

2015  
OREGON  
LEGISLATION  
HIGHLIGHTS



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*Most bills passed during the 2015 session  
have special effective dates. These dates are  
noted in the description of each bill.*

*If a special effective date is not proscribed in a  
bill, it takes effect on January 1, 2016.*

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## FORWARD

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

This book highlights more than 350 bills and other measures that were passed by both houses of the legislature. This book does not describe all of the enacted legislation. *Unless otherwise noted, all legislation takes effect on January 1, 2016.*

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

Each bill is identified – in the chapter outline and in the text – by its bill number and its 2015 Oregon Laws chapter number. A table of bill numbers and Oregon Laws chapter numbers appears at the end of the book for a quick reference to the discussion in the text.

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

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

We would also like thank the staff of the Oregon Office of Legislative Counsel, both for their volunteer assistance editing and reviewing this publication, and for their ongoing support of the Oregon State Bar.



# 2015 Oregon Legislation Highlights

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# 1

**Matt Barber**  
**Judy Parker**

## **Administrative Law**

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## I. INTRODUCTION

This chapter covers legislation effecting a variety of state agencies, especially including agency rulemaking requirements, and is generally organized by agency or topic area. Additionally the chapter contains bills relating to the Office of Administrative Hearings, and to governmental ethics including lobbying and the Government Standards and Practices Commission. Unless otherwise stated, all bills take effect on January 1, 2016.

## II. GOVERNMENTAL ETHICS

### 1. [HB 2019](#) (Ch. 619) Government Ethics Commission

HB 2019 took effect on July 1, 2015, and made changes to the size, composition, and procedures of the Oregon Government Ethics Commission (Commission).

The bill amended [ORS 244.250 \(2013\)](#) to increase the number of members serving on the Commission from seven to nine, and correspondingly increased the quorum requirement from four to five members. The number of members appointed by the Governor upon the recommendation of the Democratic and Republican leaders in each house of the Legislative Assembly has also increased, from four to eight. The number of members the Governor can appoint without a recommendation from legislative leadership has decreased from three to one, and the number of members who may be members of the same political party has also decreased, from four to three.

The amendments to ORS 244.250 (2013) become operative on July 1, 2016.

[ORS 244.260\(2\) \(2013\)](#) had required that the Commission provide notice of a complaint alleging a violation of [ORS chapter 244 \(2013\)](#) or a rule adopted pursuant to ORS chapter 244, or a motion to proceed without a complaint, by mail and telephone if the person could be reached by telephone. HB 2019 repealed the requirement that notice be provided by mail and telephone. When providing notice of the complaint or motion, the Commission must include copies of all materials that were submitted with the complaint, or that the Commission will consider at the hearing on the motion.

The responsibility for determining whether the conduct of a member of the Legislative Assembly who is the subject of a complaint or motion involves conduct protected by [Article IV, section 9, of the Oregon Constitution](#) was transferred from the Commission to the Commission's executive director.

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The timeframe for conducting the Preliminary Review Phase to determine whether there is cause to undertake an investigation was reduced from 135 to 30 days. The Commission and the person who is the subject of a complaint can no longer stipulate to a delay in excess of the allowed timeframe. If a candidate for elective office is the subject of a complaint, then the candidate can request a delay in writing, and the Preliminary Review Phase must be completed not later than 30 days after the date of the election.

The Preliminary Review Phase is confidential, as is any information that the Commission considers before approving a motion to proceed on its own motion and related correspondence regarding the motion or potential violation is confidential. HB 2019 amends ORS 244.260 (2013) to specifically include the Commission's executive director along with the Commission's members and staff as being subject to a civil penalty, not to exceed \$1,000, for violating the confidentiality requirement.

HB 2019 added a new paragraph (d) to ORS 244.260(3) (2013) concerning the conclusion of the Preliminary Review Phase. After completing the Preliminary Review Phase, the executive director must prepare a statement of facts with legal citations and relevant authorities. Legal counsel must review the statement of facts before it can be presented to the Commission. The executive director must attend an executive session of the Commission and present the statement of facts, along with a summary of the results of the Preliminary Review Phase and a recommendation as to whether there is cause to undertake an investigation or whether the Commission should dismiss the complaint or rescind its motion. During the executive session, the Commission shall consider the executive director's recommendation and make a final determination as to whether there is cause to undertake an investigation or whether the Commission should dismiss the complaint or rescind its motion.

If the Commission considers the executive director's recommendations in an executive session, but does not affirmatively vote to undertake an investigation, dismiss the complaint, or rescind its motion, the Commission's nonaction shall be considered a dismissal of the complaint or a rescission of its motion.

HB 2019 repealed ORS 244.260(4)(e)(A), which provided that the time limits established by ORS 244.260 and the Commission's inquiry were suspended if there was a pending criminal investigation that related to the issues arising out of the matter under investigation or consideration by the Commission.

If the Commission makes a finding of cause to undertake an investigation and undertakes action in the Investigatory Phase, the timeframe for completing the Investigatory Phase is 180 days; however that can be suspended if there is a pending criminal investigation that relates to the issues arising out of the matter under investigation or consideration by the Commission and the Commission determines that it cannot adequately complete its investigation until the pending criminal investigation is completed.

The amendments to ORS 244.260 apply to complaints filed on or after July 1, 2015.

HB 2019 amended [ORS 244.290](#), as amended by [section 9d, chapter 877, Oregon Laws 2007](#), and [section 14, chapter 68, Oregon Laws 2009](#). The types of materials the Commission must make available online for public review has increased from just statements filed under [ORS 244.050](#) and [244.217](#) to include advisory opinions issued by the Commission or its executive director, and findings issued by the Commission under ORS 244.260 after it has determined that there has been a violation of a violation of ORS chapter 244 (2013) or a rule adopted pursuant to ORS chapter 244.

The amendments to ORS 244.290, as amended by section 9d, chapter 877, Oregon Laws 2007, and section 14, chapter 68, Oregon Laws 2009 become operative on January 1, 2017.

**2. [HB 2058](#) (Ch. 813) Lobbyist Expenses**

Under [ORS 171.745 \(2013\)](#), as amended by section 1, chapter 701, Oregon Laws 2013, lobbyists registered or required to register with the Oregon Government Ethics Commission must file statements with the commission showing certain expenses incurred while lobbying. However, lobbyists are not required to report the amounts they spent lobbying another lobbyist. The exemption on reporting expenses incurred lobbying another lobbyist is repealed by section 2, chapter 701, Oregon Laws 2013, which became operative on June 30, 2015.

HB 2058 would amend section 3, [chapter 701](#), Oregon Laws 2013, to provide that the exemption on reporting expenses incurred lobbying another lobbyist would not become effective until June 30, 2017. Additionally, the bill provides that if it does not become effective until after June 30, 2015, then it will apply retroactively to June 30, 2015, and the exemption in section 1, chapter 701, Oregon Laws 2013, will be revived and continue forward from that date to the effective date of HB 2058.

HB 2058 took effect on August 12, 2015.

**3. [SB 294](#) (Ch. 666) Rules**

SB 294 amends [ORS 244.290](#) (2013) to authorize the Oregon Government Ethics Commission to adopt rules necessary to carry out its duties under [ORS 192.660](#) and [192.685](#) (2013). ORS 192.660 (2013) concerns executive sessions, and ORS 192.685 (2013) authorizes the commission to investigate and respond to alleged violations of ORS 192.660 (2013).

ORS 244.290 (2013), as amended by section 9d, chapter 877, Oregon Laws 2007, and section 14, chapter 68, Oregon Laws 2009, is similarly amended.

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The bill also amends ORS 192.660 (2013) to provide that, notwithstanding ORS 244.290, the commission may not adopt rules that establish which entities are considered representatives of the news media entitled to attend executive sessions.

SB 294 has an effective date of January 1, 2016, and the amendments to ORS 192.660 and 244.290 apply to alleged violations that occur on or after that date.

### III. MEDICAL AND HEALTH AGENCIES, BOARDS, AND COMMISSIONS

#### 1. [SB 696](#) (Ch. 674) Behavior Analysis Regulatory Board

SB 696 amends [ORS 676.800](#), as amended by section 19, chapter 771, Oregon Laws 2013, to increase the number of members on the Behavior Analysis Regulatory Board from seven to nine. It increases number of members who must be licenses by the board from three to four, requires that one of the newly added members must be a parent, guardian, or family member of an individual diagnosed with autism spectrum disorder who has received some form of applied behavior analysis therapy, and replaces a previous requirement that one member be a licensed speech-language pathologist registered with the board with a new requirement that one member be a licensed developmental pediatrician with experience or training in treating autism spectrum disorder. Members are appointed by the Governor and must be confirmed by the Senate.

SB 696 has an effective date of July 6, 2015; however, sections 1, 3 to 5, 10 and 18 of the bill and the amendments to [ORS 676.160](#), [676.583](#), [676.610](#), [676.613](#), [676.622](#), [676.800](#), [676.805](#) and [676.992](#) and sections 2, 4 and 24, chapter 771, Oregon Laws 2013, by sections 2, 6 to 9 and 11 to 16 of the bill become operative on November 1, 2015. The Governor, the Health Licensing Office, and the board, are authorized to take any action before November 1, 2015, that is necessary to enable the Governor, the office, or the board to exercise all of the duties and responsibilities conferred on the Governor, the office, and the board on November 1, 2015.

Sections 1 and 3 to 5 of the bill and the amendments to ORS 676.160, 676.583, 676.610, 676.613, 676.622, 676.800, 676.805 and 676.992 and sections 2, 4 and 24, chapter 771, Oregon Laws 2013, by sections 2, 6 to 9 and 11 to 16 of the bill apply to an individual licensed as a behavior analyst or assistant behavior analyst by the Behavior Analysis Regulatory Board or registered as a behavior analysis interventionist by the Health Licensing Office on or after November 1, 2015.

#### 2. [HB 2307](#) (Ch. 79) Conversion Therapy Prohibition

HB 2307 prohibits a mental health care or social health professional from practicing “conversion therapy”, a term defined in the bill, if the recipient is under 18 years of age. It also makes conforming amendments to [ORS 675.070](#), [675.300](#), [675.336](#), [675.540](#), and [675.745](#) (2013) which make the practice of conversion therapy, if the recipient is under 18 years of age,

grounds for administrative sanctions, including but not limited to suspension or revocation of the professional's license.

The bill took effect on May 18, 2015. For more information on this bill, please see the Health Law Chapter.

**3. [SB 699](#) (Ch. 794) Cosmetology**

[ORS 690.025](#) (2013) lists various classes of persons who are exempt from the cosmetology licensing requirements of [ORS 690.005 to 690.225](#), such as cosmetology students and certain health care professionals.

SB 699 amends ORS 690.025 (2013) to add two additional classes of persons to that list: persons who apply temporary makeup or style hair for the sole purpose of preparing an individual for a professional film or video performance or a theatrical performance, and persons who apply temporary makeup and style hair in the manner identified in the bill for the sole purpose of preparing an individual for a professional photograph.

For the benefit of the two additional classes of persons added to ORS 690.005 to 690.225, the bill also authorizes the Health Licensing Office to develop and disseminate guidelines for sanitation and hygiene best practices.

SB 699 took effect on July 27, 2015.

**4. [HB 2296](#) (Ch. 56) Electrologists and Body Art Practitioners**

HB 2296 changes the name of the Board of Body Art Practitioners, located within the Health Licensing Office, to the Board of Electrologists and Body Art Practitioners. Amends [ORS 690.401](#) and [690.410](#) (2013) accordingly, and directs the Legislative Counsel to update references to the board in the Oregon Revised Statutes.

**5. [HB 2642](#) (Ch. 722) Estheticians**

HB 2642 establishes standards for the use of a laser or other nonablative device in "advanced nonablative esthetic procedures" (a term defined in the bill), and criteria for estheticians using lasers and other nonablative devices. The bill prohibits estheticians from using lasers and other nonablative devices unless they possess an advanced esthetician certification, and it also establishes the criteria for obtaining an advanced esthetician certificate.

Advanced esthetician certifications will be issued by the newly created Board of Certified Advanced Estheticians, located within the Health Licensing Office. The board will consist of nine members appointed by the Governor and either the section manager of the Radiation Protection Services Section of the Oregon Health Authority, or the section manager's

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designee. The board is authorized to adopt rules establishing, among other requirements, safety and sanitation standards for nonablative procedures and a professional code of conduct for certified advanced estheticians.

The bill amends [ORS 676.583](#) (2013) to add the Board of Certified Advanced Estheticians to the list of boards for which the Health Licensing Office provides administrative and regulatory oversight, and it also amends [ORS 676.992](#) (2013) to add sections 1 to 7 of the bill to the list of statutes that, if violated, the Health Licensing Office may impose a civil penalty.

HB 2642 took effect on July 20, 2015, however the amendments to ORS 676.583 (2013) and ORS 676.992 (2013) and sections 1 to 9 of the bill do not become operative until July 1, 2016. The Health Licensing Office is authorized to take administrative action before the operative date so that it can exercise its duties and responsibilities on July 1, 2016.

### 6. [SB 684](#) (Ch. 582) Limited Physician Licenses

SB 684 amends [ORS 677.132](#) (2013) to authorize the Oregon Medical Board to issue a limited license to practice medicine in Oregon to a physician who is licensed to practice medicine in another state or country, is appointed as a full-time professor of medicine at an Oregon medical school, and satisfies other criteria. The bill limits the board to issuing no more than eight such limited licenses in a four-year period and directs the board to adopt rules ensuring that at least two limited licenses are available each year.

SB 684 has an effective date of June 25, 2015, and the amendments to ORS 677.132 (2013) become operative on January 1, 2016. The board is authorized to take any action prior to January 1, 2016, necessary to enable the board to exercise the duties and responsibilities imposed by the bill's amendments to ORS 677.132 (2013).

### 7. [SB 298](#) (Ch. 491) Massage Therapy, Bodywork

SB 298 amends [ORS 687.011](#) (2013) to include "bodywork" as another synonym for "massage" – in addition to "massage therapy" – and clarify that the use of high-velocity, short-amplitude manipulative thrusting procedures to the articulations of the spine or extremities are not included within the definition of "massage," "massage therapy," or "bodywork." The bill also amended ORS 687.011 (5)(b) to clarify that an accredited college or university, or a community college operated under [ORS chapter 341](#), is not included within the definition of a "massage facility."

The bill also amends [ORS 687.051](#) (2013) to increase the minimum number of contact hours of certified classes an applicant for initial licensure as a massage therapist must complete from 500 to 625.

SB 298 will take effect on January 1, 2016, and the amendments to ORS 687.051 (2013) apply to applications received by the State Board of Massage Therapists on or after January 1, 2016.

**8. [SB 840](#) (Ch. 461) Medical Board: Definitions**

SB 840 adds the term “licensed independent practitioner” and its definition to [ORS 426.005](#) (2013). The bill amends [ORS 426.070](#), [426.072](#), [426.074](#), [426.075](#), [426.095](#), [426.155](#), [426.180](#), [426.225](#), [426.228](#), [426.231](#), [426.232](#), [426.233](#), [426.234](#), [426.235](#), [426.237](#), [426.292](#), [426.335](#), and [426.495](#) (2013), to replace references to “physician,” “person’s physician,” “attending physician,” and “physician licensed by the Oregon Medical Board,” among others, with references to “licensed independent practitioner,” and authorizes “licensed independent practitioners” to initiate or approve a prehearing detention of a person alleged to have a mental illness in a hospital or nonhospital facility.

“Licensed independent practitioners” who are or have been treating a person alleged to have a mental illness may be subpoenaed as expert witnesses. Their records are to be made available to community mental health program investigators and examiners appointed by a judge under ORS 426.110 (2013) for a commitment hearing.

SB 840 took effect on June 16, 2015.

**9. [SB 905](#) (Ch. 403) Medical Board: Membership**

SB 905 amends [ORS 677.235](#) (2013) to increase the number of members on the Oregon Medical Board from 12 to 13. One of the board members must be either a physician assistant licensed under [ORS 677.512](#) (2013) or a retired physician assistant. A spouse, domestic partner, child, parent, or sibling of either a physician assistant licensed under ORS 677.512 (2013) or a retired physician assistant is not eligible for appointment to the board as a public member.

The number of board members whose terms can end each year was also increased, from four to five. If a vacancy occurs on the board, the Governor must appoint another qualifying member possessing the same professional degree, license, or retired status of the Doctor of Medicine, Osteopathy, or Podiatric Medicine, or physician assistant whose position has been vacated.

The bill directs the Governor to appoint a physician assistant licensed under ORS 677.512 (2013) or a retired physician assistant to the board for a term beginning March 1, 2016. The Governor shall select the board member required to be either a physician assistant licensed under ORS 677.512 (2013) or a retired physician assistant from a list of three to five candidates

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submitted by the Oregon Society of Physician Assistants. The society shall submit its list to the Governor by no later than February 1. Candidates for the physician assistant member position must have been in active practice for at least five years preceding their appointment.

[ORS 677.540](#) and [677.545](#) (2013), which established the Physician Assistant Committee and the committee's duties, respectively, are repealed by the bill. A corresponding amendment to [ORS 677.515](#) (2013) removes a reference to the committee.

### 10. [SB 280](#) (Ch. 385) **Medical Imaging Board**

SB 280 amends [ORS 688.545](#) (2013) to modify the composition of the Board of Medical Imaging. One member must be a licensed physician who is a radiologist, three must be licensed physicians who apply to serve in a form and manner prescribed by the board, five must be "actively engaged" medical imaging licensees, including one from each of the medical imaging modalities listed in [ORS 688.405](#) (2013), and three must be members of the public. The bill establishes a process for filling a vacancy on the board by gubernatorial appointment if the board does not receive a sufficient number of applications to fill the physician member slots.

The term "actively engaged" and its definition are added to ORS 688.405 (2013).

SB 280 took effect on June 11, 2015, and the amendments to ORS 688.545 and 688.405 (2013) apply to board members appointed on or after June 11, 2015.

### 11. [HB 2796](#) (Ch. 632) **Music Therapy**

Sections 1 to 4 of HB 2796 authorize the Health Licensing Office to issue licenses to practice "music therapy," a term defined in the bill, to applicants who satisfy the criteria established in the bill. They also prohibit unlicensed individuals from practicing music therapy or using a title indicating that the person is a music therapist or authorized to practice music therapy.

The bill directs the Health Licensing Office to adopt rules establishing a process for issuing licenses, determining the qualifications of license applicants, establishing standards of practice and professional responsibility for music therapists, and approving examinations, certifications, and professional designations offered or issued by national music therapist certification or registration associations.

The bill amends [ORS 676.580](#) (2013) to add professions or occupations subject to the Health Licensing Office's direct oversight to the definition of "authorization." [ORS 676.992](#) (2013) is amended to authorize the Health Licensing Office to impose civil penalties for violations of sections 1 to 4 of the bill and rules regarding music therapists.

HB 2796 took effect on July 1, 2015. Sections 1 to 4 of the bill and its amendments to ORS 676.580 and 676.992 (2013) become operative on January 1, 2016. The Health Licensing Office is authorized to take administrative action before the operative date so that it can exercise its duties and responsibilities on January 1, 2016.

**12. [SB 281](#) (Ch. 173) Naturopathic Medicine Board**

SB 281 amends [ORS 685.160](#) (2013) to provide that a member of the Oregon Board of Naturopathic Medicine may not serve for more than two consecutive full terms (each term is for a period of three years), and directs the Governor to appoint a successor whose term will begin immediately upon the expiration of the current member's term.

The amendments to ORS 685.160 (2013) apply to board appointments made on or after January 1, 2016.

**13. [HB 2930](#) (Ch. 63) Nurse Practitioner Privileges**

HB 2930 amends [ORS 441.064](#) (2013) to provide that hospitals may grant privileges to nurse practitioners licensed and certified under [ORS 678.375](#) (2013). Such rules must include admitting privileges, be consistent with the privileges of other medical staff, and permit a nurse midwife nurse practitioner to exercise the voting rights of the other members of the medical staff.

**14. [SB 547](#) (Ch. 353) Nurse Emeritus**

SB 547 adds a new section to the [ORS 678.010 to 678.410](#) which authorizes the Oregon State Board of Nursing to issue a nurse emeritus license to an applicant who is a certified registered nurse anesthetist, clinical nurse specialist, licensed practical nurse, nurse practitioner or registered nurse who has been granted retirement status by the board and paid the fee set by the board by rule.

A licensed nurse emeritus may engage in the practice of nursing, practical nursing or registered nursing on a volunteer or other unpaid basis.

The board is directed to adopt rules establishing a licensing fee for the nurse emeritus license and the method to determine the competency required to practice nursing, practical nursing or registered nursing as a nurse emeritus.

SB 547 took effect on June 10, 2015, and has an operative date of January 1, 2016. The board may take any action on or before the operative date that is necessary to enable the board to exercise the duties and powers conferred on it by the bill.

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### 15. [HB 2028](#) (Ch. 362) Pharmacy Board: Clinical Pharmacy

HB 2028 amended [ORS chapter 689](#) (2013) to provide that pharmacists may engage in the practice of “clinical pharmacy” in accordance with rules adopted by the State Board of Pharmacy. It also changed the name of the Immunization and Vaccination Advisory Committee to the Public Health Advisory Committee.

[ORS 689.005](#) (2013), which provides definitions for terms used in ORS chapter 689 (2013), was amended to include definitions for “clinical pharmacy agreement” and “practice of clinical pharmacy.” Under a clinical pharmacy agreement between a pharmacist or pharmacy and a health care organization or a physician, a pharmacist may engage in the practice of clinical pharmacy, which means providing patient care to optimize medication therapy, promote health, wellness, and disease prevention, and the practice of pharmacy pursuant to a clinical pharmacy agreement. The definition of “practice of pharmacy” was amended to include two additional activities: optimizing drug therapy through the practice of clinical pharmacy and patient care services. These amendments to ORS 689.005 (2013) become operative on January 1, 2016.

HB 2028 also amended [ORS 689.645](#) (2013). Pharmacists may now provide approved patient care services, including smoking cessation therapy and travel health services, pursuant to a statewide drug therapy management protocol developed by the Oregon Health Authority (OHA) and adopted by rule of the State Board of Pharmacy. The board was also given authority to adopt rules regarding a pharmacist’s provision of patient care services. The amendments to ORS 689.645 (2013) become operative on January 1, 2016.

HB 2028 creates a new section in [ORS chapter 414](#) (2013), as amended by chapters 17, 25, and 55, Oregon Laws 2014, which authorizes the OHA to reimburse a pharmacist or pharmacy for providing health services to a recipient of medical assistance who is not enrolled in a coordinated care organization or a prepaid managed care health services organization, if the OHA determines that the service is within the types of care and services provided to recipients of medical assistance under [ORS 414.065](#) (2013).

HB 2028 also creates a new section in the Insurance Code (ORS chapters [731](#), [732](#), [733](#), [734](#), [735](#), [737](#), [742](#), [743](#), [743A](#), [748](#), and [759](#)) which provides that insurers may, notwithstanding any provisions of a health benefit plan - as defined in [ORS 743.730](#), provide payment or reimbursement for a service that is within the scope of practice of a pharmacist when the service is provided by a pharmacist. This new section applies to health benefit plans entered into or renewed on or after June 11, 2015.

HB 2028 took effect on June 11, 2015.

**16. [SB 148](#) (Ch. 284) Pharmacy Board: Composition**

SB 148 amends [ORS 689.115](#) (2013) to modify the composition of the State Board of Pharmacy. The number of members is increased from seven to nine, reflecting the addition of two members who must be pharmacy technicians. The pharmacy technician members must be licensed and in good standing in Oregon, engaged as pharmacy technicians in Oregon, and have at least three years of post-license experience working as pharmacy technicians in Oregon. A pharmacy technician member will be removed once the member ceases to be a licensed pharmacy technician.

The provisions regarding public members were amended as well. Whereas before, public members of the board could not be former members of the pharmacy profession, now they also cannot be current members of the profession.

The bill directs the Governor to appoint the licensed pharmacy technician members for terms beginning on January 1, 2016.

SB 148 took effect on June 8, 2015.

**17. [HB 2305](#) (Ch. 78) Polysomnographic Technologists**

HB 2305 amends [ORS 688.819](#) (2013). It clarifies that an applicant for a polysomnographic technologist license must have completed a polysomnography program that is approved by the Respiratory Therapist and Polysomnographic Technologist Licensing Board. The program can be either an education program, training program, or an education-training combination program. The bill provides that self-study education programs approved by the Board of Registered Polysomnographic Technologists as of March 1, 2013, are acceptable education programs. Persons actively credentialed as registered polysomnographic technologists who completed an education and training program approved by the board as of March 1, 2013, either before or after passing the registered polysomnographic technologist exam, satisfy the education and training requirement.

The bill also authorizes the Health Licensing Office to issue a polysomnographic technologist license by endorsement or reciprocity to an applicant holding an active credential approved by the Respiratory Therapist and Polysomnographic Technologist Licensing Board.

**18. [HB 2306](#) (Ch. 467) OHA: Filling Prescriptions**

HB 2306 adds a new section to the series [ORS 414.351 to 414.414](#) (2013) authorizing the Oregon Health Authority to restrict, for 18 months or less, a medical assistance recipient's pharmacy choices for filling and refilling prescriptions to a mail order pharmacy that contracts with the OHA, a retail pharmacy selected by the recipient, and a specialty pharmacy selected by the recipient, if the recipient meets the indicia of overutilization established by the bill. The OHA is given authority to conduct prospective drug utilization reviews, in accordance with rules

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adopted under [ORS 414.361](#) (2013), prior to paying for a patient's drugs if the patient has filled prescriptions for more than 15 drugs in the preceding six-month period.

The bill also makes conforming amendments to [ORS 414.325](#), [414.351](#), and [414.364](#) (2013).

HB 2306 took effect on June 18, 2015.

### 19. [HB 3230](#) (Ch. 740) OHA: Housing

HB 3230 amends [ORS 443.480](#) (2013) to include definitions for the following terms that have been added to the series [ORS 443.480 to 443.500](#) (2013): "community-based structured housing" and "congregate housing." Two other terms, "residential care" and "treatment," both defined in ORS 443.400 (2013), are also added to the series.

The bill also amends [ORS 443.485](#) (2013) to provide that, subject to [ORS 443.490](#) (2013), the owner or operator of a community-based structured housing facility offered to the general public must register with the Department of Human Services (DHS) or the Oregon Health Authority (OHA). The DHS and OHA are authorized to adopt by rule standards regarding the operation of facilities subject to ORS 443.480 to 443.500 (2013), and the minimum subjects those standards must address, including but not limited a facility's physical properties and the storing, preparing, and dispensing of medications to residents.

HB 3230 took effect on July 20, 2015.

### 20. [HB 2413](#) (Ch. 241) OHA: Residential Facilities

HB 2413 amends [ORS 443.420](#) (2013), which establishes standards and qualification criteria for persons applying for a license to maintain and operate a residential facility from either the Department of Human Services or the Oregon Health Authority under [ORS 443.415](#) (2013), to prohibit the licensing agency from issuing an initial license to a residential care facility if the facility has not conducted a market study that assesses the need for the facility's services in the geographic area the facility would serve.

The bill took effect on June 2, 2015.

### 21. [HB 2300](#) (Ch. 819) OHA: Terminal Disease Treatment

HB 2300 authorizes a "health care practitioner" to treat a patient who has a terminal disease with an investigational product not approved by the Food and Drug Administration, U.S. Department of Health and Human Services. The bill creates processes and criteria for prescribing an investigational product, and refers to [21 C.F.R. §§ 312.300 to 312.320](#) (2015).

Health care practitioners who administer treatment under the bill must file records with the Oregon Health Authority (OHA). The OHA may adopt rules regarding the content of those records, and shall maintain and annually review such records. The OHA must make an annual statistical report regarding the content of the records collected and of patients who received treatment provided pursuant to 21 C.F.R. §§ 312.300 to 312.320 (2015). This report must be made available to the legislature on or before February 1 of each odd-numbered year.

The bill specifies that patients may be required to pay the costs of administering the treatment and the costs of, or associated with, manufacturing the investigational product. Insurers are not required to reimburse the costs of treatment or related to an adverse effect resulting from treatment. Patients must also waive liability for any act related to administering the treatment or manufacturing or distributing the investigational product that does not constitute gross negligence for practitioners who participates in the treatment; health care facilities or professional organizations or associations involved in the treatment's administration; or any person that participates in manufacturing or distributing the investigational product used to treat the patient.

Health care practitioners and providers who participate in administering treatment are not subject to administrative discipline or civil or criminal liability for acts or omissions of acts related to administering the treatment, if the administration complies with the processes and criteria created by the bill. Health care practitioners or facilities may prohibit a health care practitioner from participating in administering treatment at the facility or premises owned or controlled by the prohibiting practitioner.

HB 2300 takes effect on January 1, 2016, and sunsets on January 2, 2022.

**22. [HB 2230](#) (Ch. 621) OHA: Veterans**

HB 2230 directs the Director of the Oregon Health Authority, if authorized in writing by a veteran or uniformed service member, to notify the Director of Veterans' Affairs at least once each month regarding the receipt of written information from a veteran or service member applying for health care coverage. It also authorizes the OHA, in consultation with OVA, to adopt rules implementing the new requirement.

The bill took effect on July 1, 2015, and has an operative date of January 1, 2016.

**23. [SB 430](#) (Ch. 611) Sanctions Against Psychologist Examiners, Social Workers, Professional Counselors**

SB 430 amends ORS 657.070 (2013), [ORS 675.540](#), as amended by section 3, chapter 60, Oregon Laws 2013, and [ORS 675.745](#) (2013) to authorize the State Board of Psychologist Examiners, the State Board of Licensed Social Workers, and the Oregon Board of Licensed Professional Counselors and Therapists, respectively, to impose sanctions against licensees and applicants for licensure when, notwithstanding [ORS 670.280](#), the licensee or applicant has been

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convicted of a sex crime as defined in [ORS 181.805](#) (2013) or has been convicted in another state or jurisdiction of a crime that is substantially equivalent to a sex crime as defined in ORS 181.805.

The State Board of Psychologist Examiners may also impose sanctions, if applicable, against an unlicensed person found in violation of [ORS 675.010 to 675.150](#), when the board has found that the person, notwithstanding ORS 670.280, the licensee or applicant has been convicted of a sex crime as defined in ORS 181.805 (2013) or has been convicted in another state or jurisdiction of a crime that is substantially equivalent to a sex crime as defined in ORS 181.805.

The bill's amendments to ORS 657.070 (2013), ORS 675.540, as amended by section 3, chapter 60, Oregon Laws 2013, and ORS 675.745 (2013) apply to applications for licensure, certification, or registration received, and licenses, certifications, or registrations received by the boards on or after January 1, 2016.

### 24. [SB 287](#) (Ch. 271) **Speech-Language Pathology**

[ORS 681.250\(2\)](#) (2013) establishes that a person may not practice speech-language pathology or audiology, or purport to be a speech-language pathologist or audiologist, in Oregon unless the person possess an appropriate license. Various individuals are exempt from the licensure requirement, including teachers who were licensed by the Teacher Standards and Practices Commission and held a communications disorders or hearing impaired endorsement issued by the commission. [ORS 681.230\(4\)](#) (2013).

SB 287 amends ORS 681.230 (2013) by removing the exemption for teachers found in subsection (4).

The amendments to ORS 681.230 (2013) under SB 287 do not become operative until July 1, 2016. Teachers licensed by the commission, and who possess a communications disorders or hearing impaired endorsement issued by the commission, may continue to practice speech-language pathology on and after July 1, 2016, if they satisfy criteria identified in the bill.

## IV. EDUCATION

### 1. [HB 2870](#) (Ch. 726) **Student Complaints**

HB 2870 amends [ORS 351.735](#), as amended by section 2, chapter 83, Oregon Laws 2014, and section 1, chapter 113, Oregon Laws 2014, to direct the Higher Education Coordinating Commission to implement a process for resolving student complaints against a post-secondary institution. The bill authorizes the commission to receive and investigate student complaints, establish a complaint resolution process, assess fees to cover costs, and adopt rules and enter agreements to implement the new section. The bill also authorizes the commission to hold

administrative hearings, subject to [ORS chapter 183](#), and assess fees to cover the costs of an administrative hearing.

The same amendments are made to ORS 351.735, as amended by section 2, chapter 83, Oregon Laws 2014, and sections 1 and 2, chapter 113, Oregon Laws 2014.

HB 2870 took effect on July 20, 2015.

**2. [HB 3339](#) (Ch. 479) Teacher Leader Licenses**

[ORS 342.137](#) (2013) provides that individuals shall receive a teacher leader license if they possess a valid teaching license and have been deemed to be effective to highly effective in teaching. HB 3339 amends ORS 342.137(2)(b) (2013) to provide that applicants can be deemed sufficiently effective as shown by a combination of evaluations conducted in compliance with ORS 342.856 (2013) and evidence of current professional leadership practices, as determined based on standards adopted by the commission by rule.

The bill also creates a new section directing the Secretary of State to conduct an audit of the commission, which must address the commission's finances and resources, licensing and educator oversight, recommendations for improving the commission's activities, and the commission's governance role. The Secretary of State shall submit a report on the audit to the interim legislative education committees by no later than January 15, 2016. This new section will sunset on June 30, 2016.

**3. [HB 3371](#) (Ch. 434) Student Retaliation**

HB 3371 adds a new section to [ORS chapter 659](#) (2013) containing definitions for the following new terms "education program" and "retaliation," and which prohibits "education programs" (as defined in the bill) from retaliating against a student who has in good faith reported information that the student believes is evidence of a violation of a state or federal law, rule, or regulation. A student, or the student's parent or guardian if the student is under 18, who alleges retaliation may bring a civil claim under [ORS 659A.885](#) (2013).

The bill makes conforming amendments to ORS 659.855 (2013) and 659A.885 (2013).

HB 3371 took effect on June 16, 2015. The new section added to ORS chapter 659 (2013), and the conforming amendments to ORS 659.855 (2013) and 659A.885 (2013), apply to acts of retaliation occurring on or after that date.

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### 4. [SB 80](#) (Ch. 767) **Oregon University System and State Board of Higher Education**

SB 80 abolished the Oregon University System and the State Board of Higher Education. The board's duties, powers, functions, and lawfully incurred rights and obligations pertaining to a university with a governing board are transferred to and vested in the university's governing board. Any administrative rules and policies adopted by the board continue in effect until superseded or repealed by the standards or policies of a university or its governing board.

The bill replaces references to the Oregon University System in numerous statutes with references to the appropriate successor entity, such as a public university, a university governing board, the Oregon Department of Administrative Services, or the Higher Education Coordinating Commission.

The Oregon University System Fund, its accounts and subaccounts are abolished, with the remaining moneys transferred to the Public University Fund. The Higher Education Donation Fund, Higher Education Academic Modernization Account, and Oregon University System Capital Construction, Deferred Maintenance and Capital Repair Project Fund are also abolished. The moneys remaining in those accounts and funds is transferred to the Public University Fund and are to be used for the purposes for which the funds were initially donated or dedicated.

Proceeds and interest earnings on bonds issued by the State Treasurer for the benefit of a university with a governing board will be transferred to the university.

The bill adds the Higher Education Coordinating Commission to the list of entities in [ORS 351.810 to 351.830](#) (2013) authorized to take action with respect to the Western Interstate Commission for Higher Education, and any action necessary to achieving the ends of the Western Regional Higher Education Compact.

SB 80 took effect on July 27, 2015.

### 5. [SB 83](#) (Ch. 279) **Teaching License Requirements**

SB 83 amends the requirements for obtaining an initial teaching license found in [ORS 342.136](#) (2013) to include a requirement that the applicant for an initial teaching license must complete a supervised clinical practice experience. The bill establishes requirements for a supervised clinical practice experience and authorizes the Teacher Standards and Practices Commission to adopt additional requirements by rule.

A related amendment is made to [ORS 342.223](#) (2013), replacing a reference to "student teaching" with a reference to "supervised clinical practice experience."

The bill also directs the commission to convene a work group to meet throughout the 2015-2017 biennium and assist with implementing the supervised clinical practice experience requirement. The work group's composition and duties are described in the bill, and will end on July 1, 2017.

SB 83 took effect on June 8, 2015. The supervised clinical practice experience requirement that applies to applicants for an initial teaching license has an operative date of July 1, 2020, and first applies to the 2020-2021 school year.

## V. DEPARTMENT OF ADMINISTRATIVE SERVICES

### 1. [HB 2250](#) (Ch. 758) Fingerprint Capture

HB 2250 authorizes the Oregon Department of Administrative Services to adopt rules regarding electronic fingerprint capture via amendments to [ORS 181.516](#) (2013). It also amends [ORS 181.547](#) (2013) to direct DAS to adopt uniform rules, in consultation with the Department of State Police (DSP), specifying categories of individuals who are subject to criminal records checks for use by authorized agencies, qualified entities, or districts, and establishing a process for appealing a fitness determination. Additionally, the bill directs the DAS to continue to convene the work group convened to implement chapter 285, Oregon Laws 2013, for the purposes of implementing the bill's provisions and studying further statutory changes. The DAS must submit a report, and include any legislative recommendations, to an interim legislative committee related to government efficiency by no later than December 15, 2015.

HB 2250 applies the DAS's rules regarding fitness determinations to various agencies that were previously not subject to DAS's rules by amending [ORS 181.533](#) (2013), [ORS 181.534](#) (2013), [ORS 181.537](#) (2013), [ORS 181.547](#) (2013), and [ORS 267.237](#) (2013), and adds citations to ORS 181.547 in [ORS 329A.270](#) (2013), [329A.300](#) (2013), [329A.330](#) (2013), [329A.370](#) (2013), and [329A.390](#) (2013).

The bill made conforming amendments to [ORS 181.612](#) (2013), [242.550](#) (2013), [326.604](#) (2013), and [443.004](#) (2013).

The bill's amendments to [ORS 8.100](#) (2013), [181.533](#) (2013), [181.534](#) (2013), [181.537](#) (2013), and [267.237](#) (2013) apply to information submitted for the purpose of conducting a criminal records check that is received on or after January 1, 2016. The DAS and the Department of Human Services may take action before January 1, 2016, to implement the bill's amendments to ORS 8.100 (2013), ORS 181.516 (2013), ORS 181.533 (2013), ORS 181.534 (2013), ORS 181.537 (2013), ORS 181.547 (2013), ORS 181.612 (2013), [242.550](#) (2013), [267.237](#) (2013), [326.604](#) (2013), [329A.300](#) (2013), [329A.330](#) (2013), [329A.370](#) (2013), [329A.390](#) (2013), and [443.004](#) (2013).

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Rules adopted by the DSP pursuant to ORS 181.516 (2013) before January 1, 2016, continue in effect until superseded or repealed by the DAS's rules. Until then, references in the DSP's rules to the Department of State Police or an officer or employee of the DSP are considered to be references to the DAS or an officer or employee of the DAS.

### 2. [HB 2255](#) (Ch. 622) Supervisory Employees

HB 2255 delays until June 30, 2017, implementation of the provisions of [ORS 291.231](#) (2013) setting a ratio of at least 11 nonsupervisory employees to 1 supervisory employee in state agencies that employ more than 100 employees. If a state agency increases its ratio of nonsupervisory employees to supervisory employees during the 2015-17 biennium, the agency may count the increase in subsequent years for purposes of complying with ORS 291.231(2) (2013).

The bill directs the DAS to monitor state agency staffing ratios during the 2015-17 biennium and produce quarterly reports describing any changes in the ratios. The DAS is also directed to convene a work group to study and develop a report on appropriate staffing ratios, and authorizes the Director of the DAS to appoint the work group's members – based on criteria established in the bill. The work group shall submit a report, along with any recommendations for legislation, to the Legislative Assembly on or before the date of the convening of the 2017 regular session of the Legislative Assembly.

HB 2255 took effect on July 1, 2015. Sections 1 (implementation delay) and 3 (work group) of the bill will sunset on June 30, 2017. Section 2 of the bill, which allows agencies to credit any increase in their ratio of nonsupervisory employees to supervisory employees to years after the delay ends, will sunset on January 2, 2020.

### 3. [HB 2476](#) (Ch. 30) Rulemaking

HB 2476 makes a housekeeping amendment to [ORS 184.340](#) (2013), as well as another amendment authorizing the DAS to adopt by rule uniform policies or procedures applicable to multiple state agencies, boards, or commissions.

The bill took effect on April 16, 2015.

### 4. [HB 3099](#) (Ch. 807) Enterprise Information

HB 3099 transfers the duties, functions, and powers of the DAS with regard to “enterprise information technology and telecommunications” – a term defined in the bill – policy to the State Chief Information Officer. All related records and property, and employees engaged in related duties, are transferred to the State CIO. Any administrative rules adopted by DAS regarding “enterprise information technology and telecommunications” remains in effect until the State CIO supersedes or repeals those rules.

Before adopting rules to implement [ORS 184.475](#) (2013), as amended by section 17, chapter 807, Oregon Laws 2015, regarding the State CIO's authority for oversight and management of the state's information technology (IT) resources and ensuring that state agencies implement portfolio-based management of IT resources, the State CIO must present the proposed rules to the Joint Legislative Committee on Information Management and Technology.

The bill amends [ORS 184.477](#) (2013), as amended by section 2, chapter 102, Oregon Laws 2014, to authorize the State CIO to oversee and review IT procurements that the State CIO estimates will cost more than \$1 million dollars. The State CIO may require that state agencies obtain approval to make the procurement, or stop or modify the procurement. After a state agency executes an IT procurement contract, the State CIO may direct the agency to take action in accordance with the contract's terms, including directing the agency to suspend performance or terminate the contract in whole or in part.

The bill similarly amends [ORS 279A.050](#) (2013), as amended by section 1, chapter 167, Oregon Laws 2015 (Enrolled SB 7), to provide that, for state agencies, the DAS Director may delegate authority for procuring or supervising the procurement of all IT and telecommunications-related goods, services, and personal services to the State CIO, as well as the procurement of all IT and telecommunications-related price agreements. It authorizes the State CIO to review any solicitation document for procuring IT or telecommunications before a state agency issues the solicitation document and require that the issuing agency name the State CIO as a third-party beneficiary with full authority to enforce the contract. The State CIO must approve IT or telecommunication procurements when they have an anticipated contract price of \$1 million dollars or more, and may require that the agency name the State CIO as the contracting party on behalf of the State of Oregon.

The bill amends [ORS 279A.075](#) (2013) to authorize the State CIO to require the DAS Director to obtain the State CIO's review and approval before the director delegates authority to a state contracting agency to conduct a procurement for IT or telecommunications. Amendments to [ORS 283.140](#) (2013) transfer budgetary management, supervision, and control over state agencies' telephone and telecommunication services to the State CIO. The DAS retains authority for operating mail, shuttle, or messenger services. Amendments to [ORS 291.039](#) (2013), as amended by section 5, chapter 102, Oregon Laws 2014, revise and add to the State CIO's position description, duties, and responsibilities.

HB 3099 took effect on August 12, 2015, however many of the much of the bill's provisions do not become operative until January 1, 2016. The State CIO and DAS Director are authorized to take any action before the operative date necessary to enable the State CIO or the director exercise the duties, functions, and powers conferred on the State CIO or the director on January 1, 2016.

## VI. LANDSCAPE CONTRACTING

### 1. [HB 3304](#) (Ch. 652) Practical Skills

HB 3304 directs the State Landscape Contractors Board to establish a practical skills test and offer a business practices class by no later than September 1, 2016. The practical skills test must be designed so as to demonstrate whether the applicant has the ability to perform the tasks most commonly required of a landscape construction professional in a manner meeting or exceeding the board's practice standards. The business practices class shall be offered to all applicants who successfully complete the practical skills test. The board must offer the practical skills test and business practices class during three periods in each year, and is authorized to collect fees from applicants to offset the full cost of offering the practical skills test and business practices class.

Applicants for a landscape construction professional license under [ORS 671.570](#) (2013) may satisfy the examination requirement by either passing the written exam, or by passing the practical skills test and attending the business practices class. If the board requires that applicants for a limited or specialty license under [ORS 671.560](#) (2013) pass an exam, then the board must allow the applicants to satisfy that requirement by passing either a written exam, or by passing the practical skills test and attending the business practices class.

The board must report to the 79th Legislative Assembly, by no later than May 15, 2017, regarding implementation of the practical skills test and the business practices class.

The bill also amends ORS 671.570 (2013) and [671.617](#) (2013), directing the board to offer the licensing exam for a landscape construction professional license or backflow assembly installer license in a format in which the instructions and questions are provided in both English and Spanish, upon an applicant's request. The amendments to ORS 671.570 (2013) and 671.617 (2013) apply to exams offered on or after May 1, 2016.

### 2. [SB 520](#) (Ch. 295) Landscape Contractors Board

SB 520 amends [ORS 671.520](#) (2013) to clarify that a licensed landscape construction professional may install or repair landscape irrigation systems as provided by the board by rule. [ORS 671.565](#) (2013) is amended to increase the minimum public liability, personal injury, and property damage insurance for a landscape contracting business from \$100,000 to \$500,000.

