishment or the debt, you should see an attorney.

17 YOU MAY USE THE CHALLENGE TO GARNISHMENT FORM ONLY FOR THE FOLLOW-
18 ING PURPOSES:

19 (1) To claim such exemptions from garnishment as are permitted by law.

20 (2) To assert that property is not garnishable property under ORS 18.618.

21 (3) To assert that the amount specified in the writ of garnishment as being subject to
22 garnishment is greater than the total amount owed.

23
24 YOU MAY NOT USE THE CHALLENGE TO GARNISHMENT FORM TO CHALLENGE THE
25 VALIDITY OF THE DEBT.

26 IF YOU FILE A CHALLENGE TO A GARNISHMENT IN BAD FAITH, YOU MAY BE SUB-
27 JECT TO PENALTIES IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. Penalties
28 that you could be subject to are listed in ORS 18.715.

29 When you file a Challenge to Garnishment form, the Garnishee may be required to make all
30 payments under the garnishment to the court, and the Garnishor may be required to pay to the
31 court all amounts received by the Garnishor that are subject to the challenge to the garnishment.
32 The Garnishee and Garnishor are subject to penalties if they do not. For a complete explanation of
33 their responsibilities, see ORS 18.705 and 18.708.

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36 **SECTION 3.** ORS 18.896 is amended to read:

37 18.896. (1) The challenge to execution form described in this section does not expand or restrict
38 the law relating to exempt property. A determination as to whether property is exempt from at-
39 tachment or execution must be made by reference to other law. The form provided in this section
40 may be modified to provide more information or to update the notice based on subsequent changes
41 in exemption laws.

42 (2) A challenge to execution form must be in substantially the following form:
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45 _____ COURT

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COUNTY OF _____

_____) CHALLENGE TO
Plaintiff,) EXECUTION
)
vs.) Case No. _____
)
_____)
Defendant.)

THIS FORM MAY BE USED BY THE DEBTOR ONLY TO CLAIM SUCH EXEMPTIONS FROM EXECUTION AS ARE PERMITTED BY LAW.

THIS FORM MAY BE USED BY PERSONS OTHER THAN THE DEBTOR ONLY TO CLAIM AN INTEREST IN THE PROPERTY THAT IS TO BE SOLD ON EXECUTION.

THIS FORM MAY NOT BE USED TO CHALLENGE THE VALIDITY OF THE DEBT.

I/We claim that the following described property or money is exempt from execution:

I/We believe this property is exempt from execution because (the Notice of Exempt Property at the end of this form describes most types of property that you can claim as exempt from execution):

I am a person other than the Debtor and I have the following interest in the property:

Name _____ Name _____
Signature _____ Signature _____
Address _____ Address _____

Telephone Telephone
Number _____ Number _____
(Required) (Required)

1 YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK.

2 You may seek to reclaim your exempt property by doing the following:

3 (1) Fill out the Challenge to Execution form that you received with this notice.

4 (2) Mail or deliver the Challenge to Execution form to the court administrator at the address
5 shown on the writ of execution.

6 (3) Mail or deliver a copy of the Challenge to Execution form to the judgment creditor at the
7 address shown on the writ of execution.

8 You should be prepared to explain your exemption in court. If you have any questions about the
9 execution or the debt, you should see an attorney.

10
11 YOU MAY USE THE CHALLENGE TO EXECUTION FORM ONLY TO CLAIM SUCH EX-
12 EMPTIONS FROM EXECUTION AS ARE PERMITTED BY LAW.

13
14 YOU MAY NOT USE THE CHALLENGE TO EXECUTION FORM TO CHALLENGE THE
15 VALIDITY OF THE DEBT.

16
17 IF YOU CLAIM AN EXEMPTION IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES
18 IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. Penalties that you could be subject
19 to are listed in ORS 18.899.

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21 NOTICE OF EXEMPT PROPERTY

22
23 Property belonging to you may have been taken or held in order to satisfy a debt. The debt may
24 be reflected in a judgment or in a warrant or order issued by a state agency. Important legal papers
25 are enclosed.

26 YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CARE-
27 FULLY.

28 State and federal law specify that certain property may not be taken. Some of the property that
29 you may be able to get back is listed below.

30 (1) Wages or a salary as described in ORS 18.375 and 18.385[. *Whichever of the following*
31 *amounts is greater*] **in an amount not to exceed the greater of:**

32 (a) 75 percent of your take-home wages; or

33 (b) \$170 per workweek.

34 (2) Social Security benefits.

35 (3) Supplemental Security Income (SSI).

36 (4) Public assistance (welfare).

37 (5) Unemployment benefits.

38 (6) Disability benefits (other than SSI benefits).

39 (7) Workers' compensation benefits.

40 (8) Exempt wages, Social Security benefits (other than SSI), welfare, unemployment benefits and
41 disability benefits when placed in a checking or savings account (up to \$7,500).

42 (9) Spousal support, child support or separate maintenance to the extent reasonably necessary
43 for your support or the support of any of your dependents.

44 (10) A homestead (house, mobile home or houseboat) occupied by you, or occupied by your
45 spouse, parent or child. The value of the homestead is exempt up to the following amounts:

1 (a) For a mobile home or houseboat located on land that is not owned by you, \$20,000. If you
 2 jointly own the mobile home or houseboat with another person who is also liable on the debt,
 3 \$27,000.

4 (b) For a mobile home or houseboat located on land that is owned by you, \$23,000. If you jointly
 5 own the mobile home or houseboat with another person who is also liable on the debt, \$30,000.

6 (c) For any other homestead, \$30,000. If you jointly own the homestead with another person who
 7 is also liable on the debt, \$39,600.

8 (11) Proceeds from the sale of a homestead described in item 10, up to the limits described in
 9 item 10, if you hold the proceeds for less than one year and intend to use those proceeds to procure
 10 another homestead.

11 (12) Household goods, furniture, radios, a television set and utensils with a combined value not
 12 to exceed \$3,000.

13 *(13) An automobile, truck, trailer or other vehicle with a value not to exceed \$2,150.

14 *(14) Tools, implements, apparatus, team, harness or library that are necessary to carry on your
 15 occupation, with a combined value not to exceed \$3,000.

16 *(15) Books, pictures and musical instruments with a combined value not to exceed \$600.

17 *(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed
 18 \$1,800.

19 (17) Domestic animals and poultry for family use with a combined value not to exceed \$1,000
 20 and their food for 60 days.

21 (18) Provisions and fuel for your family for 60 days.

22 (19) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt
 23 may not exceed \$1,000.

24 (20) Public or private pensions.

25 (21) Veterans' benefits and loans.

26 (22) Medical assistance benefits.

27 (23) Health insurance proceeds and disability proceeds of life insurance policies.

28 (24) Cash surrender value of life insurance policies not payable to your estate.

29 (25) Federal annuities.

30 (26) Other annuities to \$250 per month (excess over \$250 per month is subject to the same ex-
 31 emption as wages).

32 (27) Professionally prescribed health aids for you or any of your dependents.

33 *(28) Elderly rental assistance allowed pursuant to ORS 310.635.

34 *(29) Your right to receive, or property traceable to:

35 *(a) An award under any crime victim reparation law.

36 *(b) A payment or payments, not exceeding a total of \$10,000, on account of personal bodily in-
 37 jury suffered by you or an individual of whom you are a dependent.

38 *(c) A payment in compensation of loss of future earnings of you or an individual of whom you
 39 are or were a dependent, to the extent reasonably necessary for your support and the support of
 40 any of your dependents.

41 (30) Amounts paid to you as an earned income tax credit **or additional child tax credit** under
 42 federal tax law.

43 (31) Interest in personal property to the value of \$400, but this cannot be used to increase the
 44 amount of any other exemption.

45 (32) Equitable interests in property.

1 Note: If two or more people in your household owe the claim or judgment, each of them may
2 claim the exemptions marked by an asterisk (*).

3
4
5 SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND
6 SPOUSAL SUPPORT. Some property that may not otherwise be taken for payment against the debt
7 may be taken to pay for overdue support. For instance, Social Security benefits, workers' compen-
8 sation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but
9 only 75 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support
10 obligation.

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12
13 **SECTION 4.** The amendments to ORS 18.345 by section 1 of this 2007 Act apply only to
14 execution as defined in ORS 18.005 that is issued on or after the effective date of this 2007
15 Act.

Enrolled Senate Bill 301

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Oregon State Bar Debtor/Creditor Section)

CHAPTER

AN ACT

Relating to trustee notices of sale; amending ORS 86.750.

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

SECTION 1. ORS 86.750 is amended to read:

86.750. (1)(a) **Except as provided in paragraph (b) of this subsection,** the notice prescribed in ORS 86.745 shall be served upon an occupant of the property described in the trust deed in the manner in which a summons is served pursuant to ORCP 7 D(2) and 7 D(3) at least 120 days before the day the trustee conducts the sale.

(b)(A) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection on the first attempt, the person attempting service shall post a copy of the notice in a conspicuous place on the property on the date of the first attempt. The person attempting service shall make a second attempt to effect service on a day that is at least two days after the first attempt.

(B) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection on the second attempt, the person attempting service shall post a copy of the notice in a conspicuous place on the property on the date of the second attempt. The person attempting service shall make a third attempt to effect service on a day that is at least two days after the second attempt.

(C) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection on the third attempt, the person attempting service shall send a copy of the notice, bearing the word "occupant" as the addressee, to the property address by first class mail with postage prepaid.

(c) Service on an occupant is deemed effected on the earlier of the date that notice is served as provided in paragraph (a) of this subsection or the first date on which notice is posted as described in paragraph (b)(A) of this subsection.

(2) A copy of the notice of sale shall be published in a newspaper of general circulation in each of the counties in which the property is situated once a week for four successive weeks. The last publication shall be made more than 20 days prior to the date the trustee conducts the sale.

(3) On or before the date the trustee conducts the sale, **the trustee shall file the following with respect to the notice of sale for recording in the official record of the county or counties in which the property described in the deed is situated:**

(a) An affidavit of mailing, **if any** [*notice of sale, proof of service (if any)*];

- (b) An affidavit of service, if any;
- (c) An affidavit of service attempts and posting, if any; and
- (d) An affidavit of publication [*of notice of sale shall be recorded in the official records in the county or counties in which the property described in the deed is situated*].

Passed by Senate March 27, 2007

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Secretary of Senate

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President of Senate

Passed by House May 10, 2007

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Speaker of House

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State

Enrolled
Senate Bill 302

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Oregon State Bar Debtor/Creditor Section)

CHAPTER

AN ACT

Relating to judgments of foreclosure and sale; creating new provisions; and amending ORS 18.312.

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

SECTION 1. ORS 18.312 is amended to read:

18.312. (1) **Except as provided in subsection (2) of this section**, execution [*shall not issue*] **may not be issued** against the property of a deceased party[, *but such judgment shall be paid as*]. **Except as provided in subsection (2) of this section, a judgment against a deceased party may be collected only by making** a claim against the estate of the deceased party in the manner prescribed by ORS chapter 115 or ORS 114.505 to 114.560.

(2) **This section does not prevent the issuance of execution and sale of property pursuant to a judgment of foreclosure and sale of property of the decedent. If the amount realized from the sale of property is not sufficient to satisfy the judgment and collection of the deficiency is otherwise allowed by law, the amount of the deficiency may be collected by making a claim against the estate in the manner prescribed by ORS chapter 115 or ORS 114.505 to 114.560.**

SECTION 2. The amendments to ORS 18.312 by section 1 of this 2007 Act apply to all decedents, whether dying before, on or after the effective date of this 2007 Act.

Passed by Senate April 23, 2007

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Secretary of Senate

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President of Senate

Passed by House June 4, 2007

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Speaker of House

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State

Enrolled Senate Bill 303

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Oregon State Bar Debtor/Creditor Section)

CHAPTER

AN ACT

Relating to garnishment; creating new provisions; and amending ORS 18.385, 18.618, 18.625, 18.685, 18.750, 18.838, 18.840, 18.845, 18.855, 18.896 and 90.300.

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

SECTION 1. ORS 18.618 is amended to read:

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

[(a)] (A) Equitable interests, except to the extent allowed under ORS chapter 130.

[(b)] (B) Property in the custody of the law.

[(c)] (C) Property in the possession of a conservator.

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

[(e)] (E) If a residential landlord is the garnishee, property in the possession of a residential landlord that is held as a security deposit or prepaid rent under ORS 90.300.

[(f)] (F) The right of a seller under a land sale contract, as defined by ORS 18.960, to receive payments that are due more than 45 days after the writ of garnishment is delivered.

[(2)] (b) If a garnishee holds any property described in [subsection (1) of this section] **paragraph (a) of this subsection**, the garnishee must note in the garnishee response required by ORS 18.680 that the garnishee holds the property, but may not deliver the property to the garnishor.

(2)(a) Notwithstanding ORS 18.615, wages owing by a garnishee to a debtor for a specific pay period are not garnishable property if:

(A) The writ is delivered within two business days before the debtor's normal payday for the pay period;

(B) When the writ is delivered to the garnishee, the debtor's wages are paid by direct deposit to a financial institution, or the garnishee uses the Oregon Department of Administrative Services or an independent contractor as defined in ORS 670.600 as payroll administrator for the garnishee's payroll; and

(C) Before the writ is delivered to the garnishee, the garnishee issued instructions to the financial institution or the payroll administrator to pay the debtor for the pay period.

(b) If a garnishee owes any wages as described in paragraph (a) of this subsection, the garnishee must so note in the garnishee response required by ORS 18.680.

(3) Notwithstanding any other provision of law, if a voluntary or involuntary bankruptcy petition has been filed by or on behalf of the debtor after a writ of garnishment could be issued under

ORS 18.605, the garnishment of any property of the debtor in the garnishee's possession, control or custody is stayed pursuant to section 362 of the United States Bankruptcy Code (11 U.S.C. 101 to 1330).

SECTION 2. ORS 18.625 is amended to read:

18.625. (1) For any property other than wages, a writ of garnishment acts to garnish only garnishable property of the debtor that is in the garnishee's possession, control or custody at the time the writ is delivered, including money that is owed but not yet due.

(2) **Except as provided in ORS 18.618 (2)**, a writ of garnishment acts to garnish all wages owed by the garnishee to the debtor at the time the writ is delivered. Except as provided in subsection (3) of this section, a writ also acts to garnish all wages earned by the debtor by reason of services to the garnishee during the period commencing with the date the writ is delivered and ending on the earlier of:

- (a) The expiration of 90 days after the date the writ is delivered; or
- (b) The date on which the garnishment is released or satisfied in full.

(3) If a writ of garnishment is issued on behalf of a county or county agency, the writ acts to garnish all wages earned by the debtor by reason of services to the garnishee until the full amount owed to the county or county agency is paid or until the writ of garnishment is released by the county or county agency or by a court order. A writ of garnishment issued on behalf of a county or county agency shall contain language reasonably designed to notify the garnishee of the provisions of this subsection.

SECTION 3. ORS 18.838 is amended to read:

18.838. Instructions to garnishees must be in substantially the following form:

INSTRUCTIONS TO GARNISHEE

Except as specifically provided in these instructions, you must complete and deliver the Garnishee Response within seven calendar days after you receive the writ of garnishment. If the writ does not comply with Oregon law, the writ is not effective to garnish any property of the Debtor, but you still must complete and deliver the Garnishee Response. You must complete and deliver the response even though you cannot determine from the writ whether you hold any property or owe any debt to the Debtor. If the seventh calendar day is a Saturday, Sunday or legal holiday, you must deliver your response on or before the next following day that is not a Saturday, Sunday or legal holiday.

The writ is not effective, and you need not make a Garnishee Response, if:

- You do not receive the writ within 60 days after the date of issuance shown on the face of the writ.
- You do not receive an original writ of garnishment or a copy of the writ.

Statutes that may affect your rights and duties under the writ can be found in ORS 18.600 to 18.850.

NOTE: The Garnishor may be the Creditor, the attorney for the Creditor or some other person who is authorized by law to issue the writ of garnishment. See the writ to determine who the Garnishor is.

STEP 1. FILL OUT THE GARNISHEE RESPONSE.

All garnishees who are required to deliver a garnishee response must fill in Part I of the Garnishee Response. Garnishees who employ the Debtor must also fill in Part II of the response. You should keep a copy of the response for your records.

Completing Part I of the Garnishee Response. If you discover before you deliver your response that a bankruptcy petition has been filed by or on behalf of the Debtor, and the bankruptcy petition was filed after a judgment was entered against the Debtor or after the debt otherwise became subject to garnishment (see the date specified in the writ), you must put a check by the appropriate statement in Part I. If a bankruptcy petition has been filed, you should not make any payments to the Garnishor unless the court orders otherwise. You need not complete any other part of the response, but you still must sign the response and deliver it in the manner described in Step 2 of these instructions.

In all other cases you must list in Part I all money and personal property of the Debtor that is in your possession, control or custody at the time of delivery of the writ. You must also list all debts that you owe to the Debtor, whether or not those debts are currently due (e.g., money loaned to you by the Debtor that is to be repaid at a later time).

If you are the employer of the Debtor at the time the writ is delivered to you, you must put a check by the appropriate statement in Part I. In addition, you must complete Part II of the response.

If you believe that you may hold property of the Debtor or that you owe a debt to the Debtor, but you are not sure, you must put a check by the appropriate statement and provide an explanation. When you find out what property you hold that belongs to the Debtor, or you find out whether you owe money to the Debtor and how much, you must prepare and deliver an amended response. You must do this even if you find out that you have no property of the Debtor or that you do not owe anything to the Debtor.

If you determine that the writ, on its face, does not comply with Oregon laws governing writs of garnishment, or if you are unable to determine the identity of the Debtor from the information in the writ, then the writ is not effective to garnish any property of the Debtor. You must put a check by the appropriate statement in Part I and provide an explanation. You still must complete the response and deliver the response in the manner described in Step 2 of these instructions.

If you have received an order to withhold income that applies to the income of the Debtor and that order has priority over the garnishment, and if compliance with the order will reduce or eliminate the money or property that you would otherwise deliver under the garnishment, you must put a check by the appropriate statement in Part I. You still must fill out the remainder of the response and deliver the response in the manner described in Step 2 of these instructions. If you employ the Debtor, you still must complete Part II of the response.

If you receive notice of a challenge to the garnishment before you send your response, you must complete and deliver your response as otherwise required by these instructions. However, see Step 3 of these instructions regarding payment of money or delivery of property after receipt of notice of a challenge to the garnishment.

If you owe a debt to the Debtor and the Debtor owes a debt to the holder of an underlying lien on your property, you may be able to offset the amount payable to the underlying lienholder. See ORS 18.620. You must note that you have made the offset in Part I of the response (under "Other") and specify the amount that was offset.

Completing Part II of the Garnishee Response (employers only). You must fill in Part II of the response if you employ the Debtor on the date the writ of garnishment is delivered to you, or if you previously employed the Debtor and still owe wages to the Debtor on the date the writ is delivered to you.

Wages affected. **Except as provided below**, the writ garnishes all wages that you owe to the Debtor for work performed before the date you received the writ, even though the wages will not be paid until a later date. The writ also garnishes all wages that are attributable to services per-

formed during the 90-day period following the date you received the writ, even though you would not pay the Debtor for all or part of those services until after the end of the 90-day period. Wages subject to garnishment under the writ include all amounts paid by you as an employer, whether on an hourly, weekly or monthly basis, and include commission payments and bonuses.

Example 1: Debtor A is employed by you and is paid a monthly salary on the first day of each month. You receive a writ of garnishment on July 17. The writ garnishes all wages that you owe to Debtor A for work performed on or before July 17. If Debtor A was paid on July 1 for services performed in the month of June, the writ garnishes Debtor A's salary for the period beginning July 1 and ending October 15 (90 days after receipt of the writ).

The writ does not garnish any wages you owe to a Debtor for a specific pay period if:

(a) The writ is delivered to you within two business days before the Debtor's normal payday for the pay period;

(b) When the writ is delivered to you, the Debtor's wages are paid by direct deposit to a financial institution, or you use an independent contractor as payroll administrator for your payroll; and

(c) Before the writ was delivered to you, you issued instructions to the financial institution or the payroll administrator to pay the Debtor for the pay period.

If any wages are not garnishable by reason of the issuance of instructions to a financial institution or a payroll administrator as described above, you must so note in the Garnishee Response. Thereafter, you must pay to the Garnishor all wages that are subject to garnishment that are attributable to services performed by the Debtor during the 90-day period following the date you received the writ.

Calculation of wages subject to garnishment. A Wage Exemption Calculation form is attached to the writ of garnishment. You must use this form to calculate the amount of the Debtor's wages that is subject to garnishment. You should read the instructions printed on the Wage Exemption Calculation form to determine the normal wage exemption and the minimum wage exemption for each payment you make under the writ.

A Wage Exemption Calculation form must be sent with the first payment you make under the writ. For the 90-day period during which the writ is effective, you must also fill out and return a Wage Exemption Calculation form with a subsequent payment any time the initial calculation changes. Finally, you must fill out and return a Wage Exemption Calculation form with the final payment that you make under the writ.