The bill amends [ORS 671.570](#) (2013) to direct the State Landscape Contractors Board to provide the instructions and questions for the board's licensing exam available in both English and Spanish. An amendment to [ORS 671.603](#) (2013) extends the deadline for a landscape construction professional or landscape contracting business to notify the board of a change in the professional or business's address from 10 to 30 days.

The requirement in [ORS 671.625](#) (2013) that work by a landscape contracting business must be performed subject to a written contract was relaxed and now requires a written contract only when the business charges for the landscape job are \$2,000 or more.

The bill modified the continuing education requirement for landscape construction professionals in [ORS 671.676](#) (2013). Previously, all licensees had to obtain 10 hours of continuing education each year. The new requirement requires 16 hours of continuing education every two years for landscape construction professionals who have six years or less of experience and eight hours every two years for landscape construction professionals who have more than six years of experience.

The bill added a new tier to the bonding requirement of [ORS 671.690](#) (2013). The maximum amount of a bond or irrevocable letter of credit a landscape construction professional must file with the State Landscape Contractors Board is now \$20,000, if the applicant charges \$50,000 or more for a landscape job. Applicants who charge between \$25,000 and \$49,999.99 must provide a bond or irrevocable letter of credit in the amount of \$15,000.00. The bond or irrevocable letter of credit must also provide coverage for the removal or pruning of a tree, removal of limbs or stumps and tree or limb guying. The amendments to ORS 671.690 (2013) also authorize the board to identify, by rule, other landscape jobs for which an applicant must provide a bond or irrevocable letter of credit in the amount of \$10,000.

Amendments to [ORS 671.695](#) (2013) provide that claims against a licensed landscape contracting businesses payable from a bond or irrevocable letter of credit required under ORS 671.690 (2013) now include claims involving a breach of an oral or written contract.

The bill amended the penalty schedule in [ORS 671.997](#) (2013). The \$500 minimum civil penalty requirement for a first offense, and \$1,000.00 minimum for a second offense, were repealed. The State Landscape Contractors Board now has authority to set a civil penalty, up to a maximum of \$1,000, for a first offense and assess a civil penalty for a second or subsequent offense, up to a maximum of \$2,000 for each offense. The board may now permanently revoke a landscape business's license for a fifth or subsequent offense, rather just for a fifth offense.

**3. [SB 580](#) (Ch. 672) Landscape Contractors Law**

SB 580 expands the services that may be provided by landscape construction professionals, primarily related to irrigation systems and artificial turf. For more information about this bill please see the Construction Law Chapter.

## VII. DEPARTMENT OF HUMAN SERVICES

### 1. [HB 2219](#) (Ch. 195) Application Process

HB 2219 directs the Department of Human Services to convene a work group of seven state agencies for the purpose of studying how to create a consolidated application process for Oregon residents to use when applying for and obtaining assistance in accessing food, housing, medical care, education, employment services, child care, and other social services. The work group must develop and submit recommendations to the legislature by no later than September 15, 2016.

The bill took effect on June 2, 2015.

### 2. [HB 2233](#) (Ch. 706) Adult Abuse Prevention

HB 2233 directs the Department of Human Services to create an advisory committee within the department's Office of Adult Abuse Prevention and Investigations for the purpose of advising the department and the office on matters related to residential care facilities for children, youth, or, youth offenders. It authorizes the department's director to appoint advisory committee's members. The bill directs the advisory committee to prepare recommendations for the department and the office, and the department and the office to submit a report to the interim legislative committees on child welfare and residential care for children, youth, or, youth offenders by no later than December 15, 2015.

The bill took effect on July 20, 2015.

### 3. [SB 307](#) (Ch. 839) Retirement Community

SB 307 makes two changes to [ORS 101.115](#) (2013). The first provides that an owner or operator of a continuing care retirement community that provides continuing care to at least one unrelated resident under a residency agreement ("provider") must adopt written policies and procedures for the timely resolution of a resident's grievance.

The second directs providers to establish a procedure by which residents can request that a person of a particular sex be assigned to assist the resident with activities of daily living, such as bathing, toileting, and grooming. Providers must accommodate a resident's request unless unable to do so. If the provider is unable to accommodate the resident's request, then the provider must notify the resident in writing of the reasons why the provider is unable to accommodate the resident's request.

The bill also amends [ORS 101.150](#) (2013) to direct the Department of Human Services to adopt a procedure for a resident to file a complaint with the department concerning a continuing care retirement community's failure to comply with a requirement of ORS chapter 101. The department must respond to the complainant by no later than 14 days after the

complainant files a complaint with the department, complete its investigation by no later than 90 days after the complainant files a complaint with the department, and provide a written report detailing the results of the department's investigation to both the complainant and the provider.

The bill adds continuing care retirement communities to the list of facilities included within the definition of "residential facility" in [ORS 441.100](#) and subject to the oversight of the Long Term Care Ombudsman.

## VIII. STATE MORTUARY AND CEMETERY BOARD

### 1. [HB 2471](#) (Ch. 367) Criteria

HB 2471 makes changes to the statutes establishing licensure qualifications for funeral service practitioners and embalmers, and the criteria for an individual applying for a trainee funeral service practitioner or trainee embalmer registration, found in [ORS chapter 692](#) (2013). The 12 month practical experience requirement for embalmer's apprentices is repealed, and references to apprentices throughout ORS chapter 692 (2013) are replaced with references to trainees.

The bill also revised the reciprocity requirements for individuals licensed to practice as a funeral service practitioner or embalmer, or registered as a trainee funeral service practitioner or embalmer, in another state, who applies for an Oregon license or registration.

The bill makes conforming amendments to [ORS 97.931](#) (2013) and other statutes in ORS chapter 692 (2013).

HB 2471 took effect on June 11, 2015, but the amendments to the licensing, registration, and reciprocity requirements do not become operative until January 1, 2016. The State Mortuary and Cemetery Board may take any action before the operative date necessary to exercise its duties, functions, and powers on January 1, 2016.

### 2. [HB 2472](#) (Ch. 516) Self-Inspection

HB 2472 amends [ORS 692.320](#) (2013) to authorize the State Mortuary and Cemetery Board to adopt by rule a self-inspection program to supplement the board's regular biennial inspections. Also authorizes the board to adopt rules establishing criteria by which an exempt operating cemetery is exempt from the biennial inspections, and to take action to carry out the rules adopted under ORS chapter 692 (2013).

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The bill also repeals ORS [692.387](#), [692.389](#), [692.391](#), and [692.393](#) (2013), which concerned the availability and issuance of inspection warrants by magistrates for the inspection or investigation of funeral establishments, cemeteries, crematoriums, immediate disposition companies and other facilities used for the final disposition of human remains, and any other location at which human remains may be stored, temporarily held or processed prior to final disposition.

### 3. [HB 3242](#) (Ch. 430) Temporary Operating Permits

HB 3242 authorizes the State Mortuary and Cemetery Board to grant a temporary operating permit for a cemetery that does not hold a valid license to operate for the purpose of performing an interment. The board may only grant the temporary permit in situations where there is an existing prearrangement sales contract to which the cemetery is a party. The legislature directed the board to adopt rules regarding temporary permits that must require that the permit holder maintain records and verification of plot location identified in the existing prearrangement sales contract before interment.

HB 3242 took effect on June 16, 2015, but many provisions do not become operative until January 1, 2016. The bill will sunset on January 1, 2018. The board may take any action necessary before the operative date to enable the board to exercise the duties and responsibilities conferred by HB 3242.

## IX. DEPARTMENT OF CONSUMER AND BUSINESS AFFAIRS

### 1. [HB 2211](#) (Ch. 194) Service Companies

HB 2211 adds “service companies” to the list of entities, found at [ORS 656.745](#) (2013), that the Director of the Department of Consumer and Business Services may assess a civil penalty against for failure to pay assessments or other payments due to the director under ORS chapter 656. The bill also amends ORS 656.745 (2013) to authorize the director to assess a penalty against a service company only for workers’ compensation claims processing performance deficiencies revealed in annual audits associated with claims processing performance.

HB 2211 replaces references to “third party administrators” in [ORS 656.780](#) (2013) with “service company.”

### 2. [SB 1](#) (Ch. 3) Health Insurance Exchange Abolition

SB 1 abolished the Oregon Health Insurance Exchange Corporation and transferred its powers, obligations, liabilities, records, and unexpended revenues to the Department of Consumer and Business Services. Any rules adopted by the corporation remain in effect until either superseded or repealed by the department. The bill authorizes the director to take action

before the operative date of the section abolishing the corporation (June 30, 2015) that is necessary to enable to department to exercise the duties and functions that will be transferred on June 30, 2015. The bill makes numerous corresponding and conforming amendments to ORS chapter 741 (2013) and statutes in other chapters to reflect the abolition of the corporation and the transfer of its duties to the department.

The bill also adds two new sections to [ORS 741.001 to 741.540](#) (2013), as amended by chapter 78, Oregon Laws 2014. The first new section creates a Health Insurance Exchange Advisory Committee to advise the department's director in developing and implementing policies and operation procedures governing the administration of a health insurance exchange in Oregon, among other duties. The second new section establishes a Health Insurance Exchange Fund in the State Treasury, separate and distinct from the General Fund, to hold moneys received under ORS 741.001 to 741.540 (2013), as amended by chapter 78, Oregon Laws 2014, and any funds transferred from the corporation to the department.

SB 1 adds a new to the Insurance Code (ORS chapters [731](#), [732](#), [733](#), [734](#), [735](#), [737](#), [742](#), [743](#), [743A](#), [748](#), and [759](#)) which defines the term "Small Business Health Options Program" as used in the Insurance Code and providing that health benefit plans offered through a Small Business Health Options Program are subject to [ORS 743.730 to 743.773](#) (2013) and to other provisions of the Insurance Code applicable to small employer group health insurance.

The bill repeals [ORS 741.025](#), [741.027](#), [741.029](#), [741.031](#), [741.101](#), and [741.250](#) (2013). Section 227, chapter 415, Oregon Laws 2011, as amended by section 8, chapter 38, Oregon Laws 2012, and section 2, chapter 74, Oregon Laws 2014, are also repealed.

SB 1 took effect on March 6, 2015, and most provisions of the bill become operative on June 30, 2015 Amendments to section 14 of the bill (regarding the creating of the Health Insurance Exchange Fund) by section 15 of the bill (removing references to moneys transferred from the corporation) become operative on January 1, 2016.

### **3. [SB 277](#) (Ch. 118) Check-Cashing Business Licenses**

SB 277 amends [ORS 697.510](#), [697.632](#), [717.205](#), and [717.220](#) (2013) to authorize the Director of the Department of Consumer and Business Services to administer a program to issue and renew licenses for check-cashing businesses, registrations for debt management services, license or register money transmission businesses by means of the Nationwide Multistate Licensing System and Registry (NMLS) and, by rule, conform the practices, procedures, and information used by the department to issue or renew a license or registration, or requirements for a license or registration application, to the NMLS's requirements.

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The bill also amends [ORS 717.240](#) (2013) to authorize the department to collect a fee to renew the license of a money transmission business that is either \$500.00, or an amount set by rule, but not to exceed \$1,000.00. The department director may also, by rule, require a licensee to renew a license under the terms of the department's agreement with the NMLS.

SB 277 took effect on May 20, 2015, the amendments in the bill become operative 91 days later and apply licenses and registrations, and applications to renewals of licenses and registrations, issued on or after the operative date.

## X. VETERINARY BOARD

### 1. [HB 2474](#) (Ch. 628) **Veterinary Facility, Advisory Committee**

HB 2474 adds two new sections to [ORS chapter 686](#) (2013). The first concerns veterinary facilities and the board's oversight of them. The bill amends [ORS 686.010](#) (2013), the definitions statute for ORS chapter 686 (2013), to include a new term, "veterinary facility." The term is not accompanied by a definition; instead, the term will be defined by a rule adopted by the Oregon State Veterinary Medical Examining Board. Veterinary facilities, as they will eventually be defined by the board, may not offer veterinary services unless they have registered with the board and designated a licensed veterinarian who will be responsible for ensuring that the facility complies with the statutes and administrative rules applicable to veterinary facilities.

The Legislative Assembly directed the board to adopt rules establishing the form and manner for registering a veterinary facility and reviewing a facility's registration, setting the fees for registering or renewing a registration, and establishing health and safety standards for veterinary facilities. The bill amended [ORS 686.260](#) (2013) to authorize the board to inspect the premises of a veterinary facility, if the board has evidence of noncompliance.

The board's authority to adopt rules regarding and inspect veterinary facilities becomes operative on January 1, 2016, however it may take any action necessary before that date to enable it to exercise its duties and responsibilities on and after the operative date.

The second new section added to ORS chapter 686 (2013) requires the board to convene a rules advisory committee, as described in [ORS 183.333](#) (2013), for the purpose of adopting, amending, or repealing rules regarding veterinary facilities. The bill also establishes the size and composition of the rules advisory committee, and directs the committee to report its recommendations for a definition of "veterinary facility" to the board by no later than October 31, 2015. This new section will be repealed on January 1, 2020.

HB 2474 took effect on July 1, 2015.

2. [HB 2475](#) (Ch. 418) Fines

HB 2475 adds a new section to [ORS chapter 686](#) (2013) authorizing the Oregon State Veterinary Medical Examining Board to impose a fine, not to exceed \$100, on any holder of a permit or license issued under ORS chapter 686 (2013) for an administrative or clerical violation of ORS chapter 686 (2013) or a rule adopted pursuant to ORS chapter 686 (2013) if the violation does not create a risk of harm to the public, as established by the board by rule.

## XI. SECRETARY OF STATE

1. [HB 2174](#) (Ch. 29) Municipal Corporations

HB 2174 makes changes to the filing of audits and reviews of municipal corporations. The bill amends [ORS 297.425](#) (2013) to eliminate the requirement that contracts for conducting audits and reviews of municipal corporations shall be in a form prescribed or approved by the Secretary of State. Amendments to [ORS 297.465](#) (2013) will allow the secretary to grant municipal corporations an extension – not to exceed one year after the close of the calendar or fiscal year under audit, unless the secretary finds that extraordinary circumstances justify a longer extension – for filing their audit report with the secretary.

The bill also adds a new section to the series [ORS 297.405 to 297.555](#) (2013), which requires the Secretary of State to prepare and maintain a summary report including, but not limited to, a list of municipal corporations that did not request an extension and did not file their audit reports within six months after the close of the calendar or fiscal year, and a list of the deficiencies cited in the audit report by each municipal corporation's accountant. The secretary must submit the two most recent reports to the legislative committee with authority over audits by no later than March 1 of each odd-numbered year.

HB 2174 became effective April 16, 2015, and the amendments to ORS 297.425, 297.465, and 297.466 (2013), along with the new section added to series ORS 297.405 to 297.555 (2013), apply to contracts entered into and audit reports required to be filed on or after that date.

2. [HB 2175](#) (Ch. 17) Financial Statements

HB 2175 amends [ORS 293.265](#) (2013) to clarify that state agencies may be excused from complying with the requirement to turn over all funds, contributions, or donations collected or received by, and to be expended by or on behalf of the state, to the State Treasurer not later than one business day after collection or receipt of the moneys, if the state agency maintains in its official files information that a valid business reason exists for using a longer transmittal period and that the period chosen is no longer than necessary to satisfy that business reason. The bill repeals a requirement that state agencies file a copy of that business reason with the Division of Audits of the Secretary of State; instead, agencies will only need to submit a copy of

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the documentation regarding that business reason to the Division upon the Division's request. The bill also provides a definition for the term "state agency" as it is used in ORS 293.265 (2013).

HB 2175 similarly amended [ORS 576.416](#) (2013) to repeal requirement that commodity commissions file a copy of their annual financial statements with the Division of Audits of the Secretary of State within 90 days after the end of the state fiscal year. Commodity commissions must now provide a copy of their annual financial statements to the Department of Agriculture no later than 30 days after the end of the state fiscal year.

HB 2175 took effect on March 30, 2015.

## XII. ENERGY

### 1. [HB 2187](#) (Ch. 311) Planning

HB 2187 establishes the state's policy position that "any regional transmission planning processes conducted for the transmission planning regions that wholly or partly encompass any areas of this state shall adequately consider the transmission of electricity from ocean renewable energy generated within Oregon's territorial sea, as defined in [ORS 196.405](#) [(2013)], or within adjacent federal waters." The bill was prompted in part by the Federal Energy Regulatory Commission's Order No. 1000, which established three requirements for transmission planning, including a requirement that local and regional transmission planning processes provide an opportunity to identify and evaluate transmission needs driven by public policy requirements established by state or federal laws or regulations.

### 2. [HB 2193](#) (Ch. 312) Public Utility Commission

HB 2193 directs the Public Utility Commission, by not later than January 1, 2017, to adopt by rule or order guidelines for an electric company that makes sales of electricity to at least 25,000 retail electricity consumers in Oregon to use in submitting a proposal to procure at least one "qualifying energy storage system" – a term defined in the bill – that has the capacity to store at least five megawatt hours of energy. By January 1, 2018, an electric company must submit one or more proposals for developing an energy storage system to the PUC for evaluation. The PUC may authorize an electric company to develop one or more projects that include one or more qualifying energy storage systems. An electric company may recover all of the costs it prudently incurred procuring one or more qualifying energy storage systems in its rates. The PUC shall report to the legislature's interim energy committees on the implementation of HB 2193 on or before September 15, 2016, and September 15, 2018.

The bill took effect on June 10, 2015.

### XIII. DEPARTMENT OF JUSTICE

#### 1. [HB 3476](#) (Ch. 265) Victim Disclosure

HB 3476 adds a new section to [ORS 40.225 to 40.295](#) (2013) containing definitions for the terms “certified advocate,” “confidential communication,” “qualified victim services program,” and “victim.” The new section added to ORS 40.225 to 40.295 (2013) also provides that a “victim” (as that term is defined in the bill) has a privilege to refuse to disclose and to prevent any other person from disclosing “confidential communications” – such as communications made by the victim in the context of group counseling or seeking safety planning, counseling, support, or advocacy services. It also provides that the privilege does not apply to the disclosure of confidential communications when the disclosure is necessary for defense in a civil, criminal, or administrative action brought against either the “certified advocate” or “qualified victim services program” by, or on behalf of, the victim. This new section applies to civil, criminal, and administrative proceedings and to institutional disciplinary proceedings at a two- or four-year post-secondary institution that enrolls at least one student who receives an Oregon Opportunity Grant. [ORS 40.252](#) (2013) is amended to include a reference to this new section added to ORS 40.225 to 40.295 (2013).

The bill creates another new section prohibiting a certified advocate or a qualified victim services program from disclosing confidential communications between a victim and the certified advocate or a qualified victim services program made in the course of safety planning, counseling, support, or advocacy services, and records created or maintained in the course of providing services, except as provided in ORS 40.252 (2013), as amended by section 3, chapter 265, Oregon Laws 2015 (Enrolled HB 3476). Certified advocates or qualified victim services programs may disclose confidential communications or records without the victim’s consent as required by law, or if necessary for defense in a civil, criminal, or administrative action brought against either the certified advocate or qualified victim services program by, or on behalf of, the victim.

HB 3476 took effect on June 4, 2015. Both new sections in the bill and ORS 40.252 (2013), as amended by section 3, chapter 265, Oregon Laws 2015 (Enrolled HB 3476), became operative on October 1, 2015. The Attorney General is authorized to take any action before the operative date that is necessary to exercise all of the duties and functions conferred on the Attorney General. The new section added to ORS 40.225 to 40.295 (2013) applies to proceedings occurring on or after October 1, 2015. Both new sections and ORS 40.252 (2013), as amended by section 3, chapter 265, Oregon Laws 2015 (Enrolled HB 3476), apply to communications and records made before, on, or after October 1, 2015, unless the communications were disclosed by a third party before that date.

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### 2. [SB 189](#) (Ch. 114) Confidentiality

SB 189 amends [ORS 36.224](#) (2013) to clarify that the rules developed by the Attorney General regarding the confidentiality of mediation communications in mediation in which a state agency is a party, or a state agency is mediating a dispute in which the agency has regulatory authority are model rules. The bill provides that a state agency may adopt the Attorney General’s model rules regarding the confidentiality of mediation communications in their entirety without complying with the rulemaking procedures of [ORS 183.335](#) (2013).

SB 189 (Ch. 114) (2015) took effect on May 20, 2015.

## XIV. KLAMATH BASIN ADJUDICATION

### 1. [SB 206](#) (Ch. 445) Transfer or Lease of Klamath Basin Water Rights

In 2013, the Oregon Water Resources Department issues its “Findings of Fact and Order of Determination” (FFOD) for the Upper Klamath Basin in Klamath County. This represents the end of the administrative phase of the Klamath Basin Adjudication that began in 1975. The second phase of the adjudication involves court review of the FFOD before the Klamath County Circuit Court. That process is expected to take several years. Currently pre-1909 water rights in the basin are considered “determined claims” but do not become “decreed rights” until the court issues its final decree.

SB 206 allows water rights holders of determined claims in the Klamath Basin to temporally transfer or lease water instream, just as other water rights holders in the basin already can. In the absence of this bill, determined claims would not be eligible for temporary transfers or instream leases.

SB 206 took effect on June 16, 2015 and applies to all transfers and leases that are entered into before January 2, 2026.

### 2. [SB 264](#) (Ch. 449) Oregon Water Resources Department

In 2014 the Upper Klamath Basin Comprehensive Agreement was entered into between the State of Oregon, the United States, representatives of the Klamath Tribes, and Upper Klamath Basin irrigators. Under the Agreement, a “Joint Management Entity” will oversee implementation of the Agreement.

SB 264 simply permits the Oregon Water Resources Department to participate in activities related to the Joint Management Entity to further the implementation of the Agreement. This bill took effect on June 16, 2015.

## XV. MISCELLANEOUS

### 1. [SB 272](#) (Ch. 451) Board of Accountancy

SB 272 reflects the work of a law and rules task force organized by the Oregon Board of Accountancy and amendments made in 2014 to the Uniform Accountancy Act by the American Institute of Certified Public Accountants and the National Association of State Boards of Accountancy.

The bill amends the definition of “attestation services” in [ORS 673.010](#)(1) (2013). Amendments to [ORS 673.410](#) (2013) provide that the Oregon Board of Accountancy has the authority to engage in certain activities, including but not limited to, adopting rules to implement [ORS 673.010 to 673.457](#) (2013), adopting rules of professional conduct and standards for and applicable to persons or businesses holding certificates, licenses, permits, or registrations issued under ORS 673.010 to 673.457 (2013), appointing advisory committees to assist the board, delegating administrative and enforcement duties, imposing disciplines as authorized by [ORS 673.400](#) (2013), issuing subpoenas to compel the attendance of witnesses or production of records necessary to conduct an investigation under [ORS 673.170](#) (2013), and conducting criminal records checks under [ORS 673.465](#) (2013).

The bill adds a new section to the series ORS 673.010 to 673.457 (2013), which establishes the Oregon Board of Accountancy Fund in the State Treasury, separate and distinct from the General Fund. The Oregon Board of Accountancy Fund established pursuant to [ORS 670.335](#) (2013) is abolished.

[ORS 673.040](#) (2013) is amended to repeal the board’s authority to prescribe, by rule, information required of applicants for a certificate of certified public accountant regarding the practice of public accountancy outside of Oregon and changes in the licensee’s ability or authority to practice public accountancy. Amendments to [ORS 673.150](#) (2013) repeal the 60 day deadline for renewing a permit to engage in the practice of public accountancy and authorize the board to adopt rules regarding permits that were not timely renewed. The \$50.00 fee prescribed in [ORS 673.220](#) (2013) for taking inactive status is repealed, and the board is authorized to establish, by rule, a fee for becoming or remaining inactive, or for becoming active.

[ORS 673.170](#) (2013) is amended to authorize the board to limit the privileges of any certificate, license, permit, or registration issued by the board, and to issue an emergency suspension order to a person that the board has reasonable cause to believe has engaged, is engaged, or is about to engage in any violation of ORS 673.010 to 673.457 (2013), or any board rule adopted under ORS 673.010 to 673.457 (2013). The contents of ORS 673.400 (2013) were repealed and replaced with a provision authorizing the board to impose a civil penalty, not to exceed \$5,000.00 for each offense, for a violation of ORS 673.010 to 673.457, a rule adopted under ORS 673.010 to 673.457, or an order of the board.

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The bill also makes several conforming amendments, adds [ORS 673.465](#) (2013) to the series ORS 673.010 to 673.457 (2013), and repeals [ORS 673.012](#), [673.173](#), and [673.445](#) (2013).

SB 272 took effect on June 16, 2015, but much of the bill does not become operative until January 1, 2016. The board is authorized to take any action necessary before January 1, 2016, to enable the board to exercise on or after January 1, 2016, the duties and powers conferred on the board.

### 2. [HB 2473](#) (Ch. 106) Board of Licensed Social Workers

HB 2473 adds a new section to series [ORS 675.510 to 675.600](#) (2013). The bill authorizes the State Board of Licensed Social Workers to adopt rules providing for the temporary licensure of clinical social workers and master's social workers, the temporary registration of baccalaureate social workers, and the temporary certification of clinical social workers. It also authorizes the board to establish by rule fees for such temporary licensures, registrations, and certifications.

The bill took effect on May 20, 2015.

### 3. [HB 2250](#) (Ch. 758) Judicial Department Employment

HB 2208 amends [ORS 8.100](#) (2013) to authorize the Chief Justice of the Supreme Court to, by order, adopt rules used to determine whether a person employed or applying for employment by the Judicial Department is fit to be employed by, or provide services to, the department.

### 4. [HB 2208](#) (Ch. 313) Civil Code Enforcement Officers Disclosure

HB 2208 adds certain records containing personal information concerning "civil code enforcement officers" to the list of public records at [ORS 192.501](#) (2013), as amended by section 1, chapter 37, Oregon Laws 2014, and section 1, chapter 64, Oregon Laws 2014, that are conditionally exempt from disclosure. The amendments include a definition of the term "civil code enforcement officer" and provide that the conditional exemption must be requested by the civil code enforcement officer.

HB 2208 took effect on June 10, 2015.

### 5. [SB 574](#) (Ch. 498) Construction Contractors Board

SB 574 adds a new section to [ORS chapter 701](#) authorizing the Construction Contractors Board to issue a residential restoration contractors endorsement to a licensee. The endorsement authorizes the licensee to perform "restoration work," a term defined in the bill, but not other contractor activities. The board may adopt, by rule, continuing education requirements for residential restoration contractors, minimum standards of practice and

professional conduct for the offering or performance of restoration work, and regulations on arranging, undertaking, offering to undertake, and submission of bids for restoration work by board licensees.

The bill amends [ORS 701.005](#) (2013) to include persons who perform restoration work within the definitions of “contractor” and “residential contractor.” The same amendments are also made to ORS 701.005, as amended by section 59, chapter 630, Oregon Laws 2011, section 7, chapter 130, Oregon Laws 2013, section 4, chapter 251, Oregon Laws 2013, section 7, chapter 300, Oregon Laws 2013, and section 9, chapter 383, Oregon Laws 2013.

“Residential restoration contractor” is added to the lists of endorsements in ORS 701.201 (2013) a person or joint venture that undertakes or submits a bid to do work as a contractor must have to do work as a contractor in connection with a residential or small commercial structure.

Amendments to [ORS 701.081](#) (2013) provide that a residential restoration contractor must obtain a surety bond under ORS 701.068 in the amount of \$10,000.00 and general liability insurance under [ORS 701.073](#) in an amount of at least \$100,000.00.

The bill authorizes the board to adopt initial rules for issuing residential restoration contractor license endorsements, and directs the board to do so in time to make the license endorsements available by no later than January 1, 2017. The initial application, licensing, or other fees imposed for a residential restoration contractor license endorsement shall be the same as the fess in effect on January 1, 2016, for a residential limited contractor.

SB 574 will take effect on January 1, 2016. The endorsement requirements established in section 2(3) of the bill apply to arranging for, undertaking, offering to undertake, or submitting a bid to undertake restoration work to be performed on a residential or small commercial structure in whole or in part on or after July 1, 2017.

**6. [HB 3549](#) (Ch. 833) Department of Agriculture**

HB 3549 adds new sections to [ORS chapter 634](#) (2013). The bill provides that individuals must possess an aerial pesticide applicator certificate to apply pesticides by aircraft. It authorizes the State Department of Agriculture to issue aerial pesticide applicator certificates to individuals who satisfy the qualification criteria established in the bill, to establish a term for aerial pesticide applicator certificates not to exceed five years, and to suspend or revoke an individual’s aerial pesticide applicator certificate if the individual does not maintain a valid pesticide applicator license, public applicator license, or private applicator certificate.

The bill also authorizes the department to suspend, revoke, or refuse to renew a license, certificate, or other authorization issued to a person under ORS chapter 634 if the person fails to pay a civil penalty under [ORS 634.900](#) on or before 90 days after the date the order imposing the civil penalty becomes final. It amends ORS 634.900 (2013) to increase the maximum civil

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penalties the department can impose for a first violation from \$1,000.00 to \$2,000.00, and for subsequent violations from \$2,000.00 to \$4,000.00. Effective January 1, 2017, it modifies the criteria for obtaining an aerial pesticide applicator certificate to require passage of a national examination, or other exam, regarding proper spraying and other application of pesticides by aircraft.

The bill amends [ORS 634.126\(1\)\(c\)](#) (2013) to allow the department to issue or renew a pesticide trainee certificate to an individual who is working under the direct supervision and control of a certified aerial pesticide applicator, if spraying or otherwise applying pesticides by aircraft.

HB 3549 took effect on August 12, 2015.

### 7. [HB 3037](#) (Ch. 26) Disclosure Exemptions

HB 3037 amends [ORS 192.502](#) (2013), which lists various public records that are exempt from disclosure under [ORS 192.410 to 192.505](#) (2013). Currently, a public body employee or volunteer's address, Social Security number, date of birth, and telephone numbers contained in personnel records maintained by the public body are exempt. The bill clarifies that the employee or volunteer's residential address is exempt and makes the following additional personal information exempt: the employee or volunteer's residential telephone number, personal mobile telephone number, personal e-mail address, driver license number, employer-issued identification card number, emergency contact information, and other telephone numbers. Additionally, the bill repeals provision allowing disclosure of an employee or volunteer's information when party seeking disclosure demonstrates that, based on clear and convincing evidence, the public interest requires disclosure.

The bill also adds two new sections to the series ORS 192.410 to 192.505 (2013). The first provides that a public body – but not the Judicial Department or the Department of Transportation – that is the custodian of or otherwise in possession of the residential address, residential telephone number, personal mobile telephone number, personal e-mail address, Social Security number, employer-issued identification card number, and emergency contact information of a home care worker, a child care facility operator, an exempt family child care provider, or an adult foster home operator may not disclose that information in response to a public records request.

The second section provides that a public body that is the custodian of, or otherwise in possession of, information that was submitted to it in confidence and not otherwise required to be disclosed, must redact the following information before making a disclosure under ORS 192.502(4): residential address, residential telephone number, personal e-mail address, personal mobile telephone number, Social Security number, employer-issued identification card number, and emergency contact information.

HB 3037 took effect on April 9, 2015.

**8. [HB 2439](#) (Ch. 69) Employment Department**

HB 2439 amends [ORS 657.270](#) (2013) to authorize the Director of the Employment Department to dismiss a request for a hearing under ORS 657.270(1) if the requesting party withdraws the request for a hearing, the issues are resolved by cancellation or amendment of the decision that is the subject of the hearing request, the hearing request is filed prior to the date of the written decision or determination that is the subject of the request, or the person requesting the hearing is not entitled to a hearing or does not represent a party entitled to a hearing. The director's dismissal is final unless the party files a request for hearing regarding the dismissal with 20 days after the notice was mailed to the party's last-known address.

A hearing regarding the dismissal shall be assigned to an administrative law judge from the Office of Administrative Hearings. The ALJ shall determine whether the dismissal was appropriately entered and, if not, shall decide the underlying issue upon which the hearing was requested.

HB 2439 took effect on May 14, 2015, and applies to requests for hearings and requests to reopen hearings filed on or after that date.

**9. [SB 297](#) (Ch. 576) Engineering and Surveying**

SB 297 revises the procedures for obtaining a license to practice professional engineering, land surveying, or photogrammetric mapping in Oregon, to reflect, in part, changes made to the national examinations administered in those fields by the National Council of Examiners for Engineering and Surveying.

The bill repeals [ORS 672.095](#), [672.102](#), [672.105](#), [672.115](#), [672.118](#), [672.121](#), [672.123](#), [672.141](#), and [672.148](#) (2013). Those statutes addressed the minimum qualifications for an engineer, land surveying, and photogrammetric mapping registration and application, alternative qualifications for all three fields, licensing examinations, and issuing registration certificates to engineers previously registered in another state. Corresponding amendments were made to [ORS 672.255](#) and [455.628](#) (2013). SB 297 specifically provides that the repeal of those nine statutes does not invalidate, terminate, or otherwise affect any action taken by Oregon State Board of Examiners for Engineering and Land Surveying (OSBEELS) prior to the bill's effective date.

In their place, the bill adds seven new sections to the series [ORS 672.002 to 672.325](#). The new sections establish the minimum evidence of qualification an application for an engineer, land surveying, or photogrammetric mapping registration must provide. They also give OSBEELS authority to refuse to register an applicant if a court or administrative agency in another state previously has found that the applicant violated a statute, rule, or ethical or professional standard through an act which, if committed in Oregon, would constitute grounds for refusing, suspending, or revoking an individual's engineer, land surveying, or photogrammetric mapping registration.

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OSBEELS received authority to waive the fundamentals of engineering examination for registration applicants who have been licensed or registered as a professional engineer in another state for at least 25 years before they applied for an Oregon registration.

The legislature directed OSBEELS to adopt rules that would permit veterans to present evidence of military training or experience that is substantially equivalent to the education and degree requirements for all three fields.

The bill amended [ORS 672.002](#) (2013) to add photogrammetric mapping project work to the definition of “responsible charge,” which had previously only included engineering design and land surveying work. Photogrammetric mapping was also added to the services an out-of-state professional could offer under [ORS 672.060](#) (2013) if the professional or business is registered to provide those services in another state and upon providing notification that the professional or business would comply with [ORS 672.002 to 672.325](#) by having a professional registered in Oregon perform any services provided in Oregon.

[ORS 672.155](#) (2013) was amended to authorize OSBEELS to establish, by rule, a fee for enrolling engineering or land surveying interns.

SB 297 took effect on June 25, 2015.

### 10. [HB 2207](#) (Ch. 704) Environmental Quality Commission

HB 2207 amends [ORS 783.635](#) (2013) to authorize the Environmental Quality Commission to adopt by rule procedures for implementing alternative ballast water management strategies for vessels with empty ballast tanks that enter the waters of Oregon. The bill also amended [ORS 783.630](#) (2013) to provide that [ORS 783.625 to 783.640](#) (2013) do not apply to a vessel carrying ballast water from a voyage into the waters of this state if the vessel has discharged ballast water that has been treated to remove organisms pursuant to the procedures adopted by the Commission. Finally, the bill added a new term (“empty ballast tank”) and definition to ORS 783.625 (2013), which provides definitions of terms used in ORS 783.625 to 783.640 (2013).

### 11. [HB 2534](#) (Ch. 61) Fish and Wildlife Commission

HB 2534 directs the State Fish and Wildlife Commission to adopt rules prohibiting the use of drones for angling, hunting, or trapping; using drones to harass, track, locate, or scout wildlife for the purpose of aiding angling, hunting, or trapping; and interfering in the acts of a person who is lawfully angling, hunting, or trapping. Exceptions are made for drones used by the State Department of Fish and Wildlife and its agents and contractors; drones are used for the benefit of wildlife management, habitat, or the protection or property; and drones are used by a person lawfully engaged in activities authorized under the commercial fishing laws.

**12. [HB 2288](#) (Ch. 196) Innovation Council**

HB 2288 amends [ORS 284.706](#) (2013) to increase the number of members the Governor may appoint to the Oregon Innovation Council from five to seven, modifies the criteria for some council members, reduces the term of office for each appointed voting member from three to two years, and clarifies that members may only be reappointed for one additional term. The bill also increases the number of council meetings that must occur per fiscal year from two to four and directs the council to establish an audit and accountability committee to monitor the performance of the council's contracts and benchmark Oregon's performance against nationally accepted innovation metrics.

HB 2288 amends [ORS 284.711](#) (2013) and [284.715](#) (2013) to clarify the council's role in promoting the commercialization of research from private research firms and institutions of higher education, and the policy and program recommendations in the council's state plan for innovation and economic competitiveness.

The bill took effect on June 2, 2015.

**13. [HB 3214](#) (Ch. 477) Land Conservation and Development Commission: Statewide Planning**

HB 3214 directs the Land Conservation and Development Commission to adopt or amend rules regarding the statewide planning goal criteria in [ORS 197.732\(2\)\(a\) and \(b\)](#), which allow local governments to adopt an exception to a goal if land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal, or irrevocably committed as described by a commission rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable, respectively.

The bill provides that the commission's rules must:

- Allow a local government to rezone land in an area physically developed or committed to residential use without requiring that the local government take a new exception to the statewide planning goals related to agricultural and forest land;
- Allow for a rezoning that authorizes change, continuation or expansion of an industrial use that has been in operation for the five years immediately preceding the formal land use planning action that was initiated for the change, continuation or expansion of use;
- Provide that the rezoned use will maintain the land as rural land in a manner consistent with other statewide planning goal requirements;

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- Ensure that rural uses, density and public facilities and services permitted by the rezoning will not commit adjacent or other nearby resource land to uses that are not permitted by statewide planning goals related to agricultural and forest lands, and are compatible with the uses of adjacent and other nearby resource land uses; and
- Provide that the land to be rezoned is not in an area designated as a rural or urban reserve under [ORS 195.141](#).

HB 3214 took effect on June 18, 2015.

### 14. [SB 120](#) (Ch. 280) Land Conservation and Development Commission: Transportation Improvement Rules

SB 120 directs the Land Conservation and Development Commission to “adopt new rules, or amend existing rules, as necessary to allow a city or county to propose transportation improvements located outside the city or county when the city or county is considering an amendment to a functional plan, comprehensive plan, or land use regulation and the amendment would significantly affect a transportation facility within the city or county.” It also defines the term “transportation facility” as it is used in the bill.

The bill authorizes cities and counties to use highway mobility targets established for a highway corridor by the Department of Transportation’s Oregon Highway Plan as the basis for proposing transportation improvements located outside of the city or county. It also directs the Department of Transportation and the Department of Land Conservation and Development to jointly report to an interim committee of the legislature related to transportation by no later than September 16, 2016.

SB 120 took effect on June 8, 2015.

### 15. [HB 2571](#) (Ch. 550) Law Enforcement Agencies

HB 2571 directs law enforcement agencies to establish policies and procedures regarding the use, storage, and retention of audio and video recordings made by a police officer using a video camera worn on the officer’s person (also known as body cameras) while the officer is on duty. The bill establishes provisions that must be included in a law enforcement agency’s policies and procedures regarding body cameras, including but not limited to the length of time a recording must be retained when not related to either a court proceeding or ongoing criminal investigation, a prohibition on using recordings for any purpose other than a legitimate law enforcement purpose, and a requirement that any contracts with third party vendors include a provision identifying the camera’s recordings as the agency’s property and prohibiting the vendor from using the recordings for any purpose inconsistent with the agency’s policies and procedures.

The bill also makes several related amendments:

- [ORS 165.540\(5\)\(c\)](#) (2013) is amended to include a new subparagraph (B) which excludes body cameras worn by police officers from the prohibition in ORS 165.540(1)(c) (2013) against using devices to record a conversation without first notifying the participants that the conversation is being recorded;
- [ORS 41.910\(1\)](#) (2013) is amended to exclude recordings made by a police officer's body camera from the prohibition on admitting wire or oral communications obtained in violation of ORS 165.540 when the officer substantially complied with or made a good faith attempt to comply with the new ORS 165.540(5)(c)(B);
- [ORS 136.295\(4\)\(b\)](#), which lists the situations establishing good cause for a court to order an extension of custody and postponement of the date of a criminal trial for up to 60 additional days, is amended to include a new subparagraph (J), which adds a defendant's need to edit digital video evidence collected by a police officer's body camera in response to a discovery request to the list; and
- Numerous statutes are amended to include audio and video recordings made by a body camera worn by a police officer among the public records that are exempt from disclosure under [ORS 192.410 to 192.505](#) unless the public interest requires disclosure in a particular instance. Body camera recordings that have been sealed, or are the subject of a court's nondisclosure order, may not be disclosed. A disclosure request concerning recordings made by a police officer's body camera must identify the approximate date and time of the recorded incident for which the records were requested. Video recordings, before they can be disclosed, must be edited to render the faces of all persons within the recording unidentifiable.

HB 2571 became effective on June 25, 2015.

**16. [HB 3487](#) (Ch. 226) Licensed Investigators**

HB 3487 amends [ORS 703.450](#) (2013) to include a requirement that licensed investigators must include their name and license number in all advertisements for their services. This requirement applies to advertisements published on or after January 1, 2016.

The bill took effect on June 2, 2015, and the amendments to ORS 703.450 (2013) become operative on January 1, 2016. The Department of Public Safety Standards and Training may take any action before the operative date that is necessary to enable the department to exercise the duties and powers conferred on it by the amendments to ORS 703.450 (2013).

**17. [HB 3318](#) (Ch. 478) Lottery Commission**

HB 3318 amends [ORS 461.200](#) (2013) to direct the Oregon State Lottery Commission to implement an Oregon State Lottery Responsible Gambling Code of Practice. The bill also adds

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two new sections to ORS chapter 461 (2013) to be collectively known and cited as the Oregon State Lottery Responsible Gambling Code Practices Act.

The first new section establishes definitions for the terms “problem gambling,” “responsible gambling,” and “responsible or problem gambling community” as used in the Oregon State Lottery Responsible Gambling Code Practices Act. The second section directs the commission to operate the Oregon State Lottery in compliance with the Oregon State Lottery Responsible Gambling Code Practices Act, as well as engage in other activities, including but not limited to evaluating the lottery’s operation annually, and relying on research to inform its responsible gambling and problem gambling resource awareness efforts.

### 18. [HB 3498](#) (Ch. 438) Marine Board

HB 3498 amends [ORS 704.020](#) (2013) to provide that applicants for an outfitter and guide registration must provide with their application to the State Marine Board an affidavit that the applicant and each person who provides or assists in directly providing outfitting and guiding services has not been convicted of a crime involving delivery, manufacture, or possession of a controlled substance, as defined in [ORS 475.005](#) (2013), except marijuana, or assault in any degree, criminal homicide, or kidnapping in any degree, in the 24 month period immediately prior to making the application. The amendments also add ORS chapter 830 to the list of ORS chapters, found in [ORS 704.020\(1\)\(i\)\(A\)\(ii\)](#) (2013). Applicant and each person who provides or assists in directly providing outfitting and guiding services swears or affirms that they have not violated the ORS chapters listed and any rules adopted pursuant to those ORS chapters.

The applicant must also include with their application an affidavit that the applicant and each person who provides or assists in directly providing outfitting and guiding services has not been convicted of a crime, the result of which either prohibits the person from possessing a firearm, or requires the person to be registers as a sex offender under [ORS 181.806](#), [181.807](#), [181.808](#), or [181.809](#) (2013).

The bill makes the same amendments to [ORS 704.020](#) (2013), as amended by section 7, chapter 422, Oregon Laws 2013.

The bill amends [ORS 704.040\(5\)](#) (2013) by adding convictions of a crime involving delivery, manufacture, or possession of a controlled substance, as defined in [ORS 475.005](#) (2013), except marijuana, or assault in any degree, criminal homicide, or kidnapping in any degree as a basis for the board to reprimand the outfitter and guide, or suspend the outfitter and guide’s registration for a period of up to 24 months. The bill also adds a new subsection (6) to [ORS 704.040](#) (2013) which directs the board to revoke the registration of an outfitter and guide who was convicted of a crime, the result of which either prohibits the person from possessing a firearm, or requires the person to be registers as a sex offender under [ORS 181.806](#), [181.807](#), [181.808](#), or [181.809](#) (2013).

HB 3498 took effect on June 16, 2015. The amendments to ORS 704.020 and 704.040 by sections 1 to 3 of the bill become operative on January 1, 2016. The board may take any action before the operative date that is necessary to enable to board to exercise the duties and powers conferred by the amendments to ORS 704.020 and 704.040. The amendments to ORS 704.020 by sections 1 and 2 of the bill apply to applications for either an initial or renewed registration received by the board on or after January 1, 2016. The amendments to ORS 704.040 by section 3 of the bill apply to convictions for acts committed on or after January 1, 2016.

**19. [SB 386](#) (Ch. 14) OHSU**

SB 386 amends [ORS 192.501](#) to provide that the name, home address, professional address, or location of a person that is engaged in, or provides goods or services for, medical research at the Oregon Health and Science University that is conducted using animals other than rodents are exempt from disclosure under [ORS 192.410 to 192.505](#), unless the public interest requires disclosure in a particular instance.

The bill also repeals section 4, chapter 455, Oregon Laws 2005, which had initially established a sunset date of January 1, 2010, for the exemption and extended it to January 1, 2016.

A corresponding amendment reflecting the renumbering of subsections in ORS 192.501 was made to [ORS 146.035\(5\)](#) (2013).

**20. [HB 3549](#) (Ch. 833) Pesticide Analytical and Response Center**

HB 2549 amends [ORS 634.550](#) (2013) to require that the Pesticide Analytical and Response Center's governing board develop standard operating procedures for implementation by public entities represented on the board to coordinate the receipt of, and response to, pesticide-related complaints indicating possible health or environmental effects. The board must also report biennially to the legislature, or to an interim committee dealing with natural resource issues, regarding activities undertaken by the board and by public entities represented on the board during the reporting period regarding the development, implementation, amendment, or operation of those standard operating procedures.

The bill directs the department to establish a pesticide incident telephone line for receiving pesticide-related complaints from the public and coordinating with public entities' responses to such complaints, and directs the Pesticide Analytical and Response Center to develop standard operating procedures for use with the telephone line. The department must report biennially to the legislature regarding the telephone line's operation.

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The bill also directs the department to post information regarding pesticides on a website available for access by the public without charge, including which pesticides and devices are listed as highly toxic or restricted-use pesticides or devices under [ORS 634.316](#) (2013).

HB 3549 amends [ORS 634.016](#) (2013) to increase the registration fee for registering a pesticide with the department from \$250.00 to \$400.00.

The bill adds a new section to the series [ORS 527.610 to 527.770](#) (2013), also known as the Oregon Forest Practices Act, which provides that operators, as part of a forest operation, when applying herbicides by aircraft near an inhabited dwelling or school must leave an unsprayed strip at least 60 feet adjacent to the dwelling or school. Amendments to [ORS 527.990](#) and [527.992](#) (2013) make a violation of this new section is a Class A misdemeanor and provide for the imposition of civil penalties.

HB 3549 took effect on August 12, 2015.

### 21. [HB 2270](#) (Ch. 762) Resilience Officer

HB 2270 creates the office of the State Resilience Officer in the office of the Governor. The officer shall be appointed by the Governor and confirmed by the Senate, and the office shall direct, implement, and coordinate seismic safety and resilience goal setting and agency planning and preparation. The bill directs the legislative and judicial branches to select an individual to monitor the effectiveness of their seismic safety and resiliency planning.

HB 2770 took effect on July 27, 2015.

### 22. [HB 2960](#) (Ch. 557) Retirement Savings Board

HB 2960 creates the seven-member Oregon Retirement Savings Board, comprised of four members appointed by the Governor, the State Treasurer (or the State Treasurer's designee), and two non-voting members – one appointed by the Speaker of the House of Representatives and the other appointed by the President of the Senate. Members appointed by the Governor must be confirmed by the Senate. The term of office for the members appointed by the Governor is four years.

The board is directed to develop a defined contribution retirement plan for persons employed for compensation in Oregon, and given the authority to adopt rules for the general administration and management of the plan. The defined contribution retirement plan developed by the board must satisfy criteria established by the Legislative Assembly, including but not limited to a default contribution rate set by the board by rule, provide for automatic enrollment of eligible employees, and require no employer contributions. The legislature has identified July 1, 2017, as the target date when individuals can begin making contributions to the plan if certain criteria are met, such as that the board determines that the plan is, among

other things, feasible and would not qualify as an employee benefit plan under Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. 1001 et seq. (2014)).

Before the board can establish a defined contribution retirement plan under the bill, it must first conduct a market analysis to determine the plan's viability and obtain advice regarding the applicability of ERISA and the Internal Revenue Code, among other preliminary activities. The board must submit a report to a legislative committee or interim committee on or before December 31, 2016, concerning the results of the board's market analysis, findings from legal advice regarding the applicability of ERISA and the Internal Revenue Code, an overview of any contracts entered into by the board, and other matters.

The bill preempts local governments from establishing their own retirement plans for workers who are not employed by a public body.

The board must submit an annual report to the Governor and an appropriate committee or interim committee of the legislature detailing the board's activities. The Secretary of State, the Department of Revenue, the Employment Department, the Department of Consumer and Business Services, the Bureau of Labor and Industries, and any other agency that enters into an intergovernmental agreement with the board to provide outreach, technical assistance, or compliance services must report to the board by January 1, 2016, on their plan for providing those services.

HB 2960 took effect on June 25, 2015.

**23. [SB 934](#) (Ch. 589) **State Fair Council****

[ORS 30.271](#) (2013) establishes limits on claims – but not claims for damage to or destruction of property – made against the state, its officers, employees, or agents when acting within the scope of their employment duties, and the Oregon Health and Science University. SB 934 amends ORS 37.271 (2013) to provide that those limits also apply to claims made against the State Fair Council.

The bill also amends [ORS 565.460](#) (2013) to increase the number of members on the State Fair Council by two. Whereas the council had consisted of no fewer than nine and no more than 13 members, it will now have no fewer than 11 and no more than 15. Council members are appointed by the Governor. The President of the Senate and the Speaker of the House of Representatives shall each select a member of their respective chambers to act as nonvoting observers and advisors to the council.

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### 24. [HB 2184](#) (Ch. 54) **Transportation: Parks and Recreation**

HB 2184 directs the Department of Transportation (ODOT) and the State Parks and Recreation Department (SPRD) to work together to add a link from ODOT's website to a SPRD webpage that provides information about how to purchase day-use parking passes. The bill also directs the SPRD to coordinate with ODOT on making informational brochures, applications, and other materials about purchasing day-use parking passes available at ODOT field offices where driver license or vehicle registration applications are accepted. Furthermore, the bill directs SPRD to coordinate with other executive branch agencies to provide website links, informational brochures, applications, and other materials about purchasing day-use parking passes.

### 25. [SB 494](#) (Ch. 455) **Transportation: Veterans**

SB 494 amends [ORS 807.110](#) (2013) by adding a third instance in which the Oregon Department of Transportation may issue a valid license without a photograph - to an applicant who is stationed outside of Oregon who is in active military service with either the Armed Forces of the United States or the National Guard, and the department does not have an acceptable photograph for the applicant, as determined by the department by rule.

### 26. [HB 2886](#) (Ch. 111) **Vehicle Dealers**

HB 2886 amends [ORS 822.015](#) (2013) to clarify when a person who is licensed as a vehicle dealer in another jurisdiction, or is an employee of a person who is licensed as a vehicle dealer in another jurisdiction, may participate with other vehicle dealers in either a vehicle auction, or a display of vehicles, including but not limited to an auto show.

### 27. [SB 253](#) (Ch. 383) **Veteran Personally Identifiable Information**

SB 253 amends [ORS 192.502](#) (2013) to include personally identifiable information and contact information of veterans, as defined in [ORS 408.225](#) (2013), and of persons serving on active duty or as reserve members with the Armed Forces of the United States, National Guard, or other reserve component that was obtained by the Department of Veterans' Affairs in the course of performing its duties and functions among the public records that are exempt from disclosure under [ORS 192.410 to 192.505](#) (2013). The bill provides a non-exhaustive list of exempt information, such as Social Security numbers, veteran status, information relating to an application for or receipt of state or federal benefits, or financial information provided in connection with an application for a home loan or grant.

# 2

Channa Newell  
Amber Hollister

## Attorney Regulation and Judicial Administration

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## ATTORNEY REGULATION AND JUDICIAL ADMINISTRATION

### I. INTRODUCTION

This chapter covers bills impacting the functioning of the Oregon Court System, requirements for court documents, and changes to the Oregon Evidence Code. Additionally, this chapter covers bills effecting the Oregon State Bar and regulating the practice of law in Oregon. Unless otherwise stated, all bills take effect on January 1, 2016.

### II. BAR REGULATION

#### 1. [HB 2327](#) (Ch. 6) Custodianship of a Law Practice

HB 2327 makes several important changes to [ORS 9.705-9.755](#); the Bar's Custodianship Statute. This statute provides a process whereby the Oregon State Bar can, with the court's approval and oversight, assume responsibility for and control over a lawyer's practice when the lawyer is no longer able to do so. The purpose of the statute is to protect the lawyer's clients and ensure that any property in the custody of the lawyer is returned to its rightful owner.

HB 2327 makes four key changes to the statute:

- 1) The bill clarifies that custodianship proceedings may be initiated upon a lawyer's death or disbarment;
- 2) The bill eliminates the requirement of notice to the affected lawyer as a prerequisite to filing a custodianship petition, and instead requires the affected lawyer receive notice and the opportunity for a hearing after the court has assumed jurisdiction;
- 3) The bill clarifies that once the bar has been appointed as a custodian, the bar has the authority to take control of the lawyer's client trust account, and has the responsibility to determine ownership of funds and distribute them accordingly; and
- 4) The bill sets out requirements for how the bar is to handle client files. This may include returning them to clients, destroying them, or retaining them depending on the circumstances.

HB 2327 took effect on March 12, 2015.

#### 2. [HB 2328](#) (Ch. 7) Businesses Entities Must Appear Through Counsel

Prior to HB 2328, [ORS 9.320](#) stated that persons are permitted to appear in court without an attorney, with the exception that "the state or a corporation" must appear through an attorney. While the statute referred only to corporations, courts have generally held that LLCs, partnerships, trusts and other business entities must also appear through an attorney. See

## ATTORNEY REGULATION AND JUDICIAL ADMINISTRATION

*Oregon Peaceworks Green, PAC v. Secretary of State*, 311 Or 267, 270-72, 810 P2d 836 (1991) (holding that the combined effect of [ORS 9.160](#) and ORS 9.320 is to provide that persons may appear pro se, but entities must be represented by an lawyer); *Marguerite E. Wright Trust v. Dep't of Revenue*, 297 Or 533, 536, 685 P2d 418 (1984) (non-lawyer trustee of the plaintiff trust may not represent a business trust; and *Hansen v. Bennett*, 162 Or App 380, 383 n 4, 986 P2d 633 (1999) (noting that court dismissed an appeal filed on behalf of a corporation and a trust on the ground that an lawyer had not filed the notice of appeal for those entities).

The ambiguity in the statute has caused some concern within the bar that members of the public might read ORS 9.320 literally and mistakenly believe they can lawfully appear in court on behalf of businesses or other organizations of which they are a member. HB 2328 addresses this problem by replacing the word “corporation” in the statute with “party that is not a natural person”.

HB 2328 took effect on March 12, 2015.

### 3. [SB 381](#) (Ch. 122) OSB Governance and Administration

SB 381 addressed three separate issues related to the governance of the Oregon State Bar.

First, the bill created an additional seat on the OSB Board of Governors specifically for a member whose principle place of business is outside of the State of Oregon. Prior to this bill, the approximately 2,500 OSB members who maintained their principle office outside of the state were neither eligible to run for nor to vote for members of the Board of Governors. This new seat was filled during the fall election in 2015 and the new member’s term begins January 1, 2016.

Second, SB 381 changes the timelines for payment of Professional Liability Fund assessments. The bill eliminates specific late payment notice requirements that were contained in the statute, and replaces them with general requirement that the bar provide written notice of delinquency and offer a reasonable opportunity to cure the delinquency. The bill grants the Board of Governors the authority to establish specific deadlines for payment of the PLF assessment, which will allow the board to align those payments dates with deadlines for other bar related obligations.

Finally, the bill provides the Oregon Supreme Court with flexibility regarding appointment to the Board of Bar Examiners. The bill eliminates the requirement that the BBX consist of exactly twelve members, though it retains the requirement that the court appoint two public members. Additionally, the bill clarifies that the BBX may investigate an applicant’s character and fitness and provides that applications for the bar are confidential and subject to disclosure only as provided in Supreme Court rules.

SB 381 took effect on May 20, 2015.

### III. COURT OPERATIONS

1. [HB 2316](#) (Ch. 623) **Justice Court Fees and Administration; Material Witnesses**

House Bill 2316 changed several sections of statute relating to justice court fees, administration of justice and municipal courts, and recording requirements for proceedings in those courts. Additionally, the measure provides an avenue for deposition of a material witness within ORS 136.600 et. seq.

House Bill 2316 increases a variety of fees charged by a Justice of the Peace. For example, the first appearance of the parties will increase from \$40 to \$90. Fees for filing a small claim will increase from \$28 to \$35 in 2015, and from \$35 to \$37 in 2018. Small fees for taking affidavits or taking depositions are removed. Trial fees for small claims trials are prohibited. Other trial fees are increased to \$100 per day, payable by the plaintiff.

Additionally, HB 2316 creates a process for taking the deposition testimony of a material witness. The petition for deposition must be granted or denied within 30 days of filing. The amendment specifies that the deposition of a material witness does not invalidate or otherwise affect the material witness order, but may be considered in connection with an application to vacate or modify an order.

Finally, HB 2316 revises provisions of HB 3399 dealing with recording of proceedings within municipal and justice courts. The measure augments the audio recording allowed in HB 3399 to also include recording through stenographic or others means.

The sections of HB 2316 relating to court fees take effect October 1, 2015, with an additional increase scheduled for January 1, 2018. The sections relating to material witnesses took effect on July 1, 2015, and the sections relating to recording in municipal and justice courts take effect on January 1, 2016.

2. [HB 2339](#) (Ch. 155) **Interpreters for Victims in all Critical Stages of Proceeding**

House Bill 2339 extends the requirement under [ORS 42.275-42.285](#) that courts appoint interpreters in certain circumstances to non-English speaking or disabled victims when those victims are seeking to exercise their rights under the Oregon Constitution but are not parties or witnesses.

Article I, Section 42 of Oregon's Constitution grants certain rights to crime victims, including the right to be present at all critical stages of the criminal prosecution and to be heard at the pre-trial release hearing and sentencing. A "critical stage" of a proceeding is defined in ORS 147.500 and includes release hearings, preliminary hearings, hearings on motions and petitions, entry of pleas, trials, restitution hearings, sentencing, probation violation hearings, or any other stage of the proceeding the court determines is a critical stage.

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Prior to HB 2339, courts were not expressly authorized to appoint interpreters or provide assistive listening devices for victims unless the victim was a party or witness.

House Bill 2339 took effect May 26, 2015.

### 3. [HB 2340](#) (Ch. 197) Protection of Information in Court Documents

House Bill 2340 restricts identifying information available in court documents, such as Social Security numbers, tax payer identification numbers, and driver license numbers, to only the last four digits of those numbers. Additionally, if a restitution or compensatory fine is ordered by a court, only the name of the person will be included, not the address.

House Bill 2340 took effect on June 2, 2015, but most operative provisions do not go into effect until January 1, 2016.

### 4. [SJR 4](#) Referral to Voters on Repeal of Mandatory Retirement Age for Judges

Senate Joint Resolution 4 sends to the voters a repeal of the mandatory retirement age for judges found in Section 1a of Article VII of the Oregon Constitution. Currently, the Oregon Constitution requires any judge of any court to retire at the end of the year in which the judge turns 75 years of age. It also allows the people or Legislature to fix mandatory retirement at an early age, but no earlier than 70 years of age. The same Constitutional section allows for recalling judges out of retirement for temporary service, which SJR 4 retains.

Senate Joint Resolution 4 will be voted upon in the 2016 General Election.

## IV. OTHER LEGISLATION

### 1. [HB 3525](#) (Ch. 753) Immigration Consultant Fraud Task Force

House Bill 3535, as enacted, creates a 12-member Task Force on Immigration Consultant Fraud. The Task Force is charged with studying violations of acting as an immigration consultant without a bar license and of immigration consultants attempting to obstruct persons from reporting violations. As introduced, HB 3525 would have made the act of hindering or threatening another who tries to report unlicensed immigration consultants a violation of ORS 162.235-Obstructing Governmental or Judicial Administration.

In 2013, the Legislature enacted measures to prohibit the use of the term "notario publico" by notaries and prohibited the offering of immigration consulting services by anyone but licensed attorneys. In some Latin American countries, a "notario publico" is the equivalent of a bar-licensed attorney. In recent years, individuals have begun offering immigration consulting services in Oregon to the immigrant community under the title of a notario publico.

## ATTORNEY REGULATION AND JUDICIAL ADMINISTRATION

Often, these individuals are not qualified or licensed to practice law and in some cases, the services offered severely jeopardize immigration procedures.

The Task Force was required to report to the Legislature no later than September 15, 2015.

### 2. [SB 189](#) (Ch. 114) **Model Rules on Confidentiality of State Agency Mediation Communications**

Senate Bill 189 provides a streamlined process for state agencies to adopt model rules on confidentiality in mediation communications under [ORS 36.224](#). The bill requires the Attorney General to develop such model rules and, once developed, specifies that an agency may adopt the model rules without complying with the normal rulemaking procedure prescribed in [ORS 183.355](#).

Senate Bill 189 took effect May 20, 2015.

### 3. [SB 775](#) (Ch. 541) **Disaster Preparedness Plans or Actions not Admissible as Evidence of Negligence**

Senate Bill 775 adds a provision to the Oregon Evidence Code making evidence of assessments or actions taken to minimize the impact of a natural disaster, or actions taken to plan for a natural disaster, inadmissible to prove negligence or culpability in connection with damage, harm, injury, or death resulting from the natural disaster.

Senate Bill 775 took effect on June 23, 2015.

# 3

Mark Peterson  
Bruce Miller

## Civil Procedure

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- |            |           |  |
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| 5. HB 2333 | (Ch. 510) | Minority Tolling Statute                                   |
| 6. SB 411  | (Ch. 5)   | Personal Injury Protection and Uninsured Motorist Coverage |

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## I. INTRODUCTION

This chapter covers legislation that affects the rules of court, or other procedural requirements impacting the practice of law. It also covers some recent changes to the Oregon Rules of Civil Procedure promulgated by the Council on Court Procedures and changes to the Uniform Trial Court Rules. For a complete list of all changes to the ORCP or the UTCR please consult their respective websites.

Unless otherwise noted, all legislative changes go into effect on January 1, 2016. Likewise, changes to the ORCP promulgated by the Council on Court Procedures take effect on January 1, 2016. Changes to the Uniform Trial Court Rules generally go into effect on August 1, but many take place out of cycle, and practitioners should check the rules to confirm operate dates when relevant.

## II. CHANGES TO THE UNIFORM TRIAL COURT RULES

### 1. [UTCR 1.160](#) & [UTCR 15.010](#) Use of Forms in Filings

UTCR 1.160 rule is amended to require a judicial district to accept a filing that is substantially in the form of documents made available on the Oregon Judicial Department website, so long as the filing is otherwise in accordance with law.

The proposal is intended to allow the Oregon Judicial Department to better manage printable forms and, if applicable, interactive electronic forms. The proposal facilitates moving existing small claims forms from the UTCR to the Oregon Judicial Department website.

UTCR 15.010 was changed in several places to delete forms that were contained in the rules, and instead direct the reader to the Oregon Judicial Department website to find the forms.

Changes to UTCR 1.160 and 15.010 took effect on August 15, 2015.

### 2. [UTCR 21](#) eFiling Requirements

Numerous changes were made to UTCR 21 in order to facilitate the ongoing implementation of the Oregon eCourt Program. These changes were adopted out of cycle and most went into effect on September 29, 2014. Mandatory eFiling under UTCR 21.140 went into effect on December 1, 2014. Some highlights are presented below, but practitioners should consult the current UTCRs in order to familiarize themselves with all current eFiling requirements.

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**UTCR 21.040** was amended in several respects, including requiring that a single electronic filing be submitted as a single PDF file rather than as several individual electronic documents.

**UTCR 21.070** was updated to add additional documents that must be filed conventionally rather than electronically. Chief among these are the filing of a petition or motion for waiver of mandatory eFiling rules, and any filings required by Supplemental Local Rule to be filed conventionally.

**UTCR 20.080** was updated with language addressing filing requirements when the eFiling system is temporarily unavailable, or if a technical problem prevents the system from receiving a document. In general this rule will allow the court to permit a later filing date of a document to relate back to the date the filer attempted to file the document electronically. This rule change is intended to address bone fide problems with the eFiling system, not problems with the filer's computer equipment, and the rules states that technical problems on the filer's end will generally not excuse an untimely filing.

**UTCR 21.140** provides that an active member of the Oregon State Bar, with some exceptions, must file documents using the electronically filing system (eFiling) instead of filing documents conventionally.

Some specific documents are exempted from the rule, and UTCR 21.140(3) provides for a waiver process in order to be exempted from eFiling a document. Some counties have exempted certain documents from eFiling by Supplemental Local Rule, and practitioners should familiarize themselves with the rule in their practice area.

This rule only applies in those counties that have implemented the new eCourt eFiling system. However, it is anticipated that all Oregon counties will have eFiling available by mid 2016, and that mandatory eFiling will be the default rule statewide at that time.

UTCR 21.140 went into effect on December 1, 2014.

### III. CHANGES TO THE OREGON RULES OF CIVIL PROCEDURE

#### 1. [ORCP 1](#) Use of Declaration Under Penalty of Perjury in Lieu of Affidavit

ORCP 1 was amended, effective in 2004, to authorize the use of a declaration in lieu of an affidavit whenever an affidavit was required or allowed by the ORCP. The required language for and placement of the declaration was provided. The National Conference of Commissioners on Uniform State Laws specifies different verbiage for an unsworn declaration if that declaration is made (signed) outside of the geographic boundaries of the United States (meaning outside of the 50 states; Washington D.C.; Puerto Rico; the U.S. Virgin Islands; and any territory or insular possession of the United States). In 2013 the Legislature adopted [HB 2833](#) and codified the Uniform Unsworn Foreign Declarations Act as [ORS 194.800 to 194.835](#) and amended Rule 1 to refer to foreign declarations.

The current amendment reorganizes section E and now provides practitioners with the different placement (after the declarant's signature) and the required language for foreign declarations.

#### 2. [ORCP 7](#) Summons

Rule 7 is amended in four respects that may affect lawyers and litigants.

First, at paragraph C(3)(b), the "notice" language for that variety of a summons used to join a party to respond to a counterclaim under Rule 22 D(1) has been amended to also encompass joining a party to respond to a Rule 22 D(1) cross-claim.

Second, service on individuals is amended in subparagraph D(3)(a)(i) to make clear that service may be had on the defendant or on a person authorized to receive service.

Third, references to Rule 27 (guardians ad litem) for service of the summons on minors or incapacitated persons in subparagraphs D(3)(a)(ii) and D(3)(a)(iii) are amended to direct practitioners to the correct section of the concurrently amended Rule 27.

Fourth, the certificate of service provisions at subparagraphs F(2)(a)(i) and F(2)(a)(ii) are amended to now require a listing of the specific documents that were served on the defendant.

Numerous other words and punctuation interspersed throughout Rule 7 from paragraph C(1)(b) through section G are amended to improve clarity, consistency, and readability but should not affect practice.

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### 3. [ORCP 9](#) **Service and Filing of Pleadings**

Rule 9 is amended in five significant respects.

First, the rule defines and authorizes electronic service (see [UTCR, chapter 21](#)) in recognition of the county-by-county implementation of eCourt. Related amendments replace the term “papers” with “documents.”

Second, language relating to facsimile service has been amended to more accurately reflect the changes in facsimile technology and it is made clear that an automatically generated “out of office” message will not be sufficient to support a certificate of service.

Third, in section E, the description of the information that must be included on pleadings and documents to be filed with the court (a caption and the name and contact information of the attorney or the litigant who authored the document) is clarified and made more consistent with [UTCR 2.010\(7\) and \(11\)](#).

Fourth, any attorney who has consented to service by e-mail is now required (in section E) to notify other parties in writing of any changes to the attorney’s e-mail address.

Fifth, service of any pleading or document (other than a summons) by e-mail is treated (in section G and in Rule 10 B) in the same manner as service by facsimile service or by the postal service; the recipient is entitled to three additional days to respond to the document.

### 4. [ORCP 10](#) **Time**

[HB 2911](#) [\(Ch. 212\)](#)

In HB 2911, the Legislature deleted section B relating to terms of court and the former section C is now section B.

Rule 10 is amended in section B (previously section C) to afford recipients of documents that are served by e-mail three additional days to respond. The same three day extension is afforded for documents that are received via the court’s new electronic service. Section B now consolidates in one place the three day extension for responding to pleadings, motions, and other documents (other than a summons) whether served by regular postal mail, e-mail, facsimile transmission, or the new electronic service. HB 2911 took effect on June 2, 2015, and incorporated changes to Rule 10 promulgated by the Council on Court Procedures.

**5. [ORCP 27](#) Minor or Incapacitated Parties**

Rule 27 relating to the appointment of guardians ad litem is substantially rewritten and reorganized, and includes several new sections. Three significant changes are incorporated into the amended rule:

- 1) Absent a waiver authorized by the court, notice of the request for appointment of a guardian ad litem must be provided to the party for whom the guardian ad litem is sought and to other persons or entities (taken largely from [ORS 125.060](#)) with the opportunity for objections to be filed and a hearing to be held;
- 2) A new section C authorizes the discretionary appointment of a guardian ad litem for a party who is disabled but for whom the appointment of a guardian ad litem is not required; and
- 3) Direction is provided in section I on the procedures necessary to obtain court approval of any settlement that will involve the receipt of money or property by the party for whom the guardian ad litem was obtained.

Section E's requirement of providing notice to the party and to other listed persons or entities can be waived or modified by the court under section H for good cause shown. The notice and related procedures specified in sections D through G are not applicable when the appointment is made on the court's own motion or pursuant to a statute that provides for a different procedure.

The reorganization of Rule 27 includes changes to section A and section B to make those sections applicable to minors, incapacitated persons, or financially incapable parties; previously section A pertained to minors and section B pertained to incapacitated and financially incapable persons. The requirement that the court appoint a suitable person (in sections A and B) is now found in section D. The procedures in the former subsections A(1) and A(2) applicable for minors who are plaintiffs or defendants of various ages are now found in subsections B(1) and B(2). The procedures applicable for parties who are incapacitated or financially incapable, formerly found in subsections B(1) and B(2), are now found in subsections B(3) and B(4).

The list of those persons who may apply for appointment of a guardian ad litem in subsections B(1) and B(2) now includes other interested persons, consistent with case law. The terms "plaintiff" and "defendant" are amended to include their equitable counterparts "petitioner" and "respondent" for clarity.

Section D requires the filing of a motion supported by one or more affidavits or declarations that will provide the court with a factual basis to determine whether the appointment is appropriate. Section E identifies persons or entities, taken from [ORS 125.060](#), in addition to the party for whom the appointment is sought, to be served with notice of the motion. Unless the court waives or modifies the required notices, service must occur within 7 days of the filing of the motion for the appointment of a guardian ad litem. Section F describes the content of the notice, including a description of the procedure for filing any objection to the

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appointment within 14 days from the date of the notice. Section G specifies that a hearing on any objection shall be held as soon as practicable. Section H authorizes the court to waive or to modify the requirements and procedures for providing notice. Section I outlines the procedures for obtaining court approval when a proposed settlement will result in the receipt of money or property by the person for whom the guardian ad litem was appointed.

### Practice Tip #1:

Practitioners seeking the appointment of a guardian ad litem are now required to support their motion with one or more affidavits or declarations that contain facts sufficient to prove by a preponderance of the evidence that the party on whose behalf the motion is filed is a minor or is incapacitated or financially incapable (when appointment is mandatory), or that the party is disabled (when the appointment is discretionary).

### Practice Tip #2:

The amendment is in response to reported abuses of the guardian ad litem process, providing procedures to ensure that the person for whom the appointment is sought, and other persons or entities that may have an interest in the person or in the object of the civil action, will be apprised of the request for the appointment. The amendment is designed to allow an action that is on the cusp of being time barred to be filed without a delay due to the need to have a guardian ad litem appointed. Practitioners should identify the persons and entities identified in Section E to arrange for service of the required notice within seven days. Alternatively, if good cause can be demonstrated why some of the listed persons or entities cannot or should not be served within seven days, or should never be served, practitioners should have a motion and an affidavit or declaration prepared and promptly seek a waiver or modification of the rule's notice requirements.

## 6. [ORCP 32](#) **Class Actions**

### [HB 2700](#) (Ch. 2)

The 78th session of the Oregon Legislature made substantive changes to Rule 32 relating to class action litigation. These changes are contained in House Bill 2700 (2015). The former subsections F(2) through (4) are deleted and subsections F(5) through (7) are re-designated. The deleted subsections eliminate the previous requirement that class members wishing to be awarded individual monetary relief opt in (except as provided in the former subparagraph F(2)(iii) for limited situations) by filing claim forms to share in the recovery.

An amendment to section L requires that the judgment generally describe the members of the class and specifically identify any persons who requested to be excluded from the class and who are not bound by the class.

A new section O authorizes the court to approve a process for the payment of damages as a part of a settlement or a judgment. That process may include the use of claim forms. For any portion of the award that is not claimed by class members within the time specified by the

court or, if the court finds that payment of some or all of the damages to class members is not practicable, the court will order at least 50 percent of the unclaimed damages to be paid to the Oregon State Bar for the funding of legal services programs and the remainder to be paid to any entity for “purposes the court determines are directly related to the class action or directly beneficial to the interests of class members.”

HB 2700 took effect on March 4, 2015. The change from class members opting in to the opt-out procedures more commonly found in other jurisdictions will apply only to judgments entered on or after that date.

**7. [ORCP 46](#) Failure to Make Discovery; Sanctions**

Subsection A(2) now specifies that the items sought to be discovered are to be identified rather than “set out” at the beginning of a motion seeking discovery. Numerous other amendments of prior words and punctuation are intended to improve clarity, consistency, and readability but should not affect practice.

**8. [ORCP 54](#) Dismissal of Actions; Compromise**

Amendments of prior words and punctuation are intended to improve clarity, consistency, and readability but should not affect practice.

**9. [ORCP 55](#) Subpoena**

Section C is rewritten and reorganized to provide better clarity. See especially subparagraph C(2)(a)(i) describing what information must be added by the attorney or party requesting issuance of the subpoena when the subpoena is issued in blank. The numerous other amendments of prior words and punctuation are intended to improve clarity, consistency, and readability but should not affect practice.

**10. [ORCP 67](#) Judgments**

Minor amendments of words and punctuation are made to improve clarity, consistency, and readability but should not affect practice.

**11. [ORCP 68](#) Allowance and Taxation of Attorney Fees and Costs and Disbursements**

Rule 68 is amended in three significant respects:

- 1) A new subparagraph [C(4)(d)(ii)] authorizes the court to exercise discretion to expand the 14 day period for filing and serving statements of attorney fees and objections thereto, and the 7 day period for filing and serving a response to any

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- objection, and the court may in its discretion allow filing or service of those documents after the specified time has expired;
- 2) A new subparagraph [C(5)(b)(ii)] authorizes the court to exercise discretion to award attorney fees or costs and disbursements in the form of a limited judgment after the entry of a limited judgment that affects fewer than all of the parties or fewer than all of the claims or defenses in a case; and
  - 3) A new subsection [C(7)] is added to provide a procedure for a party to seek a supplemental judgment for attorney fees or costs and disbursements for those additional attorney fees and costs and disbursements incurred in collecting or enforcing the underlying judgment.

Other changes for clarification or consistency include a change to the title of the rule to more readily identify the rule as the procedure for drafting statements of attorney fees and the related objections and responses, but should not affect practice.

### **Practice Tip:**

Despite the amendment [at subparagraph C(4)(d)(ii)] to liberalize the 14 day deadline for filing and serving statements of attorney fees and objections thereto, and the seven day deadline for filing a response to an objection, the careful practitioner will abide by the stated deadlines. It has become somewhat time honored that a statement of attorney fees that is not filed or served within 14 days will be denied. The new subparagraph authorizes the court to exercise discretion, as Rule 15 D authorizes for pleadings or motions. However, seeking the court's discretion to authorize an untimely statement of attorney fees, or an objection or a response, carries significant risk, especially if the reason for the late filing or service is not strong.

## **12. [ORCP 73](#) Judgments by Confession**

Minor amendments of words and punctuation are made to improve clarity, consistency, and readability but should not affect practice.

## **IV. OTHER LEGISLATIVELY ENACTED CHANGES**

### **1. [HB 2336](#) (Ch. 80) Notices of Appeal**

HB 2336 amends [ORS 19.260](#) relating to the filing of notices of appeal to the Court of Appeals or to the Supreme Court to clarify when a notice of appeal, however delivered to the court, is deemed to be timely filed. HB 2336 more clearly authorizes delivery of notices of appeal by the United States Postal Service or by a commercial delivery service. Notices sent via the U.S. Postal Service no longer must be sent by registered or certified mail; whether entrusted to the Postal Service or to a commercial delivery service, the class of service selected by the party must be calculated to achieve delivery within three calendar days. If the notice of

appeal is not received by the court by the required date, the party filing the notice of appeal must file a certificate of the date of mailing or dispatch.

**Practice Tip:**

Clearly the appellant (or cross-appellant) will want to be able to provide the “record of the mailing or dispatch” which would be sufficient proof of the date of mailing or dispatch. Service of copies of the notice of appeal on opposing parties, the transcript coordinator, and the trial court administrator by commercial delivery services is now authorized. First class, certified, and registered mail are retained as appropriate service methods. An appellant is now required to certify the method of service as well as the date of service.

HB 2336 went into effect on May 18, 2015.

**2. [HB 2384](#) (Ch. 83) Service of Investigative Demands**

HB 2384 amends and moderately liberalizes three statutes related to the service of investigative demands by the Attorney General, by the Department of Human Services, or by a district attorney. [ORS 124.125](#) addresses allegations of physical or financial abuse involving a “vulnerable person.” [ORS 618.526](#) addresses allegations of breaking or removing the “security seal,” the lead wire or similar non-reusable closure affixed to weighing or metering devices for liquid or gaseous products. ORS 648.622 addresses allegations of unlawful business or trade practices. In each case, the obvious choice is personal service of the investigative demand within Oregon or outside of Oregon. Each service statute is amended to now authorize service of the investigative demand in the manner prescribed by Rule 7 for service of a summons; all of the options under Rule 7 were formerly not authorized for service on a natural person.

**3. [SB 375](#) (Ch. 121) Declarations Under Penalty of Perjury**

SB 375 amends 25 statutes that currently allow the use of affidavits and authorizes the use of a declaration under penalty of perjury, usually in the form required by [ORCP 1 E](#). The amended statutes include [ORS 46.425](#) (small claims); [ORS 107.095](#), [107.097](#), [107.138](#), [107.139](#), [107.434](#), [107.437](#), and [107.840](#) (dissolution of marriage); [ORS 107.705](#), [107.710](#), [107.720](#), [107.725](#), and [107.730](#) (family abuse restraining orders); [ORS 109.767](#) (jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act); [ORS 124.005](#), [124.010](#), [124.020](#), and [124.030](#) (Elderly Persons and Persons with Disabilities Abuse Prevention Act); [ORS 153.080](#) (affidavits in trials of violations); [ORS 163.741](#) (stalking); [ORS 163.760](#), [163.763](#), [163.773](#), and [163.775](#) (sexual abuse restraining orders); and [ORS 419B.367](#) (juvenile guardian’s reports).

ORS 419B.367 deletes “verified” and uses the declarative language from Rule 1 E without referencing the rule. ORS 107.710 through 107.728; ORS 124.010 and 124.030; and ORS 163.760 through 163.775 simply refer to a “declaration under penalty of perjury.” The amendment to ORS 107.730 deletes a redundant “affidavit.”

SB 375 took effect on May 20, 2015.

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### 4. [SB 383](#) (Ch. 610) Pleading Requirements Against Design Professionals

[ORS 31.300](#) relates to the pleading requirements for a complaint, cross-claim, counterclaim, or third-party complaint asserting a claim for damages against a licensed or registered architect, landscape architect, professional engineer, or professional surveyor based on an alleged failure to provide services meeting the professional skill and care ordinarily provided by other design professionals. The statute continues to require a [Rule 47](#) E-like certificate from the claimant's attorney that the attorney has consulted with a qualified design professional who will testify to admissible facts and opinions sufficient to create a question of fact as to the liability of the party against whom the claim is asserted. The certificate must be signed prior to filing the pleading unless the claimant's attorney files a certificate that the applicable statute of limitations is about to expire and, due to the press of time, the required certificate cannot be filed but will be filed within 30 days, or longer for good cause shown.

SB 383 adds that the claimant's design professional must have "similar credentials" as the design professional against whom the claim is asserted. SB 383 oddly seems to delete the requirement in ORS 31.300(2) that the certificate be made a part of or be filed with the pleading but it appears clear that a claimant's attorney will have to produce the appropriate certificate upon demand.

### 5. [HB 2333](#) (Ch. 510) Minority Tolling Statute

HB 2333 clarifies that Oregon's Minority Tolling Statute applies to claims brought under the Oregon Tort Claims Act. In 2007, [HB 2366](#) amended the statute to bring the statutes of limitations for claims brought by parents of injured children in line with the SOLs for the claims of the children themselves. In so doing, the wording of the Minority Tolling Statute was subtly changed from referencing "actions mentioned in" to "actions that are subject to" various relevant statutes. This resulted in at least some courts concluding that the Minority Tolling Statute no longer applied to claims against the state, because claims under the Tort Claims Act – having separate statutes of limitations – are not "subject to" the statutes listed.

HB 2333 corrects this unintended consequence by reverting to the pre-2007 phrasing of the statute.

HB 2333 took effect on June 22, 2015.

6. [SB 411](#) (Ch. 5) **Personal Injury Protection and Uninsured Motorist Coverage**

Senate Bill 411 modifies the Oregon Insurance Code at [ORS 742.500-504](#) and [ORS 742.524](#) to prioritize recovery of personal injury protection damages by the policyholder and to provide the policyholder with larger amounts of uninsured/underinsured motorist protection benefits.

SB 411 reorders the subrogation of liens so that an injured motorist policyholder recovers all damages before reimbursement of personal injury protection (PIP) benefits to the insurer, following obtaining a payment or benefit from the at-fault driver. The measure extends PIP benefit coverage from one year to two years following the date of injury.

Additionally, the measure modifies the calculation of uninsured or underinsured motorist protection insurance (UIM) so that it covers the maximum of both the policyholder's UIM policy limit and the at-fault driver's liability policy limits, should both be needed to cover the damages. Prior to enactment of SB 411, UIM insurance covered the difference between the policyholder's UIM policy limits and the at-fault driver's liability limits.

## CIVIL PROCEDURE

# 4

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## Commercial, Consumer, and Debtor-Creditor Law

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## I. INTRODUCTION

This chapter covers legislation related to consumer protection, consumer loans, and financing. It also includes bills dealing with business entities. In general, all newly passed legislation takes effect on January 1, 2016, though many bills have special earlier effective dates and are noted as such.

## II. MORTGAGES, FORECLOSURES, AND FINANCING STATEMENTS

### 1. [HB 2532](#) (Ch. 87) Required Disclosures for Reverse Mortgages

HB 2532 amends [ORS 86A.196](#) to require that every advertisement, solicitation, or communication intended to induce a person to apply for or enter into a reverse mortgage must contain a clear and conspicuous summary of the terms of the mortgage.

Specifically, if included in the mortgage contract, the summary must disclose that:

- A borrower must repay with interest any amount still owing at the conclusion of the term;
- Certain fees and charges may be added to the loan;
- The balance may increase with interest over the life of the loan;
- The borrower is directly responsible for paying taxes, insurance, and maintenance costs and that failure to pay these amounts may cause the loan to come due immediately; and
- Interest on the mortgage is not tax deductible until the loan is repaid.

The requirements of HB 2532 apply to lenders and their agents and affiliates but do not apply to financial institutions as defined in [ORS 706.008](#), licensees as defined in [ORS 725.010](#), or mortgage bankers and mortgage brokers licensed under [ORS 86A.106](#).

The bill took effect on May 18, 2015; however, the requirements apply only to reverse mortgage transactions that occur on or after the operative date of January 1, 2016.

### 2. [SB 252](#) (Ch. 382) ODVA Exempt from Foreclosure Mediation

Most lenders in Oregon are required to participate in mediation with borrowers prior to initiating foreclosure proceedings. In the case of the Oregon Department of Veterans Affairs, this requirement is duplicative with their existing mandate to avoid foreclosure.

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Therefore, SB 252 amends [ORS 86.726](#) to exempt the Oregon Department of Veterans' Affairs from the requirement to request or participate in a resolution conference with the grantor of a residential trust deed prior to commencing a foreclosure.

The bill takes effect on January 1, 2016.

### 3. [SB 367](#) (Ch. 120) **Liability for Condo and HOA Assessments during the Redemption Period after Foreclosure**

After a judicial foreclosure, the purchaser obtains possession of the property immediately but the judgment debtor retains legal title until the six-month redemption period ends.

SB 367 amends [ORS 94.712](#) and [ORS 100.475](#) to clarify that the purchaser—more precisely, the certificate holder as defined in [ORS 18.960](#)—is solely liable for all homeowner's association or condominium assessments that come due during the redemption period. If the property is redeemed, SB 367 provides that the assessments paid by the purchaser or claimant are included, with interest, in the redemption amount.

SB 367 applies to properties sold at an execution sale conducted on or after the effective date of January 1, 2016.

### 4. [SB 368](#) (Ch. 291) **Money Judgments in Foreclosures**

SB 368 amends a number of statutes including [ORS 88.010](#), [ORS 18.862](#), and [ORS 18.936](#) to eliminate the need to include a money judgment in a foreclosure action when such inclusion is inappropriate or contrary to other laws.

Previously, Oregon law had been interpreted to require a money award against the maker of the note or other person obligated on the debt when entering a judgment of foreclosure. SB 368 permits plaintiffs to elect to foreclose a mortgagee's interest in real or personal property without necessarily seeking entry of a money award, especially when to do so would be contrary to federal or other law.

The bill neither addresses nor has an effect on the current laws regarding an automatic stay in bankruptcy. In other words, a party bringing a foreclosure action – whether or not a money award is sought – in an open bankruptcy case would still violate the automatic stay unless an order granting relief had been entered, or unless the stay was terminated under the other circumstances described in Bankruptcy Code §362(c).

SB 368 took effect on June 8, 2015.

5. [SB 462](#) (Ch. 538) Debtor Names on Financing Statements

SB 462 requires a financing statement to show the name of an individual debtor as indicated on their unexpired driver license or identification card for sufficiency of the name on the financing statement. This bill also provides phase-in period for financing statements perfected under current law.

Sections 1 and 2 of this bill provide the requirements regarding what is now necessary to perfect a financing statement. Sections 3 through 11 provide requirements regarding the perfection of previously filed statements and the application to actions pending before the effective date of this act. Specifically, Section 4(2) provides that an individual has one year to satisfy the requirements of this act if they were not satisfied in the previously filed financing statement.

In 2012, the Legislature adopted the Oregon Law Commission’s recommended “Option B,” which permits filing of a financing statement under the debtor’s “true name” (that is, basically any variant of the debtor’s name that he or she goes by). This recommendation, which came from the Uniform Law Commission, was one of two acceptable variations of this particular provision. “Option A” is represented by SB 462. Oregon was one of only a few states that initially passed Option B. The Legislature changed course this session and adopted Option A.

SB 462 took effect on June 22, 2015.

6. [HB 3244](#) (Ch. 431) Lender Payoff Statements

HB 3244 provides that a borrower may rely on a lender’s payoff statement for the purpose of establishing the amount a borrower must pay to satisfy the obligation under a real estate loan agreement unless the lender delivers an amended payoff statement. This bill also provides that a lender may recover the amount a borrower owes that did not appear on payoff statement or amended payoff statement only as an unsecured debt or by foreclosing on other property securing the obligation.

HB 3244 took effect on June 16, 2015. For additional information about his bill, please see the Real Property Chapter.

### III. CONSUMER PROTECTION

1. [SB 277](#) (Ch. 118) Expanded Use of NMLS for Financial Businesses

SB 277 amends provisions of [ORS 697](#) and [ORS 717](#) to authorize the Department of Consumer and Business Affairs to issue rules requiring check-cashing businesses, debt management service providers, and money transmission businesses to register and renew Oregon licenses through the Nationwide Multistate Licensing System (NMLS).

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Originally authorized by Congress in 2008 to provide a single, nationwide, online licensing system for mortgage loan originators, NMLS has expanded to include licensing of other financial businesses. SB 277 authorizes DCBS to conform existing licensing procedures to NMLS requirements without changing the base statutory requirements.

SB 277 took effect on May 20, 2015; however, the amendments apply only to registrations and renewals issued on or after the operative date of August 19, 2015.

### 2. [SB 278](#) (Ch. 490) **Unlicensed Consumer Finance Loans Void**

Oregon law requires consumer finance, title loan, and payday lenders to obtain a license from the Department of Consumer and Business Affairs. Under prior law, loans made without a license were merely voidable. SB 278 renders consumer finance, payday, and title loans by an unlicensed lender void and therefore uncollectible.

SB 278 amends [ORS 725](#), which applies to certain consumer finance loans of \$50,000 or less, and [ORS 725A](#), which applies to payday and title lenders. If a person makes a covered consumer finance loan, payday loan, or title loan without a license, the loan is void (rather than voidable) and the lender may not deposit the borrower's check or money order, withdraw money from the borrower's accounts, or otherwise collect principal, interest, or fees in connection with the loan.