Payment of amount subject to garnishment. Payments under the writ must be made at the following times, unless the amount owing on the judgment or other debt is fully paid before the final payment is made or the writ is released:

(a) You must make a payment to the Garnishor of all wages subject to garnishment at the time you next pay wages to the Debtor. Complete the wage exemption computation, using the Wage Exemption Calculation form, to determine the portion of the Debtor's wages that is subject to garnishment. Be sure to adjust the minimum exemption amount for any payment that covers less than a full pay period. You must include a copy of the Wage Exemption Calculation form with this first payment.

Example 2: Using the facts given in Example 1, when you next make any payment of wages to Debtor A after you receive the writ on July 17, you must complete the Wage Exemption Calculation form and send the form to the Garnishor along with all amounts determined to be subject to garnishment that are attributable to the period covered by the payment. If you pay Debtor A on August 1, the payment will be for all wages attributable to the period beginning July 1 and ending July 31.

(b) Unless the writ of garnishment is satisfied or released, during the 90-day period following the date you received the writ, you must pay to the Garnishor all wages that are determined to be subject to garnishment whenever you issue a paycheck to the Debtor. If the Debtor is paid on a weekly basis, you must make payment under the writ on a weekly basis. If the Debtor is paid on a monthly basis, you must make payment under the writ on a monthly basis. If the amount paid to the Debtor varies from paycheck to paycheck, or changes at any time from the amount being paid at the time the writ was delivered to you, you must perform a new wage exemption computation to determine the amount of wages subject to garnishment under the writ. You must send a copy of the new Wage Exemption Calculation form with your payment to the Garnishor.

Example 3: Using the facts given above, as you make each subsequent payment of wages to Debtor A you must make a payment of that portion of the Debtor's wages that are subject to garnishment. If you continue to pay Debtor A on the first of each month, payments must be made on September 1 and October 1.

(c) Upon the expiration of the 90-day period, you must make a final payment to the Garnishor for all wages that were owing to the Debtor for the work performed by the Debtor through the 90th day following your receipt of the writ. This payment may be made at the time of the Debtor's next paycheck. You will need to complete another Wage Exemption Calculation form to determine the amount of the wages subject to garnishment.

Example 4: Using the facts given above, you must make a final payment for the wages owing to Debtor A for the period beginning October 1 and ending October 15. You may make this payment at the time you issue Debtor A's paycheck on November 1, but you must make the payment at any time you issue a paycheck to Debtor A after October 15. Be sure that in completing the wage exemption computation for the final payment you adjust the minimum exemption amount to take into account the fact that the period covered is only 15 days of the full month (see instructions on Wage Exemption Calculation form).

Processing fee. You may collect a \$1 processing fee for each week of wages, or fraction of a week of wages, for which a payment is made under the writ. The fee must be collected after you make the last payment under the writ. The fee must be withheld from the wages of the debtor, and is in addition to the amounts withheld for payment to the garnishor under the writ or under any other writ you have received.

If you receive more than one writ of garnishment. If you receive a second writ of garnishment for the same Debtor from another Garnishor, the first writ will have priority for wages. The priority of the first writ lasts for the 90-day period following delivery of that writ to you, or until the first writ is paid in full, whichever comes first. In your response to the second writ, you must put a check by the appropriate statement in Part II and indicate the date on which the first writ will expire (90 days after the date you received the writ). You should make no payments under the second writ until expiration of the first writ. The expiration date of the second writ is 90 days after the date you received the second writ; the expiration date is not affected by any delay in payment attributable to the priority of the first writ.

STEP 2. DELIVER THE GARNISHEE RESPONSE.

You must deliver your Garnishee Response and copies of the response in the manner provided in this step. The response and copies may be mailed or delivered personally.

You must complete and deliver the Garnishee Response within seven calendar days after you receive the writ of garnishment. If the seventh calendar day is a Saturday, Sunday or legal holiday,

you must deliver your response on or before the next following day that is not a Saturday, Sunday or legal holiday.

If you are required to hold any property under the writ or make any payment under the writ, either at the time of making your response or later, you must:

(a) Send the original of your Garnishee Response to the Garnishor at the address indicated on the writ under Important Addresses.

(b) Send a copy of your Garnishee Response to the court administrator at the address indicated on the writ under Important Addresses.

(c) Send a copy of your Garnishee Response to the Debtor if an address is indicated on the writ under Important Addresses.

If you are not required to hold any property under the writ or make any payment under the writ, either at the time of making your response or later, you must:

(a) Send the original of your Garnishee Response to the Garnishor at the address indicated on the writ under Important Addresses.

(b) Send a copy of your Garnishee Response to the Debtor if an address is indicated on the writ under Important Addresses.

STEP 3. DELIVER THE FUNDS OR OTHER PROPERTY.

As long as the writ is in effect, you may be liable to the Creditor if you pay any debt or turn over any property to the Debtor except as specifically allowed by law. If you have any money or property of the Debtor in your possession, control or custody at the time of delivery of the writ, or owe any debt to the Debtor, you must pay the money or hold the property as required by this step. Exceptions to this requirement are listed below.

IF YOU ARE HOLDING MONEY FOR THE DEBTOR OR OWE A DEBT THAT IS CURRENTLY DUE, you must pay the money to the Garnishor with your response. You must send your payment to the Garnishor at the address indicated on the writ under Important Addresses. Make your check payable to the Garnishor.

IF YOU OWE A DEBT TO THE DEBTOR THAT WILL BECOME DUE WITHIN 45 DAYS AFTER THE DATE YOU RECEIVED THE WRIT, you must send your payment directly to the Garnishor at the address provided in the writ when the debt becomes due. Make your check payable to the Garnishor.

IF YOU ARE HOLDING PROPERTY THAT BELONGS TO THE DEBTOR, OR OWE A DEBT TO THE DEBTOR THAT WILL NOT BECOME DUE WITHIN 45 DAYS AFTER THE DATE YOU RECEIVED THE WRIT, you must keep the property or debt in your possession, control or custody until you receive written notice from the Sheriff. The Sheriff's notice will tell you what to do with the property or debt. If you have followed all of the instructions in the writ and you receive no notice from the Sheriff within 30 days after the date on which you delivered your Garnishee Response, you may treat the writ as being of no further force or effect.

EXCEPTIONS:

1. Challenge to garnishment or specific directions from court. If you are making any payments under the garnishment and before making a payment you receive notice of a challenge to the garnishment from the court, or receive a specific direction from the court to make payments to the court, you must send or deliver the payment directly to the court administrator. If the money is currently due when you receive the notice, send the payment promptly to the court. If the payment

is for a debt that is payable within 45 days after you receive the writ, make the payment to the court promptly when it becomes due. If you make payment by check, make the check payable to the State of Oregon. Because you may be liable for any payment that does not reach the court, it is better not to send cash by mail.

A challenge to the garnishment does not affect your duty to follow the instructions you receive from the Sheriff for property that belongs to the Debtor and debts that you owe to the Debtor that do not become due within 45 days.

2. Previous writ of garnishment. If you receive a second writ of garnishment for the same Debtor from another Garnishor, the first writ will have priority and you need not make payments or deliver property under the second writ to the extent that compliance with the first writ will reduce or eliminate the payment of money or delivery of property that you would otherwise make under the garnishment. You must still deliver a Garnishee Response to the second writ, and must commence payment under the second writ as soon as the first writ is satisfied or expires.

3. Offset for payment of underlying lien. If you owe a debt to the Debtor and the Debtor owes a debt to the holder of an underlying lien on your property, you may be able to offset the amount payable to the underlying lienholder. See ORS 18.620.

4. Subsequent events:

(a) Bankruptcy. If you make your response and then discover that a voluntary or involuntary bankruptcy petition has been filed by or on behalf of the Debtor after the judgment was entered against the Debtor or after the debt otherwise became subject to garnishment (see date in writ), you may not make any further payments or delivery of property under the writ unless the court orders otherwise. If you have not delivered all property that is subject to garnishment under this writ when you discover that a bankruptcy petition has been filed, you must mail the following notice to the Garnishor and to the Debtor.

(b) Order to withhold income. If you make your response and then receive an order to withhold income that has priority over the writ, you may make payments or deliver property under the writ only after payment of the amounts required under the order to withhold income. If you have not delivered all property that is subject to garnishment under this writ when you receive an order to withhold income that has priority, you must mail the following notice to the Garnishor and to the Debtor.

SUPPLEMENTAL GARNISHEE
RESPONSE

TO: The Garnishor and the Debtor

RE: Writ of garnishment received _____, 2__ (date), in the case of _____ (Plaintiff)
vs. _____ (Defendant), Circuit Court of _____ County, Oregon, Case No. _____.

The undersigned Garnishee furnished a Garnishee Response to this writ of garnishment on _____, 2__ (date). Since that time (check appropriate statement):

___ I have discovered that a voluntary or involuntary bankruptcy petition has been filed by or on behalf of the Debtor after the judgment was entered against the Debtor or after the debt otherwise became subject to garnishment.

— I have received an order to withhold income of the Debtor by reason of a support obligation. Under ORS 25.375, the order to withhold income has priority over any other legal process under Oregon law against the same income. The withholding of income pursuant to the order to withhold income might reduce or eliminate subsequent payments under the garnishment. (Provide details, including the name of the agency serving the order to withhold, the date the order was served on you and the amounts to be withheld.)

Dated _____, 2__

Name of Garnishee

Signature

Address

SPECIAL INSTRUCTIONS FOR BANKS
AND OTHER FINANCIAL INSTITUTIONS

If the Garnishor fails to pay the search fee required by ORS 18.790 and you do not employ the Debtor, you are not required to deliver a Garnishee Response and you may deal with any property of the Debtor as though the garnishment had not been issued.

If the Debtor owes a debt to you that was due at the time you received the writ of garnishment, you may be able to offset the amount of that debt. See ORS 18.795. You must note that you have made the offset in Part I of the Garnishee Response (under "Other") and specify the amount that was offset.

Before making a payment under the writ, you may first deduct any processing fee that you are allowed under ORS 18.790.

You need not deliver any property contained in a safe deposit box unless the Garnishor pays you in advance for the costs that will be incurred in gaining entry to the box. See ORS 18.792.

SECTION 4. ORS 18.855 is amended to read:

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

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

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

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

(5) Notwithstanding ORS 18.700, a challenge to a notice of garnishment issued by a state agency must be delivered in person or by first class mail to the state agency within the time specified by ORS 18.700 (2). Within 14 days after receiving the challenge, the state agency must either concede the challenge or give the person making the challenge opportunity for hearing. If the person making the challenge requests a hearing, the agency shall immediately refer the challenge to the Office of Administrative Hearings established under ORS 183.605. The hearing shall be conducted as soon as possible. Notwithstanding ORS 183.315, the hearing shall be conducted as a contested case hearing. An issue that was decided in a previous hearing, or for which the debtor was previously afforded an opportunity for hearing, may not be reconsidered.

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

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

SECTION 5. ORS 18.685 is amended to read:

18.685. A garnishee must note upon a garnishee response the date on which the garnishee received the writ of garnishment. The garnishee must also note upon the response the following information and deliver the response in the manner provided by ORS 18.690:

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

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

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

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

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

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

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

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

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

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

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

SECTION 6. ORS 18.750 is amended to read:

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

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

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

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

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

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

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

SECTION 7. ORS 90.300 is amended to read:

90.300. (1) As used in this section, "security deposit" includes any last month's rent deposit.

(2) Except as otherwise provided in this section, a landlord may require the payment of a security deposit. A security deposit or prepaid rent shall be held by the landlord for the tenant who is a party to the rental agreement. The claim of a tenant to the security deposit or prepaid rent shall be prior to the claim of any creditor of the landlord, including a trustee in bankruptcy. The holder of the landlord's interest in the premises at the time of termination of the tenancy is responsible to the tenant for any security deposit or prepaid rent and is bound by this section.

(3)(a) A landlord may not change the rental agreement to require the payment of a new or increased security deposit during the first year after the tenancy has begun, except that an additional deposit may be required if the landlord and tenant agree to modify the terms and conditions of the rental agreement to permit a pet or for other cause and the additional deposit relates to that modification. This paragraph does not prevent the collection of a security deposit that was provided for under an initial rental agreement but remained unpaid at the time the tenancy began.

(b) If a landlord requires a new or increased security deposit after the first year of the tenancy, the landlord shall allow the tenant at least three months to pay that deposit.

(4) The landlord may claim all or part of the security deposit only if the security deposit was made for any or all of the purposes provided by subsection (5) of this section.

(5) The landlord may claim from the security deposit only the amount reasonably necessary:

(a) To remedy the tenant's defaults in the performance of the rental agreement including, but not limited to, unpaid rent; and

(b) To repair damages to the premises caused by the tenant, not including ordinary wear and tear.

(6) A landlord may not require that a security deposit or prepaid rent be required or forfeited to the landlord upon the failure of the tenant to maintain a tenancy for a minimum number of months in a month-to-month tenancy.

(7) Any last month's rent deposit must be applied to the rent due for the last month of the tenancy:

(a) Upon either the landlord or tenant giving to the other a notice of termination, pursuant to this chapter, other than a notice of termination under ORS 90.394;

(b) Upon agreement by the landlord and tenant to terminate the tenancy; or

(c) Upon termination pursuant to the provisions of a written rental agreement for a term tenancy.

(8) Any portion of a last month's rent deposit not applied as provided under subsection (7) of this section shall be accounted for and refunded as provided under subsections (10) to (12) of this section. Unless the tenant and landlord agree otherwise, a last month's rent deposit shall not be applied to rent due for any period other than the last month of the tenancy. A last month's rent deposit shall not operate to limit the amount of rent charged unless a written rental agreement provides otherwise.

(9) Upon termination of the tenancy, a landlord shall account for and refund to the tenant the unused balance of any prepaid rent not previously refunded to the tenant as required by ORS 90.380 and 105.120 (4)(b) or any other provision of this chapter, in the same manner as required for security deposits by this section. The landlord may claim from the remaining prepaid rent only the amount reasonably necessary to pay the tenant's unpaid rent.

(10) In order to claim all or part of any prepaid rent or security deposit, within 31 days after the termination of the tenancy and delivery of possession the landlord shall give to the tenant a written accounting that states specifically the basis or bases of the claim. The landlord shall give a separate accounting for security deposits and for prepaid rent.

(11) The security deposit or prepaid rent or portion thereof not claimed in the manner provided by subsections (9) and (10) of this section shall be returned to the tenant not later than 31 days after the termination of the tenancy and delivery of possession to the landlord.

(12) The landlord shall give the written accounting as required by subsection (10) of this section or shall return the security deposit or prepaid rent as required by subsection (11) of this section by personal delivery or by first class mail.

(13) If a security deposit or prepaid rent secures a tenancy for a space for a tenant owned and occupied manufactured dwelling or floating home, whether or not in a facility, and the dwelling or home is abandoned as described in ORS 90.425 (2) or 90.675 (2), the 31-day period described in subsections (10) and (11) of this section commences on the earliest of:

(a) Waiver of the abandoned property process under ORS 90.425 (25) or 90.675 (22);

(b) Removal of the manufactured dwelling or floating home from the rented space;

(c) Destruction or other disposition of the manufactured dwelling or floating home under ORS 90.425 (10)(b) or 90.675 (10)(b); or

(d) Sale of the manufactured dwelling or floating home pursuant to ORS 90.425 (10)(a) or 90.675 (10)(a).

(14) If the landlord fails to comply with subsection (11) of this section or if the landlord in bad faith fails to return all or any portion of any prepaid rent or security deposit due to the tenant

under this chapter or the rental agreement, the tenant may recover the money due in an amount equal to twice the amount:

- (a) Withheld without a written accounting under subsection (10) of this section; or
- (b) Withheld in bad faith.

(15)(a) A security deposit or prepaid rent in the possession of the landlord is not garnishable property, as provided in ORS 18.618.

(b) If a security deposit or prepaid rent is delivered to a garnishor in violation of ORS 18.618 [(2)] (1)(b), the landlord that delivered the security deposit or prepaid rent to the garnishor shall allow the tenant at least 30 days after a copy of the garnishee response required by ORS 18.680 is delivered to the tenant under ORS 18.690 to restore the security deposit or prepaid rent. If the tenant fails to restore a security deposit or prepaid rent under the provisions of this paragraph before the tenancy terminates, and the landlord retains no security deposit or prepaid rent from the tenant after the garnishment, the landlord is not required to refund or account for the security deposit or prepaid rent under subsection (9) of this section.

(16) This section does not preclude the landlord or tenant from recovering other damages under this chapter.

SECTION 8. The amendments to ORS 18.618, 18.625, 18.685, 18.750, 18.838, 18.855 and 90.300 by sections 1 to 7 of this 2007 Act apply only to writs of garnishment and notices of garnishment delivered on or after the effective date of this 2007 Act.

SECTION 9. ORS 18.385 is amended to read:

18.385. (1) Except as provided in this section, 75 percent of the disposable earnings of an individual are exempt from execution.

(2) The disposable earnings of an individual are exempt from execution to the extent that payment under a garnishment would result in net disposable earnings for an individual of less than the following amounts:

- (a) [\$170] **\$183** for any period of one week or less;
- (b) [\$340] **\$366** for any two-week period;
- (c) [\$368] **\$394** for any half-month period;
- (d) [\$731] **\$786** for any one-month period; and

(e) For any other period longer than one week, [\$170] **\$183** multiplied by that fraction produced by dividing the number of days for which the earnings are paid by seven. The amount calculated under this paragraph must be rounded to the nearest dollar.

(3) If an individual is paid for a period shorter than one week, the exemption calculated under subsection (2) of this section may not exceed [\$170] **\$183** for any one-week period.

(4) An employer shall deduct from the amount of disposable earnings determined to be nonexempt under subsections (1) to (3) of this section any amounts withheld from the individual's earnings for the same period of time under an order issued pursuant to ORS 25.378, 419B.408 or 419C.600 or ORS chapter 110. The employer shall make payment under a garnishment only of those amounts remaining after the deduction is made.

(5) Subsections (1) to (4) of this section do not apply to:

- (a) Any order of a court of bankruptcy.
- (b) Any debt due for federal tax.

(6) Subsections (2) to (4) of this section do not apply to any debt due for state tax. Subsection (1) of this section does not apply to a debt due for state tax if a state agency issues a special notice of garnishment under ORS 18.855 (6).

(7) A court may not make, execute or enforce any order or process in violation of this section.

(8) Any waiver by an individual of the provisions of this section is void.

(9) An employer may not discharge any individual because the individual has had earnings garnished.

SECTION 10. ORS 18.840 is amended to read:

18.840. A wage exemption calculation form must be delivered to the garnishee with each writ of garnishment. A wage exemption calculation form must be in substantially the following form:

WAGE EXEMPTION CALCULATION
(to be filled out by employers only)

1. Debtor's gross wages for period covered by this payment..... \$_____
2. Total amount required to be withheld by law for amount in Line 1 (Federal and state withholding, Social Security, etc.)..... \$_____
3. Debtor's disposable wages (Subtract Line 2 from Line 1)..... \$_____
4. Normal exemption (Enter 75 percent of Line 3) \$_____
5. Minimum exemption (check one)
— [\$170] **\$183** (payment of wages weekly)
— [\$340] **\$366** (payment of wages every two weeks)
— [\$368] **\$394** (payment of wages half-monthly)
— [\$731] **\$786** (payment of wages monthly)
— \$_____ (Any other period longer than one week, including partial payments for less than full pay period)
(Multiply [\$170] **\$183** by number of weeks or fraction of a week)
6. Wages exempt from garnishment (Line 4 or 5, whichever is greater) \$_____
7. Nonexempt wages (Subtract Line 6 from Line 3) \$_____
8. Amount withheld for this pay period pursuant to a support order under support withholding process or under another writ with priority \$_____
9. Wages subject to garnishment (Subtract Line 8 from Line 7)..... \$_____

INSTRUCTIONS FOR WAGE
EXEMPTION CALCULATION FORM

If you employ the Debtor named in the writ of garnishment, you must fill out and return this Wage Exemption Calculation form. A Wage Exemption Calculation form must be sent with the first payment you make under the writ. For the 90-day period during which the writ is effective, you must also fill out and return a Wage Exemption Calculation form with a subsequent payment any time the initial calculation changes. Finally, you must fill out and return a Wage Exemption Calculation form with the final payment that you make under the writ.

Normal wage exemption. The wage exemption calculation is based on the amount of the payment you make under the writ of garnishment. The normal wage exemption in Line 4 is 75 percent of the employee's disposable wages in Line 3.

Minimum wage exemption. The minimum exemption in Line 5 is also based on the amount of the payment you are making. The minimum exemption is designed to ensure that an employee receives at least a certain minimum amount in any one-week period. If the payment is for a one-week period (without regard to whether the period is a calendar week or any other seven-day period), the minimum exemption is [~~\$170~~] **\$183**. The minimum exemption is [~~\$340~~] **\$366** if the payment is for a two-week period. If the payment is for one-half of one month (i.e., the Debtor is paid twice each month), the minimum exemption is [~~\$368~~] **\$394**. The minimum exemption for a monthly payment is [~~\$731~~] **\$786**.

If the payment you are making is based on some period of time other than one week, two weeks, half month or month, and the payment is for more than one week, you must calculate the minimum exemption by multiplying [~~\$170~~] **\$183** by the number of weeks covered by the paycheck, including any fraction of a week. You should round the amount calculated to the nearest dollar.

Example 1: You pay Debtor A every 10 days. Each 10-day period is equal to 1.429 weeks (10 divided by 7). The minimum exemption is [~~\$243~~] **\$262** (~~[\$170] \$183~~ × 1.429 rounded to the nearest dollar).

You must use this same calculation for computing the minimum exemption when making a payment for less than a full pay period (e.g., for the final payment at the end of the 90-day period covered by the writ).

Example 2: You pay Debtor A on a monthly basis. You are required to make a final payment under a writ of garnishment for the wages owing to Debtor A for the period beginning October 1 and ending October 15. This period is equal to 2.143 weeks (15 divided by 7). The minimum exemption is [~~\$364~~] **\$392** (~~[\$170] \$183~~ × 2.143 rounded to the nearest dollar).

The amount of time actually worked by the Debtor during the period covered by the paycheck does not affect the calculation of the minimum exemption.

Example 3: You pay Debtor A on a weekly basis. Debtor A works two days per week. The minimum exemption is [~~\$170~~] **\$183** for each weekly payment you make for Debtor A.

If the payment you are making is based on a period of time less than one week, the minimum wage exemption may not exceed [~~\$170~~] **\$183** for any one-week period.

If you receive more than one writ of garnishment. If you receive more than one writ of garnishment for the same debtor, the writs have priority based on the date on which you receive them. If the full amount of wages subject to garnishment for a given pay period is paid on the first writ, you should not make any payment on subsequently received writs until the first writ expires. In some cases, it may be necessary to make payments on two or more writs for the same pay period.

Example 4. You have received two writs of garnishment for Debtor A. You pay Debtor A on a monthly basis. The first writ expires on October 16. The second writ will not expire until November 15. You will need to prepare two wage exemption calculation forms for Debtor A's October wages and make payments under both writs. The wage exemption calculation form for the first writ will be for the wages attributable to October 1 to October 15 as described in Example 2. The wage exemption calculation form for the second writ will be for all wages for the month of October, but the amounts withheld under the first writ

must be subtracted on Line 8 to determine the October wages subject to garnishment under the second writ.

SECTION 11. ORS 18.845 is amended to read:

18.845. A notice of exemptions form must be in substantially the form set forth in this section. Nothing in the notice form described in this section is intended to expand or restrict the law relating to exempt property. A determination as to whether property is exempt from execution, attachment and garnishment must be made by reference to other law. The form provided in this section may be modified to provide more information or to update the notice based on subsequent changes in exemption laws.

**NOTICE OF EXEMPT PROPERTY
AND INSTRUCTIONS FOR
CHALLENGE TO GARNISHMENT**

Property belonging to you may have been taken or held in order to satisfy a debt. The debt may be reflected in a judgment or in a warrant or order issued by a state agency. Important legal papers are enclosed.

YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CAREFULLY.

State and federal law specify that certain property may not be taken. Some of the property that you may be able to get back is listed below.

(1) Wages or a salary as described in ORS 18.375 and 18.385. Whichever of the following amounts is greater:

- (a) 75 percent of your take-home wages; or
 - (b) [~~\$170~~] **\$183** per workweek.
- (2) Social Security benefits.
- (3) Supplemental Security Income (SSI).
- (4) Public assistance (welfare).
- (5) Unemployment benefits.
- (6) Disability benefits (other than SSI benefits).
- (7) Workers' compensation benefits.

(8) Exempt wages, Social Security benefits (other than SSI), welfare, unemployment benefits and disability benefits when placed in a checking or savings account (up to \$7,500).

(9) Spousal support, child support or separate maintenance to the extent reasonably necessary for your support or the support of any of your dependents.

(10) A homestead (house, mobile home or houseboat) occupied by you, or occupied by your spouse, parent or child. The value of the homestead is exempt up to the following amounts:

(a) For a mobile home or houseboat located on land that is not owned by you, \$20,000. If you jointly own the mobile home or houseboat with another person who is also liable on the debt, \$27,000.

(b) For a mobile home or houseboat located on land that is owned by you, \$23,000. If you jointly own the mobile home or houseboat with another person who is also liable on the debt, \$30,000.

(c) For any other homestead, \$30,000. If you jointly own the homestead with another person who is also liable on the debt, \$39,600.

(11) Proceeds from the sale of a homestead described in item 10, up to the limits described in item 10, if you hold the proceeds for less than one year and intend to use those proceeds to procure another homestead.

(12) Household goods, furniture, radios, a television set and utensils with a combined value not to exceed \$3,000.

- *(13) An automobile, truck, trailer or other vehicle with a value not to exceed \$2,150.
- *(14) Tools, implements, apparatus, team, harness or library that are necessary to carry on your occupation, with a combined value not to exceed \$3,000.
- *(15) Books, pictures and musical instruments with a combined value not to exceed \$600.
- *(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed \$1,800.
- (17) Domestic animals and poultry for family use with a combined value not to exceed \$1,000 and their food for 60 days.
- (18) Provisions and fuel for your family for 60 days.
- (19) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt may not exceed \$1,000.
- (20) Public or private pensions.
- (21) Veterans' benefits and loans.
- (22) Medical assistance benefits.
- (23) Health insurance proceeds and disability proceeds of life insurance policies.
- (24) Cash surrender value of life insurance policies not payable to your estate.
- (25) Federal annuities.
- (26) Other annuities to \$250 per month (excess over \$250 per month is subject to the same exemption as wages).
- (27) Professionally prescribed health aids for you or any of your dependents.
- *(28) Elderly rental assistance allowed pursuant to ORS 310.635.
- (29) Your right to receive, or property traceable to:
 - (a) An award under any crime victim reparation law.
 - (b) A payment or payments, not exceeding a total of \$10,000, on account of personal bodily injury suffered by you or an individual of whom you are a dependent.
 - (c) A payment in compensation of loss of future earnings of you or an individual of whom you are or were a dependent, to the extent reasonably necessary for your support and the support of any of your dependents.
- (30) Amounts paid to you as an earned income tax credit under federal tax law.
- *(31) Interest in personal property to the value of \$400, but this cannot be used to increase the amount of any other exemption.
- (32) Equitable interests in property.
- (33) Security deposits or prepaid rent held by a residential landlord under ORS 90.300.
- (34) If the amount shown as owing on the Debt Calculation form exceeds the amount you actually owe to the creditor, the difference between the amount owed and the amount shown on the Debt Calculation form.

Note: If two or more people in your household owe the claim or judgment, each of them may claim the exemptions marked by an asterisk (*).

SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND SPOUSAL SUPPORT. Some property that may not otherwise be taken for payment against the debt may be taken to pay for overdue support. For instance, Social Security benefits, workers' compensation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but only 75 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support obligation.

YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK. You may seek to reclaim your exempt property by doing the following:

- (1) Fill out the Challenge to Garnishment form that you received with this notice.

(2) Mail or deliver the Challenge to Garnishment form to the court administrator at the address shown on the writ of garnishment, and mail or deliver a copy of the form to the Garnishor at the address shown on the writ of garnishment. If you wish to claim wages or salary as exempt, you must mail or deliver the form within 120 days after you receive this notice. If you wish to claim that any other money or property is exempt, or claim that the property is not subject to garnishment, you must mail or deliver the form within 30 days after you receive this notice. You have the burden of showing that your challenge is made on time, so you should keep records showing when the challenge was mailed or delivered.

(3) The law only requires that the Garnishor hold the garnished money or property for 10 days before applying it to the Creditor's use. You may be able to keep the property from being used by the Creditor by promptly following (1) and (2) above.

You should be prepared to explain your exemption in court. If you have any questions about the garnishment or the debt, you should see an attorney.

YOU MAY USE THE CHALLENGE TO GARNISHMENT FORM ONLY FOR THE FOLLOWING PURPOSES:

- (1) To claim such exemptions from garnishment as are permitted by law.
- (2) To assert that property is not garnishable property under ORS 18.618.
- (3) To assert that the amount specified in the writ of garnishment as being subject to garnishment is greater than the total amount owed.

YOU MAY NOT USE THE CHALLENGE TO GARNISHMENT FORM TO CHALLENGE THE VALIDITY OF THE DEBT.

IF YOU FILE A CHALLENGE TO A GARNISHMENT IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. Penalties that you could be subject to are listed in ORS 18.715.

When you file a Challenge to Garnishment form, the Garnishee may be required to make all payments under the garnishment to the court, and the Garnishor may be required to pay to the court all amounts received by the Garnishor that are subject to the challenge to the garnishment. The Garnishee and Garnishor are subject to penalties if they do not. For a complete explanation of their responsibilities, see ORS 18.705 and 18.708.

SECTION 12. ORS 18.896 is amended to read:

18.896. (1) The challenge to execution form described in this section does not expand or restrict the law relating to exempt property. A determination as to whether property is exempt from attachment or execution must be made by reference to other law. The form provided in this section may be modified to provide more information or to update the notice based on subsequent changes in exemption laws.

(2) A challenge to execution form must be in substantially the following form:

_____ COURT
COUNTY OF _____

_____) CHALLENGE TO
Plaintiff,) EXECUTION
)
vs.) Case No. _____
)
_____)
Defendant.)

THIS FORM MAY BE USED BY THE DEBTOR ONLY TO CLAIM SUCH EXEMPTIONS FROM EXECUTION AS ARE PERMITTED BY LAW.

THIS FORM MAY BE USED BY PERSONS OTHER THAN THE DEBTOR ONLY TO CLAIM AN INTEREST IN THE PROPERTY THAT IS TO BE SOLD ON EXECUTION.

THIS FORM MAY NOT BE USED TO CHALLENGE THE VALIDITY OF THE DEBT.

I/We claim that the following described property or money is exempt from execution:

I/We believe this property is exempt from execution because (the Notice of Exempt Property at the end of this form describes most types of property that you can claim as exempt from execution):

I am a person other than the Debtor and I have the following interest in the property:

Name _____	Name _____
Signature _____	Signature _____
Address _____	Address _____
_____	_____
Telephone Number _____ (Required)	Telephone Number _____ (Required)

YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK.
You may seek to reclaim your exempt property by doing the following:

- (1) Fill out the Challenge to Execution form that you received with this notice.
- (2) Mail or deliver the Challenge to Execution form to the court administrator at the address shown on the writ of execution.
- (3) Mail or deliver a copy of the Challenge to Execution form to the judgment creditor at the address shown on the writ of execution.

You should be prepared to explain your exemption in court. If you have any questions about the execution or the debt, you should see an attorney.

YOU MAY USE THE CHALLENGE TO EXECUTION FORM ONLY TO CLAIM SUCH EXEMPTIONS FROM EXECUTION AS ARE PERMITTED BY LAW.

YOU MAY NOT USE THE CHALLENGE TO EXECUTION FORM TO CHALLENGE THE VALIDITY OF THE DEBT.

IF YOU CLAIM AN EXEMPTION IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. Penalties that you could be subject to are listed in ORS 18.899.

NOTICE OF EXEMPT PROPERTY

Property belonging to you may have been taken or held in order to satisfy a debt. The debt may be reflected in a judgment or in a warrant or order issued by a state agency. Important legal papers are enclosed.

YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CAREFULLY.

State and federal law specify that certain property may not be taken. Some of the property that you may be able to get back is listed below.

(1) Wages or a salary as described in ORS 18.375 and 18.385. Whichever of the following amounts is greater:

- (a) 75 percent of your take-home wages; or
 - (b) [~~\$170~~] **\$183** per workweek.
- (2) Social Security benefits.
- (3) Supplemental Security Income (SSI).
- (4) Public assistance (welfare).
- (5) Unemployment benefits.
- (6) Disability benefits (other than SSI benefits).
- (7) Workers' compensation benefits.

(8) Exempt wages, Social Security benefits (other than SSI), welfare, unemployment benefits and disability benefits when placed in a checking or savings account (up to \$7,500).

(9) Spousal support, child support or separate maintenance to the extent reasonably necessary for your support or the support of any of your dependents.

(10) A homestead (house, mobile home or houseboat) occupied by you, or occupied by your spouse, parent or child. The value of the homestead is exempt up to the following amounts:

(a) For a mobile home or houseboat located on land that is not owned by you, \$20,000. If you jointly own the mobile home or houseboat with another person who is also liable on the debt, \$27,000.

(b) For a mobile home or houseboat located on land that is owned by you, \$23,000. If you jointly own the mobile home or houseboat with another person who is also liable on the debt, \$30,000.

(c) For any other homestead, \$30,000. If you jointly own the homestead with another person who is also liable on the debt, \$39,600.

(11) Proceeds from the sale of a homestead described in item 10, up to the limits described in item 10, if you hold the proceeds for less than one year and intend to use those proceeds to procure another homestead.

(12) Household goods, furniture, radios, a television set and utensils with a combined value not to exceed \$3,000.

*(13) An automobile, truck, trailer or other vehicle with a value not to exceed \$2,150.

*(14) Tools, implements, apparatus, team, harness or library that are necessary to carry on your occupation, with a combined value not to exceed \$3,000.

*(15) Books, pictures and musical instruments with a combined value not to exceed \$600.

*(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed \$1,800.

(17) Domestic animals and poultry for family use with a combined value not to exceed \$1,000 and their food for 60 days.

(18) Provisions and fuel for your family for 60 days.

(19) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt may not exceed \$1,000.

- (20) Public or private pensions.
 - (21) Veterans' benefits and loans.
 - (22) Medical assistance benefits.
 - (23) Health insurance proceeds and disability proceeds of life insurance policies.
 - (24) Cash surrender value of life insurance policies not payable to your estate.
 - (25) Federal annuities.
 - (26) Other annuities to \$250 per month (excess over \$250 per month is subject to the same exemption as wages).
 - (27) Professionally prescribed health aids for you or any of your dependents.
 - * (28) Elderly rental assistance allowed pursuant to ORS 310.635.
 - * (29) Your right to receive, or property traceable to:
 - * (a) An award under any crime victim reparation law.
 - * (b) A payment or payments, not exceeding a total of \$10,000, on account of personal bodily injury suffered by you or an individual of whom you are a dependent.
 - * (c) A payment in compensation of loss of future earnings of you or an individual of whom you are or were a dependent, to the extent reasonably necessary for your support and the support of any of your dependents.
 - (30) Amounts paid to you as an earned income tax credit under federal tax law.
 - (31) Interest in personal property to the value of \$400, but this cannot be used to increase the amount of any other exemption.
 - (32) Equitable interests in property.
- Note: If two or more people in your household owe the claim or judgment, each of them may claim the exemptions marked by an asterisk (*).

SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND SPOUSAL SUPPORT. Some property that may not otherwise be taken for payment against the debt may be taken to pay for overdue support. For instance, Social Security benefits, workers' compensation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but only 75 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support obligation.

SECTION 13. The amendments to ORS 18.385, 18.840, 18.845 and 18.896 by sections 9 to 12 of this 2007 Act become operative on the effective date of this 2007 Act, and apply only to writs of garnishment and notices of garnishment delivered on or after January 1, 2008.

SECTION 14. ORS 18.385, as amended by section 9 of this 2007 Act, is amended to read:

18.385. (1) Except as provided in this section, 75 percent of the disposable earnings of an individual are exempt from execution.

(2) The disposable earnings of an individual are exempt from execution to the extent that payment under a garnishment would result in net disposable earnings for an individual of less than the following amounts:

- (a) [~~\$183~~] **\$196** for any period of one week or less;
- (b) [~~\$366~~] **\$392** for any two-week period;
- (c) [~~\$394~~] **\$420** for any half-month period;
- (d) [~~\$786~~] **\$840** for any one-month period; and

(e) For any other period longer than one week, [~~\$183~~] **\$196** multiplied by that fraction produced by dividing the number of days for which the earnings are paid by seven. The amount calculated under this paragraph must be rounded to the nearest dollar.

(3) If an individual is paid for a period shorter than one week, the exemption calculated under subsection (2) of this section may not exceed [~~\$183~~] **\$196** for any one-week period.

(4) An employer shall deduct from the amount of disposable earnings determined to be nonexempt under subsections (1) to (3) of this section any amounts withheld from the individual's earnings for the same period of time under an order issued pursuant to ORS 25.378, 419B.408 or 419C.600 or ORS chapter 110. The employer shall make payment under a garnishment only of those amounts remaining after the deduction is made.

(5) Subsections (1) to (4) of this section do not apply to:

(a) Any order of a court of bankruptcy.

(b) Any debt due for federal tax.

(6) Subsections (2) to (4) of this section do not apply to any debt due for state tax. Subsection (1) of this section does not apply to a debt due for state tax if a state agency issues a special notice of garnishment under ORS 18.855 (6).

(7) A court may not make, execute or enforce any order or process in violation of this section.

(8) Any waiver by an individual of the provisions of this section is void.

(9) An employer may not discharge any individual because the individual has had earnings garnished.

SECTION 15. ORS 18.840, as amended by section 10 of this 2007 Act, is amended to read:

18.840. A wage exemption calculation form must be delivered to the garnishee with each writ of garnishment. A wage exemption calculation form must be in substantially the following form:

WAGE EXEMPTION CALCULATION
(to be filled out by employers only)

1. Debtor's gross wages for period covered by this payment..... \$_____
2. Total amount required to be withheld by law for amount in Line 1 (Federal and state withholding, Social Security, etc.)..... \$_____
3. Debtor's disposable wages (Subtract Line 2 from Line 1)..... \$_____
4. Normal exemption (Enter 75 percent of Line 3)..... \$_____
5. Minimum exemption (check one)
— [\$183] **\$196** (payment of wages weekly)
— [\$366] **\$392** (payment of wages every two weeks)
— [\$394] **\$420** (payment of wages half-monthly)
— [\$786] **\$840** (payment of wages monthly)
— \$_____ (Any other period longer than one week, including partial payments for less than full pay period)
(Multiply [\$183] **\$196** by number of weeks or fraction of a week)
6. Wages exempt from garnishment (Line 4 or 5, whichever is greater)..... \$_____
7. Nonexempt wages (Subtract Line 6 from Line 3)..... \$_____

- 8. Amount withheld for this pay period pursuant to a support order under support withholding process or under another writ with priority \$_____
- 9. Wages subject to garnishment (Subtract Line 8 from Line 7)..... \$_____

INSTRUCTIONS FOR WAGE EXEMPTION CALCULATION FORM

If you employ the Debtor named in the writ of garnishment, you must fill out and return this Wage Exemption Calculation form. A Wage Exemption Calculation form must be sent with the first payment you make under the writ. For the 90-day period during which the writ is effective, you must also fill out and return a Wage Exemption Calculation form with a subsequent payment any time the initial calculation changes. Finally, you must fill out and return a Wage Exemption Calculation form with the final payment that you make under the writ.

Normal wage exemption. The wage exemption calculation is based on the amount of the payment you make under the writ of garnishment. The normal wage exemption in Line 4 is 75 percent of the employee’s disposable wages in Line 3.

Minimum wage exemption. The minimum exemption in Line 5 is also based on the amount of the payment you are making. The minimum exemption is designed to ensure that an employee receives at least a certain minimum amount in any one-week period. If the payment is for a one-week period (without regard to whether the period is a calendar week or any other seven-day period), the minimum exemption is [~~\$183~~] **\$196**. The minimum exemption is [~~\$366~~] **\$392** if the payment is for a two-week period. If the payment is for one-half of one month (i.e., the Debtor is paid twice each month), the minimum exemption is [~~\$394~~] **\$420**. The minimum exemption for a monthly payment is [~~\$786~~] **\$840**.

If the payment you are making is based on some period of time other than one week, two weeks, half month or month, and the payment is for more than one week, you must calculate the minimum exemption by multiplying [~~\$183~~] **\$196** by the number of weeks covered by the paycheck, including any fraction of a week. You should round the amount calculated to the nearest dollar.

Example 1: You pay Debtor A every 10 days. Each 10-day period is equal to 1.429 weeks (10 divided by 7). The minimum exemption is [~~\$262~~] **\$280** (~~[\$183] \$196~~ × 1.429 rounded to the nearest dollar).

You must use this same calculation for computing the minimum exemption when making a payment for less than a full pay period (e.g., for the final payment at the end of the 90-day period covered by the writ).

Example 2: You pay Debtor A on a monthly basis. You are required to make a final payment under a writ of garnishment for the wages owing to Debtor A for the period beginning October 1 and ending October 15. This period is equal to 2.143 weeks (15 divided by 7). The minimum exemption is [~~\$392~~] **\$420** (~~[\$183] \$196~~ × 2.143 rounded to the nearest dollar).

The amount of time actually worked by the Debtor during the period covered by the paycheck does not affect the calculation of the minimum exemption.

Example 3: You pay Debtor A on a weekly basis. Debtor A works two days per week. The minimum exemption is ~~[\$183]~~ **\$196** for each weekly payment you make for Debtor A.

If the payment you are making is based on a period of time less than one week, the minimum wage exemption may not exceed ~~[\$183]~~ **\$196** for any one-week period.

If you receive more than one writ of garnishment. If you receive more than one writ of garnishment for the same debtor, the writs have priority based on the date on which you receive them. If the full amount of wages subject to garnishment for a given pay period is paid on the first writ, you should not make any payment on subsequently received writs until the first writ expires. In some cases, it may be necessary to make payments on two or more writs for the same pay period.

Example 4. You have received two writs of garnishment for Debtor A. You pay Debtor A on a monthly basis. The first writ expires on October 16. The second writ will not expire until November 15. You will need to prepare two wage exemption calculation forms for Debtor A's October wages and make payments under both writs. The wage exemption calculation form for the first writ will be for the wages attributable to October 1 to October 15 as described in Example 2. The wage exemption calculation form for the second writ will be for all wages for the month of October, but the amounts withheld under the first writ must be subtracted on Line 8 to determine the October wages subject to garnishment under the second writ.