The bill contains an exception for lenders that held a license that lapsed inadvertently or by mistake. For lapsed title and payday lenders, the Director of DCBS may determine by order whether and how the licensee may collect.

SB 278 took effect on June 18, 2015; however, the amendments apply only to loans made on or after the operative date of September 17, 2015.

### 3. [HB 2383](#) (Ch. 199) **Registration of Telephonic Sellers**

HB 2383 amends [ORS 646.551](#), which relates to the registration of telephonic sellers. The bill adds "business opportunities" to the definition of telephone solicitation. Any person who solicits the purchase of a business opportunity by telephone needs to register as a telephonic seller pursuant to [ORS 646.553](#) and provide certain disclosures at the time the solicitation is made pursuant to [ORS 646.557](#).

The bill defines a business opportunity as a commercial arrangement in which three events must occur:

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- The seller solicits a prospective purchaser to enter into a new business or to buy ancillary services within 60 days after entering into a new business,
- The prospective purchaser makes a payment for the business or services, and
- The seller claims that it will find customers for the purchaser of the business or buy back goods or services from the purchaser.

Excluded from the definition of a business opportunity are sales of an ongoing business, and certain sales of demonstration equipment and franchises.

HB 2383 took effect on June 2, 2015.

### 4. [HB 2377](#) (Ch. 128) Phishing Violates the UTPA

HB 2377 makes phishing a violation of the Unlawful Trade Practices Act (UTPA), under [ORS 646.607](#). The bill provides that, unless for a lawful investigation, a person may not use a website, email, text message, or other electronic means to induce another person to provide personal information by falsely representing who the person is.

The bill took effect May 21, 2015.

### 5. [SB 601](#) (Ch. 357) Expanded Identity Theft Protection

SB 601 amends the [Oregon Consumer Identity Theft Protection Act](#). It expands the definition of “personal information” to include certain biometric data, health insurance policy numbers, and health information. It also adds that persons who have had a breach of security must provide notice to the Attorney General if the breach affects more than 250 Oregonians. HIPAA covered entities do not need to give notice of data breaches to Oregon consumers as long as they provide a copy of the notice sent under HIPAA to the Attorney General.

Enforcement of the Oregon Consumer Identity Theft Protection Act will also be covered under the Unlawful Trade Practices Act, [ORS 646.607](#).

### 6. [HB 2282](#) (Ch. 708) New Requirements for Vehicle Dealers

HB 2282 amends [ORS 822.043](#). The bill provides that vehicle dealers may charge a document processing fee for:

- Issuing or transferring a certificate of title;
- Registering a vehicle;
- Issuing a license plate;
- Verifying and clearing a title;
- Perfecting, releasing, or satisfying a lien;
- Complying with federal security requirements; and

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- Rendering any other services in order to comply with state or federal law.

The bill also authorizes the Oregon Department of Transportation to receive the above documents in an electronic form.

A dealer may charge \$150 if it uses an electronic system and \$115 if it processes the paperwork by hand. If a consumer pays a dealer a document processing fee, the dealer must prepare and submit all documents to complete the transaction as permitted by law.

### 7. [HB 2832](#) (Ch. 633) **Limits on Third-Party Financial Aid Contracts**

HB 2832 creates new provisions and amends [ORS 352.129](#). The bill provides that if a public or private post-secondary institution of education has a contract with a third party to disburse and manage state or federal financial aid for students, the contract may not include a revenue sharing provision.

The contract must also prohibit the third party from charging students a fee for the initial disbursement of financial aid funds via paper check or electronic funds transfer, a transaction fee for debits from an account, or an inactivity fee. A college or university that enters into a contract with a third party to disburse and manage financial aid funds must post the contract on its website.

### 8. [HB 2845](#) (Ch. 523) **Guaranteed Asset Protection Waivers**

HB 2845 establishes conditions under which a person may sell Guaranteed Asset Protection (GAP) waivers in connection with sale or lease of motor vehicles. Specifically, Section 3 provides that a GAP waiver may not be sold unless:

- Several disclosures are provided by the seller, including, contact information of the seller, the price of the GAP, terms and conditions of the GAP, cancellation procedures, and how refunds are formulated;
- The GAP waiver provides that the borrower may cancel the guaranteed asset protection waiver during the evaluation period for a full refund of the purchase price if the borrower did not receive any benefits; and
- The creditor states that the GAP waiver is not required for purchase of the vehicle.

This bill specifies that GAP waivers are not insurance and not subject to provisions of Insurance Code. In addition, the bill specifies conditions for cancellation or termination of GAP waivers and the process for a refund. Finally, it requires persons selling GAP waivers to insure the waiver with a reimbursement insurance policy and provides conditions for reimbursement insurance. Violations of this bill are subject to the Unlawful Trade Practices Act.

#### IV. BUSINESS ENTITIES

1. [HB 2330](#) (Ch. 28) Procedure for Converting Business Entities; Shareholders' Rights

House Bill 2330 addresses two separate issues impacting business entities in Oregon.

The Oregon Secretary of State's Corporations Division is responsible for registering limited liability companies, business corporations, and nonprofit corporations. Oregon business entities of all types are required to file certain documents with the Division, including articles of merger, share exchange, or conversion. Plans for these actions may contain confidential information or otherwise not be available for public view, necessitating the creation of a separate plan document solely for the purpose of filing with the Division. HB 2330 allows converting business entities to file written declaration stating the location where a plan of conversion is on file. The declaration must also state that the converting entity will provide any owner with a copy of the plan upon request and without cost in lieu of submitting plans to Secretary of State (SOS).

Additionally, the articles of incorporation for a business entity may include an option to take action on less than unanimous written consent of all shareholders. A member who does not consent to the action has the same rights as those who oppose the action at a meeting. However, there was no method for notice to be delivered to members who are dissenting via writing. HB 2330 allows written notice of dissenters' rights be delivered to all shareholders entitled to such notice, and specifies procedures for providing such notice.

2. [SB 35](#) (Ch. 113) Cooperatives

Senate Bill 35 adds new language to [ORS Chapter 62](#) on the notice requirements of cooperatives and modifies language in [ORS 62.015](#), [ORS 62.265](#), and [ORS 62.435](#).

Senate Bill 35 is intended to facilitate business between small telecommunication cooperatives. The measure specifies that notification of elections and voting may be provided electronically and clarifies that notice is considered effective when it is received, five days after deposit in the mail, or on the date shown on the return receipt, if used. The bylaws or articles of incorporation may provide for an alternative effective date. Senate Bill 35 allows for a simple majority of a cooperative's members voting in support of a merger or sale of assets to signify support of the merger on behalf of the cooperative. The measure maintains the ability for a telecommunications cooperative board of directors to require a higher vote threshold if desired.

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### 3. [SB 77](#) (Ch. 278) Abolishing Corporations Sole

Senate Bill 77 removed the corporate sole as a form of business entity for new corporations. Corporate soles in existence prior to the effective date of this bill are permitted to continue operations, subject to the requirements of [ORS Chapter 65](#).

Corporate soles are nonprofit entities, often established by a religious organization. A single person is appointed the sole financial officer, rather than a board of directors. The corporate sole entity has been identified as a potential avenue for tax evasion; of the 270 active corporate sole organizations filed with the Oregon Secretary of State, 65% have been filed by the same parent organization.

Senate Bill 77 took effect June 8, 2015.

# 5

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## **Construction Law**

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## I. INTRODUCTION

The 2015 Legislative Assembly focused on contractor licensing requirements and updates to the administration of public contracting when addressing design and construction law. It also further stiffened requirements for claims against design professionals and demolishing residences, while making evidence of disaster-preparedness upgrades inadmissible in negligence claims. Unless otherwise stated, all new legislation goes into effect on January 1, 2016.

## II. LICENSING

### 1. [HB 3304](#) (Ch. 652) **Licensing Option for Landscape Construction Professional**

House Bill 3304 establishes for landscape contractors an alternative licensing option to the traditional written examination. Effective January 1, 2016, the law will allow an applicant for a landscape construction professional license to satisfy the examination requirement by passing an eight-hour skills test in conjunction with attending a six-hour business practices class. The practical skills testing will be available for three periods of time each year. Costs of the alternate testing and classes will be paid for by application fees.

Separately, the law will require the State Landscape Contractors Board to consult with the State Plumbing Board in developing any written and practical examinations for backflow assembly installer licenses. Finally, the new law requires that upon request the written examination and study materials shall now be offered with Spanish translations of the instructions and questions.

### 2. [SB 297](#) (Ch. 576) **Professional Engineering, Land Surveying, and Mapping Licensing**

Senate Bill 297 revises qualifications for registration to practice professional engineering, land surveying, or photogrammetric mapping and adjusts the application process to address changes in the national testing procedures. Currently, licensing for these professions requires a two-step application process to the Oregon State Board of Examiners for Engineering and Land Surveying (OSBEELS). The national organization that examines applicants nationwide in these disciplines is moving towards a year-round computer based test. Accordingly, this bill modifies existing law to allow for a single application, permits waivers of the examination, and reciprocity for those licensed in another jurisdiction for 25 years or more. The bill also broadens the definitions of photogrammetric mapping work to include all work of the profession. Additionally the bill enables OSBEELS to refuse registration to applicants who have violated any statute, rule, or standards in another jurisdiction that would be grounds for refusal in Oregon.

Senate Bill 297 took effect June 25, 2015.

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### 3. [SB 574](#) (Ch. 498) CCB Licensing Required for Emergency Restoration Work

Senate Bill 574 establishes a residential restoration contractor endorsement required for those persons providing restoration work on residential or small commercial structures following man-made or natural disasters. Previously, certain restoration companies who offered only clean up or "board-up" services to address water and smoke damage to homes were not required to be licensed by the Oregon Construction Contractors Board (CCB).

With the aim of protecting homeowners following a disaster causing damage to a residence, the bill directs the CCB to adopt rules for issuing residential restoration contractor license endorsements but limits the work of such an endorsed contractor to non-structural and non-demolition related restoration work.

### 4. [SB 596](#) (Ch. 356) Construction Contractors' Board License Requirement for Flaggers

Senate Bill 596 requires a person employing, contracting with, or leasing services of a construction traffic control flagger to obtain construction flagging contractor license. Current law did not categorize flaggers' work as construction and thus did not require flaggers to follow the same standards as all other workers on a construction project. In addition to the license requirement, the bill mandates the flagging contractor to carry a license bond and at least \$500,000 of general liability insurance.

Senate Bill 596 will take effect on July 1, 2017.

### 5. [SB 580](#) (Ch. 672) Landscape Construction Professionals

Senate Bill 580 expands the scope of services that landscape construction professionals are permitted to provide. Specifically, the bill allows landscape construction professionals to plan irrigation systems without installing them, install and repair outdoor artificial turf (excluding sports fields), and subcontract work related to landscaping jobs to general or specialty contractors licensed by the Construction Contractors Board (CCB). The bill also clarifies that maintenance work remains unregulated and that CCB licensees have the right to repair what they are qualified to install, and allows for landscaping work under \$2,000 to be performed without written contract.

As a result of the expanded scope of services, the bill also provides additional protection to consumers. The bill allows consumers to file claims with both the Landscape Contractors Board (LCB) and CCB if landscape business is licensed by both boards. The bill also requires the LCB to establish a continuing education requirement to maintain the license. Lastly, the bill increases the insurance requirement from \$100,000 to \$500,000 and increases the bond requirement for landscaping jobs of \$50,000 or more.

### III. CONSTRUCTION CLAIMS

#### 1. [SB 383](#) (Ch. 610) Pleading Requirements Against Design Professionals

The statute requiring certain prerequisites for claims against licensed design professionals, [ORS 31.300](#), is amended by SB 383. Under the amended ORS 31.300, any claim brought against a "design professional" must include a certification that the attorney bringing the claim has consulted a design professional who possesses credentials similar to those of the defendants, and who is willing to testify to admissible facts and opinions sufficient to create a question of fact as to liability—essentially, that the defendant design professional's conduct fell below the standard of care.

The standard of care is specifically set out as "the skill and care ordinarily provided by other design professionals with similar credentials, experience and expertise and practicing under the same or similar circumstances." The new law also clarifies that the certification must contain a statement from the attorney that the design professional consulted prior to filing the claim is one with credentials similar to that of the defendant.

A "design professional" is clarified by SB 383 to include any professional licensed under [ORS 671](#) (e.g., architects, landscape architects) or [ORS 672](#) (e.g., engineers, land surveyors), or any similar design professional licensed in another state. The requirement that the certification be filed with or made part of the original pleading against the professional defendant is omitted, although best practice would continue to be to plead compliance with the statute.

Senate Bill 383 applies to claims filed after its effective date of May 20, 2015.

#### 2. [SB 705](#) (Ch. 583) Residential Demolition Restrictions

Senate Bill 705 requires the Environmental Quality Commission to adopt rules prohibiting the demolition of a residential building before a determination has been made as to whether asbestos-containing materials are present. The Commission is tasked with establishing a procedure for conducting surveys to determine the presence of asbestos-containing material, including the accreditation requirements of the inspectors.

Senate Bill 705 took effect on June 25, 2015 for rulemaking and administrative purposes. However, the operative portions of the bill does not go into force until January 1, 2016. The Commission may take appropriate action immediately to ensure that it is capable of fulfilling its duties when the substantive portions of the bill go into effect.

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### 3. [SB 775](#) (Ch. 541) Evidentiary Exclusion for Natural Disaster Preparedness

Senate Bill 775 encourages private-sector investments in disaster preparedness by making pre-disaster measures taken to improve resilience inadmissible as evidence of negligence. Under the bill, evidence of measures taken or of vulnerability assessments conducted before a natural disaster occurs that were intended to minimize the impact of the natural disaster, or that were conducted in order to plan for the natural disaster, are not admissible in order to prove negligence or culpable conduct in connection with claim stemming from the disaster.

Senate Bill 775 took effect on June 23, 2015.

## IV. PUBLIC CONTRACTING

### 1. [HB 2375](#) (Ch. 646) Public Entity Bid Solicitation and Contract Forms

House Bill 2375 amends [ORS 279A.140](#) to [279A.155](#). The legislation has four main components. First, it requires state contracting agencies to use a specific form of contract and solicitation template approved by the Attorney General and Oregon Department of Administrative Services, and the terms and conditions language may not be varied without approval by the Attorney General for any contract over \$150,000. If a custom form is to be used, it must be for a unique project and vetted by the Attorney General.

Second, the legislation directs the Department of Administrative Services (DAS) to develop criteria which a person must meet in order to conduct a procurement or administer a contract. Third, for any contract over \$150,000, the legislation directs that the director or other head of the state contracting agency verify that the person conducting the procurement or administering the contract meet the established criteria. Fourth, the legislation broadly directs the DAS to develop standards for contracting.

House Bill 2375 took effect on July 6, 2015.

### 2. [HB 2664](#) (Ch. 209) Public Contracting Standards Apply to Universities

House Bill 2664 amends [ORS 352.138](#) to apply the public contracting standards of [ORS 279C.800](#) and [ORS 279C.870](#) to an agreement by a private entity to construct, reconstruct, renovate, or paint an improvement on real property owned by a university with a governing board, or by a not-for-profit organization or other entity the university controls.

House Bill 2664 took effect on June 2, 2015.

3. [HB 2716](#) (Ch. 325) **DMWESB Contractors Must Maintain that Status Through Contract Term**

House Bill 2716 supplements and amends [ORS 200.065](#) and [ORS 279A](#). The legislation requires that a Disadvantaged, Minority, Women or Emerging Small Business enterprise (DMWESB) contractor which is awarded a public contract because of that status must maintain that status through the performance of the contract.

The legislation also requires that the contractor must certify the same of its subcontractor(s), if the DMWESB status of the subcontractor(s) was part of the reason for awarding the contract. The legislation makes an exception for a growing emerging small business enterprise which may outgrow that designation during the performance of the contract. The legislation then further clarifies the certification, verification, and regulation of that status.

House Bill 2716 took effect on June 10, 2015.

4. [HB 2843](#) (Ch. 110) **Building Codes Division and Construction Contractors Board to Share Resources**

House Bill 2843 recognizes the overlap between the Building Codes Division of the Department of Consumer and Business Services (DCBS) and the Construction Contractors Board (CCB). The legislation authorizes and formalizes the sharing of information, resources, and personnel between the two bodies.

House Bill 2843 took effect on May 20, 2015.

5. [HB 2987](#) (Ch. 424) **Agencies to Evaluate "Green Energy Technologies"**

House Bill 2987 amends [ORS 279C.527](#) and [ORS 279C.528](#). The legislation allows a public agency which is going to construct or substantially renovate a public building to first determine whether certain defined "green energy technologies" are appropriate, before committing to setting aside 1.5 percent of the total contract price for those technologies.

House Bill 2987 took effect on June 16, 2015.

6. [SB 133](#) (Ch. 170) **Building Codes Division to make Electronic Resources Available**

Senate Bill 133 creates new provisions and amends [ORS 455.095](#), [455.097](#), [455.185](#), and [455.210](#). The legislation enables and formalizes how the Department of Consumer and Business Services may make building code information available electronically to other government agencies and municipalities for defined "construction-related" services.

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7. [SB 137](#) (Ch. 482) **Prevailing Wage Applies to any Project with at least \$750,000 in Public Funding**

Senate Bill 137 amends [ORS 279C.800](#). The legislation clarifies that the prevailing wage rate requirement applies to work on all improvements, public or private, so long as the construction, reconstruction, painting or major renovation on the project uses \$750,000 or more of public funds.

Senate Bill 137 became effective June 18, 2015.

8. [SB 675](#) (Ch. 539) **Contractors to Certify Tax Compliance as part of "Responsibility" Assessment for Public Contracts**

Senate Bill 675 creates new provisions and amends existing [ORS 279B.110](#). The legislation requires that when a public contracting agency is evaluating the "responsibility" of a contractor responding to a bid proposal, that public contracting agency must also obtain a certification from the contractor that it has complied and will continue to comply with the tax laws of the State of Oregon, and any applicable subdivisions.

Senate Bill 675 took effect on June 22, 2015.

9. [SB 584](#) (Ch. 148) **DMWESB Restrictions and Suspensions**

Senate Bill 584 substantially updates the Disadvantaged, Minority, Women or Emerging Small Business enterprise (DMWESB) laws and creates additional grounds for the Oregon Business Development Department (OBDD) to revoke a business's certification as a DMWESB enterprise. The amended sections of [ORS 200](#) to strengthen the substantive oversight of OBDD to determine a contractor's true status as a DMWESB enterprise.

Beginning January 1, 2016, the OBDD must suspend a business's certification if the business fails to perform a commercially useful function in performing a public contract, subcontract, or supply contract if the business was presented as a disadvantaged business enterprise in order to meet an essential goal or requirement. In other words, a certified disadvantaged business may not be contracted with solely to satisfy a requirement while not performing any substantive work on the project. If the OBDD finds a pattern of this type of behavior, it may revoke the certification.

The bill also requires contracting public agencies to notify the OBDD when there is an investigation into a contractor for failing to perform a commercially useful function, and allows OBDD to conduct an independent investigation in response to notification.

Senate Bill 584 took effect on May 21, 2015, but amendments to the existing statutes become operative on January 1, 2016.

# 6

Jeffrey Rhoades  
Eric Deitrick

## Criminal Law

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## CRIMINAL LAW

### I. INTRODUCTION

The 2015 Legislature passed a large number of bills modifying existing criminal laws or creating new crimes. Major legislation was passed in the area of personal privacy, with several bills addressing the unauthorized dissemination of intimate digital images. There were also several important bills passed related to the regulation of firearms, and bills addressing police profiling and the video and audio recording of police.

Unless otherwise stated, all new legislation takes effect on January 1, 2016.

### II. FIREARMS

#### 1. [HB 2357](#) (Ch. 709) **Modifies Certain Law Enforcement Defenses Applicable to Certain Firearms Crimes**

[ORS 166.250](#) states that a person commits the crime of “unlawful possession of a firearm” if the person:

- 1) Knowingly carries any firearm concealed upon the person;
- 2) Knowingly possesses a handgun that is concealed and readily accessible to the person within any vehicle;
- 3) Knowingly possesses a firearm and is under 18 years of age;
- 4) Has been convicted of a felony;
- 5) Was committed to the Oregon Health Authority; or
- 6) Is mentally ill or has been found guilty except for insanity. The law contains an exemption for certain law enforcement officers.

Similarly, [ORS 166.370](#) states that a person who intentionally possesses a loaded or unloaded firearm or any other instrument used as a dangerous weapon while in a public building is guilty of “possession of firearm or dangerous weapon in public building or court facility.” The law also contains certain exemptions for “a sheriff, police officer, other duly appointed peace officer or a corrections officer while acting within the scope of employment.”

House Bill 2357 expands upon the applicable law enforcement defenses in these statutes. The bill adds provisions for federal officers, corrections officers, and reserve officers acting within the scope of employment as well as both off-duty and honorably retired police officers. The bill removes language concerning corrections officers carrying firearms while transporting or accompanying an inmate. Additionally, House Bill 2357 adds similar expanded definitions to ORS 166.370, thus allowing qualifying law enforcement to carry firearms and other weapons in public buildings under certain circumstances.

House Bill 2357 amends [ORS 166.173](#) to state that, although a city or county is permitted to adopt ordinances concerning the possession of loaded firearms in public places, those ordinances do not apply to off-duty or honorably retired police officers. The bill makes clear that officers cannot claim the affirmative defense if they have been convicted of an offense that would otherwise disqualify them from obtaining a concealed handgun license.

Lastly, the bill amends [ORS 166.663](#) and [ORS 821.240](#) to allow honorably retired police officers to cast an artificial light from a vehicle while in the immediate presence of a firearm or bow and arrow, and to operate a snowmobile and all-terrain vehicle with a loaded firearm or bow and arrow.

HB 2357 took effect on July 20, 2015

**2. [HB 2424](#) (Ch. 246) Firearms on Department of Corrections Property**

[Section 2, Chapter 88 of Oregon Laws 2014](#) currently allows a corrections officer employed by the Department of Corrections (“DOC”) to possess a firearm in the officer’s personal vehicle when the vehicle is parked in a department parking lot if the officer:

- 1) Is present at a public building occupied by the department;
- 2) Has a valid concealed handgun license; and
- 3) Has secured the firearm in a closed and locked trunk, glove compartment, center console, or other container, and the key is not inserted into the lock, if the trunk, glove compartment, center console, or other container locks with a key.

House Bill 2424 simultaneously expands the number of people who may take advantage of this law and restricts the method of storage that a person may employ to keep a firearm in a personal vehicle on DOC premises. The bill allows for all authorized staff to store firearms in their personal vehicle. However, those staff members must store the firearm in a container specifically designed for the storage of firearms inside a vehicle. The bill also specifies that DOC is not responsible for patrolling, inspecting, or securing any parking lot where firearms may be stored in vehicles. Additionally, House Bill 2424 provides that DOC is not required to investigate or confirm staff member’s compliance with Section 2, chapter 88 of Oregon Laws 2014.

HB 2424 took effect on June 4, 2015.

**3. [HB 2429](#) (Ch. 201) Relief from Prohibition on Purchasing Firearm**

In 2009, the Federal Bureau of Investigation (FBI) Criminal Justice Information Services Division began offering states federal grant money to assist with the reconciliation of records and uploading of names to the National Instant Criminal Background Check System (NICS). NICS helps licensed firearms dealers and law enforcement to determine whether an individual is barred under state or federal law from purchasing or possessing a firearm. Oregon applied for

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and received grant money from the FBI on the condition that it also create an ATF Certified Relief Program.

The 2009 legislature designated the Psychiatric Security Review Board (PSRB) as the state's agency to implement the relief program and provide an opportunity for barred individuals to request that their firearms rights be restored when they are no longer a danger to themselves or others.

Between 2009 and 2014, roughly 30,000 Oregonians were uploaded to NICS utilizing the aforementioned funding stream. The profiles uploaded to NICS represent individuals who are barred from owning a firearm due to a mental health determination. Prior to 2009, regardless of actions taken by local courts, federal law prohibited gun possession once an individual had a mental health determination. Since the inception of the FBI's program, however, federal law has allowed petitions for relief to be heard by entities that meet ATF criteria. The PSRB has been this entity since 2009.

House Bill 2429 allows the PSRB to continue as the entity designated to hear petitions for gun rights restoration by those with a mental health determination. The bill allows the board to conduct hearings on both felony crimes and those misdemeanors involving violence.

HB 2429 took effect on June 2, 2015.

### 4. [SB 173](#) (Ch. 605) **Inspection on Firearm in Public Building**

[ORS 166.380](#) allows a peace officer to examine any firearm possessed by a person while they are in or on a public building. The purpose of such inspection is to determine whether or not the firearm is loaded. Under prior law, a refusal of such inspection constitutes an arrestable offense pursuant to [ORS 133.310](#).

Senate Bill 173 allows people with a valid concealed handgun license to present their license rather than their firearm upon a peace officer's request for inspection. The bill removes existing language stating that refusal to present the firearm for inspection constitutes reason to believe the person has committed a crime.

### 5. [SB 525](#) (Ch. 497) **Firearms and FAPA Orders**

[ORS 107.700 to 107.735](#) governs the definitions, petitions, hearings, and enforcement of Family Abuse Prevention Act (FAPA) restraining orders. When a petitioner requests relief from the court in the form of a FAPA restraining order, the circuit court holds an ex parte hearing either in person or by telephone.

Senate Bill 525 provides that a respondent who is the subject of a FAPA restraining order may not possess a firearm or ammunition. In order for the prohibition to apply, the respondent must have had both notice and a hearing before the court. Additionally, Senate Bill

525 states that if a person is convicted of a qualifying misdemeanor and the victim was a family member at the time of the offense, they may not possess a firearm or ammunition. Senate Bill 525 provides specific definitions necessary for the prohibition on firearms or ammunition to become applicable. A “Qualifying misdemeanor” is defined as any misdemeanor that involves, as an element of the crime, the use or attempted use of physical force or a deadly weapon.

Senate Bill 525 makes clear that the prohibition on firearms does not apply to transportation, shipment, receipt, possession, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of the United States Government or any federal department or agency, or any state or department, agency, or political subdivision of a state if a person is convicted of a qualifying misdemeanor involving domestic violence. Lastly, Senate Bill 525 allows for a person to petition the court for relief from the firearms prohibition.

**6. [SB 941](#) (Ch. 50) Universal Background Checks**

Senate Bill 941A, also named the “Oregon Firearms Safety Act,” requires universal background checks for firearm transfers in the state of Oregon. Eight jurisdictions currently require a background check to be conducted prior to any firearms transfer, including those between private citizens and at gun shows. This is known colloquially as a “universal background check.” These states are California, Colorado, Connecticut, Delaware, New York, Rhode Island, Washington State, and Washington D.C. Of these states, some have additional restrictions such as handgun purchase permits, waiting periods, assault weapons bans, and magazine capacity restrictions. Washington State is the most recent addition to the list, with Initiative 594 taking effect on December 4, 2014.

Prior to passage of this bill, Oregon mandates that all firearms transfers at both gun shows and gun dealers be completed with a criminal background check. Such checks for private individuals, however, are permissive. [ORS 166.436](#) provides that, prior to transferring a firearm, a transferor may request by telephone that the Department of State Police conduct a criminal background check on the recipient. Should a transferor elect to utilize this procedure, he or she is then immune from civil liability for any use of the firearm from the time of the transfer, unless the transferor knows, or reasonably should have known, that the recipient is likely to commit an unlawful act with the firearm.

SB 941 makes a background check between private individuals mandatory. There are certain exceptions enumerated in the Act. These include:

- 1) Transfers between law enforcement agencies;
- 2) Transfers at firearms turn-in or buy-back events;
- 3) Transfers to certain family members; or
- 4) Transfers as a result of the death of the owner.

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Violation of these provisions is classified as a Class A misdemeanor for a first offense, and a Class B felony for second and subsequent offenses. In the event that a background check reveals a transferee's ineligibility to possess a firearm, the Act allows the Department of State Police to notify the local sheriff of the attempted firearm transfer. The bill provides that, if a transferor and transferee live over 40 miles from each other, the transferor may ship or deliver the firearm to a gun dealer located near the transferee. Lastly, the Act allows judges to prohibit those undergoing assisted outpatient treatment from owning a firearm if, in the opinion of the court, there is a reasonable likelihood the person would constitute a danger to themselves or others as the result of the person's mental or psychological state.

SB 941 took effect upon signature by the Governor on May 11, 2015. However, some provisions of the bill have later effective dates.

### III. SEX CRIMES

#### 1. [HB 2206](#) (Ch. 98) **Commercial Sexual Solicitation**

[ORS 167.008](#) provides the elements for the crime of patronizing a prostitute. In some circumstances an individual may be solicited for sex, deny the request and still may be labeled a prostitute during the prosecution of the soliciting individual. "Patronizing a prostitute" may also misidentify victims of sex trafficking. House Bill 2206 seeks to prevent these situations by relabeling the crime of "patronizing a prostitute" to "commercial sexual solicitation."

#### 2. [HB 2205](#) (Ch. 703) **Fund to End Commercial Sexual Exploitation of Children**

House Bill 2205 establishes the Fund to End Commercial Sexual Exploitation of Children. Separate and distinct from the General Fund, the measure continuously appropriates the monies in the fund to the Department of Justice (DOJ) and credits interest earned back to the fund.

House Bill 2205 stipulates that the fund may be used for one or more of the following:

- 1) Services, interventions, and treatment for children who have been or may become the victims of commercial sexual exploitation;
- 2) Efforts to provide outreach to, and to educate the public, professionals, and service providers about the commercial sexual exploitation of children;
- 3) Efforts to prevent and reduce the incidence of commercial sexual exploitation of children;
- 4) Training of investigators, service providers, and others regarding the identifications and treatment of children who have been victimized;
- 5) Victim advocacy;

- 6) Promotion and facilitation of interagency and interdepartmental cooperation among state agencies and among different levels of government in this state in the delivery and funding of services for children who have been or may become victims of commercial sexual exploitation; and
- 7) Any other activity, project, or program that will encourage and support the provision of preventative and therapeutic assistance to child victims or potential child victims.

The measure states that the DOJ shall establish an advisory committee to advise the department on policies and procedures and to make recommendations for the distribution of monies in the fund.

**3. [HB 2317](#) (Ch. 417) Increase Statute of Limitations on Certain Sex Crimes**

House Bill 2317 represents an effort to raise the statute of limitations on certain sex crimes. [ORS 131.125](#) currently provides the time limitations for the commencement of prosecution in the State of Oregon. Certain crimes, such as murder or its attached inchoate crimes, may be commenced without limitation. Rape in the first degree, sodomy in the first degree, unlawful sexual penetration in the first degree and sexual abuse in the first degree all may be commenced within six years after the commission of the offense or, if the victim was under eighteen years of age at the time of the crime, any time before the victim attains age 30 or within 12 years after the offense is reported, whichever occurs first.

House Bill 2317 increases the statute of limitations on the aforementioned crimes. The bill sets the limitation at 12 years on such offenses or, if the victim was minor at the time of the offense, any time before the victim turns 30 years old. Lastly, the bill applies to offenses committed at any point, however it does not operate to revive any prosecutions that have previously been barred due to the statute of limitations expiring.

**4. [HB 2385](#) (Ch. 101) Purchasing Sex with a Minor**

While investigating the crimes of luring a minor and purchasing sex with a minor, police officers often participate in sting operations where they pose as the minor victim. Allowing an officer to investigate in this manner avoids law enforcement waiting for a person to be victimized in order to begin a prosecution.

Prior to HB 2385, [ORS 167.057\(4\)](#) stated, “[i]t is not a defense that the person to whom the representation, description or account was furnished or with whom the representation, description or account was used was not a minor but was a law enforcement officer posing as a minor.” This language is intended to negate an affirmative defense; however it does not appear in the elements of the crime contained in ORS 167.057. The language is completely absent from [ORS 163.413](#). This can lead to confusion in applying the statutes at the trial court level.

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House Bill 2385 amends ORS 167.057 and ORS 163.413 to clarify that a person commits the crimes of luring a minor or purchasing sex with a minor if the victim of the crime is actually a police officer, or police officer's agent, posing as a minor.

### 5. [HB 3476](#) (Ch. 265) **Campus Sexual Assault - Confidentiality**

Confidentiality is commonplace in many relationships involving positions of confidence. These include, but are not limited to, doctor-patient, psychologist-patient, lawyer-client, husband-wife, and priest-penitent relationships. The rules for confidentiality are set out in [ORS 40.225-40.295](#) in the Oregon Evidence Code.

House Bill 3476 creates a new type of communications privilege in the evidence code. The bill states that "confidential communications" between victims of sexual assault, domestic violence, or stalking and victim advocates or services programs are to be kept confidential from disclosure, and by default will not be admissible in court. This functions as both an evidentiary privilege, and as a duty of confidentiality.

"Confidential communications" are defined as "a written or oral communication that is not intended for disclosure, except to: A) persons present at the time the communication is made who are present to further the interests of the victim in the course of seeking safety planning, counseling, support, or advocacy services; B) persons reasonably necessary for the transmission of the communication; or C) other persons, in the context of group counseling." Victims are permitted to waive confidentiality if they so choose.

The bill specifies that, in order for the privilege to take effect, the communication must be between a victim and a certified advocate working at a qualified victims' services program. A qualified victims' services program may be either: A) A nongovernmental, nonprofit, community-based program that offers safety planning, counseling, support, or advocacy services for victims; or B) A sexual assault center, victim advocacy office, women's center, student affairs center, health center, or other program providing victims' services on campus or affiliated with a two or four year post-secondary institution.

HB 3476 took effect on June 4, 2015.

### 6. [HB 2320](#) (Ch. 820) **Changes to Sex Offender Sentencing**

HB 2320 is an omnibus bill that modifies several areas of criminal law, primarily relating to sex offenders, expungement, and the Board of Parole and Post-Prison Supervision.

First, the bill modifies various provisions of Oregon's sex offender law, particularly issues that arose from [House Bill 2549](#) of the 2013 legislative session creating the new three-tier sex offender classification. The bill moves deadline in HB 2549 (2013) from December 1, 2016 until December 1, 2018 to allow time for the risk assessments to occur. The bill authorizes the Psychiatric Security Review Board (PSRB) and Oregon Health Authority (OHA) to conduct risk

assessments. In addition, it authorizes information sharing between the Parole Board, PSRB, and OHA. It eliminates “risk assessment tools” and authorizes “risk assessment methodologies.” It eliminates the juvenile predatory sex offender designation. It eliminates the automatic tier 3 designation for offenders convicted before July 1, 2013.

In addition, the bill authorizes the Oregon State Police to continue to post previously designated predatory sex offenders on its website until all reclassifications are complete. It exempts from the website posting requirement offenders who are in the physical custody of PSRB or OHA.

The bill also removes references to juvenile predatory sex offenders, requires any agency that classifies an offender based on risk assessment methodology to notify the Oregon State Police within three business days, and allows the Oregon Youth Authority to register offenders that are in their custody.

Second, HB 2320 amends [ORS 181.800 – 181.845](#) and eliminates the automatic reporting requirement for juveniles who are adjudicated for felony sex offenses. The bill establishes a procedure whereby, within 6 months of the juvenile being released from supervision or custody, the court must hold a hearing to determine if the juvenile must register going forward. The juvenile will have the right to counsel at the hearing and carry the burden of proving by clear and convincing evidence that they are rehabilitated and do not pose a threat to public safety.

Third, HB 2320 permits those required to register as a sex offender, based on a juvenile sex offense adjudication, to seek registration relief in Oregon when they are residents of another state.

Fourth, HB 2320 modifies a provision in [ORS 137.225](#) relating to expungement of certain Class C felony sex offenses. The bill extends the permissible age difference between the offender and the victim to three years, 180 days. Currently, expungement is only permissible if the age difference is 3 years or less.

Fifth, HB 2320 amends [ORS 144.005 – 144.079](#) and requires the Parole Board to provide written explanations of its release decisions. It also expands the Parole Board to five members, and requires a panel of at least three members to make release decisions. It establishes voting procedures for the panels. The bill provides additional funding for the Parole Board.

Finally, HB 2320 includes the following modifications to ORS 137.225 (Order setting aside conviction or record of arrest) to make the bill consistent with SB 908:

- Prohibits offenders from seeking motion to set aside conviction for ten years if probationary sentence was revoked for non-compliance;
- Prohibits motion to set aside conviction of Assault 3 if victim was under 10 years of age at time of offense;

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- Adds Class B Felony possession of controlled substance offenses to list of offenses eligible to be set aside;
- Allows one non-motor vehicle violation without re-tolling of eligibility period; and
- Eliminates repetitive and duplicative language.

HB 2320 took effect on August 12, 2015. Section 32(a) relating to expungement takes effect on January 1, 2016.

### IV. OTHER DESIGNATED CRIMES

#### 1. [HB 3469](#) (Ch. 639) Strangulation and Assault IV Parity

House Bill 3469 expands upon the crime of strangulation. A person commits strangulation if he or she knowingly impedes the normal breathing or circulation of the blood of another person by: 1) applying pressure on the throat or neck of the other person; or 2) blocking the nose or mouth of the other person. Strangulation is a Class A misdemeanor by default; however certain enhancing factors can raise the crime to a Class C felony.

House Bill 3469 adds to the list of enhancements by providing that a person commits felony strangulation if he or she commits the crime knowing that the victim is pregnant.

In addition to making changes to the strangulation statute, House Bill 3469 changes which crimes are prerequisites to enhancing the crime of Assault in the Fourth Degree from a Class A misdemeanor to a Class C felony. The bill states that Assault in the Fourth Degree shall be a Class C felony if a person has been previously convicted of the following against the same victim:

- Assault in the Fourth Degree;
- Assault in the Third Degree;
- Assault in the Second Degree;
- Assault in the First Degree;
- Strangulation; and
- Menacing.

Additionally, if a person has at least three previous convictions for the preceding crimes, Assault in the Fourth Degree is elevated to a Class C felony even if it is not against the same victim.

Separately, House Bill 3469 makes changes to animal welfare laws to add to the list of crimes animal law enforcement officers have jurisdiction to enforce.

**2. [HB 2335](#) (Ch. 10) Definition of “enters or remains unlawfully”**

HB 2335 amends [ORS 164.205](#), which provides “a person ‘enters or remains unlawfully’ when, at the time of the entry or remaining, the premises ‘are not open to the public’ or ‘when the entrant is not otherwise licensed or privileged to do so.’” In *State v. Hartfield*, 290 Or. 583(1981), the Oregon Supreme Court interpreted the statute and decided the legislature intended the “or” to be an “and.”

HB 2335 revises the statute so that it mirrors the existing judicial interpretation of the statute.

**3. [HB 2356](#) (Ch. 645) Creates Crime of Invasion of Personal Privacy**

HB 2356 amends [ORS 163.700](#), which defines the crime of Invasion of Personal Privacy. Currently, ORS 163.700 prohibits the nonconsensual recording or viewing of a person when that person is in a private place and nude. The offense is a Class A misdemeanor.

HB 2356 creates the elevated offense of Invasion of Privacy in the First Degree, a Class C felony, with a crime category of 6 on the felony sentencing guidelines. Sex offender registration is discretionary if the court finds it appropriate for public safety.

An offender is subject to the elevated offense in two situations. First, it applies to persons who violate ORS 163.700 and, at the time of the offense, have certain predicate convictions. Second, it applies to conduct prohibited by current ORS 163.700(1)(a) – those who knowingly record another person when that person is in a private place and nude.

Invasion of Privacy in the Second Degree would apply to all other conduct in ORS 163.700 and remain a Class A misdemeanor.

**4. [HB 2596](#) (Ch. 321) Invasion of Personal Privacy**

HB 2596 amends [ORS 163.700](#), which defines the crime of Invasion of Personal Privacy as the nonconsensual recording or viewing of a person when that person is in a private place and nude.

This bill expands the statute to prohibit the nonconsensual recording of a person’s intimate areas, regardless of whether that person is nude or in a private place. The prohibition only applies when the victim has a reasonable expectation of privacy concerning the intimate area, meaning that (1) the person intended to protect the intimate area from being seen and (2) the person has not exposed the intimate area to public view. The bill applies to conduct commonly referred to as “up skirting” or “down blousing.”

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Because [HB 2356](#) was also enacted, the conduct prohibited by HB 2596 will be classified as Invasion of Privacy in the Second Degree, a Class A Misdemeanor.

HB 2596 took effect on June 10, 2015.

### 5. [SB 188](#) (Ch. 379) Unlawful Dissemination of an Intimate Image

SB 188 creates crime of unlawful dissemination of an intimate image. It prohibits the nonconsensual disclosure of an intimate picture to a website with a specific intent to harass, humiliate, or injure another person. The first violation is a Class A misdemeanor, with each subsequent violation being a Class C felony.

SB 188 took effect on June 11, 2015.

### 6. [SB 377](#) (Ch. 350) Theft of an Intimate Image

SB 377 amends two separate statutes. First, it modifies [ORS 164.377](#) to specifically include “theft of an intimate image” as a violation of the Computer Crime statute. This eliminates the need to investigate and prove “value” when the object of the theft is a digitized intimate image.

Second, it provides a technical modification to [ORS 137.540](#) by re-ordering the general conditions of probation.

SB 377 took effect June 10, 2015.

### 7. [SB 919](#) (Ch. 361) Initiating a False Report

SB 919 amends [ORS 166.023](#), which defines the offense of Disorderly Conduct in the First Degree. Currently, it is a Class B Misdemeanor to initiate a false report about a hazardous substance, fire, explosion, catastrophe, or other emergency. The offense is elevated to a Class A Misdemeanor if the location of the false report is a school. SB 919 adds all public buildings and court facilities to locations where the false report becomes an elevated offense.

## V. IGNITION INTERLOCK DEVICES

### 5. [HB 2660](#) (Ch. 251) Ignition Interlock Devices in Diversion

[ORS 813.602](#) currently requires that all persons participating in a Driving Under the Influence of Intoxicants (“DUI”) diversion install an Ignition Interlock Device (“IID”) to lawfully drive a motor vehicle. Failure to comply with this requirement constitutes a Class A traffic violation. Courts have the power to exempt a person from this requirement under a medical

exception. The rules and guidelines for such an exemption are promulgated by the Oregon Department of Transportation.

Additionally, ORS 813.602 allows for the department to defer or waive all or part of a defendant's responsibility to pay for the cost of IID lease, installation, and maintenance. The rules for such a deferment or waiver are set by the department. Finally, ORS 813.602 sets out the penalty for failing to submit proof of IID installation to the department. Should an individual fail to do so, the department continues the suspension for:

- 1) One year after the ending date of the suspension resulting from the first DUII conviction;
- 2) Two years after the ending date of the suspension resulting from a second or subsequent conviction; or
- 3) Five years after the ending date of the longest running suspension or revocation resulting from a DUII conviction.

House Bill 2660 changes the parameters by which a court may order an IID for DUII diversion. The bill specifies that if a person submits to a chemical test of his or her breath or blood and the result is less than .08 by weight, and the test discloses the presence of alcohol only, the court has discretion whether to order an IID. Additionally, House Bill 2660 reorganizes the fees and license suspension portions of the law without making major substantive changes.

**6. [SB 397](#) (Ch. 577) Ignition Interlock Device Omnibus Bill**

[ORS 813.602](#) currently requires that all persons participating in a DUII diversion install an Ignition Interlock Device (IID) to lawfully drive a motor vehicle. Failure to comply with this requirement constitutes a Class A traffic violation. Courts have the power to exempt a person from this requirement under a medical exception. The rules and guidelines for such an exemption are promulgated by the Department of Transportation. Additionally, ORS 813.602 requires all persons convicted of DUII to install an IID device. The required period for the device is dependent upon the person's number of DUII convictions.

Additionally, ORS 813.602 allows for the department to defer or waive all or part of a defendant's responsibility to pay for the cost of IID lease, installation, and maintenance. The rules for such a deferment or waiver are set by the department. Finally, ORS 813.602 sets out the penalty for failing to submit proof of IID installation to the department. Should an individual fail to do so, the department continues the suspension for: 1) one year after the ending date of the suspension resulting from the first DUII conviction; 2) two years after the ending date of the suspension resulting from a second or subsequent conviction; or 3) five years after the ending date of the longest running suspension or revocation resulting from a DUII conviction.

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Senate Bill 397 is the product of the Ignition Interlock Device workgroup. There are a number of concepts included, all aimed at streamlining the IID process for defendants, the court, and the prosecution. The bill defines “negative report” and allows the Department of Transportation to further define “test violations” by rule. It requires that, when a defendant is participating in DUII diversion, the provider who installed the IID notify the court or court’s designee and the district attorney or city prosecutor of the negative report within seven business days. Currently negative reports are contained within the entire packet of downloaded information from the device, which records every blow into the machine. Such packets are extremely difficult for the supervising court and treatment agency to decipher. Senate Bill 397 aims to correct this issue by introducing a more uniform and accessible report. Under the bill, the negative report notification must be in a format prescribed by the Department of Transportation.