SECTION 16. ORS 18.845, as amended by section 11 of this 2007 Act, is amended to read:

18.845. A notice of exemptions form must be in substantially the form set forth in this section. Nothing in the notice form described in this section is intended to expand or restrict the law relating to exempt property. A determination as to whether property is exempt from execution, attachment and garnishment must be made by reference to other law. The form provided in this section may be modified to provide more information or to update the notice based on subsequent changes in exemption laws.

NOTICE OF EXEMPT PROPERTY
AND INSTRUCTIONS FOR
CHALLENGE TO GARNISHMENT

Property belonging to you may have been taken or held in order to satisfy a debt. The debt may be reflected in a judgment or in a warrant or order issued by a state agency. Important legal papers are enclosed.

YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CAREFULLY.

State and federal law specify that certain property may not be taken. Some of the property that you may be able to get back is listed below.

(1) Wages or a salary as described in ORS 18.375 and 18.385. Whichever of the following amounts is greater:

- (a) 75 percent of your take-home wages; or
- (b) ~~[\$183]~~ **\$196** per workweek.
- (2) Social Security benefits.
- (3) Supplemental Security Income (SSI).
- (4) Public assistance (welfare).
- (5) Unemployment benefits.
- (6) Disability benefits (other than SSI benefits).

- (7) Workers' compensation benefits.
- (8) Exempt wages, Social Security benefits (other than SSI), welfare, unemployment benefits and disability benefits when placed in a checking or savings account (up to \$7,500).
- (9) Spousal support, child support or separate maintenance to the extent reasonably necessary for your support or the support of any of your dependents.
- (10) A homestead (house, mobile home or houseboat) occupied by you, or occupied by your spouse, parent or child. The value of the homestead is exempt up to the following amounts:
 - (a) For a mobile home or houseboat located on land that is not owned by you, \$20,000. If you jointly own the mobile home or houseboat with another person who is also liable on the debt, \$27,000.
 - (b) For a mobile home or houseboat located on land that is owned by you, \$23,000. If you jointly own the mobile home or houseboat with another person who is also liable on the debt, \$30,000.
 - (c) For any other homestead, \$30,000. If you jointly own the homestead with another person who is also liable on the debt, \$39,600.
- (11) Proceeds from the sale of a homestead described in item 10, up to the limits described in item 10, if you hold the proceeds for less than one year and intend to use those proceeds to procure another homestead.
- (12) Household goods, furniture, radios, a television set and utensils with a combined value not to exceed \$3,000.
- *(13) An automobile, truck, trailer or other vehicle with a value not to exceed \$2,150.
- *(14) Tools, implements, apparatus, team, harness or library that are necessary to carry on your occupation, with a combined value not to exceed \$3,000.
- *(15) Books, pictures and musical instruments with a combined value not to exceed \$600.
- *(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed \$1,800.
- (17) Domestic animals and poultry for family use with a combined value not to exceed \$1,000 and their food for 60 days.
- (18) Provisions and fuel for your family for 60 days.
- (19) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt may not exceed \$1,000.
- (20) Public or private pensions.
- (21) Veterans' benefits and loans.
- (22) Medical assistance benefits.
- (23) Health insurance proceeds and disability proceeds of life insurance policies.
- (24) Cash surrender value of life insurance policies not payable to your estate.
- (25) Federal annuities.
- (26) Other annuities to \$250 per month (excess over \$250 per month is subject to the same exemption as wages).
- (27) Professionally prescribed health aids for you or any of your dependents.
- *(28) Elderly rental assistance allowed pursuant to ORS 310.635.
- (29) Your right to receive, or property traceable to:
 - (a) An award under any crime victim reparation law.
 - (b) A payment or payments, not exceeding a total of \$10,000, on account of personal bodily injury suffered by you or an individual of whom you are a dependent.
 - (c) A payment in compensation of loss of future earnings of you or an individual of whom you are or were a dependent, to the extent reasonably necessary for your support and the support of any of your dependents.
- (30) Amounts paid to you as an earned income tax credit under federal tax law.
- *(31) Interest in personal property to the value of \$400, but this cannot be used to increase the amount of any other exemption.
- (32) Equitable interests in property.
- (33) Security deposits or prepaid rent held by a residential landlord under ORS 90.300.

(34) If the amount shown as owing on the Debt Calculation form exceeds the amount you actually owe to the creditor, the difference between the amount owed and the amount shown on the Debt Calculation form.

Note: If two or more people in your household owe the claim or judgment, each of them may claim the exemptions marked by an asterisk (*).

SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND SPOUSAL SUPPORT. Some property that may not otherwise be taken for payment against the debt may be taken to pay for overdue support. For instance, Social Security benefits, workers' compensation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but only 75 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support obligation.

YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK. You may seek to reclaim your exempt property by doing the following:

- (1) Fill out the Challenge to Garnishment form that you received with this notice.
- (2) Mail or deliver the Challenge to Garnishment form to the court administrator at the address shown on the writ of garnishment, and mail or deliver a copy of the form to the Garnishor at the address shown on the writ of garnishment. If you wish to claim wages or salary as exempt, you must mail or deliver the form within 120 days after you receive this notice. If you wish to claim that any other money or property is exempt, or claim that the property is not subject to garnishment, you must mail or deliver the form within 30 days after you receive this notice. You have the burden of showing that your challenge is made on time, so you should keep records showing when the challenge was mailed or delivered.
- (3) The law only requires that the Garnishor hold the garnished money or property for 10 days before applying it to the Creditor's use. You may be able to keep the property from being used by the Creditor by promptly following (1) and (2) above.

You should be prepared to explain your exemption in court. If you have any questions about the garnishment or the debt, you should see an attorney.

YOU MAY USE THE CHALLENGE TO GARNISHMENT FORM ONLY FOR THE FOLLOWING PURPOSES:

- (1) To claim such exemptions from garnishment as are permitted by law.
- (2) To assert that property is not garnishable property under ORS 18.618.
- (3) To assert that the amount specified in the writ of garnishment as being subject to garnishment is greater than the total amount owed.

YOU MAY NOT USE THE CHALLENGE TO GARNISHMENT FORM TO CHALLENGE THE VALIDITY OF THE DEBT.

IF YOU FILE A CHALLENGE TO A GARNISHMENT IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. Penalties that you could be subject to are listed in ORS 18.715.

When you file a Challenge to Garnishment form, the Garnishee may be required to make all payments under the garnishment to the court, and the Garnishor may be required to pay to the court all amounts received by the Garnishor that are subject to the challenge to the garnishment. The Garnishee and Garnishor are subject to penalties if they do not. For a complete explanation of their responsibilities, see ORS 18.705 and 18.708.

SECTION 17. ORS 18.896, as amended by section 12 of this 2007 Act, is amended to read:

18.896. (1) The challenge to execution form described in this section does not expand or restrict the law relating to exempt property. A determination as to whether property is exempt from attachment or execution must be made by reference to other law. The form provided in this section may be modified to provide more information or to update the notice based on subsequent changes in exemption laws.

(2) A challenge to execution form must be in substantially the following form:

_____ COURT
COUNTY OF _____

Plaintiff,) CHALLENGE TO
) EXECUTION
)
 vs.) Case No. _____
)

Defendant.)

THIS FORM MAY BE USED BY THE DEBTOR ONLY TO CLAIM SUCH EXEMPTIONS FROM EXECUTION AS ARE PERMITTED BY LAW.

THIS FORM MAY BE USED BY PERSONS OTHER THAN THE DEBTOR ONLY TO CLAIM AN INTEREST IN THE PROPERTY THAT IS TO BE SOLD ON EXECUTION.

THIS FORM MAY NOT BE USED TO CHALLENGE THE VALIDITY OF THE DEBT.

I/We claim that the following described property or money is exempt from execution:

I/We believe this property is exempt from execution because (the Notice of Exempt Property at the end of this form describes most types of property that you can claim as exempt from execution):

I am a person other than the Debtor and I have the following interest in the property:

Name _____	Name _____
Signature _____	Signature _____
Address _____	Address _____
_____	_____
Telephone _____	Telephone _____
Number _____	Number _____

(Required)

(Required)

YOU MUST ACT PROMPTLY IF YOU WANT TO GET YOUR MONEY OR PROPERTY BACK. You may seek to reclaim your exempt property by doing the following:

- (1) Fill out the Challenge to Execution form that you received with this notice.
- (2) Mail or deliver the Challenge to Execution form to the court administrator at the address shown on the writ of execution.
- (3) Mail or deliver a copy of the Challenge to Execution form to the judgment creditor at the address shown on the writ of execution.

You should be prepared to explain your exemption in court. If you have any questions about the execution or the debt, you should see an attorney.

YOU MAY USE THE CHALLENGE TO EXECUTION FORM ONLY TO CLAIM SUCH EXEMPTIONS FROM EXECUTION AS ARE PERMITTED BY LAW.

YOU MAY NOT USE THE CHALLENGE TO EXECUTION FORM TO CHALLENGE THE VALIDITY OF THE DEBT.

IF YOU CLAIM AN EXEMPTION IN BAD FAITH, YOU MAY BE SUBJECT TO PENALTIES IMPOSED BY THE COURT THAT COULD INCLUDE A FINE. Penalties that you could be subject to are listed in ORS 18.899.

NOTICE OF EXEMPT PROPERTY

Property belonging to you may have been taken or held in order to satisfy a debt. The debt may be reflected in a judgment or in a warrant or order issued by a state agency. Important legal papers are enclosed.

YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CAREFULLY.

State and federal law specify that certain property may not be taken. Some of the property that you may be able to get back is listed below.

(1) Wages or a salary as described in ORS 18.375 and 18.385. Whichever of the following amounts is greater:

- (a) 75 percent of your take-home wages; or
 - (b) [~~\$183~~] **\$196** per workweek.
- (2) Social Security benefits.
 - (3) Supplemental Security Income (SSI).
 - (4) Public assistance (welfare).
 - (5) Unemployment benefits.
 - (6) Disability benefits (other than SSI benefits).
 - (7) Workers' compensation benefits.

(8) Exempt wages, Social Security benefits (other than SSI), welfare, unemployment benefits and disability benefits when placed in a checking or savings account (up to \$7,500).

(9) Spousal support, child support or separate maintenance to the extent reasonably necessary for your support or the support of any of your dependents.

(10) A homestead (house, mobile home or houseboat) occupied by you, or occupied by your spouse, parent or child. The value of the homestead is exempt up to the following amounts:

(a) For a mobile home or houseboat located on land that is not owned by you, \$20,000. If you jointly own the mobile home or houseboat with another person who is also liable on the debt, \$27,000.

(b) For a mobile home or houseboat located on land that is owned by you, \$23,000. If you jointly own the mobile home or houseboat with another person who is also liable on the debt, \$30,000.

(c) For any other homestead, \$30,000. If you jointly own the homestead with another person who is also liable on the debt, \$39,600.

(11) Proceeds from the sale of a homestead described in item 10, up to the limits described in item 10, if you hold the proceeds for less than one year and intend to use those proceeds to procure another homestead.

(12) Household goods, furniture, radios, a television set and utensils with a combined value not to exceed \$3,000.

*(13) An automobile, truck, trailer or other vehicle with a value not to exceed \$2,150.

*(14) Tools, implements, apparatus, team, harness or library that are necessary to carry on your occupation, with a combined value not to exceed \$3,000.

*(15) Books, pictures and musical instruments with a combined value not to exceed \$600.

*(16) Wearing apparel, jewelry and other personal items with a combined value not to exceed \$1,800.

(17) Domestic animals and poultry for family use with a combined value not to exceed \$1,000 and their food for 60 days.

(18) Provisions and fuel for your family for 60 days.

(19) One rifle or shotgun and one pistol. The combined value of all firearms claimed as exempt may not exceed \$1,000.

(20) Public or private pensions.

(21) Veterans' benefits and loans.

(22) Medical assistance benefits.

(23) Health insurance proceeds and disability proceeds of life insurance policies.

(24) Cash surrender value of life insurance policies not payable to your estate.

(25) Federal annuities.

(26) Other annuities to \$250 per month (excess over \$250 per month is subject to the same exemption as wages).

(27) Professionally prescribed health aids for you or any of your dependents.

*(28) Elderly rental assistance allowed pursuant to ORS 310.635.

*(29) Your right to receive, or property traceable to:

*(a) An award under any crime victim reparation law.

*(b) A payment or payments, not exceeding a total of \$10,000, on account of personal bodily injury suffered by you or an individual of whom you are a dependent.

*(c) A payment in compensation of loss of future earnings of you or an individual of whom you are or were a dependent, to the extent reasonably necessary for your support and the support of any of your dependents.

(30) Amounts paid to you as an earned income tax credit under federal tax law.

(31) Interest in personal property to the value of \$400, but this cannot be used to increase the amount of any other exemption.

(32) Equitable interests in property.

Note: If two or more people in your household owe the claim or judgment, each of them may claim the exemptions marked by an asterisk (*).

SPECIAL RULES APPLY FOR DEBTS THAT ARE OWED FOR CHILD SUPPORT AND SPOUSAL SUPPORT. Some property that may not otherwise be taken for payment against the debt may be taken to pay for overdue support. For instance, Social Security benefits, workers' compensation benefits, unemployment benefits, veterans' benefits and pensions are normally exempt, but only 75 percent of a lump sum payment of these benefits is exempt if the debt is owed for a support obligation.

SECTION 18. The amendments to ORS 18.385, 18.840, 18.845 and 18.896 by sections 14 to 17 of this 2007 Act become operative on January 1, 2009, and apply only to writs of garnishment and notices of garnishment delivered on or after January 1, 2009.

Passed by Senate April 17, 2007

Received by Governor:

Repassed by Senate June 7, 2007

.....M,....., 2007

Approved:

.....
Secretary of Senate

.....M,....., 2007

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President of Senate

.....
Governor

Passed by House June 4, 2007

Filed in Office of Secretary of State:

.....M,....., 2007

.....
Speaker of House

.....
Secretary of State

Enrolled Senate Bill 304

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Oregon State Bar Debtor/Creditor Section)

CHAPTER

AN ACT

Relating to definitions for secured transactions; amending ORS 79.0102.

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

SECTION 1. ORS 79.0102 is amended to read:

79.0102. (1) As used in this chapter:

(a) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(b) "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(c) "Account debtor" means a person obligated on an account, chattel paper or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(d) "Accounting," except as used in "accounting for," means a record:

(A) Authenticated by a secured party;

(B) Indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(C) Identifying the components of the obligations in reasonable detail.

(e) "Agricultural lien" means an interest, other than a security interest or a lien created under ORS 87.226, 87.228, 87.700 to 87.736 or 87.750 to 87.777, in farm products:

(A) Which secures payment or performance of an obligation for:

- (i) Goods or services furnished in connection with a debtor's farming operation; or
- (ii) Rent on real property leased by a debtor in connection with its farming operation;
- (B) Which is created by statute in favor of a person that:
 - (i) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or
 - (ii) Leased real property to a debtor in connection with the debtor's farming operation; and
- (C) Whose effectiveness does not depend on the person's possession of the personal property.
- (f) "As-extracted collateral" means:
 - (A) Oil, gas or other minerals that are subject to a security interest that:
 - (i) Is created by a debtor having an interest in the minerals before extraction; and
 - (ii) Attaches to the minerals as extracted; or
 - (B) Accounts arising out of the sale at the wellhead or minehead of oil, gas or other minerals in which the debtor had an interest before extraction.
- (g) "Authenticate" means:
 - (A) To sign; or
 - (B) To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.
- (h) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions and trust companies.
- (i) "Cash proceeds" means proceeds that are money, checks, deposit accounts or the like.
- (j) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.
- (k) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.
- (L) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:
 - (A) Proceeds to which a security interest attaches;
 - (B) Accounts, chattel paper, payment intangibles and promissory notes that have been sold; and
 - (C) Goods that are the subject of a consignment.
- (m) "Commercial tort claim" means a claim arising in tort with respect to which:
 - (A) The claimant is an organization; or
 - (B) The claimant is an individual and the claim:
 - (i) Arose in the course of the claimant's business or profession; and
 - (ii) Does not include damages arising out of personal injury to or the death of an individual.
- (n) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.
- (o) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option or another contract if the contract or option is:
 - (A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(p) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(q) "Commodity intermediary" means a person that:

(A) Is registered as a futures commission merchant under federal commodities law; or

(B) In the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(r) "Communicate" means:

(A) To send a written or other tangible record;

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(s) "Consignee" means a merchant to which goods are delivered in a consignment.

(t) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) The merchant:

(i) Deals in goods of that kind under a name other than the name of the person making delivery;

(ii) Is not an auctioneer; and

(iii) Is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) With respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery;

(C) The goods are not consumer goods immediately before delivery; and

(D) The transaction does not create a security interest that secures an obligation.

(u) "Consignor" means a person that delivers goods to a consignee in a consignment.

(v) "Consumer debtor" means a debtor in a consumer transaction.

(w) "Consumer goods" means goods that are used or bought for use primarily for personal, family or household purposes.

(x) "Consumer-goods transaction" means a consumer transaction in which:

(A) An individual incurs an obligation primarily for personal, family or household purposes; and

(B) A security interest in consumer goods secures the obligation.

(y) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family or household purposes.

(z) "Consumer transaction" means a transaction in which (i) an individual incurs an obligation primarily for personal, family or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family or household purposes. The term includes consumer-goods transactions.

(aa) "Continuation statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(bb) "Debtor" means:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) A seller of accounts, chattel paper, payment intangibles or promissory notes; or

(C) A consignee.

(cc) "Deposit account" means a demand, time, savings, passbook or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(dd) "Document" means a document of title or a receipt of the type described in ORS 77.2010 (2).

(ee) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(ff) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(gg) "Equipment" means goods other than inventory, farm products or consumer goods.

(hh) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) Crops grown, growing, or to be grown, including:

(i) Crops produced on trees, vines and bushes; and

(ii) Aquatic goods produced in aquacultural operations;

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) Supplies used or produced in a farming operation; or

(D) Products of crops or livestock in their unmanufactured states.

(ii) "Farming operation" means raising, cultivating, propagating, fattening, grazing or any other farming, livestock or aquacultural operation.

(jj) "File number" means the number assigned to an initial financing statement pursuant to ORS 79.0519 (1).

(kk) "Filing office" means an office designated in ORS 79.0501 as the place to file a financing statement.

(LL) "Filing-office rule" means a rule adopted pursuant to ORS 79.0526.

(mm) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(nn) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying ORS 79.0502 (1) and (2). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(oo) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law. The term does not include portable irrigation equipment including movable pipe, pumps, electrical pump panels, pump columns, electrical wire, wheel lines, center pivots and handlines. The term includes domestic pumps, domestic pump wire, domestic pump panels, domestic pump columns, and buried irrigation equipment including buried pipe, buried electrical wire and all buried well casings.

(pp) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money and oil, gas or other minerals before extraction. The term includes payment intangibles and software.

(qq) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(rr) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing or to be grown, even if the crops are produced on trees, vines or bushes, and (v) manufactured structures. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money or oil, gas or other minerals before extraction.

(ss) "Governmental unit" means a subdivision, agency, department, county, parish, municipality or other unit of the government of the United States, a state or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(tt) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(uu) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(vv) "Inventory" means goods, other than farm products, which:

(A) Are leased by a person as lessor;

(B) Are held by a person for sale or lease or to be furnished under a contract of service;

(C) Are furnished by a person under a contract of service; or

(D) Consist of raw materials, work in process, or materials used or consumed in a business.

(ww) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract or commodity account.

(xx) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(yy) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(zz) "Lien creditor" means:

(A) A creditor that has acquired a lien on the property involved by attachment, levy or the like;

(B) An assignee for benefit of creditors from the time of assignment;

(C) A trustee in bankruptcy from the date of the filing of the petition; or

(D) A receiver in equity from the time of appointment.

(aaa) "Manufactured structure" has the meaning given that term in ORS 446.561.

(bbb) "Manufactured-structure transaction" means a secured transaction:

(A) That creates a purchase-money security interest in a manufactured structure, other than a manufactured structure held as inventory; or

(B) In which a manufactured structure, other than a manufactured structure held as inventory, is the primary collateral.

(ccc) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(ddd) "New debtor" means a person that becomes bound as debtor under ORS 79.0203 (4) by a security agreement previously entered into by another person.

(eee) "New value" means (i) money, (ii) money's worth in property, services or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(fff) "Noncash proceeds" means proceeds other than cash proceeds.

(ggg) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(hhh) "Original debtor," except as used in ORS 79.0310 (3), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under ORS 79.0203 (4).

(iii) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(jjj) "Person related to," with respect to an individual, means:

(A) The spouse of the individual;

(B) A brother, brother-in-law, sister or sister-in-law of the individual;

(C) An ancestor or lineal descendant of the individual or the individual's spouse; or

(D) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(kkk) "Person related to," with respect to an organization, means:

(A) A person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) An officer or director of, or a person performing similar functions with respect to, the organization;

(C) An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A) of this paragraph;

(D) The spouse of an individual described in subparagraph (A), (B) or (C) of this paragraph; or

(E) An individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C) or (D) of this paragraph and shares the same home with the individual.