The bill additionally provides that people may not have their IID removed until they demonstrate 90 days without a negative report. This requirement applies regardless of whether the person is a diversion participant or has been convicted of DUII. The department is permitted to remove the IID requirement from a person’s license as soon as practicable, in order to allow for their more antiquated computer system to process the data. A person participating in diversion, however, may petition the court for removal of the IID after six consecutive months without a negative report. In making the decision, the court will consider the nature of the underlying crime, the blood alcohol content of the defendant at the time of the arrest, and any other relevant factors.

## VI. PRETRIAL RELEASE, SENTENCING, AND POST CONVICTION

### 1. [HB 2310](#) (Ch. 508) Credit for Time Served

The product of a 2014 workgroup, House Bill 2310 is a “clean up” bill that clarifies when a defendant will receive credit for time served as part of a Department of Corrections (“DOC”) sentence. In a criminal case, defendants may be held in local jail custody pending sentence. Upon sentencing, a defendant may receive probation, a diversionary program, or a term of incarceration. In the event probation or diversion is granted, there is the possibility that a defendant will fail in his or her obligations to the court. Should this occur, the court may revoke probation or diversion and impose the original term of incarceration.

House Bill 2310 clarifies that, in the event the court revokes a probationer, the probationer will receive credit for time served as part of any presentence incarceration. Such credit is only given when a defendant is sentenced as part of a downward dispositional departure, a presumptive sentence, or as part of a diversionary program where the defendant is not on probation. For example, if a defendant is given a “downward dispositional departure” that means the defendant was given probation in lieu of the presumptive sentence of incarceration. In such a case, the bill allows the court to limit credit for time served to 90 days. The bill also specifies that lesser or greater included offenses, as well as offenses committed as

part of the same criminal episode in the same county, shall all be considered together in computing an offender's DOC term of incarceration.

House Bill 2310 also addresses the situation where a defendant is held in custody both on a probation violation, post-prison supervision sanction or some other sentence; as well as on a new criminal case. The bill makes clear that a judge has the discretion to give a defendant credit on the new criminal matter for time served as part of a probation violation, provided that both the prosecuting attorney and the defendant consent. A sunset date of July 1, 2017 was put in place on the ability of the district attorney to veto such credits. The bill applies only to sentencing proceedings occurring on or after the effective date of the act and declares an emergency, making it effective upon signing.

**2. [HB 2380](#) (Ch. 12) Post-Conviction Relief Clean Up**

Currently, there is no mechanism in the law to allow for a settlement of post-conviction relief cases that have been appealed out of circuit court. House Bill 2380 gives the parties to such an action the ability to ask the circuit court for a revised judgment in order to settle the appeal.

**3. [HB 2423](#) (Ch. 625) Earned Time Reduction**

In 2013, the Oregon Supreme Court decided *Engweiler v. Oregon Department of Corrections*, 352 Or. 667, 293 P.3d 1045, (2013). That opinion allowed the Department of Corrections (DOC) to calculate earned time against the prison term set by the Board of Parole and Post-Prison Supervision (BPPPS). BPPPS, however, still maintains authority over when an adult serving a life sentence should be released. House Bill 2423 fixes this technical issue by making it clear in statute that such sentences are not eligible for sentence reduction.

Additionally, House Bill 2423 removes the 60 days of earned time credit for completion of education while in custody. These provisions were placed in statute in 2008 as a way to incentivize inmates to obtain a high school diploma, GED certificate, or other apprenticeship or certificate. Such inmates, however, are already required by DOC rule to participate in required education. Therefore the current statutory provisions do not actually allow for reduction of an inmate's sentence, but rather creates a redundancy. House Bill 2423 fixes this issue by removing the 60 days earned time for completion of education credentials.

HB 2423 became effective on July 1, 2015.

**4. [HB 2980](#) (Ch. 258) District Attorney Diversion**

[ORS 135.896](#) sets out the parameters for "district attorney diversion" in criminal cases. When a defendant is charged with a crime, the district attorney may elect to forgo a traditional prosecution in lieu of a "diversion" or "set-over sentencing." In order for such an agreement to be effective, the defendant must have advice of counsel, agree to the terms in the district

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attorney's proposed agreement, and waive all rights to speedy trial. The diversion, however, must have a definite period. If a defendant is charged with a felony, the stay shall not exceed 270 days. By contrast, if the defendant is charged with a misdemeanor, the stay shall not exceed 180 days.

House Bill 2980 allows a defendant to request that the district attorney extend the period of the stay. Felony charges may be extended an additional 270 days while misdemeanor charges may be extended an additional 180 days. Should the parties come to such an agreement, the bill states that the court is required to enter the order commensurate with the agreement. Lastly, the bill allows a defendant to request an extension of diversion even after a district attorney files a request for termination with the court.

### 5. [HB 3466](#) (Ch. 264) Release of Defendant on Domestic Violence Case

[ORS 135.235](#) sets out the framework for the appointment and duties of a release assistance officer. A release officer, if properly directed by the court, investigates a defendant's case and life circumstance, and submits a report to the court evaluating whether a defendant may be released pending trial. Such a report typically generates a release hearing, at which the court will hear arguments from the district attorney, defense counsel, and the release officer concerning the custody status of the defendant. The victim of the crime has the right to be heard in relation to the release decision, and must be notified of any release hearing before the court. Should the court order release, certain conditions will be placed upon the defendant. If the defendant violates any of these conditions of release, the person may be brought back into custody and held pending adjudication of the underlying criminal matter.

House Bill 3466 amends [ORS 135.247](#), a provision of statute that comes into effect if the defendant is charged with a sex crime or a crime constituting domestic violence. Under the current drafting of the law, ORS 135.247 provides that a release officer must include a provision prohibiting contact with the victim in a decision to release. House Bill 3466 expands upon this by stating that the order must prohibit contact or attempted contact, either directly or through a third party.

Additionally, ORS 135.247 currently states that, when a defendant is charged with a sex crime or a crime constituting domestic violence, the court shall enter an order prohibiting contact with the victim while the defendant is in custody. Similar to the aforementioned provisions, House Bill 3466 expands this prohibition to include contact or attempted contact, either directly or through a third party.

### 6. [SB 391](#) (Ch. 493) Bail Seizure and Forfeiture

Oregon's forfeiture law provides in [ORS 131.561\(2\)](#) that, "A police officer may seize property without a court order if the police officer has probable cause to believe that the property is subject to criminal forfeiture." In the context of security release deposits, ORS 131.561(2) works in conjunction with [ORS 131.558\(6\)](#), which allows for criminal forfeiture of,

“All moneys, negotiable instruments, balances in deposit or other accounts, securities or other things of value furnished or intended to be furnished by any person in the course of prohibited conduct...” ORS 131.558(9) further expands upon this, allowing for forfeiture of all property described in ORS 131.558 that is intended for use in either committing a crime or attempting to do so.

Certain law enforcement agencies have utilized the aforementioned statutes to seize security release deposits under the theory that what is being used as bail is part of a “criminal enterprise.” Oftentimes, the security is then transferred into a federal program which allows for disposition of the property in a less cumbersome manner than state statute.

Senate Bill 391 seeks to add an additional layer of judicial oversight onto the process by requiring a warrant or court order prior to seizure of security release deposits.

**7. [HB 2326](#) (Ch. 125) Conditional Discharges in Drug Cases**

HB 2326 amends [ORS 475.245](#), which authorizes a “conditional discharge” in certain drug-related criminal cases. In a conditional discharge, the court retains jurisdiction over the defendant to dismiss the case if the defendant complies with the terms of probation. The bill fixes a problem highlighted in *State v. Grandberry*, 260 Or App 15 (2013) and grants the court continued jurisdiction over the defendant until final disposition occurs, regardless of whether a warrant was issued to toll the probationary period.

The bill took effect on May 21, 2015.

**8. [HB 2341](#) (Ch. 198) Extradition Costs**

HB 2341 amends [ORS 137.540](#) and authorizes the court to order extradition costs for defendants found in violation of their probation due to having left the state. The bill gives the court discretion in whether to order the costs. Currently, the court has authority to order extradition costs at the time of conviction, but not at subsequent probation violation proceedings.

**9. [HB 2420](#) (Ch. 130) Fitness to Proceed Determinations**

HB 2420 amends [ORS 161.365](#) and [161.370](#), and modifies procedure when the court has reason to doubt the defendant’s fitness to proceed. Currently, the court has legal authority to commit an unfit defendant to the state hospital for restorative services only when (1) there is a finding that the defendant is dangerous, or (2) there are no community-based restorative services.

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HB 2420 requires the community mental health director or designee to consult with unfit defendants in all criminal cases. It directs the community mental health director or designee to determine whether community-based restorative services are available and provide written findings to the court before the court commits the defendant to the state hospital.

### 10. [HB 2557](#) (Ch. 320) Expungment of Guilty Except for Insanity Adjudications

HB 2557 authorizes motions to set aside, or “expunge,” adjudications of Guilty Except for Insanity (“G.E.I.”). Currently, [ORS 137.225](#) authorizes the court to set aside certain criminal convictions. However, G.E.I. adjudications are not convictions and therefore ineligible.

A person is eligible to set aside their G.E.I. adjudication if it would have been eligible as a criminal conviction under ORS 137.225. When an order setting aside the adjudication is granted, the person is no longer legally deemed to have been found G.E.I. and the court records are sealed. The bill requires the court to inform people that their right to possess, purchase, or acquire a firearm is still prohibited under federal law. The court retains jurisdiction to unseal and disclose records relating to GEI adjudication in civil actions in which truth is a defense or criminal cases when the moving party shows good cause.

In addition, HB 2557 amends [ORS 419A.260](#) and authorizes the expunction of records associated with juvenile adjudications of responsible except for insanity.

### 11. [HB 3036](#) (Ch. 161) Parole Board Hearings

HB 3036 creates new procedures for certain Parole Board hearings. It authorizes the Board to require a prosecuting attorney appear at the Board hearing. The Board must notify the office of the original prosecuting attorney – either the District Attorney or the Attorney General. Upon notification, the District Attorney may consult with the Attorney General to determine who should appear at the hearing. Appearance may be in person, by phone, or through an electronic communication device.

### 12. [HB 3070](#) (Ch. 140) Reductions in Supervision Periods

HB 3070 amends [ORS 137.633](#), which authorizes a reduction in supervision periods by up to 50 percent if offenders successfully satisfied their restitution and treatment obligations. The bill clarifies that the 50% reduction is available to all types of supervision – formal probation, informal probation, post-prison supervision.

**13. [HB 3168](#) (Ch. 186) Waiver of Fines and Court-Appointed Counsel Fees**

HB 3168 amends [ORS 137.286](#) and [151.505](#) and grants the circuit continued jurisdiction over offenders to waive previously imposed fines if payment of fines interferes with the offender's ability to complete a drug treatment or alcohol treatment program as a condition of supervision. In addition, the bill authorizes the court to enter a supplemental judgment modifying court-appointed counsel fees if payment of fees would interfere with offender's ability to pay for drug or alcohol treatment program.

**14. [HB 3206](#) (Ch. 564) Post-Conviction DNA Testing**

HB 3206 amends [ORS 138.690 – 138.698](#), which governs Oregon's post-conviction DNA testing procedures.

Currently, a person can file a motion and affidavit with the court seeking an order for DNA testing when a person has been convicted of murder, a sex crime, or is incarcerated for a person crime. The person must file an affidavit of innocence with the court and identify specific evidence that will establish the actual innocence of the person. The person must make a prima facie showing that the testing will establish his or her actual innocence. The testing is done by the Oregon State Police. The court will only appoint counsel if the identity of the perpetrator was at issue in the underlying prosecution, unless the defendant had developmental disabilities.

House Bill 3206 changes the statutory framework in several ways. It expands the availability of testing to all felony offenses. It requires the defendant to identify the evidence to be tested with as much specificity as is practicable. It requires the defendant to make a prima facie showing that exculpatory evidence would lead to a finding that the person is actually innocent of the offense. It limits victim testimony in motion practice for testing. It changes when testing can be completed by labs other than the Oregon State Police. It requires the court to make written findings when denying a motion for testing. Finally, it clarifies the availability of court-appointed counsel to aid in the motions for testing.

**15. [HB 3503](#) (Ch. 830) Family Sentencing Alternative Pilot Program**

HB 3503 creates and funds the Family Sentencing Alternative Pilot Program. Offenders are eligible for the program if they have a qualifying offense, are eligible for probation under the rules of the Oregon Criminal Justice Commission, and they are the custodial parent or legal guardian of a minor child at the time of the offense. In addition, the offender must have no prior person felony or sex crimes convictions.

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The bill requires the Department of Corrections and the Department of Human Services to coordinate with community correction agencies and develop probation conditions targeted towards parents with minor children. If an offender is sentenced to the program, they must participate in the program for at least the first year of the probationary sentence.

HB 3503 takes effect on January 1, 2016 and sunsets on July 1, 2025.

### 16. [SB 199](#) (Ch. 230) Early Release

SB 199 amends [ORS 144.122](#) and [ORS 144.126](#), which authorize the Board of Parole and Post-Prison Supervision to release a prisoner early if certain criteria are met regarding the prisoner's health, capacity, or reformation. SB 199 requires victim notification prior to those release determinations if the victim requests notification.

### 17. [SB 908](#) (Ch. 462) Orders Setting Aside Convictions

SB 908 modifies [ORS 137.225](#) (Order setting aside conviction or record of arrest) in five ways:

- Prohibits offenders from seeking motion to set aside conviction for ten years if probationary sentence was revoked for non-compliance;
- Prohibits motion to set aside conviction of Assault 3 if victim was under 10 years of age at time of offense;
- Adds Class B Felony possession of controlled substance offenses to list of offenses eligible to be set aside;
- Allows one non-motor vehicle violation without re-tolling of eligibility period; and
- Eliminates repetitive and duplicative language.

## VII. COURT PROCEDURES AND FAPA REQUIREMENTS

### 1. [HB 2609](#) (Ch. 250) Electronic Certification of Complaint

[ORS 133.015](#) prescribes that an information or a complaint must contain:

- 1) The name of the court in which it is filed;
- 2) The title of the action;
- 3) A statement that accuses the defendant or defendants of the designated offense or offenses;
- 4) A separate accusation or count addressed to each offense charged, if there are more than one;
- 5) A statement in each count of county in which the offense was committed;

- 6) A statement of on or about when the offense was committed;
- 7) A statement of the acts constituting the offense in ordinary and concise language; and
- 8) The verification by the complainant and the date of the signing of the information or complaint.

Traditionally, complaints have been physically filed with the local court.

House Bill 2609 remedies one process issue relating to electronic filing of complaints and informations. The bill allows jurisdictions to file informations and complaints electronically, without the need for verification with a physical signing of the document. Rather, the document may be processed electronically in court along with a verification that complies with the new language of the statute.

**2. [HB 2704](#) (Ch. 553) **Surreptitious Recording of Law Enforcement****

House Bill 2704 addresses the situation where a private citizen is recording a police officer. Most commonly, this occurs when an individual is recording an officer making an arrest. Under [ORS 165.540](#), a person who obtains, or attempts to obtain, the whole or part of a conversation by means of any device must “specifically inform” the parties of the recording. Failure to do so constitutes a Class A misdemeanor. ORS 165.540 provides specific exemptions to this rule. Examples include:

- 1) Public or semipublic meetings such as hearings before governmental or quasi-governmental bodies, trials, press conferences, public speeches, rallies, and sporting or other services;
- 2) Regularly scheduled classes or similar educational activities in public or private institutions; and
- 3) Law enforcement officers operating vehicle mounted cameras.

House Bill 2704 creates a new exemption to this rule for citizens who are recording the police. The exemption applies to a person who openly, and in plain view of the participants in the conversation, records a law enforcement officer while the officer is performing his or her official duties in a place where person recording is lawfully present. The measure makes clear that the exemption does not authorize a person to engage in conduct constituting criminal trespass.

**3. [HB 2776](#) (Ch. 252) **Emergency Protective Orders****

[ORS 107.700 to 107.735](#) governs the definitions, petitions, hearings and enforcement of Family Abuse Prevention Act (FAPA) restraining orders. When a petitioner requests relief from the court in the form of a FAPA restraining order, the circuit court holds an ex parte hearing either in person or by telephone. To grant the request for a FAPA order, the court must find that the petitioner has been the victim of abuse by the respondent within 180 days preceding

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the hearing; that there is an imminent danger of further abuse to the petitioner; and that the respondent represents a credible threat to the physical safety of the petitioner or the petitioner's child.

Upon granting of the order, the respondent is prohibited from any and all contact with the petitioner. The court may fashion additional remedies for the protection of the petitioner when appropriate.

House Bill 2776 creates an emergency protective order that operates much like the FAPA restraining order, albeit on a more limited basis. The bill creates a protective order for which a peace officer may apply, with the victim's permission. Upon granting of the victim's consent, the peace officer is permitted to unilaterally approach the court to make a showing that probable cause exists that:

- 1) The officer has responded to an incident of domestic disturbance and the circumstances for mandatory arrest exist;
- 2) A person is in immediate danger of abuse by a family or household member; and
- 3) An emergency protective order is necessary to prevent a person from suffering the occurrence or recurrence of abuse.

Should the judge make such a finding, the court will enter an order prohibiting contact between the individuals.

The order is not effective unless it is properly served upon the person restricted from contact. An emergency protective order expires on the seventh judicial business day following the day of its entry into the Law Enforcement Data System. Just like a FAPA restraining order, a violation of the order constitutes contempt of court punishable by up to six months in jail.

#### 4. [SB 3](#) (Ch. 527) **Creates Crime of Endangering Person Protected by Family Abuse Prevention Act Restraining Order**

Oregon law allows victims of domestic violence to apply for a FAPA restraining order protecting them from abuse by family or household members. This includes individuals who are:

- 1) Spouses;
- 2) Former spouses;
- 3) Adult persons related by blood, marriage or adoption;
- 4) Persons who are cohabitating or have cohabitated with each other;
- 5) Persons who have been involved in a sexually intimate relationship with each other within two years immediately preceding the filing by one of them of a petition; and
- 6) The unmarried parents of a child.

Individuals seeking protection from a FAPA order must demonstrate to the court that they are in imminent danger of further abuse from the subject of the order. Should a restraining order be granted by the court, the subject of the order is prohibited from contacting the protected party, either by themselves or through a third party. Violation of a FAPA order constitutes contempt of court, and is punishable by up to six months in jail for each violation.

Senate Bill 3 creates the crime of endangering a person protected by a FAPA order. Unlike a typical contempt of court action for a restraining order violation, it is not mere contact that constitutes the crime. Rather, the prohibited contact must be the type that recklessly places the protected party at substantial risk of physical injury, or attempts to place a protected party in fear of imminent physical injury. Therefore if persons commit the crimes of recklessly endangering another person ([ORS 163.195](#)) or menacing ([ORS 163.190](#)) while violating the order, they commit the crime of endangering a person protected by a FAPA order. Such behavior elevates the level of offense to a Class C felony, and is thus punishable by a maximum of five years incarceration, \$125,000 fine, or both.

**5. [SB 232](#) (Ch. 115) Department of Corrections Grant Application**

Prior to passage of this bill, the Department of Corrections currently lacked the authority to apply for federal grant funding earmarked for reentry support and services. County corrections agencies do have the authority to use grant-in-aid funds for reentry purposes.

Senate Bill 232 allows the Department of Corrections to secure supplemental funding through a federal grant application. The grant of authority is narrowly tailored, allowing for application only in the context of reentry support and services for offenders released on supervision. Examples of reentry services include jobs programs, housing assistance, and drug and alcohol treatment.

SB 232 took effect on May 20, 2015.

**6. [HB 2002](#) (Ch. 681) Profiling By Law Enforcement**

HB 2002 defines and prohibits profiling by law enforcement. The bill requires law enforcement agencies to adopt written policies prohibiting profiling and to establish a procedure to record profiling complaints by January 1, 2016. The bill authorizes funds for the Law Enforcement Contacts Policy and Data Review Committee (Committee) and establishes the Committee as a central repository for profiling complaints statewide. It requires the Committee to establish policies for receiving and forwarding profiling complaints by October 1, 2015.

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In addition, the bill establishes a work group that will study and identify profiling practices that impact persons disproportionately. The work group will identify methods to address disproportionate profiling and submit a report to the legislature by December 1, 2015.

HB 2002 took effect July 13, 2015.

### 7. [HB 2313](#) (Ch. 509) **Sharing of Youth Offender History Between Agencies**

HB 2313 amends [ORS 419A.257](#) and authorizes the sharing of certain material regarding a youth offender's history and prognosis between the Oregon Youth Authority (OYA), juvenile departments, and the Department of Corrections (DOC) in limited circumstances. Disclosure is permissible when there is a direct transfer of youth offender from OYA to DOC or when youth offender is in DOC custody but still under the jurisdiction of the juvenile court.

The bill took effect on June 22, 2015 and sunsets June 30, 2017.

### 8. [HB 2433](#) (Ch. 13) **Electronic Citations**

HB 2433 amends [ORS 133.073](#) and [ORS 153.770](#), and allows police officers to file electronic citations in a size and format different than the current uniform citation, so long as the citation contains the required information.

HB 2433 took effect March 18, 2015.

### 9. [SB 366](#) (Ch. 143) **Definition of 'Recidivism'**

SB 366 amends [ORS 423.557](#), which defines "recidivism" for purposes of statistics and data collection by public bodies in Oregon. Currently, a person recidivates if, within three years of conviction or release from custody for a conviction, they are again arrested, convicted, or incarcerated for any reason.

SB 366 amends ORS 423.557 to require the subsequent arrest, conviction, or incarceration be for a new crime. If the subsequent arrest, conviction, or incarceration is for a reason other than a new crime, such as not reporting to your probation officer, it will not constitute recidivism.

### 10. [SB 641](#) (Ch. 613) **Law Enforcement Copies of Certain Data**

SB 641 prohibits law enforcement from duplicating or copying data from portable electronic device without warrant or consent. The bill exempts correctional facilities, state hospital, community corrections, and probation officers when operating in an otherwise lawful manner. In addition, the bill amends [ORS 133.633](#) and [133.653](#) and authorizes the court to order law enforcement to purge certain duplicated data if defendant files motion for return of property.

**11. [SB 825](#) (Ch. 586) Defendant Right to Testify Before Grand Jury**

SB 825 modifies [ORS 132.320](#) and grants a defendant the right to testify before the grand jury when the defendant has been arraigned on a felony allegation and is represented by counsel. The defense attorney must notify the district attorney in writing of the request to testify before the grand jury. If notice is provided, the district attorney must notify the defense attorney of the date, time, and location of the grand jury proceeding.

SB 825 does not afford a defendant the right to appear and testify when the grand jury is meeting in secret, nor does it afford a defendant the right to offer additional evidence or witnesses, other than their own testimony.

**12. [SB 839](#) (Ch. 274) Evidence Received from a Request for Medical Assistance**

SB 839 immunizes persons from arrest or prosecution when the evidence is obtained as a result of a request for medical assistance due to a drug-related overdose. Both the person making the medical request and the person in need of assistance receive the immunity. The specific offenses for which immunity exists are possession of a controlled substance, frequenting a place where controlled substances are used, and possession of drug paraphernalia with intent to sell or delivery.

In addition, SB 839 prohibits a person from being arrested for violating supervision, and from being found in violation of supervision, if the alleged violation is for certain drug offenses and the evidence was obtained in response to a request for medical assistance. SB 839 prohibits law enforcement from arresting persons on certain warrants if the location of the person was discovered after a request for medical assistance. That prohibition does not apply if there is evidence of new criminal activity, other than the specific drug offenses listed above. It also does not apply to out-of-state warrants and federal warrants.

**13. [HB 2372](#) (Ch. 11) Department of Public Safety Standards and Training Certifications**

In its current form, [ORS 813.131](#) requires that a police officer be certified by the Board of Public Safety Standards and Training before requesting a urine sample during an investigation for driving under the influence of intoxicants. The entity responsible for such certification is now the “Department of Public Safety Standards and Training.” House Bill 2372 fixes language in the statute to accurately reflect the current certification process.

HB 2372 took effect on March 18, 2015.

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# Domestic Relations

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## DOMESTIC RELATIONS

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6. SB 622 (Ch. 179) Abuse Reporting Requirement
7. SB 659 (Ch. 393) Requires Oregon DHS to Assist Noncustodial Parents in Obtaining Home and Community-Based Services for Nonresident Child
8. HB 2340 (Ch. 197) Protecting Personal Information Contained in Judgments
9. SB 788 (Ch. 399) Requires Disclosure in Petition for Annulment, Dissolution, or Separation to Disclose Certain Protective and Restraining Orders
10. HB 2362 (Ch. 127) Attorney Fees in Protective Proceedings (*Derkatsch* fix)

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## I. INTRODUCTION

The 2015 legislative session mirrored prior sessions in that it resulted in significant statutory changes impacting the family law practice area. The Oregon Child Support Program has more flexibility to suspend enforcement of child support upon a change in physical custody. The process for entry of support orders in cases with multiple orders was streamlined. The legislature created a step-by-step statutory framework for the process of re-adoption that was previously missing from statute. Adopted children were provided greater access to information about their biological parents and siblings. Oregon Department of Human Services (DHS) was tasked with adopting rules for adoption proceedings that are designed to better reflect the dynamics of foster parents, potential adoptive families, and relatives.

Victims of domestic violence were afforded greater access to stalking protective orders, they were provided an additional protection through the creation of an emergency protective order that is accessible 24/7 by a peace officer, and they can now rest assured that their confidential communications with their advocates will be protected from disclosure in court. Additionally a new state law was created to provide local law enforcement officers the ability to enforce firearm restrictions in cases involving restraining and stalking orders.

The legislature took up the task of updating outdated statutes that failed to reflect the constitutionally protected right of same-sex couples to marry freely. Spouses now have additional options for changing their names after marriage or after entering into registered domestic partnerships. The court was provided authority to divide survivor benefits in additional types of public employer pension plans, and legislature continued addressing the need to restrict access to parties' personal information contained in judgments as statewide implementation of e-Court continues.

All bills are effective January 1, 2016, unless stated otherwise.

## II. ADMINISTRATIVE SUPPORT PROCEEDINGS

### 1. [HB 3156](#) (Ch. 72) **Temporary Suspension of Enforcement of Child Support upon Change in Physical Custody**

[ORS Chapter 25](#) sets forth the framework for enforcement of child support obligations. Under current law, the Oregon Child Support Program (CSP) may suspend enforcement of child support obligations only when continued enforcement will result in a credit. HB 3156 provides authority to temporarily suspend enforcement regardless of whether continued enforcement will result in a credit balance, but only if all of the children are residing with the obligor and continued collection of support would impair the obligor's ability to provide direct support to the children. The CSP may only suspend enforcement if an action is currently pending to terminate, vacate, or set aside a support order, or to modify a support order because of a change in physical custody of the children.

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The obligee may object within 14 days of receiving notice of the CSP's intent to suspend enforcement of the support order, but may only object on the following limited grounds:

- 4) The child is not in the physical custody of the obligor;
- 5) The child is in the physical custody of the obligor, but without the consent of the obligee; or
- 6) The basis for the suspension of enforcement is factually incorrect.

Suspension of collection efforts in cases where the children have moved from residing primarily with the obligee to the obligor enables for a streamlined process through which the new primary residential parent can divert money from the other parent and instead utilize those resources for the children's benefit.

### 2. [HB 3158](#) (Ch. 73) **Removes Time Limitation on Judgments in Cases Involving Multiple Child Support Judgments**

In 2005, HB 2275 was passed to address cases involving multiple child support judgments. That bill provided that the terms of a later-issued judgment control and the earlier judgment is automatically terminated, but only if several factors are met, including:

- 1) The court (or administrator) specifically ordered that the later-issued judgment would take precedence over the earlier issued judgment;
- 2) All parties had an opportunity to challenge the later-issued judgment;
- 3) The administrator was providing enforcement services;
- 4) The two child support judgments involved the same obligor, child, and time period; and
- 5) The later-issued child support judgment was entered before January 1, 2004.

HB 3158 removes the requirement that the later-issued child support judgment be entered before January 1, 2004, and changes the requirement that the administrator was providing services to a requirement that the administrator is providing services. These changes provide the Oregon Child Support Program with the ability to provide prompt enforcement of the most recent ordered entered involving the parties.

#### **Practice Tip:**

While HB 3158 creates no new requirements for language practitioners must include in judgments dealing with cases involving multiple child support judgments, it creates an opportunity to review current form language. The most common situation in which there are multiple child support judgments is when an administrative child support order was put in place initially, followed by a second subsequent order as a result of a dissolution, filiation, or other support proceeding filed in the circuit court. In such instances, the following language should be included in the later-issued judgment:

**Later Issued Judgment As Controlling Judgment***Finding of Fact*

4. *An administrative support order was issued February 13, 2015, in CSP Case No. 012AAAB34567. That order was judicially docketed in Marion County Case No. 15DR98765. It is appropriate that the administrative support order remain effective until October 31, 2015, at which time it should terminate (subject to the collection of any arrearage thereunder) and the support judgment entered herein should become the governing child support judgment under ORS 25.091. Although the support judgment herein will then be the governing child support judgment, any arrearage under the administrative order at the time the governing child support judgment becomes effective should continue to be collected and enforced. A copy of the administrative order is attached hereto as required by ORS 25.091(8)(a).*

*Order Section*

3.4 *Governing Child Support Judgment. The child support judgment herein is effective November 1, 2015, and shall become the governing child support judgment on that date. Father's support obligation under CSP Case No. 012AAAB34567, Marion County Case No. 15DR98765 shall terminate October 31, 2015.*

**3. [HB 3159](#) (Ch. 74) Permits State to Recover from any Person or Entity that Issues a Dishonored Check as Payment for Child Support**

HB 3159 amends ORS 25.125 to provide that the state may recover from any person or entity that issues a dishonored check for payment of child support. Under current law, the state is permitted to recover only from the obligor or the withholder who presented the check (i.e., obligor's employer). The bill clarifies that the state may recover from either the obligor or the issuer.

### **III. ADOPTIVE PROCEEDINGS**

**1. [HB 2365](#) (Ch. 511) Creation of a Re-Adoption Process**

Prior to the passage of HB 2365, Oregon law lacked a statutory process for re-adoptions. A re-adoption occurs when adoptive parents travel to a different country and complete the adoption of their child in that country. Many parents wish to re-adopt their child upon their return to Oregon in order to obtain an Oregon birth certificate, change their child's name, or change their child's birth date. Federal law provides that a Federal Certificate of Citizenship for a child born outside of the United States shall reflect the child's name and date of birth as

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indicated on a state court order or state vital records document issued by the child's state of residence after the child has been adopted. The lack of a clear re-adoption process in Oregon presented difficulties for families attempting to clear this legal hurdle upon their return to Oregon with their newly adopted child.

Prior to passage of HB 2365, re-adoption processes informally adopted in Oregon by one county might differ from that found in other counties. HB 2365 amends [ORS 109.385](#) to provide a specific step-by-step process for a re-adoption proceeding in Oregon that ensures a consistent statewide standard.

This bill took effect on June 22, 2015.

### 2. [HB 2366](#) (Ch. 512) Adoption Filing Fees

HB 2366 provides for an increase in the filing fee for a petition in an adoption proceeding from \$252 to \$255. Under current law, the petitioner must pay a \$252 filing fee when filing the petition, but must then pay an additional \$1 fee once the adoption is finalized for issuance of the Court Certificate of Adoption. HB 2366 combines those two fees in an effort to streamline the administrative process involved in adoptions. The additional \$2 increase in the fee reflects that the court may no longer charge for issuing certificates of adoption and must, in fact, issue "one or more" certificates once the adoption process is complete.

HB 2366 additionally imposes a filing fee (set forth in [ORS 21.145](#), which is currently \$105) for a motion filed by the birth parent of an adult adoptee under Oregon's new open adoption records law, except in cases where the Department of Human Services (DHS) consented to the adoption.

### 3. [HB 2414](#) (Ch. 200) Use and Registry with Voluntary Adoption Registries

HB 2414 permits parents or guardians of minor adoptees or minor genetic siblings of adoptees to use and register with voluntary adoption registries. Under existing law, minor siblings are restricted from utilizing the mandatory adoption search and registry program unless the minor child's birth parent has already registered with the program, the birth parent approves of the use and registry, and all adoptees and siblings have reached the age of 18. HB 2414 amends [ORS Chapter 109](#) to provide that a minor child's adoptive parent may opt in to the search and registry program on the child's behalf in an effort to locate a sibling of the minor child, *unless* the other sibling presently resides with the birth parent. This change in the law provides an avenue for siblings separated by adoption to locate each other with the assistance of their adoptive parents without having to wait until reaching the age of majority.

HB 2414 additionally provides an avenue for children of a deceased adult adoptee to access the search and registry program. Under existing law, the child of an adult adoptee had no independent access to the program, which meant that if the adult adoptee (i.e., parent) died without having ever utilized the program, the child would be left with no readily available avenue to initiate contact with previously unknown family members. HB 2414 permits a child of a deceased adult adoptee to utilize the program so as to promote access to previously unknown family members.

4. [SB 741](#) (Ch. 795) **Requires Oregon DHS to Adopt Administrative Rules for Adoption Proceedings that Require Equal Consideration be Given to Relatives and Current Caretakers as Prospective Adoptive Parents**

Under current law governing adoption proceedings there is no expressed placement preference. Instead, adoption statutes recite the general "best interests of the child" standard as to where the child ought to be placed. SB 741 requires that the administrative rules governing home studies and placement reports to provide equal status and priority to relatives and current caretakers seeking to adopt as is provided other prospective adoptive parents with regard to factors having to do with the child's safety, attachment, and well-being. Additionally, SB 741 requires that with regard to suitability of placement, the rules include a preference for relatives and current caretakers over other individuals seeking to adopt.

This bill became effective as of July 27, 2015.

#### **IV. DOMESTIC VIOLENCE ISSUES**

1. [HB 2628](#) (Ch. 89) **Disallows Fees in Action for Stalking Protective Order**

Existing law provides that a petitioner seeking a Stalking Protective Order (SPO) without also seeking damages shall be exempted from filing fees, service fees, and hearing fees. HB 2628 extends the exemption of fees to all persons seeking SPOs, regardless of whether additional relief (i.e., monetary damages) is sought.

This bill became effective as of May 18, 2015.

2. [HB 2776](#) (Ch. 252) **Application of Emergency Protective Order by Peace Officer**

[ORS 107.700 through 107.735](#) provides the statutory framework for a Family Abuse Prevention Act (FAPA) restraining order. In order to receive an order of restraint, a victim of abuse must file a petition with the court and subsequently attend a hearing either by telephone or in person. This process presents possible barriers for individuals who may be in need of

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protective orders of restraint during a time the court is not open (and may not be open for a number of days).

HB 2776 authorizes a peace officer to request an emergency protective order on a victim's behalf that operates much like a traditional FAPA restraining order, albeit on a more restrictive basis. In order to request such an order, the peace officer must first obtain the victim's consent. The peace officer must then make a showing that probable cause exists that: (1) the peace officer has responded to an incident of domestic disturbance and the circumstances for mandatory arrest exist; **or** that a person is in immediate danger; **and** (2) an emergency protective order is necessary to prevent a person from suffering the occurrence or recurrence of abuse.

An emergency protective order entered pursuant to this new law is effective upon service of the respondent, but automatically expires seven calendar days from the date the court signs the order or upon further order of the court.

### Note:

The presiding judge of the circuit court in each county shall designate at least one judge to be reasonably available to enter, in person or by electronic transmission, ex parte emergency protective orders at all times whether or not the court is open.

### 3. [HB 3476](#) (Ch. 265) **Establishes Privilege for Certain Communications Between Victims of Domestic Violence and Advocates**

The privilege of confidentiality exists in a whole host of relationships involving positions of confidence (e.g., doctor-patient, psychologist-patient, lawyer-client, husband-wife, etc.). The rules for confidentiality are set forth in [ORS 40.225 through 40.295](#) in the Oregon Evidence Code.

HB 3476 creates a new type of communications privilege protected under the Oregon Evidence Code. The bill provides that confidential communications between a victim of sexual assault, domestic violence, or stalking, and victim advocates or services programs are protected communications that are inadmissible in civil, criminal, administrative, and school proceedings. The victim holds the privilege, but consistent with other protected privileges, the communication may be disclosed by the advocate or program without the victim's consent to the extent necessary for defense in any civil, criminal, or administrative action that is brought against the advocate or program by or on behalf of the victim.

This bill became effective as of June 4, 2015.

4. [SB 525](#) (Ch. 497) **Prohibits Possession of Firearm or Ammunition by Certain Persons**

SB 525 makes it unlawful for a person to knowingly possess a firearm or ammunition if the person is the subject of a court order that was issued or continued *after a hearing* for which the person had actual notice and during which the person had an opportunity to be heard, and restrains the person from stalking, intimidating, molesting, or menacing an intimate partner, child of an intimate partner, or child of the person. Additionally, the order must make a finding that the person represents a credible threat to the physical safety of an intimate partner, a child of an intimate partner, or a child of the person, *or* that the person has been convicted of a qualifying misdemeanor<sup>1</sup> and, at the time of the offense, the person was a family member of the victim of the offense.

SB 525 essentially creates a state crime that mirrors current federal crime prohibiting possession of a firearm or ammunition by adjudicated domestic violence offenders. Creation of a state crime provides local law enforcement officers the authority to take action. With federal law as the only barrier to firearm possession, local law enforcement officers were unable to readily act in these types of cases.

## V. OTHER DOMESTIC RELATIONS BILLS

1. [HB 2478](#) (Ch. 629) **Achieves Gender Neutrality in Marriage Statutes and Related Laws**

U.S. District Court Judge Michael McShane ruled on May 19, 2014, that Oregon's constitutional ban on marriages between gay and lesbian couples was unconstitutional. In response to that ruling, HB 2478 amends a host of statutes to reflect that same-sex couples now have the freedom to marry by making statutory language referring to married couples more gender neutral.

2. [HB 3015](#) (Ch. 425) **Creates Additional Options for Changing Name after Marriage or After Entering into Registered Domestic Partnership**

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

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<sup>1</sup> A qualifying misdemeanor must have, as an element of the offense, the use or attempted use of physical force or the threatened use of a deadly weapon.

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HB 3015 amends both ORS 106.220 and 106.335 to clarify that a party may take only one surname, or a combination of multiple surnames of either or both parties.

This bill became effective as of June 16, 2015.

**3. [SB 321](#) (Ch. 234) Decreases Compulsory School Age from Seven to Six Years of Age**

SB 321 decreases the compulsory school age from seven to six years of age as of September 1 immediately preceding the beginning of the current school term.

**4. [SB 370](#) (Ch. 506) Provides for Division of Certain Death Benefits in Judgment of Annulment, Dissolution of Marriage, or Separation**

[ORS 238.465](#) provides for payment of PERS benefits to an alternate payee on divorce, annulment or unlimited separation. [ORS 237.600](#) deals with payment of benefits from a member of other state and local public retirement plans other than PERS. The aim of SB 370 was to protect survivor benefits for former spouses of members in a public retirement plan. Where the terms of the retirement plan provide that the spouse is entitled to survivor benefits if the member dies before retirement, then logic dictates that entitlement should not be deprived by the plan just because the parties become divorced. The plan should still be required to continue that survivor benefit to the former spouse to the extent provided in a court order. The plan is already committed to provide that benefit to the spouse while the parties are married. To be relieved of providing that benefit due to divorce of the parties creates a windfall to the plan and deprives a former spouse of an important protection.

This dynamic is exactly what happened in *Rose v. Board of Trustees for the Portland Fire & Police Disability and Retirement Fund*.<sup>2</sup> In the *Rose* case, Wife divorced Husband (a firefighter with the City of Portland) when he was age 46 and by Qualified Domestic Relations Order (QDRO) she was awarded a survivor benefit should he die before retirement. Husband then died of cancer at age 47, not having remarried, less than three years before his early retirement date at age 50. The City denied survivor benefits to Wife and she received nothing. After a long fight at the City and then through the Multnomah County Circuit Court, the Oregon Court of Appeals affirmed the City's position. The entire benefit earned by husband during his 20-year career reverted back to the City, save the partial benefit that was paid to the parties' minor child under the terms of the plan. The City's attorneys admitted that Wife would have received a survivor benefit if either: (1) the parties had not divorced; or (2) Husband had remarried someone else before he died at age 47 so that a survivor benefit was payable under the terms of the plan; or (3) he had survived to age 50 before he retired. However, because the parties divorced and Husband died single before age 50, Wife received nothing.

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<sup>2</sup> 215 Or App 138, 168 P3d 1204 (2007).

The Rose case turned on the specific language of ORS 237.600(1), which states in relevant part:

*" . . . payment of any . . . death benefit . . . under any public employer retirement plan . . . **that would otherwise be made to a person entitled to benefits under the plan** shall be paid, in whole or in part, to an alternate payee if and to the extent expressly provided for in the terms of any court decree . . . ." Emphasis added.*

The plan argued, and the court held, that because there is no survivor benefit at all on the death of a single person under the City of Portland plan, then a survivor benefit cannot be paid to Wife in the Rose case. It did not matter that the parties had been married and that she was entitled to the survivor benefit while married. By virtue of the divorce, she automatically lost that benefit notwithstanding the terms of the dissolution judgment or the subsequently entered QDRO.

At each level in *Rose*, Wife argued that the statute should be read to mean " . . . that would otherwise be made but for the divorce . . ." as was the intent, but to no avail. Wife pointed to legislative history that demonstrated the intent of the statute was to make Oregon law co-extensive with federal law (i.e., ERISA) as it applies to private sector plans. ERISA provides plainly that a survivor benefit to which a spouse is entitled can be perpetuated after the divorce to the extent provided in a QDRO. Wife also pointed out that during the hearings for the bill enacting this very statute (Senate Bill 210) in 1993, the attorney for the City of Portland plan testified to the Legislature on this very issue, complaining that the bill would require the City of Portland plan to provide a benefit to a former spouse that it didn't then provide. Notwithstanding the City's complaints, the Legislature made no changes to the bill and passed it anyway. Wife in *Rose*, therefore, argued that, implicitly at least, the Legislature intended the statute to require that survivor benefits be continued a former spouse if so ordered. Wife ultimately lost that argument, with the Court of Appeals ruling that legislative history was irrelevant because the statute was plain on its face.

This issue remained dead from 2007 when the Court of Appeals issues its ruling until only recently when Oregon PERS took the position that a divorced member of OPSRP (Oregon Public Service Retirement Plan, [ORS Chapter 238A](#)) who remains single cannot designate a former spouse to receive survivor benefits -- at all. Only if the member remarries a second spouse can the member be required to provide benefits to a first spouse.

By contrast, PERS Tier One and Tier Two allow survivor benefits to anyone - they are not restricted just to a spouse, much less a former spouse.

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SB 370 amended Oregon law to require that the Oregon PERS OPSRP plan and other public employer retirement plans pay out a survivor benefit to a former spouse of the member as provided in a judgment or order.

This bill became effective as of June 19, 2015.

5.     [SB 604](#)            **(Ch. 298)**        **Adoption of Amendments to the Uniform Interstate Family Support Act**

As part of the Preventing Sex Trafficking and Strengthening Families Act (Public Law 113-183), Congress required all states to enact any amendments to the Uniform Interstate Family Support Act (UIFSA). The amendments at issue were adopted by the National Conference of Commissioners on Uniform State Laws in 2008. SB 604 enacts all of the amendments to UIFSA, which will result in the following changes to the law in Oregon:

- 1) Improved enforcement of U.S. child support orders abroad and more assurance of children residing in the U.S. receiving support from parents living abroad;
- 2) Adoption of new guidelines and procedures for the registration, enforcement, and modification of foreign support order from countries that are parties to the Hague Convention; and
- 3) Additional flexibility for the modification of orders when the state or country that issued the order cannot or will not process a modification.

6.     [SB 622](#)            **(Ch. 179)**        **Abuse Reporting Requirement**

SB 622 amends [ORS 124.050](#) and other mandatory abuse reporting statutes to include personal support workers and home care workers.

7.     [SB 659](#)            **(Ch. 393)**        **Requires Oregon DHS to Assist Noncustodial Parents in Obtaining Home and Community-Based Services for Nonresident Child**

SB 659 creates new law that requires the Oregon Department of Human Services to assist in obtaining home and community-based services for a parent's child if:

- 1) The parent resides in Oregon;
- 2) The parent has a child who does not reside in Oregon but who visits the parent in Oregon for at least six weeks (need not be consecutive) each year; and

- 3) The child qualifies for home and community-based services via Medicaid in the child's state of residence.

Creation of this new law is an important layer of protection for Oregon non-custodial parents with children who live out of state and receive home and community-based services via Medicaid because it can be difficult to maintain those services without interruption for children who spend significant amounts of time out of their home states.