(LLL) "Proceeds," except as used in ORS 79.0609 (2), means the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange or other disposition of collateral;

(B) Whatever is collected on, or distributed on account of, collateral;

(C) Rights arising out of collateral;

(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(mmm) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(nnn) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to ORS 79.0620, 79.0621 and 79.0622.

(ooo) "Public-finance transaction" means a secured transaction in connection with which:

(A) Debt securities are issued;

(B) All or a portion of the securities issued have an initial stated maturity of at least 20 years; and

(C) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(ppp) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(qqq) "Record," except as used in "for record," "of record," "record or legal title" and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(rrr) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States is required by statute or regulation to maintain a public record showing the organization to have been organized.

(sss) "Secondary obligor" means an obligor to the extent that:

- (A) The obligor's obligation is secondary; or
- (B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(ttt) "Secured party" means:

- (A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;
- (B) A person that holds an agricultural lien;
- (C) A consignor;
- (D) A person to which accounts, chattel paper, payment intangibles or promissory notes have been sold;
- (E) A trustee, indenture trustee, agent, collateral agent or other representative in whose favor a security interest or agricultural lien is created or provided for; or
- (F) A person that holds a security interest arising under ORS 72.4010, 72.5050, 72.7110 (3), 72A.5080 (5), 74.2100 or 75.1180.

(uuu) "Security agreement" means an agreement that creates or provides for a security interest.

(vvv) "Send," in connection with a record or notification, means:

- (A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or
- (B) To cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A) of this paragraph.

(www) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(xxx) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(yyy) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument or investment property.

(zzz) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(aaaa) "Termination statement" means an amendment of a financing statement which:

- (A) Identifies, by its file number, the initial financing statement to which it relates; and
- (B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(bbbb) "Transmitting utility" means an organization primarily engaged in the business of:

- (A) Operating a railroad, subway, street railway or trolley bus;
- (B) Transmitting communications electrically, electromagnetically or by light;
- (C) Transmitting goods by pipeline or sewer; or
- (D) Transmitting or producing and transmitting electricity, steam, gas or water.

(2) The following definitions in other sections apply to this chapter:

"Applicant"	ORS 75.1020
"Beneficiary"	ORS 75.1020
"Broker"	ORS 78.1020
"Certificated security"	ORS 78.1020
"Check"	ORS 73.0104
"Clearing corporation"	ORS 78.1020
"Contract for sale"	ORS 72.1060
"Customer"	ORS 74.1040
"Entitlement holder"	ORS 78.1020
"Financial asset"	ORS 78.1020

“Holder in due course”	ORS 73.0302
“Issuer” (with respect to a letter of credit or letter-of-credit right)	ORS 75.1020
“Issuer” (with respect to a security)	ORS 78.2010
“Lease”	ORS 72A.1030
“Lease agreement”	ORS 72A.1030
“Lease contract”	ORS 72A.1030
“Leasehold interest”	ORS 72A.1030
“Lessee”	ORS 72A.1030
“Lessee in ordinary course of business”	ORS 72A.1030
“Lessor”	ORS 72A.1030
“Lessor’s residual interest”	ORS 72A.1030
“Letter of credit”	ORS 75.1020
“Merchant”	ORS 72.1040
“Negotiable instrument”	ORS 73.0104
“Nominated person”	ORS 75.1020
“Note”	ORS 73.0104
“Proceeds of a letter of credit”	ORS 75.1140
“Prove”	ORS 73.0103
“Sale”	ORS 72.1060
“Securities account”	ORS 78.5010
“Securities intermediary”	ORS 78.1020
“Security”	ORS 78.1020
“Security certificate”	ORS 78.1020
“Security entitlement”	ORS 78.1020
“Uncertificated security”	ORS 78.1020

(3) ORS chapter 71 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

Passed by Senate February 26, 2007

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Secretary of Senate

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President of Senate

Passed by House March 27, 2007

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Speaker of House

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2007

.....
Secretary of State

Enrolled House Bill 2359

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

CHAPTER

AN ACT

Relating to affidavits of persons claiming deposits of decedents; creating new provisions; and amending ORS 708A.430, 722.262 and 723.466.

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

SECTION 1. ORS 708A.430 is amended to read:

708A.430. (1) On the death of a depositor of a financial institution, if the deposit is \$25,000 or less, the financial institution may, upon receipt of an affidavit from the person claiming the deposit as provided in subsection (2) of this section, pay the moneys on deposit to the credit of the deceased depositor:

(a) To the surviving spouse **on demand of the surviving spouse at any time after the death of the depositor;**

(b) If there is no surviving spouse, to the Department of Human Services, on demand of the department *[within 60]* **no less than 46 days and no more than 75** days from the death of the depositor *[where]* **when** there is a preferred claim arising under ORS 411.708, 411.795 or 414.105, *or*;

(c) **If there is no surviving spouse and no department claim,** *[if there is no claim by the department,]* to the **depositor's** surviving children 18 years of age or older;

[(c)] (d) If *[the depositor left]* **there is** no surviving spouse, *[Department of Human Services]* **department** claim or surviving *[children]* **child 18 years of age or older,** to the depositor's surviving parents; or

[(d)] (e) If there is no surviving spouse, *[Department of Human Services]* **department** claim, surviving child **18 years of age or older** or surviving parent, to the depositor's surviving brothers and sisters 18 years of age or older.

(2) The affidavit shall:

(a) State where and when the depositor died;

(b) State that the total deposits of the deceased depositor in all financial institutions in Oregon do not exceed \$25,000;

(c) Show the relationship of the affiant *[or affiants]* to the deceased depositor; and

(d) Embody a promise to pay the expenses of last sickness, funeral expenses and just debts of the deceased **depositor** out of the deposit to the full extent of the deposit if necessary, in the order of priority prescribed by ORS 115.125, and to distribute any remaining moneys to the persons who are entitled to those moneys by law.

(3) In the event the [*decedent*] **depositor** died intestate without known heirs, an estate administrator of the Department of State Lands appointed under ORS 113.235 shall be the affiant and shall receive the moneys as escheat property.

(4) The financial institution shall determine the relationship of the affiant to the deceased depositor[,]. However, payment of [*such*] **the** moneys in good faith to the affiant [*or affiants shall discharge and release*] **discharges and releases** the transferor from any liability or responsibility for the transfer in the same manner and with the same effect as if the property had been transferred, delivered or paid to a personal representative of the estate of the [*decedent*] **deceased depositor**.

(5) A probate proceeding is not necessary to establish the right of the surviving spouse, [*Department of Human Services claim*] **department**, surviving child, surviving parent, surviving brothers and sisters or an estate administrator of the Department of State Lands to withdraw the deposits upon the filing of the affidavit. If a personal representative is appointed in an estate where a withdrawal of deposits was made under this section, the person withdrawing the deposits shall account for them to the personal representative.

(6) When a financial institution transfers moneys under subsection (1) of this section, the transferor may require the transferee to furnish the transferor a written indemnity agreement, indemnifying the transferor against loss for moneys paid to the extent of the amount of the deposit.

(7) This section is subject to the rights of other parties in the account under ORS 708A.455 to 708A.515.

SECTION 2. ORS 722.262 is amended to read:

722.262. (1) On the death of an account holder or a holder of a demand deposit account, if the savings liability of an association or federal association on all savings accounts of the deceased, and the amounts held in all demand deposit accounts of the deceased, is \$25,000 or less, the association or federal association may, upon receipt of an affidavit from the person claiming the account **as provided in subsection (2) of this section**, pay the withdrawal value of the accounts of the deceased holder:

(a) To the surviving spouse **on demand of the surviving spouse at any time after the death of the holder;**

[*(b) If there is no surviving spouse, to the surviving children 18 years of age or older;*]

[*(c) If there is no surviving spouse or surviving children 18 years of age or older, to the surviving parents; or*]

[*(d) If there is no surviving spouse, surviving child 18 years of age or older or surviving parent, to the surviving brothers and sisters 18 years of age or older.*]

[*(2) If the deceased account holder or holder of a demand deposit account received public assistance pursuant to ORS chapter 411 or 414, the Department of Human Services may claim such withdrawal value by filing an affidavit in the form prescribed by subsection (3) of this section and the Department of Human Services shall be preferred to all other claimants except a surviving spouse.*]

(b) If there is no surviving spouse, to the Department of Human Services, on demand of the department no less than 46 days and no more than 75 days from the death of the holder if the holder received public assistance under ORS 411.708, 411.795 or 414.105;

(c) If there is no surviving spouse and no department claim, to the holder's surviving children 18 years of age or older;

(d) If there is no surviving spouse, department claim or surviving child 18 years of age or older, to the holder's surviving parent; or

(e) If there is no surviving spouse, department claim, surviving child 18 years of age or older or surviving parent, to the holder's surviving brothers and sisters 18 years of age or older.

[*(3)*] **(2)** The affidavit [*of the person or the Department of Human Services claiming the account*] shall:

(a) State where and when the account holder or holder of a demand deposit account died;

(b) State that the total withdrawal value of all savings and demand deposit accounts of the deceased holder in all associations in Oregon, including federal associations, does not exceed \$25,000;

(c) Show the relationship of the affiant [*or affiants*] to the deceased holder; and

(d) Embody a promise to pay the expenses of last sickness, funeral expenses and just debts of the deceased **holder** out of the account to the full extent of the account if necessary, in the order of priority prescribed by ORS 115.125, and to distribute any remaining moneys to the persons who are entitled to those moneys by law.

[(4)] (3) In the event the [*decedent*] **holder** died intestate without known heirs, an estate administrator of the Department of State Lands appointed under ORS 113.235 shall be the affiant and shall receive the withdrawal value of the accounts as escheat property.

[(5)] (4) A savings association or federal association is under no obligation to determine the relationship of the affiant to the deceased **holder**. Payment made in good faith to the person or the Department of Human Services or an estate administrator of the Department of State Lands making the affidavit is a full acquittance and release of the association or federal association for the amount so paid.

[(6)] (5) A probate proceeding is not necessary to establish the right of the surviving spouse, **department**, surviving children, surviving parent or surviving brothers and sisters to withdraw an account as provided by this section. However, if a personal representative is appointed in an estate of a deceased [*person*] **holder** whose account has been withdrawn under this section, the person [*or the Department of Human Services*] withdrawing the account shall account for it to the personal representative.

SECTION 3. ORS 723.466 is amended to read:

723.466. (1) On the death of a member of a credit union, if the deposit to the credit of the deceased member is \$25,000 or less, the credit union may, upon receipt of an affidavit from the person claiming the deposit as provided in subsection (2) of this section, pay the moneys on deposit:

(a) To the surviving spouse **on demand of the surviving spouse at any time after the death of the member**;

(b) If there is no surviving spouse, to the Department of Human Services, on demand of the [*Department of Human Services within 60*] **department no less than 46 days and no more than 75** days from the death of the member when there is a preferred claim arising under ORS 411.708, 411.795 or 414.105[, *or*];

(c) If there is no **surviving spouse and no department** claim [*by the Department of Human Services*], to the **member's** surviving children 18 years of age or older;

[(c)] (d) If there is no surviving spouse, [*Department of Human Services*] **department** claim or surviving [*children*] **child 18 years of age or older**, to the member's surviving parents; or

[(d)] (e) If there is no surviving spouse, [*Department of Human Services*] **department** claim, surviving [*children*] **child 18 years of age or older** or surviving [*parents*] **parent**, to the member's surviving brothers and sisters 18 years of age or older.

(2) The affidavit shall:

(a) State where and when the member died;

(b) State that the total deposits of the deceased member in all financial institutions in this state do not exceed \$25,000;

(c) Show the relationship of the affiant [*or affiants*] to the deceased member; and

(d) Embody a promise to pay the expenses of last sickness, funeral expenses and just debts of the deceased **member** out of the deposit, to the full extent of the deposit if necessary, in the order of priority prescribed by ORS 115.125, and to distribute any remaining moneys to the persons who are entitled to those moneys by law.

(3) In the event the [*decedent*] **member** died intestate without known heirs, an estate administrator of the Department of State Lands appointed under ORS 113.235 shall be the affiant and shall receive the moneys as escheat property.

(4) The credit union shall determine the relationship of the affiant to the deceased member. However, payment of [*such*] **the** moneys in good faith to the affiant [*or affiants shall discharge and release*] **discharges and releases** the transferor from any liability or responsibility for the transfer

in the same manner and with the same effect as if the property had been transferred, delivered or paid to a personal representative of the estate of the [*decedent*] **deceased member**.

(5) A probate proceeding is not necessary to establish the right of the surviving spouse, [*Department of Human Services claim*] **department**, surviving children, surviving parents, surviving brothers and sisters or an estate administrator of the Department of State Lands to withdraw the deposits upon the filing of the affidavit. If a personal representative is appointed in an estate where a withdrawal of deposits was made under this section, the person withdrawing the deposits shall account for them to the personal representative.

(6) When a credit union transfers moneys under subsection (1) of this section, the transferor may require the transferee to furnish the transferor with a written indemnity agreement, indemnifying the transferor against loss for moneys paid to the extent of the amount of the deposit.

(7) This section is subject to the rights of other parties to the account under ORS 723.474 to 723.498.

SECTION 4. The amendments to ORS 708A.430, 722.262 and 723.466 by sections 1, 2 and 3 of this 2007 Act apply to a deposit of a person whose death occurs on or after the effective date of this 2007 Act.

Passed by House February 26, 2007

Received by Governor:

Repassed by House May 22, 2007

.....M.,....., 2007

Approved:

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Chief Clerk of House

.....M.,....., 2007

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Speaker of House

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Governor

Passed by Senate May 18, 2007

Filed in Office of Secretary of State:

.....M.,....., 2007

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President of Senate

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Secretary of State

Enrolled
House Bill 2360

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

CHAPTER

AN ACT

Relating to conservatorships; creating new provisions; and amending ORS 125.440.

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

SECTION 1. ORS 125.440 is amended to read:

125.440. A conservator may perform the following acts only with prior court approval:

(1) Convey or release contingent or expectant interests of the protected person in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety.

(2) Create revocable or irrevocable trusts of property of the estate. A trust created by the conservator may extend beyond the period of disability of the protected person or beyond the life of the protected person. A trust created by the conservator must be consistent with the will of the protected person or any other written or oral expression of testamentary intent made by the protected person before the person became incapacitated. The court may not approve a trust that has the effect of terminating the conservatorship **unless:**

(a) The trust is created for the purpose of qualifying the protected person for needs-based government benefits or maintaining the eligibility of the protected person for needs-based government benefits;

(b) The value of the conservatorship estate, including the amount to be transferred to the trust, does not exceed \$50,000;

(c) The purpose of establishing the conservatorship was to create the trust; or

(d) The conservator shows other good cause to the court.

(3) Exercise rights of the protected person to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value.

(4) Disclaim any interest the protected person may have by testate or intestate succession or by inter vivos transfer.

(5) Authorize, direct or ratify any annuity contract or contract for life care.

SECTION 2. The amendments to ORS 125.440 by section 1 of this 2007 Act apply to conservatorships established prior to, on or after the effective date of this 2007 Act.

Passed by House February 20, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate March 26, 2007

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President of Senate

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State

Enrolled
Senate Bill 305

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Oregon State Bar Estate Planning Section)

CHAPTER

AN ACT

Relating to trusts; amending ORS 130.105.

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

SECTION 1. ORS 130.105 is amended to read:

130.105. To the extent there is no conflict of interest between the holder of a [general] testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests are subject to the power as permissible appointees, as takers in default or by other reason.

Passed by Senate February 26, 2007

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Secretary of Senate

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President of Senate

Passed by House March 27, 2007

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Speaker of House

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.....M.,....., 2007

Approved:

.....M.,....., 2007

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Governor

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.....M.,....., 2007

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Secretary of State

Enrolled
House Bill 2361

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CHAPTER

AN ACT

Relating to partial liquidations; amending ORS 129.300.

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

SECTION 1. ORS 129.300 is amended to read:

129.300. (1) In this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund or any other organization in which a trustee has an interest other than a trust or estate to which ORS 129.305 applies, a business or activity to which ORS 129.308 applies or an asset-backed security to which ORS 129.385 applies.

(2) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(3) A trustee shall allocate the following receipts from an entity to principal:

- (a) Property other than money;
- (b) Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;
- (c) Money received in total or partial liquidation of the entity; and
- (d) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(4) Money is received in partial liquidation:

(a) To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(b) If the total amount of money and property [*received*] **distributed by an entity** in a distribution or series of related distributions is greater than 20 percent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial [*receipt*] **distribution**.

(5) Money is not received in partial liquidation, nor may it be taken into account under subsection (4)(b) of this section, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

(6) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

Passed by House February 26, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate March 29, 2007

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President of Senate

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.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

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.....M,....., 2007

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Secretary of State

Enrolled
House Bill 2362

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CHAPTER

AN ACT

Relating to proceedings in probate courts; creating new provisions; and amending ORS 111.205, 111.215, 113.045, 113.145, 113.155, 115.003, 116.083, 116.093, 116.253, 117.015 and 125.325.

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

SECTION 1. ORS 111.205 is amended to read:

111.205. No particular pleadings or forms thereof are required in the exercise of jurisdiction of probate courts. The mode of procedure in the exercise of jurisdiction is in the nature of an action not triable by right to a jury except as otherwise provided by statute. The proceedings shall be in writing and upon the petition of a party in interest or the order of the court. All petitions, reports and accounts [*shall be verified*] **in proceedings before a probate court must include a declaration under penalty of perjury in the form required by ORCP 1 E** made by at least one of the persons making [*them*] **the petitions, reports and accounts** or by the attorney for the person, or in case of a corporation by its agent. The court exercises its powers by means of:

- (1) A petition of a party in interest.
- (2) A notice to a party.
- (3) A subpoena to a witness.
- (4) Orders and judgments.
- (5) An execution or warrant to enforce its orders and judgments.

SECTION 2. ORS 116.083 is amended to read:

116.083. (1) A personal representative shall make and file in the estate proceeding [*a verified*] **an** account of the personal representative's administration:

- (a) Unless the court orders otherwise, annually within 60 days after the anniversary date of the personal representative's appointment.
- (b) Within 30 days after the date of the personal representative's removal or resignation or the revocation of the personal representative's letters.
 - (c) When the estate is ready for final settlement and distribution.
 - (d) At such other times as the court may order.
- (2) Each account must include the following information:
 - (a) The period of time covered by the account.
 - (b) The total value of the property with which the personal representative is chargeable according to the inventory, or, if there was a prior account, the amount of the balance of the prior account.
 - (c) All money and property received during the period covered by the account.

(d) All disbursements made during the period covered by the account. Vouchers for disbursements must accompany the account, unless otherwise provided by order or rule of the court, or unless the personal representative is a trust company that has complied with ORS 709.030, but that personal representative shall:

(A) Maintain the vouchers for a period of not less than one year following the date on which the order approving the final account is entered;

(B) Permit interested persons to inspect the vouchers and receive copies thereof at their own expense at the place of business of the personal representative during the personal representative's normal business hours at any time prior to the end of the one-year period following the date on which the order approving the final account is entered; and

(C) Include in each annual account and in the final account a statement that the vouchers are not filed with the account but are maintained by the personal representative and may be inspected and copied as provided in subparagraph (B) of this paragraph.

(e) The money and property of the estate on hand.

(f) Such other information as the personal representative considers necessary to show the condition of the affairs of the estate or as the court may require.

(g) A declaration under penalty of perjury in the form required by ORCP 1 E.

(3) When the estate is ready for final settlement and distribution, the account must also include:

(a) A statement that all Oregon income, inheritance and personal property taxes, if any, have been paid, or if not so paid, that payment of those taxes has been secured by bond, deposit or otherwise, and that all required tax returns have been filed.

(b) A petition for a judgment authorizing the personal representative to distribute the estate to the persons and in the portions specified therein.

(4) If the distributees consent thereto in writing and all creditors of the estate have been paid in full **other than creditors owed administrative expenses that require court approval**, the personal representative, in lieu of the final account otherwise required by this section, may file a *[verified]* statement that includes the following:

(a) The period of time covered by the statement.

(b) A statement that all creditors have been paid in full **other than creditors owed administrative expenses that require court approval**.

(c) The statement and petition referred to in subsection (3) of this section.

(d) A declaration under penalty of perjury in the form required by ORCP 1 E.

(5) Notice of time for filing objections to the *[verified]* statement described in subsection (4) of this section is not required.

(6) The Chief Justice of the Supreme Court may by rule specify the form and contents of accounts that must be filed by a personal representative.

SECTION 3. ORS 116.253 is amended to read:

116.253. (1) Within 10 years after the death of a decedent whose estate escheated in whole or in part to the state, or within eight years after the entry of a judgment or order escheating property of an estate to the state, a claim may be made for the property escheated, or the proceeds thereof, by or on behalf of a person not having actual knowledge of the escheat or by or on behalf of a person who at the time of the escheat was unable to prove entitlement to the escheated property.

(2) The claim shall be made by a petition filed with the Director of the Department of State Lands. The claim is considered a contested case as provided in ORS 183.310 and there is the right of judicial review as provided in ORS 183.480. The petition *[shall be verified in the same manner as a petition in probate]* **must include a declaration under penalty of perjury in the form required by ORCP 1 E** and shall state:

(a) The age and place of residence of the claimant by whom or on whose behalf the petition is filed;

(b) That the claimant lawfully is entitled to the property or proceeds, briefly describing the property or proceeds;

(c) That at the time the property escheated to the state the claimant had no knowledge or notice thereof or was unable to prove entitlement to the escheated property and has subsequently acquired new evidence of that entitlement;

(d) That the claimant claims the property or proceeds as an heir or devisee or as the personal representative of the estate of an heir or devisee, setting forth the relationship, if any, of the claimant to the decedent who at the time of death was the owner;

(e) That 10 years have not elapsed since the death of the decedent, or that eight years have not elapsed since the entry of the judgment or order escheating the property to the state; and

(f) If the petition is not filed by the claimant, the status of the petitioner.

(3) If it is determined that the claimant is entitled to the property or the proceeds thereof, the Director of the Department of State Lands shall deliver the property to the petitioner, subject to and charged with any tax on the property and the costs and expenses of the state in connection therewith.

(4) If the person whose property escheated or reverted to the state was at any time an inmate of a state institution in Oregon for the mentally ill or mentally deficient, the reasonable unpaid cost, as determined by the Department of Human Services, of the care and maintenance of the person while a ward of the institution, regardless of when the cost was incurred, may be deducted from, or, if necessary, be offset in full against, the amount of the escheated property.

(5) For the purposes of this section, the death of the decedent is presumed to have occurred on the date shown in the decedent's death certificate or in any other similar document issued by the jurisdiction in which the death occurred or issued by an agency of the federal government.

SECTION 4. ORS 125.325 is amended to read:

125.325. Within 30 days after each anniversary of appointment, a guardian for an adult protected person shall file with the court a [verified] written report. **The report must include a declaration under penalty of perjury in the form required by ORCP 1 E.** Copies of the guardian's report must be given to those persons specified in ORS 125.060 (3). The report shall be in substantially the following form:

IN THE _____ COURT _____ COUNTY,
STATE OF OREGON
DEPARTMENT OF PROBATE

In the Matter of the) No. _____
Guardianship of)
_____)
(Name of protected)
person))
A Protected)
Person.)

GUARDIAN'S REPORT

I am the guardian for the person named above, and I make the following report to the court as required by law:

- 1. My name is _____.
- 2. My address and telephone number are:

Phone _____

- 3. The name, if applicable, and address of the place where the person now resides are:

- 4. The person is currently residing at the following type of facility or residence:

5. The person is currently engaged in the following programs and activities and receiving the following services (brief description):

6. I was paid for providing the following items of lodging, food or other services to the person:

7. The name of the person primarily responsible for the care of the person at the person's place of residence is:

8. The name and address of any hospital or other institution where the person is now admitted on a temporary or permanent basis are:

9. The person's physical condition is as follows (brief description):

10. The person's mental condition is as follows (brief description):

11. I made the following contacts with the person during the past year (brief description):

12. I made the following major decisions on behalf of the person during the past year (brief description):

13. I believe the guardianship should or should not continue because:

14. At the time of my last report, I held the following amount of money on behalf of the person: \$_____. Since my last report, I received the following amount of money on behalf of the person: \$_____. I spent the following amount of money on behalf of the person: \$_____. I now hold the following amount of money on behalf of the person: \$_____.

15. A true copy of this report will be given to the person, any conservator for the person and any other person who has requested notice.

16. Since my last report:

(a) I have been convicted of the following crimes (not including traffic violations):

(b) I have filed for or received protection from creditors under the Federal Bankruptcy Code (yes or no): _____.

(c) I have had a professional or occupational license revoked or suspended (yes or no): _____.

(d) I have had my driver license revoked or suspended (yes or no): _____.

17. Since my last report, I have delegated the following powers over the protected person for the following periods of time (provide name of person powers delegated to):

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Dated this ____ day of _____, 2_____.

Guardian

[STATE OF OREGON)
) ss.
County of _____)

I, _____ (guardian's name), being first duly sworn, say that the above statements are true.

(Guardian's signature)

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2____.

NOTARY PUBLIC FOR OREGON
My commission expires: _____]

SECTION 5. The amendments to ORS 111.205, 116.083, 116.253 and 125.325 by sections 1 to 4 of this 2007 Act apply only to petitions, reports and accounts filed in proceedings before a probate court on or after the effective date of this 2007 Act.

SECTION 6. Section 7 of this 2007 Act is added to and made a part of ORS chapter 111.

SECTION 7. (1) When proof of mailing, or other delivery of notice or other documents, is required to be filed in probate court, proof shall be made in the form required by ORCP 9 C.

(2) When proof of publication is required to be filed in probate court, proof shall be made in the form required by ORCP 7 F.

SECTION 8. ORS 111.215 is amended to read:

111.215. (1) Except as otherwise specifically provided in ORS chapters 111, 112, 113, 114, 115, 116 and 117, whenever notice is required to be given of a hearing on any petition or other matter upon which an order is sought, the petitioner or other person filing the matter shall cause notice of the date, time and place of the hearing to be given to each person interested in the subject of the hearing or to the attorney of the person, if the person has appeared by attorney or requested that notice be sent to the attorney of the person, in any one or more of the following ways and within the following times:

(a) By mailing a copy thereof addressed to the person or the attorney of the person at least 14 days before the date set for the hearing.

(b) By delivering a copy thereof to the person personally or to the attorney of the person at least five days before the date set for the hearing.

(c) If the address of any person is not known or cannot be ascertained with reasonable diligence, by publishing a copy thereof once in each of three consecutive weeks in a newspaper of general circulation in the county where the hearing is to be held, the last publication of which shall be at least 10 days before the date set for the hearing.

(2) Upon good cause shown the court may change the requirements as to the method or time of giving notice for any hearing.

(3) Proof of the giving of notice must be made at or before the hearing and filed in the proceeding. [*Proof shall be by an admission of service, a return receipt from the postal authorities or an affidavit or certificate of the person giving notice or the publisher, or one of the employees of the publisher, of the newspaper publishing the notice.*]

SECTION 9. ORS 113.045 is amended to read:

113.045. (1) Upon appointment, a personal representative shall deliver or mail to an estate administrator of the Department of State Lands appointed under ORS 113.235 a copy of the petition filed under ORS 113.035, and a copy of any last will of the decedent, if the personal representative has not identified and found all heirs and devisees of the decedent. The personal representative shall file [*an affidavit in the probate proceeding proving*] **proof of the delivery or mailing with the court.**

(2) If at any time after the appointment of a personal representative it appears that any heir or devisee of the decedent cannot be identified and found, the personal representative shall promptly deliver or mail to an estate administrator of the Department of State Lands appointed under ORS

113.235 a notice indicating that an heir or devisee cannot be identified and found. The personal representative shall file [*an affidavit in the probate proceeding proving*] **proof of** the delivery or mailing **with the court**.

(3) This section does not affect the requirements of ORS 113.085 (2).

SECTION 10. ORS 113.145 is amended to read:

113.145. (1) Upon appointment a personal representative shall deliver or mail to the devisees, heirs and the persons described in ORS 113.035 (8) and (9) who were required to be named in the petition for appointment of a personal representative, at the addresses therein shown, information that shall include:

(a) The title of the court in which the estate proceeding is pending and the clerk's file number;
(b) The name of the decedent and the place and date of the death of the decedent;
(c) Whether or not a will of the decedent has been admitted to probate;
(d) The name and address of the personal representative and the attorney of the personal representative;

(e) The date of the appointment of the personal representative;

(f) A statement advising the devisee, heir or other interested person that the rights of the devisee, heir or other interested person may be affected by the proceeding and that additional information may be obtained from the records of the court, the personal representative or the attorney for the personal representative;

(g) If information under this section is required to be delivered or mailed to a person described in ORS 113.035 (8), a statement that the rights of the person in the estate may be barred unless the person proceeds as provided in ORS 113.075 within four months of the delivery or mailing of the information; and

(h) If information under this section is required to be delivered or mailed to a person described in ORS 113.035 (9), a statement that the rights of the person in the estate may be barred unless the person proceeds as provided in ORS 112.049 within four months of the delivery or mailing of the information.

(2) If the personal representative is a devisee, heir or other interested person named in the petition the personal representative is not required to deliver or mail the information under this section to the personal representative.

(3) The failure of the personal representative to give information under this section is a breach of duty to the persons concerned, but does not affect the validity of appointment, duties or powers or the exercise of duties or powers.

(4) Within 30 days after the date of appointment a personal representative shall cause to be filed in the estate proceeding proof [*by an affidavit*] of the delivery or mailing required by this section or a waiver of notice as provided under ORS 111.225. The [*affidavit*] **proof** shall include a copy of the information delivered or mailed and the names of the persons to whom it was delivered or mailed.

(5) If before the filing of the final account the personal representative has actual knowledge that the petition did not include the name and address of any person described in ORS 113.035 (4), (5), (7), (8) or (9), the personal representative shall:

(a) Make reasonable efforts under the circumstances to ascertain each of those names and addresses;

(b) Promptly deliver or mail information as described in subsection (1) of this section to each of those persons located after the filing of the petition and before the filing of the final account; and

(c) File in the estate proceeding, on or before filing the final account under ORS 116.083, proof [*by affidavit*] of compliance with this subsection or a waiver of notice as provided under ORS 111.225.

(6) Within 30 days after the appointment of a personal representative, the personal representative must mail or deliver the information specified in subsection (1) of this section and a copy of the death certificate of the decedent to the Department of Human Services.

SECTION 11. ORS 113.155 is amended to read:

113.155. (1) Upon appointment a personal representative shall cause a notice to interested persons to be published once in each of three consecutive weeks in:

(a) A newspaper published in the county in which the estate proceeding is pending; or

(b) If no newspaper is published in the county in which the estate proceeding is pending, a newspaper designated by the court.

(2) The notice shall include:

(a) The title of the court in which the estate proceeding is pending;

(b) The name of the decedent;

(c) The name of the personal representative and the address at which claims are to be presented;

(d) A statement requiring all persons having claims against the estate to present them, within four months after the date of the first publication of the notice to the personal representative at the address designated in the notice for the presentation of claims or they may be barred;

(e) The date of the first publication of the notice; and

(f) A statement advising all persons whose rights may be affected by the proceeding that additional information may be obtained from the records of the court, the personal representative or the attorney for the personal representative.

(3) The failure of the personal representative to cause a notice to be published under this section is a breach of duty to the persons concerned, but does not affect the validity of appointment, duties or powers or the exercise of duties or powers.

(4) A personal representative shall file in the estate proceeding proof [*by an affidavit*] of the publication of notice required by this section. The [*affidavit*] **proof** shall include a copy of the published notice.

SECTION 12. ORS 115.003 is amended to read:

115.003. (1) During the three months following appointment, unless a longer time is allowed by the court, the personal representative shall make reasonably diligent efforts to investigate the financial records and affairs of the decedent and shall take such further actions as may be reasonably necessary to ascertain the identity and address of each person who has or asserts a claim against the estate. The personal representative shall request and the court shall allow a longer time for ascertaining claims if the personal representative cannot complete reasonably diligent efforts to identify persons with claims during the time required by this section or by a previous order of the court.

(2) Not later than 30 days after expiration of the period, including any extensions, described in subsection (1) of this section, the personal representative shall cause to be delivered or mailed to each person known by the personal representative during such period to have or assert a claim against the estate a notice containing the information required in subsection (3) of this section, except that it shall not be necessary to give notice on account of a claim that has already been presented, accepted or paid in full or on account of a claim that is merely conjectural. The personal representative may also cause such a notice to be delivered or mailed to any person discovered by the personal representative after expiration of the period described in subsection (1) of this section to have or assert a claim against the estate.

(3) The notice shall include:

(a) The title of the court in which the estate proceeding is pending;

(b) The name of the decedent;

(c) The name of the personal representative and the address at which claims are to be presented;

(d) A statement that claims against the estate not presented to the personal representative within 30 days of the date of the notice may be barred; and

(e) The date of the notice, which shall be the date on which it is delivered or mailed.

(4) Not later than 60 days after expiration of the period, including any extensions, described in subsection (1) of this section, the personal representative shall cause to be filed in the estate proceeding proof [*by an affidavit*] of compliance with subsections (1) and (2) of this section. The [*affidavit*] **proof** shall include a copy of the form of any notice delivered or mailed, the date on which

each notice was delivered or mailed and the name and address of the person to whom each notice was delivered or mailed.

(5) The failure of the personal representative to make reasonably diligent efforts to ascertain claims as required by subsection (1) of this section or to cause a notice to be delivered or mailed as required by subsection (2) of this section is a breach of duty to the persons concerned, but does not affect the validity of appointment, duties or powers or the exercise of duties or powers.

SECTION 13. ORS 116.093 is amended to read:

116.093. (1) Upon filing the final account and petition for a judgment of distribution, the personal representative shall fix a time for filing objections thereto in a notice thereof. Not less than 20 days before the time fixed in the notice, the personal representative shall cause a copy of the notice to be mailed to:

- (a) Each heir at the last-known address of the heir, if the decedent died intestate.
- (b) Each devisee at the last-known address of the devisee, if the decedent died testate.
- (c) Each creditor who has not received payment in full and whose claim has not otherwise been barred.

(d) Any other person known to the personal representative to have or to claim an interest in the estate being distributed.

(2) The notice need not be mailed to the personal representative.

(3) Proof of the mailing to those persons entitled to notice shall be [*made by affidavit and*] filed in the estate proceeding at or before approval of the final account.

(4) If the Department of Human Services has presented a claim under ORS chapter 411 or 414 or ORS 416.310 to 416.340, 416.510 to 416.990 or 417.010 to 417.080, or the Department of Corrections or the authorized agent of the Department of Corrections has presented a claim under ORS 179.620 (3), and the claim has not been settled or paid in full, the personal representative shall mail to the appropriate department a copy of the final account at the same time, and shall make proof of the mailing in the same manner, as the notice provided for in this section.

SECTION 14. ORS 117.015 is amended to read:

117.015. (1) Upon the filing of a petition under ORS 117.005, the clerk of the court shall set a date for hearing not less than 30 days after the date of filing the petition, unless the court sets an earlier date. A copy of the notice of the hearing shall be sent:

(a) To the absentee at the last-known address of the absentee by registered mail or by certified mail with return receipt.

(b) By ordinary mail to the devisees and heirs named in the petition.

(2) The court may order that additional notice of the hearing be given by publication or by other means. Proof of mailing [*may*] **or other notice shall** be made by the petitioner [*by affidavit*] **and filed in the proceeding.**

SECTION 15. Section 7 of this 2007 Act and the amendments to ORS 111.215, 113.045, 113.145, 113.155, 115.003, 116.093 and 117.015 by sections 8 to 14 of this 2007 Act apply only to proofs filed in probate court on or after the effective date of this 2007 Act.

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Chief Clerk of House

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Speaker of House

Passed by Senate May 15, 2007

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President of Senate

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CHAPTER

AN ACT

Relating to reinstatement of terminated spousal support award; creating new provisions; and amending ORS 107.136.

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

SECTION 1. ORS 107.136 is amended to read:

107.136. [*Whenever spousal support has been terminated under ORS 107.135, the court has the power to order reinstatement of the support obligation if:*]

[(1) The basis for the termination ceases to exist; and]

[(2) The reinstatement motion is filed within the period of time support would have been paid had the support obligation not been terminated.]

(1) When a court has terminated the duty of spousal support under ORS 107.135, the court may reinstate the remaining duration and remaining amount of the support award if the moving party alleges and proves that:

(a) The basis for the termination has ceased to exist; and

(b) The reinstatement is just and equitable under all the circumstances.

(2) For the purposes of this section:

(a) The remaining duration of a support award is the term of the award remaining as if the award had not been terminated and support had been paid from the date of termination to the date of reinstatement. For example, if the applicable judgment required payment of spousal support for 10 years, the award was terminated in year three and reinstatement of the award was sought at the end of year seven, the maximum remaining duration of the support award that could be reinstated would be three years.

(b) The remaining amount of a support award is the amount of support owed as if the award had not been terminated and support had been paid from the date of termination to the date of reinstatement. For example, if the applicable judgment required support payments of \$1,000 per month for five years and \$500 per month for the next five years, the award was terminated in year three and reinstatement of the award was sought at the end of year seven, the maximum remaining amount of the support award that could be reinstated would be \$500 per month.

(3) A motion for reinstatement of a spousal support award under this section must be brought within the remaining duration of the award or within 10 years after the entry of the judgment terminating the award, whichever is sooner.

(4) In exercising the discretion granted under subsection (1) of this section, the court shall consider the basis for the spousal support award, the basis for the termination of the award and the totality of the circumstances of each party existing since the termination of the award.

(5) Either party may file a motion to modify spousal support under ORS 107.135 in a proceeding to reinstate the spousal support award. In addition to considering the factors under ORS 107.135 (3) and (4), the court shall consider the factors described in subsection (4) of this section.

(6) At any time, the parties may waive their rights under this section in writing, signed by both parties and referencing this section.

(7) Any reinstatement of a spousal support award may be ordered effective retroactive to the date the motion was served or to any date thereafter.

SECTION 2. The amendments to ORS 107.136 by section 1 of this 2007 Act apply to spousal support awards that are or were terminated before, on or after the effective date of this 2007 Act.

Passed by Senate March 27, 2007

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Secretary of Senate

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President of Senate

Passed by House May 30, 2007

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Speaker of House

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State

Enrolled
Senate Bill 307

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Oregon State Bar Family Law Section)

CHAPTER

AN ACT

Relating to domestic relations; creating new provisions; amending ORS 18.180, 107.015, 107.093, 107.485, 107.730 and 109.020; and repealing ORS 106.210.

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

SECTION 1. ORS 18.180 is amended to read:

18.180. (1) Judgment remedies for a judgment expire upon full satisfaction of the money award portion of the judgment.

(2) If a judgment lien arises out of a support award under ORS 18.150 (3) or 18.152 (3), a support arrearage lien attaching to real property under the judgment lien expires upon satisfaction of the unpaid installment that gave rise to the support arrearage lien.

(3) Except as provided in ORS 18.180 to 18.192, judgment remedies for a judgment in a civil action expire 10 years after the entry of the judgment.

(4) Except as provided in this subsection, judgment remedies for a judgment in a criminal action expire 20 years after the entry of the judgment. Judgment remedies for a judgment in a criminal action that includes a money award for restitution expire 50 years after the entry of the judgment.

(5) Except as provided in ORS 18.192, judgment remedies for the child support award portion of a judgment, and any lump sum support award for child support, expire 25 years after the entry of the judgment that first establishes the support obligation.

(6)(a) Except as provided by paragraph (b) of this subsection and ORS 18.190, judgment remedies for any unpaid installment under the spousal support award portion of a judgment, including any installment arrearage lien arising under the judgment, expire 25 years after the entry of the judgment that first establishes the support obligation, or 10 years after an installment comes due under the judgment and is not paid, whichever is later.

(b) The judgment lien for the spousal support award portion of a judgment that is entered on or after January 1, 2004, including any installment arrearage lien arising under the judgment, expires 25 years after the entry of the judgment that first establishes the support obligation unless a certificate of extension is filed under ORS 18.185.

(7)(a) If a money award in a judgment under ORS 107.105 (1)(f) provides for a future payment of money, [*and the future payment does not become due for 10 or more years after the judgment is entered,*] judgment remedies for the portion of the judgment providing for future payment expire 10 years after the date on which the future payment becomes due. At any time before the judgment

remedies for a money award described in this subsection expire, judgment remedies for the portion of the judgment providing for a future payment may be extended as provided in ORS 18.182.

(b) This subsection does not apply to support awards.

(8) This section does not apply to justice courts, municipal courts or county courts performing judicial functions.

SECTION 2. ORS 107.015 is amended to read:

107.015. (1) **Except as provided in subsection (2) of this section,** a judgment for the annulment or dissolution of a marriage may be rendered [*for the following causes*]:

[(1)] (a) When either party to the marriage was incapable of making [*such*] **the marriage** contract or consenting [*thereto*] **to the marriage** for want of legal age or sufficient understanding; or

[(2)] (b) When the consent of either party was obtained by force or fraud[;].

(2) A judgment for the annulment or dissolution of a marriage may not be rendered for a reason [*provided that in the situations*] described in subsection (1) [*or (2)*] of this section [*the*] **if the marriage** contract was [*not*] afterward ratified.

SECTION 3. ORS 107.093 is amended to read:

107.093. (1) After a petition for marital annulment, separation or dissolution is filed and upon service of summons and petition upon the respondent as provided in ORCP 7, a restraining order is in effect against the petitioner and the respondent until a final [*decree or*] judgment is issued, until the petition for marital annulment, separation or dissolution is dismissed, or until further order of the court.

(2) The restraining order issued under this section shall restrain the petitioner and respondent from:

(a) Canceling, modifying, terminating or allowing to lapse for nonpayment of premiums any policy of health insurance, homeowner or renter insurance or automobile 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 or a minor child of the parties as a beneficiary.

(b) Changing beneficiaries or covered parties under any policy of health insurance, homeowner or renter insurance or automobile insurance that one party maintains to provide coverage for the other party or a minor child of the parties, or any life insurance policy.

[(c)(A)] (c) Transferring, encumbering, concealing or disposing of property in which the other party has an interest, in any manner, without written consent of the other party or an order of the court, except in the usual course of business or for necessities of life.

[(B)] This paragraph does not apply to payment by either party of:

[(i)] (A) Attorney fees in the existing action;

[(ii)] (B) Real estate and income taxes;

[(iii)] (C) Mental health therapy expenses for either party or a minor child of the parties; or

[(iv)] (D) Expenses necessary to provide for the safety and welfare of a party or a minor child of the parties.