8. [HB 2340](#) (Ch. 197) **Protecting Personal Information Contained in Judgments**

The continuing statewide implementation of e-Court has brought forth a variety of concerns regarding the public's growing access to court documents that contain sensitive personal information of litigants. HB 2340 operates to further the goal of protecting the personal information of litigants by limiting the information that must be required in court documents by amending a number of statutory provisions that previously required the inclusion of complete Social Security Numbers, Taxpayer Identification Numbers, and driver license numbers.

HB 2340 targets four individual types of documents:

- 1) **Civil judgments (including judgments arising from dissolution and child support proceedings) containing a money award** must now only include the last four digits of a judgment debtor's Taxpayer Identification Number (TIN). Note that ORS 18.042 previously allowed for the exclusion of all but the last four digits of the debtor's Social Security Number (SSN), but the IRS defines TINs as including SSNs, which could lead to confusion. HB 2340 creates consistency in the type of information that ought to be excluded from judgments and protected from the public's view;
- 2) **Lien record abstracts** were subjected to a similar change and must now only include the last four digits of a judgment debtor's TIN (or SSN);
- 3) **Paternity and support judgments and orders** must now only include the final four digits of each party's SSN and driver license number; and
- 4) **Criminal judgments relating to the payment of restitution and compensatory fines to victims of crime** must now exclude the victim's name and address.

This bill became effective as of June 2, 2015.

**Practice Tip:**

In the Family Law context, the TIN that will be included in the money award section of the judgment is the obligor/debtor's SSN. That means practitioners should already be in the

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habit of including the last four digits of the obligor/debtor's SSN. Practitioners typically exclude all confidential personal information from documents filed with the court pursuant to [UTCR 2.130](#) (Family Law Confidential Personal Information). UTCR 2.130 is specific, however, that mandatory redaction of confidential personal information does not apply to the information required in a money award under [ORS 18.042](#).

ORS 18.042 requires that a money award contain the year of birth, final four digits of either the TIN or SSN, and the final four digits of the driver license and the name of the state that issued the license for each judgment obligor/debtor. This information is critical so that the Oregon Department of Justice (DOJ) can accurately and quickly locate and identify the parties for support enforcement purposes. Failure to include this information in the money award puts the practitioner at risk of having the judgment rejected by the court. Additionally, while the confidential personal information may very well be contained in the Confidential Information Forms filed separately with the court, the DOJ must then look in a different location for information, which creates inefficiencies in an already overloaded system.

### **Incorrect money award – DON'T DO THIS!**

*Judgment Debtor Name, Address*

*Year of Birth, and Driver License Number:*

*John Doe*

*100 Century Drive S.*

*Salem, Oregon 97302*

*Year of Birth: Confidential – UTCR 2.130*

*SSN: Confidential – UTCR 2.130*

*DL # and State: Confidential – UTCR 2.130*

### **Correct money award – Do it the right way**

*Judgment Debtor Name, Address,*

*Year of Birth, and Driver License Number:*

*John Doe*

*100 Century Drive S.*

*Salem, Oregon 97302*

*Year of Birth: 1969*

*SSN: XXX-XX-6789*

*DL # and State: XXX4321, Oregon*

9. [SB 788](#) (Ch. 399) **Requires Disclosure in Petition for Annulment, Dissolution, or Separation to Disclose Certain Protective and Restraining Orders**

SB 788 amends [ORS 107.085](#) to provide that a petitioner in an action for marital annulment, dissolution, or separation must state whether there exists in Oregon or any jurisdiction a protective order between the parties or any other order that restrains one of the parties from contact with the other party or with the parties' minor children.

**10. [HB 2362](#) (Ch. 127) Attorney Fees in Protective Proceedings (*Derkatsch* fix)**

In 2013, the legislature enacted HB 2570 and modified [ORS 125.095](#) to provide the court specific authority to use the funds of a person subject to a protective proceeding to pay for attorney fees incurred prior to the court declaring the person protected. The bill also made clear that the procedures set forth in ORCP 68 do not apply to requests for approval and payment of attorney fees under ORS 125.095. Instead, HB 2570 created a list of ten distinct factors for the court to consider when determining whether to award fees, and an additional six factors to consider in determining the appropriate amount of fees to award. HB 2570 stated quite clearly that none of the factors set forth in ORS 125.095 should be controlling in the court's determination regarding attorney fees.

This 2013 legislation was in response to a ruling by the Oregon Court of Appeals that ORS 125.095 does not authorize the payment of attorney fees incurred before a protective order has been entered for services rendered in a financial abuse case brought on the protected person's behalf.<sup>3</sup> In other words, prior to the passage of HB 2570 in the 2013 session, attorneys were restricted from receiving payment for the pre-order work they undertook on a potential protected person's behalf (e.g., legal research, drafting petitions and other paperwork, court appearances, etc.), even if that person was subsequently deemed by the court to have been in need of protection.

Shortly after implementation of HB 2570 and the resulting amendments to ORS 125.095, some practitioners concluded that the court should consider one factor above all the others – “[t]he benefit to the person subject to the protective proceeding by the party’s actions in the proceeding.”

HB 2362 amends ORS 125.095 to provide courts the authority to elevate that singular factor above the rest in recognition of the fact that fees are often awarded out of the assets of the protected person, and that it can often be cost prohibitive for a protected person to bring an action before the court because of the possibility that fees might be paid to all affected parties. HB 2362 requires the court to consider first and foremost the benefit to the person subject to the protective proceeding in determining whether an award of fees is appropriate at all.

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<sup>3</sup> *In re Derkatsch*, 248 Or App 185, 273 P2d 204 (2012).

## DOMESTIC RELATIONS

# 8

Anastasia Meisner

## Estate Planning & Elder Law

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**Anastasia Meisner:** 1997 Willamette University School of Law. Member of the Oregon State Bar since 1998.

## I. INTRODUCTION

This session saw increased attention by legislators to elder issues and the protection of vulnerable people. Increasing awareness and legislative activity around these issues is expected to continue.

Except where otherwise noted, bills take effect on January 1, 2016.

## II. ELDERS AND OTHER VULNERABLE PERSONS

### 1. [HB 2225](#) (Ch. 415) Search Warrants

HB 2225 amends [ORS 133.545](#), which empowers Oregon courts to issue search warrants. Circuit court judges may now authorize the execution of search warrants outside the judicial district in which the court is located if: 1) an enumerated offense involves a victim 65 years of age or older at the time of the offense; 2) the search is for financial records; and 3) the person requesting the search warrant is not able to ascertain at the time of the request the proper place of trial for any of the enumerated offenses. The enumerated offenses are criminal mistreatment in the first degree, identity theft, aggravated identity theft, computer crime, fraudulent use of a credit card, forgery in any degree, criminal possession of a forged instrument in any degree, theft in any degree, or aggravated theft in the first degree.

Prior to the effective date of HB 2225, search warrants issued by a circuit court judge can only be executed within the judicial district in which the court is located.

### 2. [HB 2226](#) (Ch. 9) Definition of Victim Expanded

HB 2226 expands the meaning of “victim” as defined in the restitution provisions of [ORS 137.103](#) to include decedents who suffered or did suffer economic damages as a result of an offense; the estate of the decedents who suffered or did suffer economic damages as a result of an offense; and the estate, successor in interest, trust, trustee, successor trustee, or beneficiary of a trust that suffered economic damages as a result of an offense.

### 3. [HB 2227](#) (Ch. 416) Definition of Sexual Abuse Limited

HB 2227 limits the application of “sexual abuse” as defined in [ORS 124.050\(11\)\(a\)](#). The amendment carves out from the definition of “sexual abuse” the consensual sexual contact between an elderly person and an employee of a facility who is also the spouse of the elderly person.

Prior to the effective date of HB 2227, only consensual sexual contact between an elderly person and a paid caregiver is exempt from the definition of “sexual abuse”.

**4. [HB 2964](#) (Ch. 213) Claims on Behalf of Minors**

HB 2964 amends [ORS 31.700 \(1\)](#) to empower conservators for an estate of a person under 18 years of age, along with guardians ad litem, to file a cause of action for recovery of damages to a child by a wrongful act. Prior to HB 2964 only a guardian ad litem is empowered to seek recovery.

In addition, HB 2964 distinguishes the procedural effect of an accompanying consent to include in the cause of action the damages as, in all the circumstances of the case, may be just, and will reasonably and fairly compensate for the doctor, hospital, and medical expenses. If the consent is filed by a guardian ad litem, a court has the discretion to allow the filing. Upon the court’s approval of the consent filing, then no court shall entertain a cause of action by the parent, parents, or conservator for doctor, hospital, or medical expenses. If the consent is filed by a conservator, the court has no discretion whether to allow the filing. Again as with a consent filed by a guardian ad litem, upon filing of the consent no court shall entertain a cause of action by the parent, parents, or conservator for doctor hospital, or medical expenses.

HB 2964 took effect on June 2, 2015.

**5. [SB 296](#) (Ch. 348) Elderly Rental Assistance Program**

SB 296 transfers the administration of the elderly rental assistance program from the Department of Revenue to Oregon Housing and Community Services. The goal of moving the program to Oregon Housing and Community Services is to improve the effectiveness of the program, and to help connect low income seniors with other services. Technically the existing program is repealed effective December 31, 2016, and the OHCS is directed to begin the new program in 2017. Legislative history would indicate that this is intended to function as a transfer of the program, although technically it is an entirely new program. Recipients of the program are expected to receive notices of the new program model in November 2015, January 2016, and November 2016.

SB 296 took effect on October 5, 2015.

**6. [SB 840](#) (Ch. 461) Civil Commitments**

SB 840 adds to [ORS 426.005](#) a new defined term “licensed independent practitioner”, which means either a physician as defined in [ORS 677.010](#) or a nurse practitioner certified under [ORS 678.375](#) or authorized to write prescriptions under [ORS 678.390](#). Thus certain medical professionals such as a psychiatric mental health nurse practitioner are authorized to place a person alleged to have a mental illness at a hospital or nonhospital facility. Note, it still

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takes two persons to authorize a non-voluntary civil commitment, also known as a “72 Hour Hold”.

SB 840 took effect on June 16, 2015.

### III. PROTECTIVE PROCEEDINGS

#### 1. [HB 2361](#) (Ch. 365) Prohibition on Collection of Filing Fee

HB 2361 amends [ORS 125.075](#) which provides for filing of objections or motions by interested person in a protective proceeding. The amendment prohibits the court from charging or collecting a filing fee for an objection or motion when the interested party is the respondent, protected person, the office of the long term care ombudsman, or a system to protect and advocate the rights of individuals as provided in [ORS 192.517](#). An example of a system to protect and advocate is the nonprofit law office Disability Rights Oregon.

HB 2361 was proposed to address the concern that some circuit courts would not allow an ORS 192.517 interested party to provide information or participate in protective proceedings unless a filing fee had been paid.

This amendment applies to protective proceeding commenced on or after January 1, 2016.

#### 2. [HB 2362](#) (Ch. 127) Attorney Fees

HB 2362 amends [ORS 125.075\(2\)](#) which lists a number of factors for a court to consider in determining whether to award attorney fees. ORS 125.075 first became law in 2013, and under the original law no factor was weighted higher than another. Under HB 2362 the court is now required to give the greatest weight to one factor: “the benefit to the person subject to the protective proceeding by the party’s action in the proceeding”.

Prior to HB 2362 the following factors were equally weighted:

- a) The benefit to the person subject to the protective proceeding by the party’s action in the proceeding;
- b) The objective reasonableness of the position asserted by the party;
- c) The party’s self-interest in the outcome of the proceeding;
- d) Whether the relief sought by the party was granted in whole or in part, subject to the respondent’s right to contest the proceeding;
- e) The conduct of the party in the transactions or occurrences that gave rise to the need for a protective proceeding, including any conduct of the party that was reckless, willful, malicious, in bad faith or illegal;
- f) The extent to which an award of attorney fees in the proceeding would deter others from asserting good faith positions in similar proceedings;

- g) The extent to which an award of attorney fees in the proceeding would deter others from asserting meritless positions in similar proceedings;
- h) The objective reasonableness of the party and the diligence of the party and the attorney during the proceeding;
- i) The objective reasonableness of the party and the diligence of the party in pursuing settlement of the dispute; and
- j) Any other factor the court may consider appropriate under the circumstances of the proceeding.

#### IV. STATE RECOVERY OF FUNDS

##### 1. [HB 2415](#) (Ch. 129) DHS or OHA Access to Decedent Account Information

HB 2415 adds a new section to [ORS 192.586](#). When seeking the recovery of funds, the Department of Human Services (DHS) and the Oregon Health Authority (OHA) will now be permitted to access decedent information held by financial institutions. When submitting a written notice and request, DHS and OHA must specifically include:

- a) The decedent's name, last known address and Social Security number;
- b) the decedent's date of death;
- c) a statement that the decedent received public assistance or medical assistance that was subject to a claim for reimbursement under [ORS 411.640](#), [411.708](#), [411.795](#) or [416.350](#); and
- d) that the financial institution is to provide all or any part of the following information:
  - Whether the financial institution held at the decedent's date of death any account in the decedent's name;
  - The account balance;
  - The name of each person to whom the financial institution disbursed funds from the account or if the financial institution closed the account on or after the date of death;
  - A record of the activity in the decedent's account in the period that begins 30 days before the date of death and ends on the date of death;
  - A copy of any affidavit the financial institution received under [ORS 708A.430](#) of [723.466](#) (disposition of deposit on death of depositor); and
  - The name and address of any additional person named as an owner an account, if the financial institution has the records.

HB 2415 was introduced to address DHS and OHA concerns that financial institutions were releasing funds and not providing information about the account balances and to whom. These agencies will now have more information to determine whether to pursue recovery of funds.

## V. OTHER LEGISLATION

### 1. [HB 2349](#) (Ch. 364) Petition for Appointment

HB 2349 amends [ORS 125.240](#) to require additional information in the petition for appointment of a professional fiduciary as follows:

- The investment credentials and licensing of the individual responsible as, or acting on behalf of, the professional fiduciary;
- Whether there is any revenue sharing arrangement between the professional fiduciary and any other person;
- The method in which fees will be assessed or charged including commissions, monthly charges and any other method; and
- An acknowledgement that the professional fiduciary will make investments in accordance with ORS 130.750 to 130.775 (The Uniform Prudent Investor Act).

### 2. [HB 2549](#) (Ch. 319) Debts Owed by Closed Estates

Under Oregon law, state agencies are, with limited exceptions, required to assign unpaid debts that are sufficiently delinquent to a private collection agency or the Department of Revenue for collection.

HB 2549 creates an additional exception for cases where the debt is owned by an estate, and the state agency has received notice that the estate is closed. HB 2549 took effect on July 1, 2015.

### 3. [HB 2331](#) (Ch. 126) Uniform Trust Code

HB 2331 makes several changes to ORS Chapter 130, which is Oregon's Uniform Trust Code.

Legislation passed in 2013 had the effect of preventing the application of the "Separate Share Rule" found in section 663(c) of the Internal Revenue Code to trusts in Oregon. This rule allows the creator of a trust to choose to provide in the trust document whether the trust will be divided into separate shares which would benefit separate beneficiaries. HB 2331 reinstates this option for a settlor in Oregon. Specifically, section 1 of the bill permits trusts to operate consistent with the federal separate share rule, and section 2 permits a trustee to operate a trust as separate trusts or as separate shares of a single trust, based on the provisions of the trust and the best interests of the beneficiaries.

A separate section of HB 2331 authorizes trustees to distribute capital gains from existing irrevocable trust to pass through the capital gains to the beneficiary and thus taxed to

the beneficiary and not the trust. This provides the option of avoiding the higher capital gains rate applied to trusts.

Finally HB 2331 codifies the early vesting rule of trusts. The Oregon Supreme Court first held in 1911 that trust interests vest when the grantor of the trust created the trust or when the trust became irrevocable, and not at a later date, unless the trust document clearly indicates a different intent. This has been understood to be the rule in Oregon ever since. However, 2013 legislation created some confusion as to whether this was still the rule in Oregon. HB 2331 incorporates the early vesting rule into statute to clarify this ambiguity.

**4. [SB 379](#) (Ch. 387) Oregon Probate Code**

SB 379 was the product of an Oregon Law Commission work group that sought to update the Oregon Probate Code to reflect changes in society, as well as to clarify sections which lawyers have over the years reported as being problematic. Although this project may continue, and may propose additional changes in future years, SB 379 is primarily restricted to ORS Chapter 112 and other conforming amendments.

One of the more significant changes made by SB 379, found in Section 29, is the adoption of the doctrine of “harmless error”. This doctrine was developed in effect to address a situation where mistakes were made in the execution of a will, a codicil, or a written revocation of a will, and would thus render the document ineffective. SB 379 creates a process whereby a proponent of a document may present evidence to the court to demonstrate the decedent’s intent to adopt the document.

**Practice Tip:**

The standard of review to establish harmless error is clear and convincing evidence. This high standard may address some fears that practitioners may have about increased litigation.

Another important change is found in Section 27, addresses children conceived posthumously – embryos that exist outside of a person’s body at the time of the decedent’s death and are later implanted. Under the bill, a child conceived from genetic material of a decedent who died before the transfer of the genetic material into the body of another is not entitled to an interest in the decedent’s estate unless several conditions are met including some provision in the decedent will or trust that provides for posthumous conception.

Among other changes, the bill also addresses several domestic partnership issues, including clarifying the rights of a child adopted after domestic partners marry.

A full report of all changes proposed and made in SB 379 can be found on the website for the [Oregon Law Commission](#).

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### 5. [HB 2467](#) (Ch. 85) Early Withdrawal of Annuity

HB 2467 grants the Department of Consumer and Business Services the authority to establish rules that would regulate the use of “surrender charges” levied against consumers who make early withdrawals from an individual deferred annuity. The bill took effect immediately for rule making purposes, and applies to contracts entered into or renewed on or after January 1, 2016.

# 9

Matthew Raeburn  
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## Energy and Sustainability

### I. INTRODUCTION

### II. ENERGY AND SUSTAINABILITY

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| 2. HB 2941 | (Ch. 556) | Solar Photovoltaics  |
| 3. HB 2193 | (Ch. 312) | Energy Storage Systems   |
| 4. HB 2585 | (Ch. 249) | Planned Community or Condominium Use of<br>Electric Vehicle Charging Stations          |
| 5. SB 533  | (Ch. 147) | Permits Bicyclist or Motorcyclist to Proceed at Stop<br>Light Under Certain Conditions |

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## ENERGY AND SUSTAINABILITY

### I. INTRODUCTION

This chapter includes bills affecting the Public Utility Commission and the utility industry in general, as well as bills related to transportation. Unless otherwise noted, all bills take effect on January 1, 2016.

### II. ENERGY AND SUSTAINABILITY

#### 1. [SB 324](#) (Ch. 4) Repeal of Sunset on Low Carbon Fuel Standards

S.B. 324 repealed a 2015 sunset provision for Oregon’s Low Carbon Fuel Standard – a.k.a. the “Clean Fuels Bill.” The Low Carbon Fuel Standard, which became law in 2009, is intended to increase transportation vehicles use of biofuels and other alternatives. As a result, gasoline is blended with biofuels, such as ethanol, to reduce the amount of greenhouse gas (GHG) emissions per unit of fuel energy.

Besides repealing the sunset provisions, SB 324 enacts rulemakings by the Oregon Environmental Quality Commission (the “Commission”) that extend until 2025 – and potentially even later – the timeframe by which GHG emissions per unity of fuel energy in fuels must be 10% below 2010 levels. Because of concerns from regulated parties that insufficient alternative fuels will be affordable and available to meet the standard, new measures also aim to make compliance achievable and less costly. For example, SB 324 adds liquefied petroleum gas as an acceptable fuel that affected entities can use to help meet the standard.

The new law also requires the Commission to make rules that facilitate fuel credit trading and that exempt importers of less than half-a-million gallons of gasoline or diesel annually. Further, the Commission must set clear criteria, using ASTM or EN standards, for determining which biodiesel-containing fuels qualify as alternatives under the standard. Fuels used only for certain transport purposes – including construction vehicles, watercraft, and railroad locomotives – are also exempt under the new law. Typical farm vehicles were already exempt under the law.

SB 324 took effect on March 12, 2015.

#### 2. [HB 2941](#) (Ch. 556) Solar Photovoltaics

The enacted HB 2941 authorizes the Public Utility Commission (PUC) to decide whether electric utilities must provide solar photovoltaic (solar PV) generated electricity among the rate options available to those utilities’ customers. PUC’s decision-making process will be based on public comments, hearings, and market research. PUC’s conclusions must be presented to the legislature by September 2016. They will include detailed policy recommendations, including a recommendation for the “most effective, efficient and equitable approach” to encouraging solar PV energy’s development and use in Oregon.

In its deliberative process, PUC will evaluate programs that create incentives for solar PV projects. Considerations for the potential solar PV programs the PUC will evaluate include: the programs' benefits and costs for participating and non-participating customers; programs' efficiency and effectiveness; and whether any evaluated program should be modified, discontinued, or neither.

HB 2941 also directs the PUC, before November of this year, to make recommendations on the best attributes and preferred program design – including eligibility criteria – of community solar programs. Community solar programs are those in which electricity consumers share benefits and costs. For community solar, PUC will make its recommendations to the legislature in light of: ratepayers' access to community solar; costs to community solar program users and nonusers; and electric utilities' potential role in community solar.

HB 2941 took effect on June 25, 2015.

**3. [HB 2193](#) (Ch. 312) Energy Storage Systems**

HB 2193, as passed into law during the legislature's 2015 session, gives Oregon's Public Utility Commission (PUC) authority to require electric utilities serving at least 25,000 retail customers to procure energy storage systems. Energy storage systems help utilities handle peak demand periods during the normal fluctuations in customers' daily demand for electricity.

The amount of electricity available to customers over a short time period is relatively fixed. Even more, Oregon's wind and solar-generated renewable energy creates intermittent amounts of electricity, depending on weather conditions and other factors. But storage systems can hold and convert energy back into electricity, which lets utilities better respond to demand fluctuations.

Under HB 2193, electric utilities will be able to increase customers' rates to recover the costs of storage systems. The PUC must adopt guidelines for utilities to use in submitting proposals for energy storage systems before 2017. Each electric utility must submit at least one proposal for a storage project to the PUC before 2018.

HB 2193 took effect on June 10, 2015.

**4. [HB 2585](#) (Ch. 249) Planned Community or Condominium Use of Electric Vehicle Charging Stations**

HB 2585 amends HB 3301, passed in 2013, to clarify that an electric vehicle (EV) charging station in a planned community, such as condominiums, is personal property owned by a condo's or lot's individual owner. The EV charging station must be for the owner's personal use. The EV charging station's owner must remove it before selling the lot unless the prospective buyer accepts ownership of and responsibility for it. Although the new law establishes, as a rule, that an EV station on a lot in a planned community is the lot owner's

## ENERGY AND SUSTAINABILITY

personal property, the lot owner and the community's governing association may negotiate an alternative arrangement. That said, the 2013 law bars community governing associations from outright prohibiting condo or lot owners from installing EV charging stations on their individual units.

HB 2585 took effect on June 4, 2015.

5. [SB 533](#) (Ch. 147) **Permits Bicyclist or Motorcyclist to Proceed at Stop Light Under Certain Conditions**

Oregon joins a minority of states that let bicyclists and motorcyclists cautiously proceed at red lights during certain traffic situations. Specifically, if a bicyclist or motorcyclist comes to a red light and:

- 1) The rider's vehicle is not picked up by a vehicle detection device; and
- 2) The vehicle detection device completes a full cycle without detecting the rider, then the rider may carefully proceed through the intersection.

If a rider proceeds without obeying this and other applicable traffic laws, such as deference to pedestrians with right-of-way, then the rider has committed a Class B violation.

# Financial Institutions

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## VI. MISCELLANEOUS

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| 1. SB 693 | (Ch. 240) | Cash Purchases of Scrap Metals |
|-----------|-----------|--------------------------------|

**Kenneth Sherman:** 1974 Gonzaga University School of Law. Member of the Oregon State Bar since 1974.

## FINANCIAL INSTITUTIONS

### I. INTRODUCTION

The 2015 Oregon Legislature enacted a number of measures that will directly impact financial institutions doing business in Oregon. Among other highlights, these bills updated the Oregon Bank Act and Credit Union chapter, created new deposit account authority for small estate affiants and foster children, clarified laws regulating mortgage loan originators and consumer finance lenders, broadened the protection of consumer personal information, and brought Oregon into line with the other West Coast states with respect to Uniform Commercial Code financing statements.

Except where otherwise noted, the bills listed below take effect on January 1, 2016.

### II. FINANCIAL INSTITUTION GOVERNANCE

#### 1. [SB 582](#) (Ch. 458) Credit Union Act Amendments

This bill makes a number of changes to [ORS Chapter 723](#), which governs Oregon credit unions. The measure modifies the rules under which an Oregon credit union may establish or change its place of business in Oregon. Credit unions are no longer required to apply to the Department of Consumer and Business Services (DCBS) to open additional branches, or to pay a fee for the opening of an additional office. The credit union is only required to provide 30 days' advance notice to DCBS before opening a branch. However, DCBS retains the power to limit or restrict new branching upon a determination that the addition would adversely affect the credit union's safety and soundness.

With respect to credit union membership, the bill also provides that "immediate family" includes a member's foster parent or legally appointed guardian.

Finally, the bill grants new authority to Oregon credit unions to pay directors and supervisory committee members reasonable compensation for their services, and to reimburse them and other committee members for expenses incurred while on official business.

#### 2. [HB 2350](#) (Ch. 244) Oregon Bank Act Amendments

This measure updates the Oregon Bank Act ([ORS chapters 706 - 716](#)). Most of the changes are technical rather than substantive. Among other things, the bill:

- Updates the statutes governing the opening and closing of bank branches, replacing the requirement for an application and Department of Consumer and Business Services (DCBS) approval with a notice requirement. DCBS retains the authority to limit or restrict a bank's branching if it would adversely affect the institution's safety or soundness;

- Narrows the definition of “trust business” in [ORS 706.005](#) to “acting as a trustee of a trust.” The prior definition included acting as a fiduciary as defined in [ORS 125.005](#); acting as a personal representative as defined in [ORS 111.005](#); acting as a receiver, trustee, or assignee for the benefit of creditors; or acting in a court-appointed position of trust or any other position of trust. [ORS 709.030](#) generally limits the transaction of trust business to trust companies. The prior definition of “trust business” raised questions about the activities of some fiduciaries who are not trust companies;
- Modifies the statutes governing the registration of names of banking institutions;
- Requires that all incorporators of institutions be individuals, and that the board of an institution consist of not less than 5 individuals; and
- Modifies statutes governing the payment of stock subscriptions and in-kind capital contributions.

HB 2350 took effect on June 4, 2015.

### **III. DEPOSIT ACCOUNTS**

#### **1. [HB 2889](#) (Ch. 471) Savings Accounts for Foster Children**

Sponsored by the House Committee on Human Services and Housing, this measure finds that children age 12 or older who are in Department of Human Services (DHS) custody are entitled to DHS assistance in establishing a savings account in a financial institutions, for reasons enumerated in the bill.

Accordingly, DHS is to promulgate and administer rules under which the department will assist such children to establish savings accounts.

The measure does not define “savings account”. Presumably that detail will be addressed in the department rules. The term should be defined so as to exclude checking and other transaction accounts.

Neither this measure nor the DHS rules may require any financial institution to establish an account for a child. That decision will be left to the institutions, but the bill encourages financial institution participation with a provision shielding participating institutions from liability for establishing such accounts or permitting children to make deposits and withdrawals. The measure further provides that notwithstanding any other law, a child who is 12 or older and in DHS custody for at least 6 consecutive months may enter into a legally binding contract with a financial institution to establish and maintain a savings account.

## FINANCIAL INSTITUTIONS

No consent of the child's parent, guardian, foster parent, or other person is needed to establish the account, and such persons will not be liable on the deposit account contract unless they are party to the contract. Such persons will not be entitled to be parties on or have access to information concerning accounts created under this bill unless authorized in writing by the child.

The bill authorizes DHS to monitor these accounts to insure continuation of receipt of government benefits by or for the child account holders.

### Practice Tip:

Since the enforceability of deposit contracts entered into by children under this bill turns on (a) the child being at least 12 and (b) the child having been in DHS custody for at least 6 consecutive months, financial institutions that elect to accounts under this measure should develop procedures for confirming that these requirements have been met.

## 2. [HB 2893](#) (Ch. 137) Savings Promotion Raffles

This measure adds a new section to the Oregon Bank Act ([ORS chapters 706 - 716](#)) permitting financial institutions to conduct savings promotion raffles within Oregon. "Savings promotion raffle" is defined as a contest in which a financial institution or its agent offers a chance for an individual member or depositor to win a designated prize by depositing a specific amount into the member/depositor's account within a specific time period.

This new authority comes with a few caveats. Institutions may not:

- Use savings promotion raffles in selling or promoting any products or services other than deposit accounts;
- Predetermine a winner or other outcome in the raffle;
- Permit any institution director, officer, employee, or agent to participate;
- Arbitrarily remove, disqualify, disallow, or reject applications to participate;
- Fail to award the prize offered;
- Disseminate false, misleading, or deceptive statements regarding the raffle; or
- Require any entry fee or other promise or payment to participate in the raffle (except that institutions may enforce minimum deposit requirements and minimum deposit periods and may charge fees and other amounts ordinarily charged to customers who don't participate in the raffle.)

In addition, institutions offering such raffles must ensure that all who participate have an equal opportunity to submit or receive entries for the raffle.

The bill specifically preempts local jurisdictions from enacting ordinances and other rules that would limit or restrict the offering of these raffles.

This measure took effect May 21, 2015.

**3. [SB 402](#) (Ch. 146) Accounts for Small Estate Affiants**

This measure creates express authority for financial institutions (banks and credit unions under [ORS 706.008](#)) to open deposit accounts with funds of a decedent for whom an affiant has filed a small estate affidavit under [ORS 114.505 - 114.560](#). The bill provides that once such an account is opened, the affiant may withdraw funds by check, draft, negotiable order of withdrawal, or otherwise for the payment of claims and expenses pursuant to [ORS 114.545\(1\)\(d\)](#).

The measure provides that a financial institution that opens accounts for affiants under the bill will not be liable to any other person for opening or permitting affiant withdrawals from the account; and is not required to insure the proper application of decedent's funds paid out by the affiant.

An amendment was added to the bill at the request of the Oregon Department of Human Services (DHS) and the Oregon Health Authority (OHA), which allows small estate affiants who are approved by DHS or OHA to convey real or personal property in a small estate to a third party where the decedent's heir or devisee will not join in the conveyance. The amendment further provides that property conveyed under [ORS 114.545](#) is subject to liens and encumbrances against the decedent or decedent's estate, but is not subject to rights of the decedent's creditors or to liens or encumbrances against the decedent's heirs or devisees.

## **IV. LENDING**

**1. [HB 2532](#) (Ch. 87) Marketing Reverse Mortgages**

Beginning January 1, 2016, this measure will require certain lenders who offer "reverse mortgages" to include certain information in their advertisements, solicitations, and other communications intended to induce applications for reverse mortgages.

HB 2532 does not apply to "financial institutions" (banks and credit unions - see [ORS 706.008](#)), consumer finance "licensees" (see [ORS 725.010](#)) or mortgage bankers or mortgage brokers (see [ORS 86A.106](#)).

"Reverse mortgage" is defined as "a 'residential mortgage transaction' (mortgage or other security interest in a 1-4 residential unit property - see definition in [ORS 86A.100\(8\)](#)) in which the lender provides loan proceeds to a borrower in a lump sum or in monthly

## FINANCIAL INSTITUTIONS

installments with the expectation that the borrower will repay the loan from the proceeds of a sale or transfer of the real property that secures the loan.”

The additional information that must be provided under this measure is a “clear and conspicuous summary of the terms of the reverse mortgage”, that, at a minimum, discloses provisions under which:

- At the end of the term, some or all of the equity will no longer belong to the borrower, who may need to dispose of the property to repay the loan or repay out of other assets;
- The lender will charge an origination fee, mortgage insurance premium, closing costs, or servicing fees, some or all of which may be added to the loan balance;
- The loan balance will grow over time due to the addition of accruing interest;
- The borrower retains title to the mortgaged property during the loan term, and is thus responsible for payment of property taxes, insurance, maintenance, and related taxes, which if not paid may accelerate the loan; and
- Interest accruing on the loan is not deductible to the borrower until repaid.

This measure took effect on May 18, 2015.

### 2. [HB 2832](#) (Ch. 633) **Student Loan Disbursement and Management**

Public and private post-secondary educational institutions sometime contract with “third party financial firms” (a business that contracts with educational institutions to provide disbursement and management services of financial aid funds) to disburse student financial aid. This bill focuses on the management of such funds remaining after tuition and fees have been deducted and paid to the institution. The contract between the educational institution and the third party financial firm governs the student’s access to these excess funds, which are to be used to pay student expenses such as room and board and books.

The bill responds to complaints about access to the funds and fees charged for such access. It requires institutions to evaluate their third party financial firm contracts, using recommendations from the U.S. Department of Education and the Consumer Financial Protection Bureau. It also prohibits revenue sharing between the institution and the third party financial firm, as well as the use of certain other fees related to disbursement of funds, such as per-use transaction fees on a debit card, account inactivity fees, and fees for initial disbursement by means of a paper check or electronic funds transfer.

The bill further requires that educational institution-third party financial firm contracts be made public (including posting on the institution’s website).

3. [HB 3239](#) (Ch. 165) “Aggie Bond” Lender Expansion

In 2013, the Oregon Legislature, the State Treasurer, and the Oregon Business Development Department collaborated to establish the Oregon “Aggie Bond” program to facilitate the making of low-interest loans to beginning Oregon farmers. The only lenders that could participate in the program were those insured by the Federal Deposit Insurance Corporation (FDIC). This bill opens up the definition of “lender” to include anyone selling agricultural land to a beginning farmer, an institution organized under the federal Farm Credit Act, and other persons defined by rules of the Oregon Business Development Department.

This measure took effect May 26, 2015.

4. [HB 3244](#) (Ch. 431) Residential Loan Payoff Statements

This measure provides that as a general rule, “borrowers” and their agents may rely on “payoff statements” to establish the balance owing under a “real estate loan agreement” other than a construction loan.

The definitions in section 1 sharply define the scope of the bill:

- “Real estate loan agreement” includes only loans secured by Oregon “residential property” (real property on which is situated 4 or fewer dwellings, 1 of which is the borrower’s residence);
- “Borrower” is limited to individuals who are obligated on a real estate loan agreement;
- “Lender” means a person that makes, extends, or holds a real estate loan agreement, including mortgagees, beneficiaries, assignees, and successors in interest; and
- “Payoff statement” is defined as a written statement that sets forth, as of the date the lender prepares the statement, amounts a borrower must pay to fully satisfy the borrower’s obligation under a real estate loan agreement.

The general rule authorizing reliance on a payoff statement will not apply after a lender prepares and delivers an amended statement.

If an amount owed by the borrower under a real estate loan agreement does not appear in the payoff statement or amended payoff statement and the borrower or borrower’s agent timely satisfies the obligation set forth in the payoff statement by submitting the amount specified in the statement, requesting the lender to close any related line of credit and requesting an [ORS 86.100](#) certificate or an [ORS 86.720](#) reconveyance, the lender will only be permitted to recover the additional amount as an unsecured obligation or by foreclosing a security interest in other property.

This measure took effect June 16, 2015.

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### 5. [SB 85](#) (Ch. 48) Seismic Rehabilitation

This measure authorizes local governments to set up programs assisting owners of multifamily, commercial, and industrial properties in the seismic rehabilitation of their properties. The programs may either provide for the local government to make rehabilitation loans funded by the sale of revenue bonds, or may facilitate private financing of rehabilitation. Local governments may not make loans under these programs unless the property owner has given notice to and received consent from existing mortgagors. Loans made under the programs will be secured in the same manner as and with the same priority as a lien for assessments for local improvements.

This measure took effect May 4, 2015.

### 6. [SB 278](#) (Ch. 490) Unlicensed Lenders – Consumer Finance Lending

This measure amends the Consumer Finance Chapter ([ORS Ch. 725](#)) by providing that if when a person made a consumer finance loan of \$50,000 or less, and the lender did not have a DCBS license issued under chapter 725, then the loan is void and neither the lender nor any successor may deposit the borrower’s check, withdraw from the borrower’s account, or otherwise collect, receive, or retain any principal, interest, or any other charge on the loan. An exception is made for loans made by a licensee when the license had lapsed inadvertently or by mistake.

“Consumer finance loan” is defined in [ORS 725.010](#) as “a loan or line of credit that is unsecured or secured by personal or real property and that periodic payments and terms longer than 60 days.”

The bill also amends [ORS 725.020](#) to make a parallel change regarding payday and title loans.

This measure took effect June 18, 2015.

### 7. [SB 368](#) (Ch. 291) Judicial Foreclosure Judgments

Revisions made in 2003 and 2007 to the Oregon statutes on judgments lead to unintended interpretations of the new statutes, specifically where judges include the entry of a money award in judicial foreclosure cases. Where the judgment discharges the obligation, as is the case where the security is a residential deed of trust, the inclusion of a money judgment will violate the discharge injunction.

SB 368 clarifies that the writ of execution in a foreclosure action is not required to include a money award in all circumstances. The bill also requires the sheriff to deliver the proceeds obtained at an execution sale to the court administrator, and it permits, subject to certain requirements, that a judgment creditor in a foreclosure action may bid on the foreclosed property, either prior to or at the sale. The judgment creditor's bid is limited to the amount owing under the money award if the judgment contains a money award, or the amount declared in the judgment if there is no money award.

This bill took effect June 8, 2015.

**8. [SB 462](#) (Ch. 538) Debtor's Name on UCC Financing Statement**

In 2012, the Oregon legislature enacted [HB 4035](#) (chapter 12, 2012 Oregon Laws), which made a series of amendments to Uniform Commercial Code [\(UCC\) Article 9](#) that had been recommended by the National Conference of Commissioners on Uniform State Laws (NCCUSL). One of these changes amended [ORS 79.0503](#), dealing with the sufficiency of a financing statement.

As to the name of an individual debtor on the statement, NCCUSL offered two alternative approaches: (1) Alternative A, which required use of the debtor's name as shown on the debtor's unexpired Oregon driver license or Oregon identification card, if the debtor had such a license or card; and (2) Alternative B, which permitted the use of the driver license or ID card name, the debtor's individual name or the debtor's surname and first personal name. In HB 4035, the 2012 legislature incorporated Alternative B into [ORS 79.0503](#).

Since 2012, the NCCUSL amendments to Article 9 have been enacted in almost all of the states, 45 of which have opted for Alternative A in amending their versions of [UCC 9-503](#). Alternative A states include all of the states surrounding Oregon.

SB 462 further amends [ORS 79.0503](#) by substituting Alternative A for Alternative B. The bill also contains transition amendments to phase in this change for financing statements perfected under the prior version of this statute.

The bill took effect June 22, 2015.

**9. [SB 879](#) (Ch. 677) Mortgage Loan Originators**

Generally, under [ORS 86A.203](#), individuals in Oregon are prohibited from engaging in business as a mortgage loan originator without being licensed as a mortgage loan originator. An exception is made for individuals who as sellers during any 12-month period, offer or negotiate terms for not more than 3 residential mortgage loans secured by dwellings that were not the individual's residence. SB 879 expands this exception to cover situations where the dwelling(s) are owned by a limited liability company of which the individual and family members are the members, provided that certain conditions concerning activities of the LLC are met.

## FINANCIAL INSTITUTIONS

SB 879 also modifies the attorneys' exemption from the licensing requirement, providing that an attorney will not need a license to negotiate terms of a residential mortgage loan in representing a client where the attorney does not receive compensation from a mortgage banker, mortgage broker, mortgage loan originator, or lender, unless the compensation is from a client who has an exemption from the licensing requirement.

### V. FINANCIAL RECORDS AND INFORMATION

#### 1. [HB 2415](#) (Ch. 129) Access to Customer Financial Records

[ORS 192.583 - 192.607](#) limits state and local government access to financial institution customer records. This bill adds a provision to the series, creating a new exception to the general rule that state and local government agencies may not request, and financial institutions may not disclose, customer financial records or information contained in them without customer consent or a summons, subpoena, or other appropriate order.

Under HB 2415, at any time after an individual dies, the Oregon Department of Human Services (DHS) or the Oregon Health Authority (OHA) may give a financial institution a written notice and request identifying the decedent, stating the decedent received public or medical assistance that is subject to reimbursement, and requesting that the financial institution disclose whether the decedent held (alone or with others) any deposit accounts in the institution, and if so, the date of death balance in each account. The request may also ask for:

- The name of each person to whom the institutions has paid out funds from the account since the depositor's death;
- The record of account activity during the 30 days leading up to the date of the customer's death;
- A copy of any affidavit the institution has received under [ORS 708A.430](#) or [723.466](#) (which permit institutions to pay our decedents' funds in some circumstances); and
- The identification and any contact information the institution has on other owners of the account.

DHS or OHA is required to reimburse the financial institution for its reasonable costs and expenses in responding to the agency request, as provided in [ORS 192.602](#).

2. [SB 601](#) (Ch. 357) “Personal Information” Under Consumer ID Theft Protection Act

This bill expands the definition of “personal information” in the Oregon Consumer Identity Theft Protection Act ([ORS 646A .600 - .628](#)), requiring those who gather such information to protect a more extensive list of information from security breaches. Newly included are:

- “Data from automatic [*Note: perhaps should be ‘anatomic’ or ‘anatomical’*] measurements of a consumer’s physical characteristics, such as an image of a fingerprint, retina or iris, that are used to authenticate the consumer’s identity in the course of a financial transaction or other transaction”;
- A consumer’s health insurance policy number or health insurance subscriber identification number in combination with any other unique identifier; and
- Any information about a consumer’s medical history or mental or physical condition or about a health care professional’s medical diagnosis or treatment of the consumer.

The bill also requires that the Attorney General be notified of security breaches that affect more than 250 consumers. Violations of the act are newly labeled as unlawful trade practices, enabling prosecuting attorneys to bring enforcement actions under [ORS 646.632](#). The measure updates other elements of the Act, including providing for the expanded use of the last four digits of certain numbers.

## VI. MISCELLANEOUS

1. [SB 693](#) (Ch. 240) Cash Purchases of Scrap Metals

The 2009 Oregon legislature enacted legislation prohibiting cash purchases of certain valuable metals, requiring payment by paper check in such transactions. SB 693 expands the payment options to include payment by electronic funds transfer, stored value card, or other stored value device.

**FINANCIAL INSTITUTIONS**

# 11

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## Health Law

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## I. INTRODUCTION

This chapter covers legislation impacting the regulation and the provision of care by health care professionals and health care facilities. Additionally this chapter contains bills relating to insurance, Medicare, and various public health programs. Unless otherwise stated, all bills take effect on January 1, 2016.

## II. HEALTH CARE PROFESSIONALS

### 1. [HB 2024](#) (Ch. 542) Oral Health Prevention

Directs Oregon Health Authority, in consultation with coordinated care organizations and dental care organizations, to adopt rules and procedures for training, certification, and reimbursement of health workers to provide oral disease prevention services.

HB 2024 became effective on June 25, 2015 and applies to services provided on or after July 1, 2016.

### 2. [HB 2028](#) (Ch. 362) Clinical Pharmacy Services

The bill creates a new provision in [ORS Chapter 689](#) permitting licensed pharmacists to engage in the practice of clinical pharmacy in accordance with rules adopted by the State Board of Pharmacy. The bill amends [ORS 689.005](#) to establish definition of ‘practice of clinical pharmacy’ and ‘clinical pharmacy agreement’.

Specifically, subject to an agreement between a pharmacist or pharmacy and a health care organization or a physician, the bill authorizes a pharmacist to provide patient care services including but not limited to post-diagnostic disease state management services, to optimize medication therapy and to promote disease prevention and the patient’s health and wellness. The bill permits health plan Oregon Health Authority and coordinated care organizations to reimburse pharmacists for provision of services under specified circumstances.

HB 2028 took effect on June 11, 2015.

### 3. [HB 2300](#) (Ch. 819) Treatment for Terminal Disease (“Right To Try”)

This bill creates new provisions permitting an attending physician of a terminally-ill patient, under certain circumstances, to refer the patient to a health care practitioner for treatment with an investigational product not yet approved by the United States Food and Drug Administration. The bill specifies that the referral must be for treatment purposes related to the terminal disease of the qualified patient who, in the attending physician’s judgment, is acting voluntarily and without coercion.

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The bill requires specific notifications to the patient including but not limited to notification of their terminal disease, the attending physician's prognosis for the patient, that the investigational product to be used in treating the patient is not FDA- approved and may not be effective in treating the patient. In addition, the bill requires patient notification of each known potential risk associated with receiving the treatment and that the patient may be required to pay the costs of manufacturing and administering the treatment and that the patient must waive liability in order to receive the investigational treatment.

The bill requires the Oregon Health Authority (OHA) to adopt rules for the collection of information from those who make a referral, administer treatment, and serve as consulting physicians. The bill requires OHA to review annually a sample of record of patients treated under the provisions of the bill and to prepare a statistical report to the Legislative Assembly on or before February 1 of every odd-numbered year.

HB 2300 became effective on January 1, 2016 and sunsets on January 2, 2022.

### 4. [HB 2305](#) (Ch. 78) Polysomnographic Technologists

HB 2305 permits individuals to apply for polysomnographic technologist license who are actively credentialed as a registered polysomnographic technologist by the Board of Registered Polysomnographic Technologists, have passed the registered polysomnographic technologist examination, and have completed the required combined education and training program.

### 5. [HB 2307](#) (Ch. 79) Conversion Therapy

Conversion therapy involves an effort by a mental health professional to attempt to change a person's sexual orientation or gender identity. It is a controversial practice which is opposed by various professional organizations but supported by certain groups, including some religious organizations.

With the passage of HB 2307, Oregon became the third state in the country to prohibit conversion therapy by mental health professionals for individuals under 18 years of age. The ban applies to any licensed professional providing mental health care or social health counseling, including psychologists, social workers, marriage and family therapists, and counselors, among others.

HB 2307 also amends various licensing board statutes to permit discipline to be imposed on any licensee who violates the conversion therapy ban.

**Practice Tip:**

In other states, conversion therapy bans have been challenged based on arguments for freedom of speech and religion and the right of a parent to make medical decisions for a child. HB 2307 may be challenged based on those theories. Mandatory reporters, including lawyers, who become aware of conversion therapy taking place should consider their mandatory child abuse reporting duties.

HB 2307 went into effect on May 18, 2015.

6. [HB 2363](#) (Ch. 81) **Documentation in Facility Record of Seclusion of Person with Mental Illness**

HB 2363 amends [ORS 426.072](#), part of Oregon's civil commitment laws, by requiring a hospital or nonhospital facility and a treating physician to document the seclusion of a person who is being held involuntarily. The law adds seclusion to the existing requirement to document the use of mechanical restraints.

This bill became effective on May 18, 2015.

7. [HB 2419](#) (Ch. 318) **Health Care Interpreters; Health Care Data Reporting; Qualifications for Public Health Officer; References to Blue Mountain Recovery Center; References to Office for Oregon Health Policy and Research; Driving Under the Influence of Intoxicants Screening Interviews and Treatment Programs**

Health Care Interpreters: HB 2419 amends [ORS 413.550](#) et seq. to expand the health care interpreter requirements to expressly include individuals who communicate in sign language and expanded the health care interpreter certifications eligible for reciprocity. The bill also changes both the composition of, and manner of appointment of members to, the Oregon Council on Health Care Interpreters. As amended by HB 2419, the council membership now consists of up to 15 individuals appointed by the Director of the Oregon Health Authority, whereas the statute used to consist of 25 members appointed by the Governor.

Health Care Data Reporting: HB 2419 expands the nature of ambulatory surgery and inpatient discharge data to include information regarding each patient's race and ethnicity, primary language, and disability.

Qualifications for Public Health Officer: HB 2419 amends the qualification of the Public Health Officer to include physicians certified by the board of a primary care clinical specialty, rather than limiting such certification to the American Board of Preventive Medicine, and to require at least two years of experience working for a local, state, or federal public health authority.

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References to Blue Mountain Recovery Center: The Blue Mountain Recovery Center closed in March 2014, with all remaining patients transferred to the Oregon State Hospital. HB 2419 removed all references to Blue Mountain Recovery Center in the Oregon Revised Statutes given their obsolescence.

References to Office for Oregon Health Policy and Research: HB 2419 repealed the Oregon Health Policy and Research Advisory Committee and replaced statutory references to the Office of Health Policy and Research with references to the Oregon Health Authority.

Driving Under the Influence of Intoxicants Screening Interviews and Treatment Program: [ORS 813.010](#) et seq. contained numerous references to “diagnostic assessment”, despite the fact that the term is never defined within the statute. HB 2419 deleted the references to “diagnostic assessment” and replaced each such use with “screening interview”, which is described as the process used to determine the appropriate placement of an individual in a treatment program.

### **8. [HB 2642](#) (Ch. 722) Board Certified Advanced Estheticians**

HB 2642 establishes a new board for Certified Advanced Estheticians within the Health Licensing Office. Certified advanced estheticians may perform "advanced nonablative esthetics procedures," which are defined as nonablative procedures performed on the skin or hair using a laser or other FDA-registered device. Procedures include skin rejuvenation, body contouring, hair removal, and nonablative tattoo removal. Certified advanced estheticians must have a referral agreement with a physician, nurse practitioner, or licensed health care professional who works in the same location and has prescribing authority.

Qualified applicants must be estheticians in good standing with the Board of Cosmetology who have completed an esthetics education program and passed an examination. Currently practicing estheticians may apply by showing experience and education until January 1, 2018.

The Board of Certified Advanced Estheticians will be composed of five certified advanced estheticians, two physicians or physician assistants licensed by the Oregon Medical Board or nurse practitioners licensed by the Board of Nursing, and two public members. Terms are four years. The section manager of the Oregon Health Authority's Radiation Protection Services Section will be a nonvoting ex officio board member.

HB 2642 took effect on July 20, 2015.

**9. [HB 2796](#) (Ch. 632) Music Therapy Licensure**

HB 2796 defines “music therapy” and “music therapist”. The bill directs the Health Licensing Office to issue a license to practice music therapy to a qualified applicant and prescribes minimum qualifications. The bill prohibits the practice of music therapy or use of title “music therapist” by a person without a music therapy license.

This bill became effective on July 1, 2015 and new licensure provisions become operative January 1, 2016.

**10. [HB 2876](#) (Ch. 373) Surgical Technologists**

HB 2876 defines surgical technology and prohibits a health care facility from allowing a person without appropriate qualifications to practice surgical technology. The bill allows a health care facility in a rural or medically underserved community to allow a person who does not meet the requirements of the bill to practice surgical technology for up to three years while the person attends an accredited educational program. The bill does not apply to licensed health care practitioners practicing within the scope of their license.

This bill became effective on June 11, 2015 and new requirements become operative January 1, 2016. Health care facilities in rural or medically underserved communities are exempt from the requirements until January 1, 2017.

**11. [HB 2879](#) (Ch. 649) Prescribing Contraceptives by Pharmacists**

HB 2879 expands the ability to access contraceptives across Oregon but does not go so far as to make contraceptives available over-the-counter. HB 2879 amends [ORS 689.005](#) to permit a pharmacist to prescribe and dispense hormonal contraceptive patches and self-administered oral hormonal contraceptives to a person who is:

- At least 18 years of age and that can provide evidence of a clinical visit for women’s health within the past 3 years; or
- Under 18 years of age, only if the person has evidence of a previous prescription from a primary care practitioner or women’s health care practitioner for a hormonal contraceptive patch or self-administered oral hormonal contraceptive.

The State Board of Pharmacy must adopt rules to establish standard procedures for the prescribing of contraceptives by pharmacists and require pharmacists to complete training.

The bill became effective on July 6, 2015.

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### 12. [HB 2880](#) (Ch. 62) Fluoroscopy by Physician Assistants

HB 2880 creates a certification to allow physician assistants to practice fluoroscopy in Oregon. Physician assistants must complete an approved educational course, pass a fluoroscopy examination, and apply for a certificate from the Oregon Board of Medical Imaging (OBMI). Fluoroscopy must be among the medical duties delegated to the physician assistant by the supervising physician in the practice agreement filed with the Oregon Medical Board. Once certified by the OBMI, a physician assistant may only practice fluoroscopy with the supervising physician or a radiologic technologist in the fluoro room at the same time. These new provisions are added to and made a part of [ORS 688.405 to 688.605](#), the Medical Imaging Practice Act.

HB 2880 came into effect on May 12, 2015. The provisions outlined above become operative January 1, 2016.

### 13. [HB 2948](#) (Ch. 473) Protected Health Information

HB 2948, also known as the Susanna Blake Gabay Act, amends [ORS 192.553 through 192.581](#) to clarify the instances in which a provider may disclose protected health information (PHI) to a friend, family member, or other party involved in an individual's care. The bill closely parallels the disclosures to third parties permitted under the Health Insurance Portability and Accountability Act (HIPAA), and expressly permits providers to disclose information (including behavioral health information) to: (i) a person identified by the individual, provided the PHI is directly relevant to the person's involvement with the individual's health care; or (ii) a family member, a personal representative of the individual, or another person responsible for the care of the individual to notify the person of the individual's location, general condition or death.

The bill permits, but does not require, the aforementioned disclosures if the individual is not present or is otherwise unable to consent to the disclosure and the provider, in the exercise of professional judgment, determines that the disclosure is in the best interests of the individual.

HB 2948 also permits disclosure when the individual is present and the provider receives express or tacit consent to disclose PHI to another person. Lastly, the bill also permits a provider to disclose PHI if the provider believes, in good faith, that such disclosure is necessary to prevent or lessen a serious threat to the health or safety of any person or the public, provided the information is disclosed only to a person who is reasonably able to prevent or lessen the threat.

This bill went into effect on June 18, 2015.

**14. [HB 3149](#) (Ch. 112) Medical Orders for New Students**

HB 3149 allows a school's registered nurse to accept orders from a physician licensed to practice medicine in a state other than Oregon if the order is for the care or treatment of a student who has been enrolled at the school for fewer than 90 days. This provision is added to and made a part of [ORS 678.010 to 678.410](#), the Nurse Practice Act.

**15. [HB 3476](#) (Ch. 265) New Type of Privileged Communication**

HB 3476 establishes in the evidence code a new category of privileged communication that cannot be disclosed without consent of the victim. Communications between a certified advocate employed by a qualified victim services program and a victim of domestic violence, sexual assault, or stalking are confidential in criminal, civil, and administrative proceedings as well as in disciplinary proceedings at universities that have at least one student with an Oregon Opportunity Grant.

HB 3476 became effective on June 4, 2015 but applies only to proceedings occurring on or after October 1, 2015.

**16. [SB 71](#) (Ch. 481) Prescription Monitoring Program**

The Prescription Monitoring Program is a web-based system for Oregon's licensed retail pharmacies to submit data on prescriptions for all Schedule II, III, and IV controlled substances. These are drugs identified by the federal government as having low to high potential for abuse and psychological or physical dependence. Pharmacies are required to notify the Oregon Health Authority within a specific timeline following the dispensing of any such medication. SB 71 reduced the time period for pharmacies to report to the Oregon Health Authority on the dispensing of such medications from one week to 72 hours.

**17. [SB 152](#) (Ch. 18) Prescriptive Authority of Optometrists**

The bill amends the definition of 'practice of optometry' in [ORS 683.010](#) to include authority to prescribe Schedule II hydrocodone combination drugs for purposes within the existing optometric scope of practice.

SB 152 went into effect on March 30, 2015.

**18. [SB 282](#) (Ch. 345) Prohibited Use of "Nurse" Title**

SB 282 prohibits use of the title of "nurse" unless the individual has earned a nursing degree or a nursing certificate from an accredited nursing program and are licensed by a health professional regulatory board, as defined in [ORS 676.160](#), to practice in a health care profession in which their nursing certificate was earned.

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Upon the death of any person who is licensed by a health professional regulatory board, the executors of the decedent's estate, or their heirs, assigns, associates, or partners, may only retain the use of the decedent's name, where it appears other than as part of an assumed name for up to one year after the decedent's death or until the estate is settled.

### 19. [SB 283](#) (Ch. 452) Prohibited Use of "Advanced Practice Registered Nurse"

SB 283 amends [ORS 678.010 to ORS 678.410](#). This legislation requires that in order to use the title "Advanced Practice Registered Nurse" or the abbreviation "APRN", an individual must be a clinical nurse specialist, a nurse practitioner, or a certified registered nurse anesthetist as it is defined in [ORS 678.245](#).

### 20. [SB 284](#) (Ch. 346) Prohibited Use of Nursing Assistant Title

SB 284 prohibits an individual from using the title "Certified Nursing Assistant," "nursing assistant" or "nurse aide" or the abbreviation "CNA" unless the individual is certified as a nursing assistant by the Oregon State Board of Nursing. The bill allows some students to use title "student nursing assistant.", and it allows certain individuals newly employed at a nursing facility to use title "nursing assistant" or "nurse aide" for up to 120 days after hire.

### 21. [SB 285](#) (Ch. 347) Prohibited Use of Medical Aide Title

SB 285 prohibits an individual from using the title "medication aide" or "Certified Medication Aide" or the abbreviation "CMA" unless the individual is a certified nursing assistant and has completed training and is authorized by the Oregon State Board of Nursing to administer noninjectable medication. The bill allows some students to use the title "student medical aide."

### 22. [SB 298](#) (Ch. 491) Therapeutic Touching

SB 298 excludes high-velocity, short-amplitude manipulative thrusting from definition of massage, massage therapy, or bodywork, and excludes community colleges and accredited colleges and universities from definition of "massage facility." The bill increases number of class hours required for licensure as massage therapist or bodyworker.

SB 298 applies to applications for massage therapists received by the Board of Massage Therapists after January 1, 2016.

### 23. [SB 301](#) (Ch. 349) Expanded Practice Dental Hygienist

SB 301 amends [ORS 680.205](#) to permit an expanded practice dental hygienist to refer a patient or resident to a dentist who is available to treat the patient or resident in accordance with criteria specified in the expanded dental practice hygienist's required written agreement with an Oregon licensed dentist. Previously, an expanded practice dental hygienist was required

to refer a patient or resident to a dentist at least once each calendar year. SB 301 also expands the definition of "dental hygiene" in [ORS 679.010](#) to specifically include "prediagnostic risk assessment."

This bill became effective on June 10, 2015.

**24. [SB 302](#) (Ch. 15) Prescription Drugs in Dentistry**

The bill amends the definition of 'dentistry' and 'dental hygiene' in [ORS 679.010](#) to include prescribing, dispensing, and administering prescription drugs for certain conditions and services within each scope of practice.

A recent Assistant Attorney General opinion held that the Oregon Dental Practice Act did not expressly authorize dental hygienists to prescribe drugs. Prior to issuance of the opinion, dental hygienists prescribed and dispensed fluorides and certain antimicrobial solution and agents in accordance with Board of Dentistry administrative rule. The letter opinion further suggested that dentist authority to prescribe was unclear. This bill provides prescription authority for both professions.

SB 302 went into effect on March 23, 2015.

**25. [SB 520](#) (Ch. 295) Administration of Vaccines by Pharmacists**

SB 520 decreases from 11 to 7 years the minimum age of patients to whom pharmacists may prescribe and administer vaccines. The statute amends [ORS 689.645](#) and directs the State Board of Pharmacy to adopt rules implementing this change in age prior to January 1, 2016.

**26. [SB 594](#) (Ch. 297) Common Core Credentialing Program**

SB 594 grants the Oregon Health Authority additional time to implement its electronic Common Core Credentialing Program (CCCP) which was authorized in 2013. Until such electronic system is operational, health care providers are not required to submit credentialing information to the CCCP.

Once the CCCP is established, it will serve as a central repository for credentialing information needed by health plans, facilities, and other entities required to credential providers. Duplication of effort will be reduced if not eliminated.

Meanwhile, HB 594 requires that OHA shall issue a request for proposal, work on methodical implementation, and report back to the Legislature by February 1, 2016.

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### 27. [SB 606](#) (Ch. 842) Dental Pilot Projects

SB 606 extends the dental pilot projects authorized by the Legislature in 2011 to continue until January 2, 2025. The bill appropriates \$100,000 to fund the programs, and allows dental service providers in approved programs to be reimbursed through medical assistance programs.

This bill went into effect on August 12, 2015.

### 28. [SB 684](#) (Ch. 582) License to Practice Medicine for Distinguished Professors

SB 684 amends [ORS 677.132](#) to create a new category of licensure for physicians who are considered highly distinguished in their area of practice. To qualify for the new license issued by the Oregon Medical Board (OMB), the applicant physician must be licensed in another state or country, have received a full-time appointment as a professor of medicine at an Oregon medical school, be a member of at least two medical specialty societies, and have authored at least two published medical papers. These licensees may practice medicine only in conjunction with a full-time appointment as a professor of medicine. The license is only valid as long as the physician maintains the full-time appointment.

The OMB must ensure that at least two of these licenses are available each year, but the OMB may not issue more than eight such licenses in a four-year period.

SB 684 took effect on June 25, 2015, and the provisions outlined above become operative January 1, 2016.

### 29. [SB 832](#) (Ch. 798) Behavioral Health Homes

SB 832 obligates the Oregon Health Authority to implement standards for coordinated care organizations regarding “behavior health homes,” which are defined as a “mental health disorder or substance use disorder treatment organization . . . that provides integrated health care to individuals whose primary diagnoses are mental health disorders or substance use disorders.”

The bill will require coordinated care organizations to integrate behavioral health services and physical health services in patient centered primary care homes and behavioral health homes. To promote this integration of behavior health and physical health services, the bill will allow providers in patient centered primary care homes and behavior health home to use billing codes applicable to both behavioral health and physical health services that are provided.

SB 832 amends [ORS 413.260](#), various sections of [ORS Chapter 414](#) and [ORS 442.210](#). The bill became effective on July 27, 2015.

**30. [SB 840](#) (Ch. 461) Licensed Independent Practitioners as part of Civil Commitment Process**

SB 840 amends Oregon's civil commitment laws to add certified nurse practitioners who are authorized to write prescriptions to the list of professionals who are authorized to place holds on allegedly mentally ill persons and to provide treatment to them. Previously only physicians could perform these functions (known as the "two physician hold"). Various statutes are amended to allow "licensed independent practitioners," including physicians and nurse practitioners, to perform functions within the civil commitment process.

Among other purposes, these amendments are intended to address situations, generally in emergency departments, in which delays in detention and treatment occur because two physicians are not available.

SB 840 went into effect on June 16, 2015.

### **III. HOSPITALS AND HEALTH CARE FACILITIES**

**1. [HB 2023](#) (Ch. 466) Discharge Planning after Mental Health Treatment**

HB 2023 requires a hospital to adopt and enforce policies for the discharge of a patient hospitalized for mental health treatment, which may result in better coordination of care and connection to support systems at the time of discharge. Such policies must be publically available and include the following:

- a. Encouraging the patient to sign an authorization to permit the disclosure of information necessary for a lay caregiver (which includes parents of minor children in certain situations) to participate in discharge planning and to provide appropriate support to the patient following discharge;
- b. Assessing the patient's risk of suicide, with input from the lay caregiver if appropriate;
- c. Assessing the long-term needs of the patient including need for community-based services, capacity for self-care, and care within patient's residence;
- d. A process to coordinate the patient's care and transition the patient from an acute care setting to outpatient treatment that may include community-based providers, peer support, lay caregivers, and others who can execute the patient's care plan following discharge; and
- e. Scheduling follow-up appointments for not later than seven days after discharge or documenting why the seven-day goal could not be met.

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### 2. [HB 2413](#) (Ch. 241) Residential Facility Market Study

HB 2413 removes a required market study as a factor that the Department of Human Services (DHS) shall consider prior to approving a license of a residential facility under [ORS 443.420](#) and makes conducting a market study a requirement of a license applicant prior to receiving an approved license from DHS.

This bill went into effect on June 2, 2015.

### 3. [HB 2551](#) (Ch. 133) Protected Health Information Safeguards

HB 2551 requires insurers and health care facilities to file an annual protection of health information report signed by the chief executive officer that affirms that deficiencies in controls, breaches, and steps taken to address identified issues have been disclosed to the entity's governing board. Insurers must file the report with the Department of Consumer and Business Services, and health care facilities (including hospitals and long-term care facilities) must file the report with the Oregon Health Authority.

### 4. [HB 2930](#) (Ch. 63) Admitting Privileges for Nurse Midwives

This bill requires that rules adopted by a hospital which grants privileges to licensed registered nurses who are certified by the Oregon State Board of Nursing as nurse midwife nurse practitioners must:

- Include admitting privileges;
- Be consistent with privileges of other medical staff members; and
- Permit the nurse midwife to exercise voting rights of the other members of the medical staff.

These rules are subject to hospital and medical staff bylaws and rules governing credentialing and staff privileges.

### 5. [HB 3139](#) (Ch. 142) Mobile Medical Clinics

HB 3139 allows a nonprofit mobile medical clinic to be located on private property for up to 6 months. The bill defines mobile medical clinic as a vehicle or mobile structure that is designed to provide and actively provides medical, dental, or nursing services to the public. The bill prohibits a local government from prohibiting a nonprofit mobile medical clinic from locating on private property with the owner's permission and staying in that location for 180 days or less.

6. [HB 3230](#) (Ch. 740) **Community-based Structured Housing**

HB 3230 defines community-based structured housing as congregate housing, excluding residential care or treatment, where services and support are provided by the owner or operator of the facility to assist residents who have mental, emotional, behavioral, or substance use disorders. The bill requires community-based structured housing facilities to register with the Department of Human Services (DHS) and Oregon Health Authority (OHA) if they meet certain conditions, and requires that DHS and OHA establish standards for the facilities.

The bill prohibits the owner or operator of such a facility from retaliating against a person who files a complaint or is interviewed about a complaint.

HB 3230 became effective on July 20, 2015.

7. [HB 3378](#) (Ch. 263) **Hospital Discharge Planning and Lay Care Givers**

HB 3378 requires hospitals to adopt written discharge policies requiring assessment of a patient's post-hospital needs and giving the patient the opportunity to designate a lay caregiver. The policies require written documentation of discharge planning, including assessment of the patient's individual needs, notice to a lay caregiver of discharge or transfer of the patient, and details of the discharge plan.

8. [SB 307](#) (Ch. 839) **Residential Facilities**

SB 307 requires residential facilities to have written policies and procedures in place whereby residents may request staff member of same sex as resident to assist him or her with activities of daily living. The facility must grant the request unless it is unable to do so, in which case it must give written notice to the resident of the reason for the denial.

SB 307 requires residential facilities to have grievance procedures in place whereby a resident may challenge any requirement of [ORS Chapter 101](#) with which facility fails to comply. The bill establishes timelines for response and investigation.

SB 307 expands the definition of "residential facility" to include continuing care retirement community.

9. [SB 469](#) (Ch. 669) **Nurse Staffing Plans**

SB 469 makes changes to requirements for hospital nursing staffing, including requiring each hospital to establish a hospital nurse staffing committee and prescribing the makeup of that committee. The bill requires the committee to develop a written hospital-wide staffing plan, establishes requirements for those plans, and requires the plans to be reviewed by the staffing committee at least once every year. The bill prescribes factors the committee must consider when reviewing a staffing plan. SB 469 exempts a hospital from following the staffing

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plan during a national or state emergency requiring implementation of a disaster plan; during unforeseen adverse weather conditions; or during an infectious disease epidemic suffered by hospital staff.

The Oregon Health Authority (OHA) must be notified if the committee is unable to reach an agreement on a staffing plan, and OHA must provide a mediator to assist the committee in reaching an agreement. If the committee is unable to reach an agreement after 90 days of mediation, OHA may impose a penalty against the hospital. The bill establishes a nurse staffing advisory board within OHA, consisting of 12 members appointed by the Governor, to provide advice on administration of nurse staffing laws as well as to identify and make recommendations to OHA on trends, opportunities, and concerns related to nurse staffing.

SB 469 amends requirements for shift changes and replacement staff, and requires OHA to audit every hospital once every three years to verify compliance with nurse staffing laws. The bill prescribes a process for handling complaints about nurse staffing requirement violations.

This bill went into effect on July 6, 2015.

### 10. [SB 474](#) (Ch. 391) **Ownership of Dental Practices by Non-Profits**

SB 474 amends the corporate practice of dentistry statutes. [ORS 679.020](#) generally restricts the ownership, operation, conduct, and maintenance of an Oregon dental practice, office or clinic to persons licensed as dentists by the Oregon Board of Dentistry, with exceptions for certain labor organizations, the School of Dentistry of Oregon Health and Science University, public universities, local governments, certain educational and training institutions and programs, and certain nonprofit organizations.

SB 474 creates an additional exception for nonprofit charitable corporations that qualify for tax-exempt status under section 501(c)(3) of the Internal Revenue Code and that are determined by the Oregon Board of Dentistry to have an existing program that provides medical and dental care to medically underserved children with special needs at an existing single fixed location or multiple mobile locations.

SB 474 was intended to enable the Providence Specialty Pediatric Dental Clinic, which is owned by a nonprofit corporation, to continue to serve children with developmental, medical and behavioral disabilities.

The bill became effective on June 11, 2015.

### 11. [SB 505](#) (Ch. 496) **Influenza Vaccine in Hospitals**

The bill simply requires hospitals to offer from October 1 to March 1, subject to availability, an influenza vaccine to all patients over age 65 for whom the vaccine is not contraindicated.

**12. [SB 900](#) (Ch. 845) Health Care Price Information Website**

SB 900 will require the Oregon Health Authority to post on its website price information data, including median prices paid to hospitals and hospital outpatient clinics, for the 50 most common inpatient procedures and 100 most common outpatient procedures. The data will be reported by “reporting entities” as such term is defined in [ORS 442.464](#), which include insurers, health care service contractors that issue medical insurance, licensed third party administrators, pharmacy benefit managers or fiscal intermediaries, coordinated care organization, and Medicare Advantage plans.

The data will be updated at least annually and the bill authorizes the Oregon Health Authority to solicit gifts and donations to pay for the cost of posting the data.

SB 900 went into effect on August 12, 2015.

#### **IV. INSURANCE**

**1. [HB 2234](#) (Ch. 100) Child Abuse Medical Assessments**

HB 2234 requires that health benefit plans and the Oregon Health Plan reimburse a community assessment center for:

- Services related to conducting a child abuse medical assessment of a child who is eligible for medical assistance; and
- Expenses related to child abuse medical assessment, including, but not limited to, a forensic interview, and mental health treatment.

The bill requires health benefit plans and the Oregon Health Authority to adopt billing and payment mechanisms to guarantee that reimbursements are proportionate to the scope and intensity of services offered by the community assessment center.

HB 2234 became effective on May 20, 2015.

**2. [HB 2466](#) (Ch. 515) Transitional Plans; Insurance Code Technical Changes**

HB 2466 makes multiple changes to align the state Insurance Code with federal law. Among these changes the bill:

- Allows for renewals of transitional health benefit plans before January 1, 2016 for employers between 50-100 and exempts those renewed plans from certain small group market rules that would otherwise apply in 2016 when the small group definition changes from 1-50 to 1-100 employees;

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- Exempts carriers from requirement that they actively market health benefit plans sold to bona fide associations, grandfathered health plans, qualified health plans sold on the exchange, and health insurance policies which may be delivered without approval of the Department of Consumer and Business Services (DCBS);
- Requires DCBS to establish by rule a method for determining whether an employee is considered an eligible employee and whether an employer is a small employer. The method must be consistent with federal requirements for the Small Business Health Options Program;
- Changes font size requirements for policies;
- Amends definition of small employer to align with federal definition. Changes miscellaneous other definitions;
- Authorizes DCBS to prescribe requirements by rule for premium rates for grandfathered health plans;
- Allows a carrier to complete a standard health statement prescribed by DCBS for limited purposes;
- Requires a carrier to issue to a group any of the carrier's group health plans offered by the carrier for which the group is eligible;
- Prohibits lifetime limits on grandfathered health plans for essential health benefits; and
- Requires an insurer offering insurance against the risk of economic loss assumed under a less than fully insured employee health plan to annually submit to DCBS the number of covered lives by line of business and zip code.

HB 2466 took effect on June 22, 2015, but some provisions become operative January 1, 2016.

### 3. [HB 2468](#) (Ch. 59) Network Adequacy

HB 2468 establishes standards for the adequacy of provider networks maintained by health insurers on the individual and small group markets. The bill requires that insurers must contract with or employ a network of providers that is sufficient in number, geographic distribution, and types of providers to ensure that all covered services under the health benefit plan, including mental health and substance abuse treatment, are accessible to enrollees without unreasonable delay. For those plans offered through the health insurance exchange, the network must also include a sufficient number of "essential community providers" to ensure reasonable and timely access for low-income and medically underserved individuals. The definition of "essential community providers" shall be established by the Department of Consumer and Business Services, and such definition must be consistent with how the term is defined for the purposes of the Affordable Care Act. For plans offered outside the exchange, the bill requires plans to contract with or employ sufficient number, geographic distribution and types of providers to ensure access in health professional shortage areas and low-income zip codes.

Each insurer must submit to the Department of Consumer and Business Services, on an annual basis, the insurer's plan for ensuring that the network of providers for each health benefit plan meets the requirements of this section. The bill allows insurer to choose between two different methods for evaluating its network: a nationally recognized standard or a factor-based approach in which the insurer demonstrates that it meets factors related to access, consumer satisfaction, transparency, and quality and cost containment.

The bill also includes language substantially similar to 42 U.S.C. 300gg-5, which dictates that an insurer "may not discriminate with respect to participation under a health benefit plan or coverage under the plan against any health care provider who is acting within the scope of the provider's license or certification in this state." The bill requires rules adopted by the Department of Consumer and Business Services to implement this section, shall be consistent with any federal regulations implementing 42 U.S.C. 300gg-5. Neither the Department of Health and Human Services nor the Department of Labor have yet issued applicable regulations at the time of this writing.

The bill is effective January 1, 2016, but the network adequacy requirements become operative January 1, 2017 and apply to health benefit plans in effect on or after that date.

**4. [HB 2560](#) (Ch. 206) Extended Colonoscopy Benefits**

HB 2560 amends [ORS 743A.124](#), which mandates that health benefit plans cover preventive colonoscopies for individuals 50 to 75 years of age without patient cost sharing. This measure adds to that requirement by requiring health benefit plans to also cover fecal occult blood tests, colonoscopies, and polyp removal for people 50 years of age and up when performed in response to a positive fecal occult blood test.

**5. [HB 2600](#) (Ch. 323) Health Insurance During Family Leave**

HB 2600 relates to group health insurance while an employee is on family leave. Previously, benefits were not required to continue to accrue during a period of family leave unless continuation or accrual is required under an agreement of the employer and the employee, a collective bargaining agreement or an employer policy.

Under HB 2600 if an employee is provided group health insurance, the employee is entitled to the continuation of group health insurance while on family leave on the same terms as if the employee had continued to work. If the family member coverage is provided to the employee, family coverage must also be maintained during the period of family leave. The employee is still required to continue to make any regular contributions to the cost of the health insurance premiums.

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### 6. [HB 2605](#) (Ch. 88) Rate Decision Appeals

HB 2605 alters the Department of Consumer and Business Services (DCBS) rate review process applicable to individual and small group health insurance. The bill requires that DCBS make a preliminary decision regarding a rate filing, and notify the insurer and the public of such preliminary decision. DCBS must then provide the insurer or any person adversely affected or aggrieved by the preliminary decision the opportunity to meet with DCBS to discuss and respond to the preliminary decision. DCBS must issue an order regarding a rate filing within 30 days after the close of the applicable public comment period. The insurer then has ten days to submit a request for reconsideration of the order, and the Department must make a decision on the request for reconsideration within 30 days.

The bill also requires DCBS to convene a work group of stakeholders and DCBS staff to consider modifying the standard for reviewing a rate filing to allow DCBS to disapprove a rate only if the rate falls outside of a range of rates that are: (a) actuarially sound; (b) reasonable and not excessive, inadequate or unfairly discriminatory; and (c) based upon reasonable administrative expenses.

### 7. [HB 2758](#) (Ch. 470) Confidential Communications

HB 2758 allows health plan enrollees to request that their health plan or the third party administrator for the health plan redirect enrollee communications to an alternate address, including physical address, email address, or telephone number. The health plan or third party administrator must act upon the request within 7 days if the request is submitted electronically or within 30 days if the request is received in writing. Any such confidential communications request remains in effect until the enrollees revoke the request in writing or submits a superseding confidential communications request.

To assist members and plans in facilitating such requests, the bill requires that the Department of Consumer and Business Services (DCBS) work with stakeholders to develop a standardized confidential communication request form which advises enrollees of the right to request confidential communications, allows enrollees to specify alternate addresses for communications involving protected health information, and permits enrollees to designate a method of contact if the plan or third party administrator has to follow-up with the member regarding the confidential communication request. DCBS must make this form available to the public by September 18, 2015. Health plans and third party administrators must allow enrollees to use the form developed by DCBS and cannot require enrollees to use a plan-specific form to request confidential communications.

The confidential communication request precludes disclosure of designated communications to the policyholder or certificate holder absent the express written consent of the enrollee, even in instances in which the policyholder or certificate holder wishes to appeal an adverse benefit determination on behalf of the enrollee.

By December 1, 2016, DCBS shall submit a report to the legislature regarding the effectiveness of the confidential communications process, the extent to which enrollees are using the process, and the education and outreach activities conducted by carriers or third party administrators informing individuals about the right to have communications involving protected health information redirected to another address.

The bill took effect on June 18, 2015; however, section 2 applies to health benefit plans issued or renewed on or after January 1, 2016.

**8. [HB 3021](#) (Ch. 218) Electronic Provider Reimbursements**

HB 3021 is intended to increase transparency for providers regarding insurers' payment methods by establishing criteria use of virtual credit card payments or electronic funds transfers when paying claims, instead of sending paper checks or using an electronic funds transfer standard transaction. Use of virtual credit card payments often results in the provider having to pay a percentage-based fee, which reduces the net amount of payment providers receive.

HB 3021 amends [ORS 743.911](#) by specifying that an insurer of a health benefit plan may pay a claim using a credit card or electronic funds transfer payment that imposes a fee or similar charge on the provider (including an employee or designee of a provider who has the responsibility for billing claims for reimbursement or receiving payment on claims) only if: (a) the insurer notifies the provider in advance regarding the fee or charge; (b) the insurer offers the provider an alternative payment method that does not impose a fee or charge; and (c) the provider or the provider's designee elects to accept the payment of the claim using the credit card or electronic funds transfer payment method.

**9. [HB 3301](#) (Ch. 224) Naturopathic Physician Credentialing**

HB 3301 requires an insurer to offer a naturopathic physician the choice of applying to be credentialed as either a primary care provider or as a specialty care provider. An insurer is only required to credential as a primary care provider if the naturopathic physician meets the credentialing requirements established by the insurer for primary care providers.

**10. [HB 3343](#) (Ch. 412) 12-month Supply of Contraceptives**

HB 3343 requires insurers that cover prescription contraceptives to reimburse health care providers or dispensing entities for 3-month supply of contraceptives for the first dispensing period and for a 12-month supply thereafter.

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### 11. [HB 3530](#) (Ch. 832) Vision Care Provider Contracts

HB 3520 prohibits certain contract terms between a vision care provider and an entity that offers vision care insurance or a vision care discount card.

Under the bill, such a contract may not limit or specify the fee that a vision care provider may charge for services that are not reimbursed; require a vision care provider to participate in one plan or program as a condition of participating in another; change the terms, discount, or reimbursement without a signed acknowledgement of the provider; or directly or indirectly restrict or limit a vision care provider's choice of suppliers of materials.

### 12. [SB 1](#) (Ch. 3) Dissolution of Cover Oregon

SB 1 abolishes the Oregon Health Insurance Exchange Corporation (known as Cover Oregon) and transfers powers, rights, obligations, liabilities, functions, and duties to Department of Consumer and Business Services (DCBS). SB 1 does not make any major policy changes to exchange design or operations. For the most part it simply transfers the exchange functions and responsibilities from Cover Oregon to DCBS. The bill abolishes the exchange corporation's board of directors and replaces it with an advisory committee.

The bill requires DCBS to provide notice to the Legislature if it intends to increase an administrative charge or fee on plans sold in the exchange, and requires that exchange operations in DCBS be separate from insurance regulation functions by prohibiting employees who have management responsibilities or decision-making authority for the exchange from having management responsibilities or decision-making authority over insurance regulation.

DCBS must report annually to the Legislature on progress of implementing the Small Business Health Operations Program (SHOP) at scheduled interim committee hearings between September 1, 2015 and June 30, 2017. Requires notification to the Legislature if DCBS requests to procure an informational technology product for SHOP with anticipated costs over \$1 million.

The bill took effect on March 6, 2015. Provisions finalizing the dissolution of Cover Oregon and transfer to DCBS took effect June 30, 2015.

### 13. [SB 93](#) (Ch. 661) 90-Day Supply of Prescription Drugs

SB 93 requires health benefit plan coverage of a 90-day supply of covered prescription drugs under certain conditions. The bill specifies that the required coverage may be limited by contract terms related to reimbursement rate or formulary restrictions related to the drug. The bill specifically exempts Schedule II controlled substances from the 90-day supply dispensing requirement.

**14. [SB 144](#) (Ch. 340) Health Plan Benefits for Telemedicine**

SB 144 expands the circumstances under which telemedicine must be covered by health benefit plans. The bill requires that health benefit plans, including those offered by the Public Employees' Benefit Board and the Oregon Educators Benefit Board, cover health services provided by network providers using synchronous two-way interactive video conferencing regardless of the patient's location when:

- a. The same service would be covered if provided in person;
- b. The service is medically necessary; and
- c. The service can be safely and effectively provided by said video conferencing per generally accepted health care practices and standards.

The technology used must meet all privacy and security requirements. The bill does not require reimbursement of providers or services not included in the health benefit plan.

SB 144 took effect on June 10, 2015, but applies to health benefit plans issued or renewed on or after January 1, 2016.

**15. [SB 153](#) (Ch. 377) Physician Assistant and Nurse Practitioner Reimbursement**

SB 153 amends ORS 743A.036, which pertains to the requirement that health insurers must reimburse primary care and mental health services provided by a licensed physician assistant or certified nurse practitioner in independent practice at the same rate as it reimburses such services provided by a licensed physician.

SB 153 clarifies the definition of "independent practice" to mean a physician assistant or certified nurse practitioners who bills the health insurer for the services using the diagnosis and procedure codes applicable to the services; the physician assistant's or nurse practitioner's own name, and the national provider identifier (NPI) of the physician assistant or nurse practitioner, and, if required by the insurer, the facility in which the physician assistant or nurse practitioner provides services.

**16. [SB 231](#) (Ch. 575) Primary Care Spend Reporting**

SB 231 requires prominent carriers, the Public Employees' Benefit Board, and the Oregon Educators Benefit Board to report to Department of Consumer and Business Services (DCBS) no later than December 31, 2015 on the proportion of total medical expenses allocated to primary care. The bill requires coordinated care organizations to report the same information to the Oregon Health Authority (OHA) no later than December 31, 2015. The bill then require DCBS and OHA to submit a report on primary care spending to the Legislature by February 1, 2016, and requires OHA to convene a primary care payment reform collaborative to

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share best practices in technical assistance and methods for reimbursement that direct great health care resources toward primary care.

SB 231 went into effect on June 25, 2015.

### 17. [SB 523](#) (Ch. 580) **Grace Period for Enrollees of Qualified Health Plans**

This bill amends the Insurance Code to address certain issues left open by the Affordable Care Act concerning the required grace period after an enrollee fails to pay a premium for coverage under a qualified health plan. A qualified health plan is a plan that is certified under [ORS 741.310](#) according to requirements, standards and criteria adopted by the exchange. The grace period is three consecutive months during which coverage under a qualified health plan continues without the payment of premiums by an enrollee. During the grace period, if a health care provider requests from the insurer eligibility information for the enrollee, the insurer is required to inform the health care provider that the enrollee is in the grace period. If the insurer does not do so and terminates coverage for failure to pay premiums, and the health care provider has requested the information not more than seven business days before providing services, the insurer is required to pay a claim for reimbursement for covered service.

#### **Note:**

Section 3(c) contains an additional requirement that the insurer provides the requested information no later than two business days after the request, and it is not clear what if any additional requirement this presents in the context of the bill. The Staff Measure Summary for SB 523B interprets the provision as requiring notice from the insurer to be provided to the health care provider no later than two business days after the request. The provisions of this bill cannot be waived by agreement.

#### **Practice Tips:**

Health care providers need to have a process to deal with enrollees in their grace period. Because a health care provider can receive notice of a grace period two business days after request, for expensive procedures it would be good practice to request eligibility more than two business days prior to the procedure (but not more than seven business days before providing the procedure). Insurers need to implement a process to check if enrollees are in their grace period at the time of an eligibility request by a health care provider and to inform the health care provider that the enrollee is covered by a qualified health plan and is in the grace period.

**18. [SB 710](#) (Ch. 360) Charges for Records for use in Social Security Disability Appeal**

SB 710 requires covered entities (i.e. health care providers, health plans, and healthcare clearinghouses) to provide one copy of individually identifiable health information free of charge to an individual, or the individual's personal representative, if the individual is appealing the denial of Social Security disability benefits. The individually identifiable health information must be provided in paper or electronic format. This bill is intended to decrease the financial burden on individuals appealing the denial of Social Security disability benefits.

This bill became effective on June 10, 2015

**19. [SB 841](#) (Ch. 800) Synchronization of Prescription Drug Refills**

The bill specifies requirements of a health plan prescription drug synchronization program, requiring proration of a prescription drug copayment when a drug is dispensed in less than a 30-day supply. The bill requires health plan reimbursement of partially filled or refilled prescriptions and specifies that requirements apply to health plans issued or renewed on or after January 1, 2017.

The bill specifically exempts unit-of-use packaged drugs, controlled substances, and drugs identified by the US DEA as having a high rate of diversion. The bill requires the Oregon Health Authority to implement a synchronization policy for medical assistance recipients not enrolled in a coordinated care organization and exempts from the bill's requirements pre-paid group practice plans with more than 200,000 enrollees.

**20. [SB 901](#) (Ch. 588) Direct Reimbursement of Providers**

SB 901 requires an insurer to directly pay a reimbursement to a provider who bills the insurer for covered services provided to an individual insured under a health benefit plan, except as provided in [ORS 743.543](#) (benefits under a blanket health insurance policy) and [743.550](#) (pertaining to student health insurance). An insurer may negotiate and enter into contracts for alternative rates of payment with providers to provide services covered by a group health insurance policy and may offer the benefit of such alternative rates to insureds who select such providers.

SB 901 takes effect on January 1, 2016 but new requirements apply to reimbursements paid on claims presented to an insurer on or after January 1, 2017.

## V. MEDICAID AND OTHER PUBLIC HEALTH CARE PROGRAMS

### 1. [HB 2231](#) (Ch. 152) Organizational Provider Credentialing

HB 2231 requires the Oregon Health Authority (OHA) to prescribe standards by rule for determining whether information requested by a coordinated care organization from an organizational provider is redundant. The bill allows coordinated care organizations to request additional information from an organization provider if it is not redundant and is within the scope of the assessment of the provider, and is necessary to resolve questions about whether the provider meets policies and procedures for credentialing. Further, the bill requires OHA to establish a process for resolving complaints by organization providers, and requires OHA establish a database containing the documents required by coordinated care organizations for purposes of credentialing an organizational provider. The database is to be operational by October 15, 2015. OHA is required to submit annual reports to the Legislature on the effectiveness of the database beginning December 31, 2015 and ending January 2, 2020.

This bill went into effect on May 26, 2015.

### 2. [HB 2306](#) (Ch. 467) Limiting Pharmacies to Avoid Overutilization

Allows the Oregon Health Authority to limit, for up to 18 months, the pharmacies from which medical assistance recipient may obtain prescription drugs, if necessary, to avoid overutilization and the recipient meets certain criteria.

HB 2306 became effective on June 18, 2015.

### 3. [HB 2395](#) (Ch. 16) Hospital Provider Tax Extension

HB 2395 extends the sunset date on the hospital assessment, used to partially fund Medicaid, from September 30, 2015 to September 30, 2019. The bill requires the Oregon Health Authority to annually distribute the remainder of any funds in the Hospital Quality Assurance Fund to coordinated care organizations based upon recommendations made by the metrics and scoring committee, described in [ORS 414.638](#). The bill repeals future sunset of [ORS 414.743](#), which establishes requirements for coordinated care organization reimbursement of non-contracted hospitals, extending the requirement indefinitely.

The bill went into effect on March 23, 2015.

### 4. [HB 2638](#) (Ch. 551) Oregon Prescription Drug Program

The Oregon Prescription Drug Program (OPDP) provides drugs at discounts to individuals who have no insurance or whose insurance does not cover their drugs. OPDP also provides discounted drugs for numerous state agencies and private entities. Prior to HB 2638, the Oregon Health Authority was expressly precluded from purchasing prescription drugs through

OPDP, directly or indirectly, for the benefit of recipients of public assistance. HB 2638 deletes this express exclusion, allowing the Oregon Health Authority to participate in OPDP for the benefit of medical assistance recipients.

**5. [HB 2696](#) (Ch. 552) External Quality Reviews**

HB 2696 requires the Oregon Health Authority (OHA) to conduct one annual external quality review of each coordinated care organization. Authorizes OHA to contract with an external quality review organization to conduct the review. The review organization will collect a standard list of documents from each coordinated care organization and its subcontractors that is established by OHA, and OHA will provide the review organization with the information regarding the applicable coordinated care organization OHA has in its possession.