[(d)(A)] (d) Making extraordinary expenditures without providing written notice and an accounting of the extraordinary expenditures to the other party.

[(B)] This paragraph does not apply to payment by either party of expenses necessary to provide for the safety and welfare of a party or a minor child of the parties.

(3) Either party restrained under this section may apply to the court for further temporary orders, including modification or revocation of the restraining order issued under this section.

(4) The restraining order issued under this section shall also include a notice that either party may request a hearing on the restraining order by filing a request for hearing with the court.

(5) A copy of the restraining order issued under this section shall be attached to the summons.

(6) A party who violates a term of a restraining order issued under this section **is subject to imposition of remedial sanctions under ORS 33.055 based on the violation,** but is not subject to:

(a) Criminal prosecution based on the violation; or

(b) Imposition of punitive sanctions under ORS 33.065 based on the violation.

SECTION 4. ORS 107.485 is amended to read:

107.485. A marriage may be dissolved by the summary dissolution procedure specified in this section and ORS 107.490 and 107.500 when all of the following conditions exist at the time the proceeding is commenced:

(1) The jurisdictional requirements of ORS 107.025 and 107.075 are met.

(2)(a) There are no minor children born to the parties or adopted by the parties during the marriage[.];

(b) There are no children over age 18 attending school, as described in ORS 107.108, either born to the parties or adopted by the parties during the marriage[.];

(c) There are no minor children born to or adopted by the parties prior to the marriage[.]; **and**

(d) The wife is not now pregnant.

(3) The marriage is not more than 10 years in duration.

(4) Neither party has any interest in real property wherever situated.

(5) There are no unpaid obligations in excess of \$15,000 incurred by either or both of the parties from the date of the marriage.

(6) The total aggregate fair market value of personal property assets in which either of the parties has any interest, excluding all encumbrances, is less than \$30,000.

(7) The petitioner waives any right to spousal support.

(8) The petitioner waives any rights to pendente lite orders except those pursuant to ORS 107.700 to 107.735 or 124.005 to 124.040.

(9) The petitioner knows of no other pending domestic relations suits involving the marriage in this or any other state.

SECTION 5. ORS 107.730 is amended to read:

107.730. (1) At any time after an order has been issued under ORS 107.700 to 107.735 and after the time period set forth in ORS 107.718 (10)(a), a party may request that the court modify terms in the order that provide for custody and parenting time.

(2) The clerk of the court shall provide without charge the number of certified true copies of the request for modification of the order and notice of hearing necessary to effect service and, at the election of the party requesting the modification, shall have a true copy of the request and notice delivered to the county sheriff for service upon the other party.

(3) Service shall be in the manner provided by law for service of summons. The county sheriff shall serve the other party personally unless the party requesting the modification elects to have the other party served personally by a private party.

(4) The provisions of ORS 107.716 (5) apply to a modification of an order under this section.

(5) The court may assess against either party a reasonable attorney fee and such costs as may be incurred in the proceeding.

SECTION 6. ORS 109.020 is amended to read:

109.020. If any minor, whose [father] **parent** is living, has property the income of which is sufficient for the maintenance and education of the minor in a manner more expensive than the [father] **parent** can reasonably afford, regard being had to the situation of the [father's] **parent's** family and to all the circumstances of the case, the expenses of the maintenance and education of the minor may be wholly or partially defrayed out of the income of the property of the minor, as is judged reasonable by the court having probate jurisdiction. The charges therefor may be allowed accordingly in the settlement of the accounts of the guardian or the conservator of the minor of the estate of the minor.

SECTION 7. ORS 106.210 is repealed.

SECTION 8. The repeal of ORS 106.210 by section 7 of this 2007 Act does not affect the validity of any marriage validated by ORS 106.210 or the legitimacy of any child conceived or born of such marriage.

Passed by Senate February 26, 2007

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Secretary of Senate

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President of Senate

Passed by House March 26, 2007

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Speaker of House

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2007

.....
Secretary of State

A-Engrossed
House Bill 2363

Ordered by the House June 25
Including House Amendments dated June 25

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

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Reinstates income tax credit for qualified adoption expenses for tax years beginning on or after January 1, 2007, and before January 1, 2015. Limits credit to taxpayer with no more than \$60,000 in federal adjusted gross income.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tax credits for adoption expenses; amending ORS 315.274 and section 3, chapter 1088,
3 Oregon Laws 1999; and prescribing an effective date.

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

5 **SECTION 1.** Section 3, chapter 1088, Oregon Laws 1999, is amended to read:

6 **Sec. 3.** [*Section 2 of this 1999 Act*] **ORS 315.274** applies to tax years beginning on or after Jan-
7 uary 1, 2000, and before January 1, 2006, **and to tax years beginning on or after January 1, 2007,**
8 **and before January 1, 2015.**

9 **SECTION 2.** ORS 315.274 is amended to read:

10 315.274. (1) For purposes of this section, "qualified adoption expenses" has the meaning given
11 that term in section 23 of the Internal Revenue Code.

12 (2) A taxpayer shall be allowed a credit against the taxes otherwise due under ORS chapter 316
13 in an amount determined under subsection (3) of this section for qualified adoption expenses paid
14 or incurred by the taxpayer during the tax year, **if the taxpayer's federal adjusted gross income**
15 **does not exceed \$60,000 for the tax year.**

16 (3) The amount of the credit allowed under this section shall be equal to the lesser of:

17 (a) The qualified adoption expenses paid or incurred by the taxpayer during the tax year less
18 the credit allowed to the taxpayer under section 23 of the Internal Revenue Code;

19 (b) \$1,500; or

20 (c) The credit allowed to the taxpayer for qualified adoption expenses under section 23 of the
21 Internal Revenue Code.

22 (4) In the case of a credit allowed under this section:

23 (a) A nonresident shall be allowed the credit under this section in the proportion provided in
24 ORS 316.117.

25 (b) If a change in the status of a taxpayer from resident to nonresident or from nonresident to
26 resident occurs, the credit allowed by this section shall be determined in a manner consistent with

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 ORS 316.117.

2 (c) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the
3 Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit al-
4 lowed under this section shall be prorated or computed in a manner consistent with ORS 314.085.

5 (5) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
6 particular tax year may be carried forward and offset against the taxpayer's tax liability for the next
7 succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried
8 forward and used in the second succeeding tax year, and likewise any credit not used in that second
9 succeeding tax year may be carried forward and used in the third succeeding tax year, and any
10 credit not used in that third succeeding tax year may be carried forward and used in the fourth
11 succeeding tax year, but may not be carried forward for any tax year thereafter.

12 **SECTION 3. This 2007 Act takes effect on the 91st day after the date on which the reg-**
13 **ular session of the Seventy-fourth Legislative Assembly adjourns sine die.**

14

Enrolled
House Bill 2364

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

CHAPTER

AN ACT

Relating to American Indian tribal governments; creating new provisions; and amending ORS 40.090 and 40.460.

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

SECTION 1. ORS 40.090 is amended to read:

40.090. Law judicially noticed is defined as:

(1) The decisional, constitutional and public statutory law of Oregon, the United States, **any federally recognized American Indian tribal government** and any state, territory or other jurisdiction of the United States.

(2) Public and private official acts of the legislative, executive and judicial departments of this state, the United States, **any federally recognized American Indian tribal government** and any other state, territory or other jurisdiction of the United States.

(3) Rules of professional conduct for members of the Oregon State Bar.

(4) Regulations, ordinances and similar legislative enactments issued by or under the authority of the United States, **any federally recognized American Indian tribal government** or any state, territory or possession of the United States.

(5) Rules of court of any court of this state or any court of record of the United States, **of any federally recognized American Indian tribal government** or of any state, territory or other jurisdiction of the United States.

(6) The law of an organization of nations and of foreign nations and public entities in foreign nations.

(7) An ordinance, comprehensive plan or enactment of any county or incorporated city in this state, or a right derived therefrom. As used in this subsection, "comprehensive plan" has the meaning given that term by ORS 197.015.

SECTION 2. ORS 40.460 is amended to read:

40.460. The following are not excluded by ORS 40.455, even though the declarant is available as a witness:

(1) (Reserved.)

(2) A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) A statement of the declarant's then existing state of mind, emotion, sensation or physical condition, such as intent, plan, motive, design, mental feeling, pain or bodily health, but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of the declarant's will.

(4) Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain or sensations, or the inception or general character of the cause [of] or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(5) A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the memory of the witness and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method of circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this subsection includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) Evidence that a matter is not included in the memoranda, reports, records, or data compilations, and in any form, kept in accordance with the provisions of subsection (6) of this section, to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) Records, reports, statements[,] or data compilations, in any form, of public offices or agencies, **including federally recognized American Indian tribal governments**, setting forth:

(a) The activities of the office or agency;

(b) Matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding [however], in criminal cases, matters observed by police officers and other law enforcement personnel; or

(c) In civil actions and proceedings and against the government in criminal cases, factual findings, resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

(9) Records or data compilations, in any form, of births, fetal deaths, deaths or marriages, if the report thereof was made to a public office, **including a federally recognized American Indian tribal government**, pursuant to requirements of law.

(10) To prove the absence of a record, report, statement[,] or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement[,] or data compilation, in any form, was regularly made and preserved by a public office or agency, **including a federally recognized American Indian tribal government**, evidence in the form of a certification in accordance with ORS 40.510, or testimony, that diligent search failed to disclose the record, report, statement[,] or data compilation, or entry.

(11) Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) A statement of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a member of the clergy, a public official, **an official of a federally recognized American Indian tribal government** or any other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) Statements of facts concerning personal or family history contained in family bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) The record of a document purporting to establish or affect an interest in property, as proof of content of the original recorded document and its execution and delivery by each person by whom

it purports to have been executed, if the record is a record of a public office, **including a federally recognized American Indian tribal government**, and an applicable statute authorizes the recording of documents of that kind in that office.

(15) A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) Statements in a document in existence 20 years or more the authenticity of which is established.

(17) Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) (Reserved.)

(18a)(a) A complaint of sexual misconduct, complaint of abuse as defined in ORS 107.705 or 419B.005, complaint of abuse of an elderly person, as those terms are defined in ORS 124.050, or a complaint relating to a violation of ORS 163.205 or 164.015 in which a person 65 years of age or older is the victim, made by the witness after the commission of the alleged misconduct or abuse at issue. Except as provided in paragraph (b) of this subsection, such evidence must be confined to the fact that the complaint was made.

(b) A statement made by a person concerning an act of abuse as defined in ORS 107.705 or 419B.005, a statement made by a person concerning an act of abuse of an elderly person, as those terms are defined in ORS 124.050, or a statement made by a person concerning a violation of ORS 163.205 or 164.015 in which a person 65 years of age or older is the victim, is not excluded by ORS 40.455 if the declarant either testifies at the proceeding and is subject to cross-examination, or is unavailable as a witness but was chronologically or mentally under 12 years of age when the statement was made or was 65 years of age or older when the statement was made. However, if a declarant is unavailable, the statement may be admitted in evidence only if the proponent establishes that the time, content and circumstances of the statement provide indicia of reliability, and in a criminal trial that there is corroborative evidence of the act of abuse and of the alleged perpetrator's opportunity to participate in the conduct and that the statement possesses indicia of reliability as is constitutionally required to be admitted. No statement may be admitted under this paragraph unless the proponent of the statement makes known to the adverse party the proponent's intention to offer the statement and the particulars of the statement no later than 15 days before trial, except for good cause shown. For purposes of this paragraph, in addition to those situations described in ORS 40.465 (1), the declarant shall be considered "unavailable" if the declarant has a substantial lack of memory of the subject matter of the statement, is presently incompetent to testify, is unable to communicate about the abuse or sexual conduct because of fear or other similar reason or is substantially likely, as established by expert testimony, to suffer lasting severe emotional trauma from testifying. Unless otherwise agreed by the parties, the court shall examine the declarant in chambers and on the record or outside the presence of the jury and on the record. The examination shall be conducted immediately prior to the commencement of the trial in the presence of the attorney and the legal guardian or other suitable person as designated by the court. If the declarant is found to be unavailable, the court shall then determine the admissibility of the evidence. The determinations shall be appealable under ORS 138.060 (1)(c) or (2)(a). The purpose of the examination shall be to aid the court in making its findings regarding the availability of the declarant as a witness and the reliability of the statement of the declarant. In determining whether a statement possesses indicia of reliability under this paragraph, the court may consider, but is not limited to, the following factors:

(A) The personal knowledge of the declarant of the event;

(B) The age and maturity of the declarant or extent of disability if the declarant is a person with developmental disabilities;

(C) Certainty that the statement was made, including the credibility of the person testifying about the statement and any motive the person may have to falsify or distort the statement;

(D) Any apparent motive the declarant may have to falsify or distort the event, including bias, corruption or coercion;

(E) The timing of the statement of the declarant;

(F) Whether more than one person heard the statement;

(G) Whether the declarant was suffering pain or distress when making the statement;

(H) Whether the declarant's young age or disability makes it unlikely that the declarant fabricated a statement that represents a graphic, detailed account beyond the knowledge and experience of the declarant;

(I) Whether the statement has internal consistency or coherence and uses terminology appropriate to the declarant's age or to the extent of the declarant's disability if the declarant is a person with developmental disabilities;

(J) Whether the statement is spontaneous or directly responsive to questions; and

(K) Whether the statement was elicited by leading questions.

(c) This subsection applies to all civil, criminal and juvenile proceedings.

(d) This subsection applies to a child declarant, a declarant who is an elderly person as defined in ORS 124.050 or an adult declarant with developmental disabilities. For the purposes of this subsection, "developmental disabilities" means any disability attributable to mental retardation, autism, cerebral palsy, epilepsy or other disabling neurological condition that requires training or support similar to that required by persons with mental retardation, if either of the following apply:

(A) The disability originates before the person attains 22 years of age, or if the disability is attributable to mental retardation the condition is manifested before the person attains 18 years of age, the disability can be expected to continue indefinitely, and the disability constitutes a substantial handicap to the ability of the person to function in society.

(B) The disability results in a significant subaverage general intellectual functioning with concurrent deficits in adaptive behavior that are manifested during the developmental period.

(19) Reputation among members of a person's family by blood, adoption or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood or adoption or marriage, ancestry, or other similar fact of a person's personal or family history.

(20) Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located.

(21) Reputation of a person's character among associates of the person or in the community.

(22) Evidence of a final judgment, entered after a trial or upon a plea of guilty, but not upon a plea of no contest, adjudging a person guilty of a crime other than a traffic offense, to prove any fact essential to sustain the judgment, but not including, when offered by the government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(23) Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(24) Notwithstanding the limits contained in subsection (18a) of this section, in any proceeding in which a child under 12 years of age at the time of trial, or a person with developmental disabilities as described in subsection (18a)(d) of this section, may be called as a witness to testify concerning an act of abuse, as defined in ORS 419B.005, or sexual conduct performed with or on the child or person with developmental disabilities by another, the testimony of the child or person with developmental disabilities taken by contemporaneous examination and cross-examination in another place under the supervision of the trial judge and communicated to the courtroom by closed-circuit television or other audiovisual means. Testimony will be allowed as provided in this subsection only if the court finds that there is a substantial likelihood, established by expert testimony, that the child or person with developmental disabilities will suffer severe emotional or psychological harm if required to testify in open court. If the court makes such a finding, the court, on motion of a party, the child, the person with developmental disabilities or the court in a civil proceeding, or on

motion of the district attorney, the child or the person with developmental disabilities in a criminal or juvenile proceeding, may order that the testimony of the child or the person with developmental disabilities be taken as described in this subsection. Only the judge, the attorneys for the parties, the parties, individuals necessary to operate the equipment and any individual the court finds would contribute to the welfare and well-being of the child or person with developmental disabilities may be present during the testimony of the child or person with developmental disabilities.

(25)(a) Any document containing data prepared or recorded by the Oregon State Police pursuant to ORS 813.160 (1)(b)(C) or (E), or pursuant to ORS 475.235 (4), if the document is produced by data retrieval from the Law Enforcement Data System or other computer system maintained and operated by the Oregon State Police, and the person retrieving the data attests that the information was retrieved directly from the system and that the document accurately reflects the data retrieved.

(b) Any document containing data prepared or recorded by the Oregon State Police that is produced by data retrieval from the Law Enforcement Data System or other computer system maintained and operated by the Oregon State Police and that is electronically transmitted through public or private computer networks under an electronic signature adopted by the Oregon State Police if the person receiving the data attests that the document accurately reflects the data received.

(c) Notwithstanding any statute or rule to the contrary, in any criminal case in which documents are introduced under the provisions of this subsection, the defendant may subpoena the analyst, as defined in ORS 475.235 (6), or other person that generated or keeps the original document for the purpose of testifying at the preliminary hearing and trial of the issue. Except as provided in ORS 44.550 to 44.566, no charge shall be made to the defendant for the appearance of the analyst or other person.

(26)(a) A statement that purports to narrate, describe, report or explain an incident of domestic violence, as defined in ORS 135.230, made by a victim of the domestic violence within 24 hours after the incident occurred, if the statement:

(A) Was recorded, either electronically or in writing, or was made to a peace officer as defined in ORS 161.015, corrections officer, youth correction officer, parole and probation officer, emergency medical technician or firefighter; and

(B) Has sufficient indicia of reliability.

(b) In determining whether a statement has sufficient indicia of reliability under paragraph (a) of this subsection, the court shall consider all circumstances surrounding the statement. The court may consider, but is not limited to, the following factors in determining whether a statement has sufficient indicia of reliability:

(A) The personal knowledge of the declarant.

(B) Whether the statement is corroborated by evidence other than statements that are subject to admission only pursuant to this subsection.

(C) The timing of the statement.

(D) Whether the statement was elicited by leading questions.

(E) Subsequent statements made by the declarant. Recantation by a declarant is not sufficient reason for denying admission of a statement under this subsection in the absence of other factors indicating unreliability.

(27) A report prepared by a forensic scientist that contains the results of a presumptive test conducted by the forensic scientist as described in ORS 475.235, if the forensic scientist attests that the report accurately reflects the results of the presumptive test.

(28)(a) A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that:

(A) The statement is relevant;

(B) The statement is more probative on the point for which it is offered than any other evidence that the proponent can procure through reasonable efforts; and

(C) The general purposes of the Oregon Evidence Code and the interests of justice will best be served by admission of the statement into evidence.

(b) A statement may not be admitted under this subsection unless the proponent of it makes known to the adverse party the intention to offer the statement and the particulars of it, including the name and address of the declarant, sufficiently in advance of the trial or hearing, or as soon as practicable after it becomes apparent that such statement is probative of the issues at hand, to provide the adverse party with a fair opportunity to prepare to meet it.

SECTION 3. Section 4 of this 2007 Act is added to and made a part of ORS 194.505 to 194.595.

SECTION 4. (1) A notarial act has the same effect under the law of this state as though performed by a notarial officer of this state if performed anywhere by any of the following persons under authority granted by a federally recognized American Indian tribal government located within the United States:

- (a) A notary public of the tribal government.
- (b) A judge, clerk or deputy clerk of any court of the tribal government.
- (c) Any other person authorized by the law of the tribal government to perform notarial acts.

(2) The signature and title of a person performing a notarial act under this section are prima facie evidence that the signature is genuine and that the person holds the designated title.

(3) The signature and title of an officer listed in subsection (1)(a) or (b) of this section conclusively establish the authority of a holder of that title to perform a notarial act.

Passed by House February 8, 2007

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 Chief Clerk of House

.....
 Speaker of House

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

.....
 Governor

Passed by Senate March 26, 2007

.....
 President of Senate

Filed in Office of Secretary of State:

.....M.,....., 2007

.....
 Secretary of State

Senate Bill 308

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Oregon State Bar Real Estate and Land Use Section)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies meaning of "owner" and "landowner" for purposes of certain annexations of territory.

A BILL FOR AN ACT

1
2 Relating to annexation without election; creating new provisions; and amending ORS 199.490 and
3 222.120.

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

5 **SECTION 1. (1) As used in this section and ORS 222.120, 222.125 and 222.170, "owner" or**
6 **"landowner" means the legal owner of record of land or, when there is a recorded land con-**
7 **tract in force, the purchaser under the land contract unless the legal owner or purchaser is**
8 **a state or local road authority, as defined in ORS 801.445, whose sole ownership interest in**
9 **the territory proposed to be annexed is ownership or an interest in a public roadway located**
10 **within or adjacent to the territory proposed to be annexed.**

11 **(2) If multiple persons share ownership of a lot or parcel of land, the consent or non-**
12 **consent of each owner is counted as a fraction to the same extent as the interest of the**
13 **owner in the land bears in relation to the interest of the other owners and the same fraction**
14 **is applied to the parcel's land mass and assessed value for purposes of the consent petition.**
15 **If a corporation owns land in territory proposed to be annexed, the corporation is considered**
16 **the individual owner of that land.**

17 **SECTION 2. ORS 222.120 is amended to read:**

18 222.120. (1) Except when expressly required to do so by the city charter, the legislative body
19 of a city is not required to submit a proposal for annexation of territory to the electors of the city
20 for their approval or rejection.

21 (2) When the legislative body of the city elects to dispense with submitting the question of the
22 proposed annexation to the electors of the city, the legislative body of the city shall fix a day for
23 a public hearing before the legislative body at which time the electors of the city may appear and
24 be heard on the question of annexation.

25 (3) The city legislative body shall cause notice of the hearing to be published once each week
26 for two successive weeks prior to the day of hearing, in a newspaper of general circulation in the
27 city, and shall cause notices of the hearing to be posted in four public places in the city for a like
28 period.

29 (4) After the hearing, the city legislative body may, by an ordinance containing a legal de-
30 scription of the territory in question:

31 (a) Declare that the territory is annexed to the city upon the condition that the majority of the

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 votes cast in the territory is in favor of annexation;

2 (b) Declare that the territory is annexed to the city where electors or landowners in the con-
 3 tiguous territory consented in writing to such annexation, as provided in ORS 222.125 or 222.170,
 4 prior to the public hearing held under subsection (2) of this section; or

5 (c) Declare that the territory is annexed to the city where the Department of Human Services,
 6 prior to the public hearing held under subsection (1) of this section, has issued a finding that a
 7 danger to public health exists because of conditions within the territory as provided by ORS 222.840
 8 to 222.915.

9 (5) If the territory described in the ordinance issued under subsection (4) of this section is a part
 10 less than the entire area of a district named in ORS 222.510, the ordinance may also declare that
 11 the territory is withdrawn from the district on the effective date of the annexation or on any sub-
 12 sequent date specified in the ordinance. However, if the affected district is a district named in ORS
 13 222.465, the effective date of the withdrawal of territory shall be determined as provided in ORS
 14 222.465.

15 (6) The ordinance referred to in subsection (4) of this section is subject to referendum.

16 *[(7) For the purpose of this section, ORS 222.125 and 222.170, "owner" or "landowner" means the*
 17 *legal owner of record or, where there is a recorded land contract which is in force, the purchaser*
 18 *thereunder. If there is a multiple ownership in a parcel of land each consenting owner shall be counted*
 19 *as a fraction to the same extent as the interest of the owner in the land bears in relation to the interest*
 20 *of the other owners and the same fraction shall be applied to the parcel's land mass and assessed value*
 21 *for purposes of the consent petition. If a corporation owns land in territory proposed to be annexed, the*
 22 *corporation shall be considered the individual owner of that land.]*

23 **SECTION 3.** ORS 199.490 is amended to read:

24 199.490. (1) A proceeding for a minor boundary change other than a transfer of territory may
 25 be initiated:

26 (a) By resolution of the governing body of the affected city or district;

27 (b) By petition signed by 10 percent of the electors registered in the affected territory;

28 (c) By petition signed by the owners of at least one-half the land area in the affected territory;

29 (d) By resolution of a boundary commission having jurisdiction of the affected territory; or

30 (e) When the minor boundary change is a withdrawal of a city from a district, by resolution of
 31 the governing body of the city, which shall be an affected city for the purposes of ORS 199.410 to
 32 199.534.

33 (2)(a)(A) An annexation proceeding may also be initiated by a resolution adopted by the gov-
 34 erning body of the affected city or district upon receiving consent to annex their land in writing
 35 from more than half of the owners of land in the territory proposed to be annexed, who also own
 36 more than half of the land in the territory proposed to be annexed and of real property therein
 37 representing more than half of the assessed value of all real property in the territory proposed to
 38 be annexed.

39 (B) A resolution adopted by the governing body of the affected city or district upon receiving
 40 written consent to annexation from a majority of the electors registered in the territory proposed
 41 to be annexed and written consent to the annexation of their land from the owners of more than
 42 half the land in the territory proposed to be annexed.

43 (b) However, before soliciting statements of consent for the purpose of authorizing an
 44 annexation under a proceeding initiated as provided by this subsection, the governing body of the
 45 affected city or district shall file a notice of intent to annex with the boundary commission having

1 jurisdiction of the affected territory. The notice of intent to annex shall name the affected city or
 2 district and generally describe the boundaries of the territory sought to be annexed, which territory
 3 must be contiguous to the city or district or separated from it only by a public right of way or a
 4 stream, bay, lake or other body of water. The notice of intent to annex shall have attached to it a
 5 county assessor's cadastral map showing the location of the affected territory that the city or dis-
 6 trict proposes to annex.

7 (c) For the purpose of this subsection, consent need not be obtained for any land in a public
 8 way included within or contiguous to the territory proposed to be annexed. However, land in such
 9 a public way shall, as determined by the commission, be considered annexed to the affected city or
 10 district if the minor boundary change is approved, regardless of the land's ownership, size or as-
 11 sessed valuation.

12 (d) For the purpose of this subsection, consent need not be obtained for any real property that
 13 is publicly owned, is the right of way for a public utility, telecommunications utility or railroad or
 14 is exempt from ad valorem taxation unless the owner of such property files a statement consenting
 15 to or opposing annexation with the legislative body of the annexing city or district on or before the
 16 date the city or district adopts the resolution required by paragraph (a) of this subsection.

17 (e) As used in this subsection, "owner" has the additional meaning given that term in [ORS
 18 222.120 (7)] **section 1 of this 2007 Act.**

19 (3) A transfer of territory proceeding may be initiated:

20 (a) By joint resolution of the governing bodies of the affected districts or cities;

21 (b) By petition signed by 10 percent of the electors registered in the affected territory;

22 (c) By petition signed by the owners of at least one-half the land area in the affected territory;

23 or

24 (d) By resolution of a boundary commission having jurisdiction of the affected territory.

25 (4) The petition or resolution shall:

26 (a) Name the affected city or district and state whether it is proposed to annex, withdraw or
 27 transfer territory;

28 (b) Describe the boundaries of the affected territory;

29 (c) If the proposal concerns a district, designate the applicable principal Act;

30 (d) Have attached a county assessor's cadastral map showing the location of the affected terri-
 31 tory; and

32 (e) Be filed with the boundary commission having jurisdiction of the affected territory.

33 (5) When a city annexation is initiated:

34 (a) As provided by ORS 222.750 the petition proposing the annexation shall be filed with the
 35 boundary commission having jurisdiction of the annexation.

36 (b) As provided by ORS 222.840 to 222.915, the findings adopted by the Director of Human Ser-
 37 vices under ORS 222.880 shall be considered the initiatory action and a certified copy of the findings
 38 shall be filed with the boundary commission having jurisdiction of the annexation, at the same time
 39 a copy of the finding is filed with the affected city.

40 (6) Except when a boundary change is initiated by an affected city or district under subsection
 41 (1), (2), (3) or (5) of this section or by the Director of Human Services as provided by subsection
 42 (5)(b) of this section, the boundary commission shall notify the affected city or district that a petition
 43 has been filed or that the commission has adopted a resolution. If the petition complies with the
 44 requirements of the applicable statutes, the commission shall proceed as provided by ORS 199.460
 45 to 199.463 and 199.490 to 199.519.

1 (7) Unless the parties appearing at a hearing for a minor boundary change or application under
2 ORS 199.464 agree to a postponement of the adoption of a final order, a final order approving or
3 disapproving a minor boundary change must be adopted within 90 days after the date the petition,
4 resolution or application is filed with the commission. If a final order approving or disapproving a
5 minor boundary change is not adopted within 90 days after the petition, resolution or application is
6 filed or within the period of postponement, the petition, resolution or application shall be considered
7 approved by the commission. A postponement shall not be for a period exceeding one year from the
8 date the petition, resolution or application initiating the proposal is filed with the commission.

9 **SECTION 4. The amendments to ORS 222.120 by section 2 of this 2007 Act apply to an**
10 **annexation proposal for which the first notice of hearing required in ORS 222.120 is published**
11 **and posted on or after the effective date of this 2007 Act.**

12

Enrolled
Senate Bill 310

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CHAPTER

AN ACT

Relating to sale of county land; amending ORS 275.225.

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

SECTION 1. ORS 275.225 is amended to read:

275.225. (1) Notwithstanding ORS 275.110 to 275.220, the governing body of a county may authorize the sale of county land by private sale as provided in this section if each parcel of county land to be sold is:

- (a) Assessed at less than \$5,000 on the most recent assessment roll prepared for the county; and
- (b) Unsuitable for the construction or placement of a dwelling under [*current*] **applicable** zoning ordinances and building codes [*of the county*].

(2) The governing body of the county may publish a notice of the private sale of county land described in subsection (1) of this section in a newspaper of general circulation in the county. The notice must contain a description of the land and must indicate the assessed value of the land.

(3) Not earlier than 15 days after publication of the notice, an officer or employee of the county authorized by the governing body of the county to sell the land may sell all or a part of the land, at private sale without further notice, at a price the governing body of the county considers reasonable.

(4) A sale under this section must be made in the manner provided by ORS 275.190 (1).

Passed by Senate March 12, 2007

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Secretary of Senate

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President of Senate

Passed by House May 7, 2007

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Speaker of House

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State

Enrolled Senate Bill 311

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CHAPTER

AN ACT

Relating to application for action by local government; amending ORS 215.427.

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

SECTION 1. ORS 215.427 is amended to read:

215.427. (1) Except as provided in subsections (3) and [(4)] (5) of this section, for land within an urban growth boundary and applications for mineral aggregate extraction, the governing body of a county or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 215.422, within 120 days after the application is deemed complete. The governing body of a county or its designee shall take final action on all other applications for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 215.422, within 150 days after the application is deemed complete, except as provided in subsections (3) and [(4)] (5) of this section.

(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant **in writing** of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section *[upon receipt by the governing body or its designee of the missing information. If the applicant refuses to submit the missing information, the application shall be deemed complete for the purpose of subsection (1) of this section on the 31st day after the governing body first received the application]* **upon receipt by the governing body or its designee of:**

- (a) **All of the missing information;**
- (b) **Some of the missing information and written notice from the applicant that no other information will be provided; or**
- (c) **Written notice from the applicant that none of the missing information will be provided.**

(3)(a) If the application was complete when first submitted or the applicant submits *[the requested]* additional information, **as described in subsection (2) of this section**, within 180 days of the date the application was first submitted and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

(b) If the application is for industrial or traded sector development of a site identified under section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan,

approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this subsection.

(4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:

(a) All of the missing information;

(b) Some of the missing information and written notice that no other information will be provided; or

(c) Written notice that none of the missing information will be provided.

[(4)] (5) The period set in subsection (1) of this section may be extended for a [reasonable] specified period of time at the written request of the applicant. The total of all extensions may not exceed 215 days.

[(5)] (6) The period set in subsection (1) of this section applies:

(a) Only to decisions wholly within the authority and control of the governing body of the county; and

(b) Unless the parties have agreed to mediation as described in ORS 197.319 (2)(b).

[(6)] (7) Notwithstanding subsection [(5)] (6) of this section, the period set in subsection (1) of this section does not apply to an amendment to an acknowledged comprehensive plan or land use regulation or adoption of a new land use regulation that was forwarded to the Director of the Department of Land Conservation and Development under ORS 197.610 (1).

[(7)] (8) Except when an applicant requests an extension under subsection [(4)] (5) of this section, if the governing body of the county or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days or 150 days, as applicable, after the application is deemed complete, the county shall refund to the applicant either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.

[(8)] (9) A county may not compel an applicant to waive the period set in subsection (1) of this section or to waive the provisions of subsection [(7)] (8) of this section or ORS 215.429 as a condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment.

Passed by Senate March 12, 2007

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Secretary of Senate

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President of Senate

Passed by House May 8, 2007

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Speaker of House

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State

Enrolled
House Bill 2365

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon State Bar Real Estate and Land Use Section)

CHAPTER

AN ACT

Relating to tenancies in real property; creating new provisions; and amending ORS 93.180.

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

SECTION 1. ORS 93.180 is amended to read:

93.180. *[Every conveyance or devise of lands, or interest therein, made to two or more persons, other than to a husband and wife, as such, or to executors or trustees, as such, creates a tenancy in common unless it is in some manner clearly and expressly declared in the conveyance or devise that the grantees or devisees take the lands with right of survivorship. Such]*

(1) A conveyance or devise of real property, or an interest in real property, that is made to two or more persons:

(a) Creates a tenancy in common unless the conveyance or devise clearly and expressly declares that the grantees or devisees take the real property with right of survivorship.

(b) Creates a tenancy by the entirety if the conveyance or devise is to a husband and wife unless the conveyance or devise clearly and expressly declares otherwise.

(c) Creates a joint tenancy as described in ORS 93.190 if the conveyance or devise is to a trustee or personal representative.

(2) A declaration of a right to survivorship [shall create] creates a tenancy in common in the life estate with cross-contingent remainders in the fee simple.

(3) Except as provided in ORS 93.190, joint tenancy in real property is abolished and the use in a conveyance or devise of the words "joint tenants" or similar words without any other indication of an intent to create a right of survivorship [shall create] creates a tenancy in common.

SECTION 2. The amendments to ORS 93.180 by section 1 of this 2007 Act apply to conveyances or devises that are made on or after the effective date of this 2007 Act.

Passed by House February 8, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate March 26, 2007

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President of Senate

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

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.....M,....., 2007

.....
Secretary of State

Enrolled
House Bill 2366

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

CHAPTER

AN ACT

Relating to statutes of limitation; creating new provisions; and amending ORS 12.160.

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

SECTION 1. ORS 12.160 is amended to read:

12.160. *[If, at the time the cause of action accrues, any person entitled to bring an action mentioned in ORS 12.010 to 12.050, 12.070 to 12.250 and 12.276 is within the age of 18 years or insane, the time of such disability shall not be a part of the time limited for the commencement of the action; but the period within which the action shall be brought shall not be extended more than five years by any such disability, nor shall it be extended in any case longer than one year after such disability ceases.]*

(1) Subject to subsection (2) of this section, if a person is entitled to bring an action that is subject to the statutes of limitation prescribed by ORS 12.010 to 12.050, 12.070 to 12.250 or 12.276, and at the time the cause of action accrues the person is a child who is younger than 18 years of age, the statute of limitation for commencing the action is tolled for so long as the person is younger than 18 years of age.

(2) The time for commencing an action may not be extended under subsection (1) of this section for more than five years, or for more than one year after the person attains 18 years of age, whichever occurs first.

(3) Subject to subsection (4) of this section, if a person is entitled to bring an action that is subject to the statutes of limitation prescribed by ORS 12.010 to 12.050, 12.070 to 12.250 or 12.276, and at the time the cause of action accrues the person is insane, the statute of limitation for commencing the action is tolled for so long as the person is insane.

(4) The time for commencing an action may not be extended under subsection (3) of this section for more than five years, or for more than one year after the person is no longer insane, whichever occurs first.

(5) If a child's cause of action is tolled under subsection (1) of this section, a cause of action for recovery of damages for medical expenses incurred by a parent, guardian or conservator of the child is tolled for the same period of time as the child's cause of action if the medical expenses resulted from the same wrongful conduct that is the basis of the child's cause of action.

SECTION 2. The amendments to ORS 12.160 by section 1 of this 2007 Act apply only to causes of action arising on or after the effective date of this 2007 Act.

Passed by House March 12, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate May 17, 2007

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President of Senate

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

.....
Governor

Filed in Office of Secretary of State:

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Secretary of State

Enrolled House Bill 2367

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CHAPTER

AN ACT

Relating to Council on Court Procedures; amending ORS 1.730.

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

SECTION 1. ORS 1.730 is amended to read:

1.730. (1) There is created a Council on Court Procedures consisting of:

- (a) One judge of the Supreme Court, chosen by the Supreme Court.
- (b) One judge of the Court of Appeals, chosen by the Court of Appeals.
- (c) Eight judges of the circuit court, chosen by the Executive Committee of the Circuit Judges Association.

(d) Twelve members of the Oregon State Bar, appointed by the Board of Governors of the Oregon State Bar. The Board of Governors, in making the appointments referred to in this [section] **paragraph**, shall include but not be limited to appointments from members of the bar active in civil trial practice, to the end that the lawyer members of the council shall be broadly representative of the trial bar and the regions of the state.

(e) One public member, chosen by the Supreme Court.

(2)(a) A quorum of the council shall be constituted by a majority of the members of the council.[, and] **If a quorum is present**, an affirmative vote by a majority of **the members of the council who are present** is required for action by the council on all matters other than promulgation of rules under ORS 1.735. An affirmative vote of fifteen members of the council shall be required to promulgate rules pursuant to ORS 1.735.

(b) The council shall adopt rules of procedure and shall choose, from among its membership, annually, a chairperson to preside over the meetings of the council.

(3)(a) All meetings of the council shall be held in compliance with the provisions of ORS 192.610 to 192.690.

(b) In addition to the requirements imposed by paragraph (a) of this subsection, with respect to the public hearings required by ORS 1.740 and with respect to any meeting at which final action will be taken on the promulgation, amendment or repeal of a rule under ORS 1.735, the council shall cause to be published or distributed to all members of the bar, at least two weeks before such hearing or meeting, a notice which shall include the time and place and a description of the substance of the agenda of the hearing or meeting.

(c) The council shall make available upon request a copy of any rule which it proposes to promulgate, amend or repeal.

(4) Members of the Council on Court Procedures shall serve for terms of four years and shall be eligible for reappointment to one additional term, provided that, where an appointing authority has more than one vacancy to fill, the length of the initial term shall be fixed at either two or four years by that authority to accomplish staggered expiration dates of the terms to be filled. Vacancies occurring shall be filled by the appointing authority for the unexpired term.

(5) Members of the Council on Court Procedures shall not receive compensation for their services but may receive actual and necessary travel or other expenses incurred in the performance of their official duties as members of the council, as provided in ORS 292.210 to 292.288.

Passed by House February 20, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate March 26, 2007

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President of Senate

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

.....
Governor

Filed in Office of Secretary of State:

.....M.,....., 2007

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Secretary of State

Enrolled
House Bill 2368

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

CHAPTER

AN ACT

Relating to appeals; creating new provisions; and amending ORS 19.270.

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

SECTION 1. ORS 19.270 is amended to read:

19.270. (1) The Supreme Court or the Court of Appeals has jurisdiction of the cause when the notice of appeal has been served and filed as provided in ORS 19.240, 19.250 and 19.255. The trial court may exercise those powers in connection with the appeal as are conferred by law, and retains jurisdiction in the matter for the following purposes:

- (a) Deciding requests for attorney fees, costs and disbursements or expenses pursuant to ORCP 68 or other provision of law.
- (b) Enforcing the judgment, subject to any stay of the judgment.
- (c) Deciding a motion for judgment notwithstanding the verdict under ORCP 63.**
- (d) Deciding a motion for new trial under ORCP 64.**
- (e) Deciding a motion for relief from judgment under ORCP 71 B.**

(2) The following requirements of ORS 19.240, 19.250 and 19.255 are jurisdictional and may not be waived or extended:

(a) Service of the notice of appeal on all parties identified in the notice of appeal as adverse parties or, if the notice of appeal does not identify adverse parties, on all parties who have appeared in the action, suit or proceeding, as provided in ORS 19.240 (2)(a), within the time limits prescribed by ORS 19.255.

(b) Filing of the original of the notice of appeal with the Court of Appeals as provided in ORS 19.240 (3), within the time limits prescribed by ORS 19.255.

(3) After the Supreme Court or the Court of Appeals has acquired jurisdiction of the cause, the omission of a party to perform any of the acts required in connection with an appeal, or to perform such acts within the time required, shall be cause for dismissal of the appeal. In the event of such omission, the court, on motion of a party or on its own motion may dismiss the appeal. An appeal dismissed on a party's motion or on the court's own motion may be reinstated upon showing of good cause.

(4) Notwithstanding the filing of a notice of appeal, the trial court has jurisdiction, with leave of the appellate court, to enter an appealable judgment if the appellate court determines that:

- (a) At the time of the filing of the notice of appeal the trial court intended to enter an appealable judgment; and

(b) The judgment from which the appeal is taken is defective in form or was entered at a time when the trial court did not have jurisdiction of the cause under subsection (1) of this section, or the trial court had not yet entered an appealable judgment.

(5) Notwithstanding the filing of a notice of appeal, the trial court has jurisdiction:

(a) To enter an order or supplemental judgment under ORCP 71 or ORS 19.275, 107.105 (4) or 107.452; and

(b) To enter an order or supplemental judgment for the purpose of implementing a settlement as allowed by ORS 19.410 (3).

(6) Jurisdiction of the appellate court over a cause ends when a copy of the appellate judgment is mailed by the State Court Administrator to the court from which the appeal was taken pursuant to ORS 19.450, except that the appellate court may:

(a) Recall the appellate judgment as justice may require;

(b) Stay enforcement of the appellate judgment to allow the filing of a petition for writ of certiorari to the Supreme Court of the United States; and

(c) Stay enforcement of the appellate judgment pending disposition of the matter by the Supreme Court of the United States or for such other time as the Oregon appellate court may deem appropriate.

(7) If a limited or supplemental judgment is appealed, the jurisdiction of the appellate court is limited to the matters decided by the limited or supplemental judgment, and the trial court retains jurisdiction over all other matters in the proceeding.

(8) After jurisdiction of the appellate court ends, all orders which may be necessary to carry the appellate judgment into effect shall be made by the court from which the appeal was taken.

SECTION 2. The amendments to ORS 19.270 by section 1 of this 2007 Act apply only to causes for which a notice of appeal is filed on or after the effective date of this 2007 Act.

Passed by House February 20, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate March 26, 2007

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President of Senate

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2007

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Secretary of State