**6. [HB 3464](#) (Ch. 750) Timeframes for Dental Care for Pregnant Women**

HB 3464 requires Oregon Health Authority to adopt rules prescribing time frames within which a pregnant medical assistance recipient whose coverage is reimbursed on a fee-for-service basis receives dental services. The bill requires the OHA to report to the Legislature every year, beginning no later than February 1, 2017, as to whether wait times for pregnant women to be provided dental care are within the timeframes adopted by the authority in rule.

This bill became effective on July 21, 2015.

**7. [SB 233](#) (Ch. 836) Suspension of Medical Assistance for Inmates**

This bill requires Department of Human Services (DHS) and Oregon Health Authority (OHA) to suspend, instead of terminate, medical assistance for any person who resides in a correctional facility or the state hospital. Previously, DHS and OHA were only required suspend benefits if the person were expected to reside in a correctional facility for less than 12 months. SB 233 also requires DHS or OHA to reinstate medical assistance if an individual with suspended benefits is admitted to a medical institution outside the state hospital or a correctional facility for a period of hospitalization.

SB 233 went into effect on August 12, 2015.

**8. [SB 465](#) (Ch. 785) Community Mental Health Programs**

SB 465 allows for community mental health program to be either a county or private entity contracted with the Oregon Health Authority. Requires community mental health program to bear certain costs related to the civil commitment process and to reimburse the county when the county does not operate the community mental health program.

The bill became effective on July 27, 2015.

## HEALTH LAW

### 9. [SB 695](#) (Ch. 792) Continuation of Some Managed Care Organizations

This bill requires the Oregon Health Authority to continue to contract with certain prepaid managed care health services organizations to serve areas of the state not served by a coordinated care organization or individuals not required to be enrolled in a coordinated care organization.

SB 695 became effective on July 27, 2015.

### 10. [SB 833](#) (Ch. 799) Oregon Integrated and Coordinated Care Delivery System

SB 833 amended [ORS 414.652](#) to require the Oregon Health Authority (OHA) to provide Coordinated Care Organizations at least 60 days' advance notice of a proposed amendment to any existing or renewing contract entered into between the parties. Prior to the enactment of this bill, the only limitations on amendments and corresponding notification requirements were those set forth in the underlying contract between OPHA and each coordinated care organization.

The bill went into effect on July 27, 2015.

## VI. PUBLIC HEALTH

### 1. [HB 2546](#) (Ch. 158) E-Cigarettes and Vaping

HB 2546 establishes regulation of e-cigarettes and "vaping" in Oregon by extending many of the restrictions on tobacco sales and use to "inhalant delivery systems." As amended, [ORS 431.840](#) defines an "inhalant delivery system" as "a device [or a component of a device] that can be used to deliver nicotine or cannabinoids in the form a vapor or aerosol to a person inhaling the device" as well as any "substance sold for the purpose of being vaporized or aerosolized" by such a device, but does not include products approved by the FDA approved as a tobacco cessation product or another therapeutic purpose.

HB 2546 makes it illegal to distribute, sell, or allow to be sold inhalant delivery systems to minors, to fail as a retailer to post notices regarding the prohibition on the sale of inhalant delivery systems to minors, and to and distribute, sell, or allow to be sold inhalant delivery systems that are not labeled correctly, that are packaged in a manner attractive to minors, or that are not packaged in child-resistant safety packaging. [ORS 431.845](#), as amended, permits the Oregon Health Authority (OHA) to impose a civil penalty of \$250 to \$1000 per violation of ORS 431.840. OHA must coordinate with law enforcement to conduct random, unannounced inspections of wholesalers and retailers of inhalant delivery systems, as it does for tobacco products. HB 2546 also amends [ORS 163.575](#) to expand "endangering the welfare of a minor" to include knowingly distributing, selling or allowing to be sold an inhalant delivery system to a

minor and [167.401](#) to prohibit possession of an inhalant delivery system by a minor, except in a private residence accompanied by a consenting parent or guardian.

In addition, HB 2546 expands the purview of the Indoor Clean Air Act ([ORS 433.835](#) et seq.) to state that no one may smoke aerosolize or vaporize an inhalant in public places or places of employment. An "inhalant" is defined as "nicotine, a cannabinoid or any other substance" that is in a form that allows and is inhaled for the purpose of delivering the substance into a person's respiratory system and is not approved or emitted by a device approved by the FDA for a therapeutic purpose or, if approved, is not marketed and sold solely for that purpose.

HB 2546 became effective on May 26, 2015.

**2. [HB 2972](#) (Ch. 558) Dental Screenings**

HB 2972 requires a certificate to be submitted for all students seven years old and younger who are beginning an educational program for the first time indicating that the student received a dental screening within the previous 12 months to identify potential dental health problems. The dental screening must have been performed by a licensed dentist, licensed hygienist, or a health care practitioner, education provider's employee, or person trained by the Oregon Dental Director, who acts in accordance with rules adopted by the Board of Education.

HB 2972 allows an exemption for those students who provide a statement from a parent or guardian that the student submitted certification to a prior education provider, the screening is contrary to religious beliefs, or the screening is a burden under rules adopted by the Board of Education. School districts must submit an annual report identifying the number of students who failed to submit the certificate in the prior year. A summary of these reports must be submitted to the interim legislative committees on education and the dental director.

This bill went into effect on June 25, 2015.

**3. [HB 3041](#) (Ch. 162) Use of Sun Protection in Schools**

The bill requires school districts to permit student use of sun-protective clothing and self-application of non-prescription sunscreen. The bill permits school districts to allow, but not require, school personnel to assist in the application of non-prescription sunscreen. The bill exempts non-prescription sunscreen from the definition of 'Medication' in [ORS 339.867](#) (administration of medication in schools and liability of school personnel).

HB 3041 went into effect on July 1, 2015.

## HEALTH LAW

### 4. [HB 3100](#) (Ch. 736) Public Health System Modernization

HB 3100 operationalizes the recommendations of the Task Force on the Future of Public Health Services (the Task Force was created by [HB 2348](#) in 2013.) HB 3100 requires the Oregon Health Authority to determine the foundational capabilities and foundational programs that all local health authorities need to protect and improve the health of Oregon residents.

The Oregon Health Authority's Public Health Division and local public health authorities are required to assess their current ability to implement the foundational capabilities and programs. Local health authorities are required to implement these foundational capabilities and program to the extent that funding is availability. The bill set parameters for how state funds are distributed to local health authorities.

HB 3100 requires that the foundational capabilities include:

- a. Assessment and epidemiology;
- b. Emergency preparedness and response;
- c. Communications;
- d. Policy and planning ;
- e. Leadership and organizational competencies;
- f. Health equity and cultural responsiveness; and
- g. Community partnership development.

The foundational programs must include:

- a. Communicable disease control programs;
- b. Environmental public health programs;
- c. Prevention of injury and disease and promotion of health programs; and
- d. Clinical preventive services.

The bill describes these minimum foundational capabilities and programs in more detail. The Oregon Health Authority may add to the list of foundational capabilities and programs.

HB 3100 became effective on July 20, 2015.

### 5. [SB 227](#) (Ch. 286) Trauma Registry

SB 227 authorizes information from Oregon Trauma Registry to be released to the Oregon Health Authority and to be used to establish a registry of information related to brain injury trauma or for the performance of epidemiological investigations of the causes of and risk factors associated with trauma injuries.

6. [SB 478](#) (Ch. 786) **High Priority Chemicals in Children’s Products**

SB 478 requires the Oregon Health Authority to establish and maintain a list of designated high priority chemicals of concern for children's health used in children's products and to review and revise the list every three years. The list shall include chemicals listed on the Washington Department of Ecology’s Reporting List of Chemicals of High Concern to Children. The bill requires certain manufacturers to disclose use of chemicals on the list that are used in children’s products sold or offered in the state, and requires a manufacturer to remove or substitute the chemical after six years or request a waiver.

SB 478 took effect on July 27, 2015; however, most provisions become operative January 1, 2016. Requires first notices to be submitted by manufactures to the authority by January 1, 2018.

7. [SB 660](#) (Ch. 791) **Dental Sealants**

Pursuant to SB 660, the Oregon Health Authority (OHA) must screen, and ensure the availability of dental sealants to students in elementary and middle schools in which at least 40-percent are eligible to receive assistance under the federal National School Lunch Program. OHA is to directly provide the dental sealant services or, where appropriate, oversee the provision of the dental sealant services by local dental sealant programs. In addition, OHA must adopt rules and procedures for the certification and recertification of local dental sealant programs, the training of program personnel, and the monitoring and collection of data from the programs. Upon determining that a local dental sealant program is capable of providing dental sealant services to students, OHA must develop a plan and assist the schools transition from receiving services from OHA to receiving services from the local dental sealant program. SB 660 appropriates \$200,000 to fund these activities.

The bill went into effect on July 27, 2015.

8. [SB 895](#) (Ch. 802) **Requires Schools and Children’s Facilities to Make Available Certain Information Related to Immunizations**

SB 895 modifies annual reporting requirements by a school or children’s authority to the Oregon Health Authority. Each school and children’s facility must now report on the number of children in the area served by the school or children’s facility who are in attendance at the school or children’s facility conditionally because of an incomplete immunization schedule.

This information must also be provided by the school or children’s facility at the beginning of each school year and not later than one month after the date that children may be excluded. The information must be available at the school or facility’s main office, on its website (if available), and for parents in paper or electronic format.

## HEALTH LAW

SB 895 also requires each local health department to make available to each school and children's facility, in the area served by the local health department, data on the immunization rate, by disease, of children in the area. OHA can assist local health departments in compiling data for purposes of this paragraph, upon request.

Religious exemptions provided before March 1, 2014 are no longer valid and parents will need to provide proof of immunization, provide a medical exemption, or complete the new process for a non-medical exemption.

SB 895 took effect on July 27, 2015. The information required to be available must first be available during the 2015-2016 school year.

## VII. OTHER LEGISLATION

### 1. [HB 2294](#) (Ch. 243) Oregon Health Information Technology Program

HB 2294 requires the Oregon Health Authority (OHA) to establish and maintain the Oregon Health Information Technology Program. Until the passage of HB 2294, OHA could not charge fees for its health information technology services or participate as a voting member on the board of directors of a partnership or collaborative. HB 2294 affords OHA such authority and transitioned many of the duties of the Health Information Technology Oversight Council (HITOC) to the newly created Oregon Health Information Technology Program, including the facilitation of the exchange and sharing of electronic health-related information, engaging in activities necessary to become accredited or certified as a provider of health information technology, entering into agreements with other entities that provide health information technology, entering into partnerships and collaboratives in furtherance of the program's objectives, and imposing fees established by rule for use of the program's services.

[ORS 413.308](#) was amended to reflect the transfer of duties from HITOC to the Oregon Health Information Technology Program. HB 2294 established the HITOC under the Oregon Health Policy Board (OHPB), and directed the Oregon Health Policy Board to determine the terms of members, the organization of HITOC, and to appoint members to the council.

HB 2294 became effective on June 4, 2015 with some provisions becoming operative July 1, 2015.

### 2. [HB 2368](#) (Ch. 82) Advance Directives for Health Care

Under Oregon law, an advance directive is defined as a document that contains a health care instruction or a power of attorney for health care. A health care instruction is a document executed by a principal to indicate the principal's instructions regarding health care decisions, while a power of attorney for health care is a power of attorney document that authorizes an attorney-in-fact to make health care decisions for the principal when the principal is incapable.

Similarly, Oregon also recognizes a declaration for mental health treatment which documents the principal's preferences or instructions regarding mental health treatment.

Prior to the passage of HB 2368, Oregon law failed to identify which document – an advance directive or declaration for mental health treatment – would take precedent when an individual had both types of directives. HB 2368 clarifies that when principal has both a valid advance directive and declaration for mental health treatment, and the documents are inconsistent, the declaration for mental health treatment will govern to the extent of the inconsistency.

**3. [HB 2522](#) (Ch. 717) Premium Assistance Program for COFA Islanders**

This bill requires the Department of Consumer and Business Services to develop recommendations for the creation of a premium assistance program for low-income Compact of Free Association (COFA) islanders to enable them to purchase health benefit plans through the health insurance exchange and to pay the out-of-pocket expenses incurred under the plans. Requires recommendations to be submitted to the Legislature by September 1, 2016.

HB 2522 became effective on July 20, 2015.

**4. [HB 2539](#) (Ch. 821) Women Veterans Medical Services Study**

HB 2539 requires the Department of Veterans' Affairs to enter into a contract to conduct a statewide study regarding the delivery and use of, and barriers to access to, health care and medical services for women veterans and report the results of the study to the Legislature by November 1, 2016.

The bill went into effect on August 12, 2015.

**5. [HB 2828](#) (Ch. 725) Health Care Financing Study**

This bill allows an additional two years for Oregon Health Authority to study and make recommendations to Legislative Assembly on best option for financing health care in the state and appropriates \$300,000 for the study.

## HEALTH LAW

### 6. [HB 2934](#) (Ch. 256) Basic Health Plan Study

HB 2934 requires Oregon Health Authority to convene a stakeholder group to provide recommendations to Legislative Assembly regarding the policy, operational, and financial preferences of the group in the design and operation of a basic health program, in accordance with 42 U.S.C. 18051 and 42 C.F.R. part 600. The bill also requires the authority to report recommendations to the Legislature no later than December 1, 2015.

HB 2934 went into effect on June 4, 2015.

### 7. [SB 440](#) (Ch. 389) Health Care Data and Performance Metrics Strategy

SB 440 requires Oregon Health Policy Board to develop strategic plan for collection and use of health care data and report the plan to the Legislature by September 1, 2016. The bill establishes the Health Plan Quality Metrics Committee, appointed by Governor, to develop health outcome and quality measures for coordinated care organizations and plans offered through the Public Employees' Benefit Board (PEBB), Oregon Educators Benefit Board (OEBB), or health insurance exchange. The bill further require performance metrics to be aligned with the statewide strategic plan for health care data collection and use, and prohibits the Department of Consumer and Business Services (DCBS), PEBB or OEBB from adopted performance metrics other than those identified by the committee. SB 440 requires the committee to report to the Legislature during the 2017 and 2019 regular legislative sessions, and makes the coordinated care organization metrics and scoring committee a subcommittee of the new Health Plan Quality Metrics Committee. Requires appointment of the committee by February 1, 2017. The bill also requires the Oregon Health Authority, PEBB, OEBB and DCBS to implement metrics established by the committee beginning January 1, 2018.

SB 440 went into effect on June 11, 2015.

### 8. [SB 608](#) (Ch. 789) Palliative Care

SB 608 creates the Palliative Care and Quality of Life Interdisciplinary Advisory Council in the Oregon Health Authority, advising the OHA director on matters related to the establishment, maintenance, operation, and evaluation of palliative care initiatives in Oregon. The bill identifies the qualifications and terms of the nine members of the council.

The bill requires OHA to publish on its website information and resources, including links to external resources, about palliative care; and requires hospitals, nursing facilities, and residential facilities to establish a system for identifying patients or residents who could benefit from palliative care and provide them and their families with information about palliative care, and coordinate with their primary care provider, to facilitate access to appropriate palliative care.

9. [SB 672](#) (Ch. 395) **State Dental Director**

SB 672 requires the Oregon Health Authority to appoint a dental director who must: (a) provide recommendations to OHA and other state agencies, individuals, and community providers on how to prevent oral diseases and measures to improve, promote, and protect the oral health of Oregonians, focusing on reducing disparities among underserved populations; (b) make recommendations and report to the Legislative Assembly; (c) monitor, study and appraise the oral health needs and resources of Oregonians; (d) foster the development, expansions and evaluation of oral health services for Oregonians; and (e) develop policies and programs to promote and positively impact oral health. The dental director must be a licensed dentist in good standing with the Oregon Board of Dentistry.

The bill went into effect on June 11, 2015.

10. [SB 839](#) (Ch. 274) **Immunity from Criminal Prosecution for Reporting Medical Emergency**

SB 839 provides immunity from arrest or prosecution from certain crimes to qualifying individuals from criminal prosecution in situations where the person contacts law enforcement agency or emergency medical services to obtain medical assistance for a person who has suffered a drug-related overdose. Likewise a person who themselves is in need of emergency services due to a drug overdose is immune.

The immunity conferred in this bill pertains to the crimes of frequenting a place where controlled substances are used; possession of a controlled substances; and unlawful possession of hydrocodone, methadone, oxycodone, heroin, marijuana or a marijuana product, 3,4-methylenedioxymethamphetamine, cocaine, methamphetamine, and drug paraphernalia with the intent to sell or deliver.

This bill also prohibits a person from being arrested for violating, or being found in violation, of a person's pretrial release, probation, post-prison supervision, or parole if the violation involves controlled substances or frequenting a place where they are used; and the evidence of the violation was obtained because the person contacted emergency medical services or a law enforcement agency to obtain medical assistance due to a drug overdose. Likewise, a person may also not be arrested on an outstanding warrant for any of the above offenses if they contacted law enforcement or medical services as a result of a drug overdose. This law does not apply to outstanding warrants from out-of-state or federal warrants, nor is it grounds for suppression of evidence for offenses not listed in this bill.

For additional information about this bill, please see the Criminal Law Chapter.

## HEALTH LAW

### 11. [SB 844](#) (Ch. 844) Medical Marijuana

SB 844 creates a task force responsible for studying and making a report on the development of a medical cannabis industry that provides patients with medical products that meet individual patient needs and modifies the expungement requirements for marijuana offenders under the age of 21. In addition, this bill amends the Oregon Medical Marijuana Act to now permit an organization that provides hospice, palliative or home health care services, or a residential facility as defined in [ORS 443.400](#) that has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition may be designated, in addition to an individual designated pursuant to the Act ([ORS 475.312](#)), as an additional caregiver for a registry identification cardholder in the same manner that an individual is designated as the primary caregiver for a registry identification cardholder under the act.

SB 844 became effective on August 12, 2015.

### 12. [SJM 4](#) Alcohol and Drug Abuse Patient Records

Through Senate Joint Memorial 4, the Legislative Assembly urges Congress to pass legislation to better align 42 C.F.R. Part 2, which protects the confidentiality of alcohol and drug abuse patient records, with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) by allowing health care providers to share alcohol and drug treatment information, while maintaining protections against disclosure and discrimination. The strict requirements of 42 C.F.R. Part 2 currently are a barrier to coordination of care. New legislation should allow states to maintain strong confidentiality protections and still deliver coordinated care and administer electronic health records. According to the Legislative Assembly, "the rapid pace of health reform, coupled with ongoing state and federal initiatives to implement health information technology systems presents exciting opportunities for the prevention, treatment and recovery fields as efforts are made to increase communication and collaboration within the health care system."

# Juvenile Law

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## I. INTRODUCTION

This chapter contains bills effecting the juvenile delinquency process, including the disposition of children in the custody of the Oregon Youth Authority. The chapter also covers juvenile dependency bills, including bills related to the provision of services to youths, adoption, placement and foster care, and procedural requirements for juvenile court proceedings. Unless otherwise stated, bills take effect on January 1, 2016.

## II. DELINQUENCY BILLS

### 1. [HB 2313](#) (Ch. 509) Youth Offender Records

HB 2313 amends [ORS 419A.257](#) to Authorize the Oregon Youth Authority and county juvenile departments to disclose and provide copies of reports and other materials relating to a child, ward, youth or youth offender's history and prognosis to the Department of Corrections for the purpose of exercising custody or supervising a person committed to the department's legal and physical custody.

HB 2313 became effective on June 22, 2015.

### 2. [HB 2320](#) (Ch. 820) Juvenile Delinquency Sex Offender Registration

HB 2320 numerous statutes all of which govern various aspects of sex offender registration requirements for juveniles. Under HB 2320, juveniles adjudicated of sex offenses will no longer be required to report as a sex offender upon adjudication; rather, a hearing to determine the obligation to report will be held within six months prior to the end of jurisdiction, with the burden of proof remaining on the youth offender, and juveniles have a right to counsel at the hearing. HB 2320 lists relevant factors for the court to consider, describes the evaluation, treatment, and polygraph records that the court must review, and requires that records to be considered are provided to the court and parties at least 15 days prior to the hearing. Section 35 of the bill also allows a person residing out of state to apply for relief from registration in the Oregon county where he or she was adjudicated of a felony sex offense.

HB 2320 took effect on August 12, 2015.

**3. [SB 405](#) (Ch. 293) Disclosure of Offender Records by OYA**

SB 405 further delineates the circumstances under which the Oregon Youth Authority (OYA) may disclose information relating to youth offenders committed to the Oregon Youth Authority. Specifically the bill clarifies that the OYA may disclose the same information about youths as juvenile courts and county juvenile departments could disclose. This bill corrects a legislative oversight from 2013 that called into question OYA's ability to disclose this information.

SB 405 took effect on June 8, 2015.

**4. [SB 321](#) (Ch. 234) Compulsory School Attendance**

SB 321 amends [ORS 339.030](#), [339.020](#), [339.030](#), and 339.115 to decrease the age of compulsory school attendance from seven years of age to six years of age. A child is six years of age for the purposes of school attendance if the child's sixth birthday occurred on or before September 1 immediately preceding the current school year.

SB 321 will take effect on July 1, 2016.

**5. [SB 448](#) (Ch. 175) Transfer of Delinquency Cases to Tribe**

SB 448 amends [ORS 419C.058](#) to allow the Presiding Judge of the 7th Judicial District (Wasco, Hood River, Sherman, Gilliam, and Wheeler Counties), with the approval of the Chief Justice of the Supreme Court, to enter into a memorandum of understanding with the Confederated Tribes of Warm Springs regarding adjudication and disposition of youths and youth offenders. The statute was originally adopted in 2003, allowing such a transfer of adjudication for the 22nd Judicial District (Jefferson and Crook Counties).

**6. [SB 475](#) (Ch. 671) Education for Youths in Custody**

SB 475 amends [ORS 326.695](#), [327.023](#), [336.580](#), and [339.137](#), by providing that all students in youth care centers within a juvenile detention facility are to receive educational services through the Juvenile Detention Education Program. The purpose of this change is to ensure that all students within a detention facility will receive education services in the same manner.

SB 475 took effect July 6, 2015.

### III. DEPENDENCY BILLS

1. [HB 2232](#) (Ch. 153) **Support Services for Certain Youth**

HB 2232 amends [ORS 417.799](#) and tasks the Department of Human Services (DHS) with appointing an advisory committee to advise DHS with respect to policies and procedures for serving runaway and homeless youth and their families. DHS is required to report annually to the legislative committees on child welfare regarding the system of services available to this population.

HB 2232 took effect on May 26, 2015.

2. [HB 2233](#) (Ch. 706) **Residential Care for Children**

HB 2233 tasks DHS with the creation of an advisory committee within the Office of Adult Abuse Prevention and Investigation (OAAPI) to advise the agency on issues involving residential care for children, youth and youth offenders that are served by OAAPI.

HB 2233 took effect on July 20, 2015.

3. [HB 2365](#) (Ch. 511) **Adoptions**

HB 2365 is the result of an Oregon Law Commission work group on adoption records. The bill updates and revises adoption and re-adoption laws to provide clarification and consistency.

The bill took effect on June 22, 2015. For additional information about this bill, please see the Domestic Relations chapter.

4. [HB 2414](#) (Ch. 200) **Voluntary Adoption Registries**

HB 2414 amends numerous statutes including the voluntary adoption registry statutes. The bill permits parents or guardians of minor adoptees or minor genetic siblings of adoptees to use and register with voluntary adoption registries and persons who may request searches of voluntary adoption registries and information that may be disclosed.expands the list of persons who may request searches of voluntary adoption registries and information that may be disclosed.

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

5. [HB 2889](#) (Ch. 471) **Savings Accounts for Foster Children**

HB 2889 creates new provisions requiring the Department of Human Services (DHS) to assist foster children who are 12 years old or older in the custody of DHS for a minimum of six consecutive months to establish a savings account at a financial institution defined in [ORS 706.008](#). Financial institutions are not required to establish a savings account for a child. The bill provides that the child may contract with a financial institution to deposit and save money, and that the contract may not be voided based on the child's minority.

6. [HB 2890](#) (Ch. 472) **Extracurricular Activities for Foster Children**

HB 2890 is made a part of [ORS chapter 419B](#). The bill requires DHS to ensure that the substitute care provider for child or ward in custody of DHS provides opportunities for the child or ward to participate in at least one ongoing extracurricular activity based on availability and interests of the child or ward. Substitute care providers must apply the reasonable and prudent parent standard when determining the child's or ward's participation. The bill also defines the reasonable and prudent parent standard and extracurricular activities.

7. [HB 2908](#) (Ch. 254) **Implementation of the Preventing Sex Trafficking and Strengthening Families Act of 2014**

HB 2908 amends several statutes and brings Oregon into compliance with a new federal law, HR 4980, the Preventing Sex Trafficking and Strengthening Families Act.

The bill requires the Department of Human Services to ensure that providers of care for wards in substitute care follow the reasonable and prudent parent standard and that wards have regular, ongoing opportunities to engage in age-appropriate or developmentally appropriate activities. When court decides to continue child or ward in substitute care, the bill requires that the court make certain findings for a ward 16 years of age or older with a permanency plan of another planned permanent living arrangement. The bill requires that the court review the comprehensive plan for the ward's transition to successful adulthood and to make certain findings when the ward is 14 years of age or older. The bill changes the term "independent living" to "successful adulthood" in permanency plan hearings and determinations, and limits permanency placements in another planned permanent living arrangements to children or wards 16 years of age or older.

HB 2908 took effect on October 1, 2015.

## JUVENILE LAW

### 8. [HB 3014](#) (Ch. 216) Grandparent Rights

HB 3014 amends [ORS 419B.875](#) and [419B.876](#) to expand the definition of the term “grandparent” for purposes of juvenile dependency and termination of parental rights proceeding to “legal parent of the child’s or ward’s legal parent, regardless of whether the parental rights of the child’s or ward’s legal parent have been terminated under [ORS 419B.500](#) to [419B.524](#).”

This Act takes effect January 1, 2016 and applies to juvenile dependency proceedings pending or commenced on or after January 1, 2016.

### 9. [SB 222](#) (Ch. 776) Appearance by Attorney in Juvenile Court Proceedings

SB 222 extends the sunset date established in [HB 4156](#) (2014) of the provision authorizing DHS to appear as party in juvenile court proceedings without appearing through an attorney. Under [ORS 9.320](#) the State of Oregon must appear by attorney in all court cases; in this case through the Attorney General. As a practical matter, this has not always happened and DHS caseworkers have frequently appeared in dependency cases without counsel.

Under SB 222, the temporary authorization for DHS to appear without counsel will continue until June 30, 2018; after which the Department will have to have Attorney General representation in all proceedings.

This bill took effect on July 27, 2015.

### 10. [SB 375](#) (Ch. 121) Declarations Under Penalty of Perjury

SB 375 amends [ORS 109.767](#), the UCCJEA statute, to require that the first pleading in a child custody proceeding must include an affidavit or a declaration containing required information such as the child’s present address and places where the child has lived in the last 5 years.

The bill also amends [ORS 419B.367](#) to require that the annual written report required to be filed by guardians contain an affidavit attesting to the accuracy of the report or a declaration under penalty of perjury immediately above the signature line of the guardian.

SB 375 took effect on May 20, 2015.

**11. [SB 590](#) (Ch. 176) Appointment of Court Visitors for Minor Respondents in Guardianship Proceedings**

SB 590 amends [ORS 419A.255](#) and Section 12, Chapter 417, Oregon Laws 2013 and directs the court to appoint a court visitor for a minor respondent in a guardianship proceeding where the minor is more than 16 years old and the court determines there is the likelihood that the petition seeking guardianship for the respondent as an adult will be filed before respondent attains the age of majority or as an adult.

**12. [SB 622](#) (Ch. 179) Mandatory Reporting of Abuse**

SB 622 amends [ORS 124.050](#), [124.075](#), [419B.005](#), [430.735](#), [430.753](#) and [441.630](#). The bill adds personal support workers and home care workers to list of mandatory reporters of abuse of children, elderly persons and other vulnerable persons.

**13. [SB 659](#) (Ch. 393) Community Based Care for Children**

SB 659 creates new provisions requiring the Department of Human Services to assist a child's noncustodial parent, who resides in Oregon, in obtaining services for the parent's child when the child is visiting the noncustodial parent for at least six consecutive weeks.

**14. [SB 741](#) (Ch. 795) Placement of Children**

SB 741 directs Department of Human Services to adopt administrative rules for home studies and placement reports in adoption proceedings that require that equal consideration be given to relatives and current caretakers as prospective adoptive parents, and that greater consideration be given to relatives and current caretakers as compared to other persons who are not relatives or current caretakers.

The bill limits court's discretion to direct the department to place or maintain child or ward where the effect would be to remove child or ward from adoptive parent. The bill requires a public or private agency with guardianship or legal custody of child or ward to file report with the juvenile court when the agency has removed or plans to remove child or ward from foster home for purpose of placing child or ward in different substitute care placement with certain exceptions.

This bill takes effect on September 1, 2015 and January 1, 2016.

## JUVENILE LAW

## Labor and Employment Law

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2. HB 2546 (Ch. 158) E-Cigarettes Barred from the Workplace
3. HB 2960 (Ch. 557) Oregon Retirement Savings Board

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## I. INTRODUCTION

The 2015 Oregon Legislative session was groundbreaking as it pertains to labor and employment law, as it saw the passage of only the fourth mandatory paid sick leave in the United States. This new law amounts to the largest expansion of employee rights and employer obligations in the state since the passage of the Oregon Family Leave Act in 1995. A variety of additional laws were also passed, the vast majority of which inure to the benefit of workers in the state.

It should be noted that several significant bills that did not pass in 2015 included anti-bullying efforts, changes to the E-Verify program, and several bills that would have modified Oregon's minimum wage.

Except where otherwise noted, all laws will take effect on January 1, 2016.

## II. EMPLOYEE LEAVE LAWS

### 1. [SB 454](#) (Ch. 537) Paid Sick Leave

During the 2015 legislative session, Oregon became the fourth state to enact a statewide mandatory paid sick leave law, following California, Connecticut, and Massachusetts. The bill requires Oregon employers to provide up to 40 hours of sick leave to employees per year beginning January 1, 2016, and, in most cases, that leave time must be paid.

Under the new law, which amends [ORS 653.256](#) and [ORS 659A.885](#), employers with 10 or more employees (six or more for Portland employers) will be required to provide their employees who work in Oregon with up to 40 hours of paid sick leave per year. Employers with fewer than 10 employees (fewer than six for Portland employers) will also be required to provide employees with up to 40 hours of sick leave, but this bank of leave time can be unpaid. The law applies to the vast majority of Oregon's workforce, including full-time, part-time, temporary, and seasonal employees.

Employees accrue sick time at a rate of one hour per every 30 hours worked, or one and one-third hours for every 40 hours worked, up to 40 hours per year. Exempt employees are presumed to work 40 hours per week unless their normal work week is less than 40 hours a week.

Employees can use sick time, whether paid or unpaid, for the following purposes:

- For an employee's own illness, injury, or health condition, including time off for medical diagnosis, care, treatment, and preventive care;

## LABOR AND EMPLOYMENT LAW

- To care for a family member with an illness, injury, or health condition, including time off for medical diagnosis, care, treatment, and preventive care (“family member” has the same definition as under the Oregon Family Leave Act (OFLA), and thus includes spouses, same-sex domestic partners, parents, parents-in-law, children, grandparents, grandchildren, and parent/child of same-sex domestic partners);
- For any purposes allowed under OFLA, such as bereavement leave, caring for a newborn child or newly adopted/foster child, or sick child leave, regardless of whether the employee is eligible for OFLA leave and regardless of whether the company is a “covered employer” under OFLA;
- For any purpose allowed under Oregon’s domestic violence, harassment, sexual assault, or stalking law;
- To donate accrued sick time to another employee, who may use it for any qualifying purpose (i.e., any reason listed above or below). This is optional for employers; it is only permitted if the employer has a policy that allows employees to donate sick time to coworkers; or
- In the event of a public health emergency, including upon an order of a general or specific public health emergency, or when the employer excludes the employee from the workplace by law or rule for health reasons.

Employees must also be permitted to carry over up to 40 hours of unused sick time to the subsequent year. Employers who provide employees with sick time or PTO at the beginning of each year – also known as “front loading” – instead of on an accrual basis are exempt from the carry-over obligations of the law.

Employers can only require verification from a healthcare provider of the employee’s or employee’s family member’s need for sick leave if an employee is absent for more than three consecutive scheduled workdays, or if the employer suspects sick leave abuse by the employee (which could include a pattern of abuse, such as repeated use of unscheduled leave, or taking leave next to weekends or other days off). The employer must pay for any costs of verification that are not covered under a health benefit plan.

Employers are prohibited from interfering with an employee’s right to use sick leave or retaliating against an employee who requests or uses sick leave. In addition to enforcement by the Oregon Bureau of Labor and Industries (BOLI), employees who believe their rights under this act have been violated will have a private right of action to sue.

Employers must provide notification at least once per quarter to each employee of the amount of accrued and unused sick time available for use by the employee; this obligation can be satisfied by including the information in employee pay statements. Employers are also required to provide written notice to employees regarding the requirements of the law, and BOLI will soon make available to employers a template that meets the required notice provisions under the law.

2. [HB 2600](#) (Ch. 323) Continuation Coverage for OFLA Leave

HB 2600 amends [ORS 659A.171](#) to require that group health insurance coverage for an employee who is on leave under OFLA be provided on the same terms as when the employee is not on leave (including any coverage provided to spouses or dependents).

This amendment brings OFLA into close alignment with the federal Family Medical Leave Act (FMLA), which already requires that covered employers (i.e., employers with 50 or more employees) provide continuation coverage. Therefore, the primary employers affected by this amendment will be those employers that (1) are covered by OFLA but not FMLA (i.e., employers with between 25 to 49 employees); and those that (2) offer group health plans.

3. [SB 492](#) (Ch. 352) Supplementing Domestic Violence Leave

Since 2007, Oregon law, via ORS [659A.270-280](#), has required covered employers (those with six or more employees) to provide victims of domestic violence, sexual assault, harassment, or stalking with unpaid leave (If the State of Oregon is the employer, they are required to provide leave with pay.) A 2014 amendment requires covered employers to provide employees with such leave starting with the first day of his or her employment.

SB 492 amends the law to clarify that an employee taking leave for reasons related to domestic violence, harassment, sexual assault, or stalking is entitled to use accrued sick leave or personal business leave when taking that leave. The prior version of the statute only provided that employees may use any paid accrued vacation leave or other paid leave offered in lieu of vacation leave.

4. [HB 2763](#) (Ch. 42) Pay for Public Sector Employees on Military Leave

HB 2763 amends [ORS 408.250](#) to permit a public employer to establish a program that allows employees to receive pay from the employer for the purpose of supplementing the compensation that they otherwise receive from the military. The amendment clarifies that the amount “received by” the employee under this law cannot exceed “the amount of the base salary” that the employee was earning on the date he or she began the military leave of absence.

Before this amendment passed, ORS 408.250 explicitly barred public employers from offering supplemental pay to its employees. Therefore, the purpose of this amendment is to give public employers the option of bridging the gap between what an employee was paid while working for the employer and what an employee is paid by the military (as the former is often significantly higher).

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It should also be emphasized that the practice of offering supplemental pay for employees out on military leave is optional. In other words, public employers are not obligated by HB 2763 to offer such pay.

HB 2763 took effect on April 22, 2015.

### III. CIVIL RIGHTS LAWS

#### 1. [HB 3025](#) (Ch. 559) Criminal History Inquiries

HB 3025 “bans the box” on application forms which inquire into an applicant’s criminal history. As of January 1, 2016, it will be unlawful for employers to exclude an applicant from an initial interview solely because of that applicant’s past criminal convictions. Therefore, employers will be generally barred from asking a job applicant to disclose his or her criminal conviction history prior to the initial job interview, or, if no job interview is conducted, prior to a conditional offer of employment.

As with most laws of this kind, HB 3025 does not apply to employers who are required by federal, state, or local laws to consider an applicant’s criminal history (e.g., schools), or to positions in law enforcement or the criminal justice system. Additionally, [ORS 659A.030](#) continues to prohibit employers from discriminating against an applicant or employee on the basis of an expunged juvenile record, unless that decision is based on a bona-fide occupation qualification that is reasonably necessary to the normal operation of the employer’s business.

It should also be noted that the law explicitly states that it is not intended to “prevent an employer from considering an applicant’s conviction history when making a hiring decision.” Therefore, the law does not impede an employer’s ability to explore an applicant’s criminal history during the initial interview (where it can ask the applicant about his or her criminal convictions) or at an appropriate point thereafter.

#### **Practice Tip:**

That said, certain enforcement agencies such as the Equal Employment Opportunity Commission (EEOC) may still consider such practices unlawful. The EEOC has historically argued that general pre-employment criminal background checks or blanket exclusionary policies are unlawful due to the disproportionate impact on certain protected classes.

2. [SB 185](#) (Ch. 229) Social Media Privacy

Several years ago, Oregon became one of the few states in the country which explicitly prohibits an employer from demanding access to an employee's social media account. In 2015, the legislature further revised the law to provide employees with additional protections.

Under the original [ORS 659A.330](#), employers are barred from requiring or requesting that the employee or applicant: (1) provide access to his or her personal social media account (e.g., disclosing a username and password); (2) add the employer to a social media contact list (e.g., "friend" the employer); or (3) allow the employer to view the individual's personal social media account. The existing law also prohibits an employer from retaliating against an employee or applicant from refusing to provide access to an account.

SB 185 amends ORS 659A.330 to also make it unlawful for an employer to:

- Require applicants or employees to establish or maintain a social media account as a condition of employment (e.g., employers cannot refuse to hire an applicant for the sole reason that he or she does not have a social media account); or
- Demand that applicants or employees allow the employer to advertise on their "personal social media account." "Personal social media accounts" are those which are used solely for personal purposes unrelated to any business purpose of the employer and not paid for or otherwise provided for by the employer.

As defined by the legislature, the term "social media" is meant to be read broadly as it is defined to include any electronic medium that allows users to create, share, or view user generated content, including, but not limited to, "uploading or downloading videos, still photographs, blogs, video blogs, podcasts, instant messages, electronic mail, or Internet website profiles or locations." Therefore, while sites like Facebook, Twitter, Instagram, and LinkedIn often come to mind when one thinks of social media, the law covers a far wider variety of electronic media.

However, the law does have certain explicit limitations. First, employers may continue to view the public portions of an employee or applicant's social media content without violating the law. Second, employers do not violate the law if they inadvertently come across information that would provide them access to personal social media content (e.g., during the monitoring of sites an employee accesses from a work computer). Third, the law also provides that an employer may direct an employee to share his or her social media as part of an investigation into alleged misconduct or harassment involving social media.

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### 3. [SB 552](#) (Ch. 457) Domestic Workers' Protection Act

This law provides various workplace protections for domestic workers, including those who provide care in private homes (e.g., nannies) and/or maintain private homes and their premises (e.g., housekeepers). SB 552 requires that domestic workers receive overtime pay at 1.5 times the employee's base wage for hours worked in excess of 40 hours a week or, in the case of workers living in an employee's home, 44 hours a week.

Domestic workers are also now required to receive at least 24 consecutive hours of rest in each workweek. If domestic employees work on that day of rest, they will be entitled to overtime pay. Along those same lines, qualifying domestic workers will also be entitled to at least three personal days of paid leave after one year of employment.

Employers of domestic workers are required to keep accurate records of daily and weekly hours worked by the domestic worker. Such employers are also prohibited from requiring that they retain the workers' passport, making unwelcome sexual advances, harassing a worker based on a protected classification, or unlawfully retaliating against a worker.

## IV. WAGES AND PAYMENTS OF WAGES

### 1. [HB 2007](#) (Ch. 307) Wage Transparency

This law will amend [ORS Chapter 659A](#) to make it an unlawful employment practice for employers to discipline, discriminate, or otherwise retaliate against employees for:

- Inquiring about wage information;
- Disclosing or discussing wage information (related to themselves or other employees); or
- Making a complaint based on the disclosure of such wage information.

Although the National Labor Relations Act (NLRA) already provided a level of protection for wage-related discussions, HB 2007 goes well beyond the NLRA. This is because it will apply to all employees (including supervisors) and, moreover, will cover "any manner" of inquiries, discussions, or disclosures related to wages. The bill provides a right of action against an employer that discriminates or retaliates against an employee because the employee has inquired about, discussed or disclosed wage related information.

HB 2007 explicitly will not apply to situations where an employee who has access to other employees' wages as part of his or her job function (e.g., a payroll manager) discloses the wages of those employees to unauthorized individuals. However, there is an exception if the disclosure was made in response to a charge or complaint or in furtherance of an investigation, including an employer's own internal investigation.

2. [HB 3059](#) (Ch. 735) **BOLI Telephone Hotline for Entertainers**

This law requires the BOLI Commissioner to establish a toll-free telephone hotline that will be used for live entertainment performers to call and inquire about their employment status (e.g., whether they are properly classified as independent contractors, or whether club owners are violating any other laws or rules).

Additionally, BOLI will develop a poster for live entertainment facilities regarding the BOLI hotline and the general rights of independent contractors and employees who perform live entertainment. Covered live entertainment facilities will be required to display the poster in a conspicuous location.

**V. UNEMPLOYMENT INSURANCE AND BENEFITS**

1. [HB 2439](#) (Ch. 69) **Requests to Reopen Unemployment Benefits Hearing**

HB 2349 amends [ORS 657.270](#) to state that, after the issuance of a written decision by an Administrative Law Judge regarding an unemployment claim, any party requesting a rehearing must file a request to reopen the hearing with the Office of Administrative Hearings while simultaneously providing a copy of that request to the Oregon Employment Department.

HB 2439 took effect on May 14, 2015.

2. [HB 2440](#) (Ch. 103) **Reduction of Unemployment Benefits**

This law amends [657.115](#) to remove the presumption that an unemployed individual is “unavailable for work” for the purpose of benefit eligibility if the individual is required to leave the individual’s normal labor market area to apply for suitable employment.

HB 2440 took effect on May 20, 2015.

3. [SB 243](#) (Ch. 530) **Recovery of Overpaid Unemployment Insurance Benefits**

SB 243 amends [ORS 657.315](#) and [657.320](#) by providing that an individual who receives unemployment benefits to which he or she is not entitled may, in certain circumstances, have that amount deducted from future benefits that the individual would otherwise receive under the law of another state. Additionally, the bill also increases the period of time in which the Oregon Employment Department has to uncover overpayments due to false statement, misrepresentation, or non-disclosure of a material fact, to five years.

SB 243 took effect on June 22, 2015.

## VI. WORKERS' COMPENSATION

1. [HB 2764](#) (Ch. 521) **Attorneys' Fees in Workers' Compensation Claims**

HB 2764 amends various portions of [ORS Chapter 656](#) to modify the circumstances under which attorneys' fees may be awarded in workers' compensation claims. Specifically, the law allows for attorneys' fees for some instances of representation before the Director of the Department of Consumer and Business Service. Additionally, the Workers' Compensation Board is instructed to consider the inherently contingent nature of workers' compensation law when establishing fees and to review the attorneys' fees schedule for adjustment purposes on a biannual basis.

2. [HB 3114](#) (Ch. 259) **Claims Following Rejection of Benefit Health Plan Claim**

This law amends [ORS 656.265](#) to give an injured worker whose claim for benefits was rejected by a health benefits plan 90 days (from the date of rejection) to file a workers' compensation claim. If the injured worker's claim is then denied, HB 3114 also requires that the health benefit plan process the claim for payment in accordance with the plan.

3. [SB 371](#) (Ch. 144) **Closure Notices**

In 2010, the Oregon Court of Appeals decision in *SAIF v. Wild*, 237 Or App 454 (2010) highlighted what some considered to be a deficiency in the notice requirements for claim closures. Under SB 371 if a worker is deceased at the time of the closure notice, the insurer (or self-insured employer) may mail copies of the closure notices to any known or potential beneficiaries. Then bill then establishes two tiers of appeal rights – 60 days for those who were mailed the closure notice and 1 year for those who were not.

Additionally, SB 371 requires that if an injured worker seeks to submit a deposition to the reconsideration record, the insurer (or self-insured employer) is required to pay for deposition interpreter services for a non-English speaking claimant. This new requirement parallels existing requirements that the insurer pay fees for court reporters and transcription costs.

SB 371 took effect on May 21, 2015.

## VII. MISCELLANEOUS EMPLOYMENT LAWS

1. [HB 3236](#) (Ch. 429) **Limitation to Enforceability of Noncompetition Agreements**

HB 3236 amends [ORS 653.295](#) to reduce Oregon's limit on the enforceability of noncompetition agreements from two years following the employee's termination to 18

months after the termination. This law is not retroactive and, therefore, applies only to noncompetition agreements entered into on or after January 1, 2016. Agreements entered into before that date, including any currently in effect, will not be affected by this amendment.

HB 3236 does not change the other restrictions that ORS 653.295 imposes on noncompetition agreements. Therefore, in order for the 18-month period to even come into a play, there first has to be an enforceable noncompetition agreement. Also, it should be noted that the 18-month limit does not affect nonsolicitation agreements, as such agreements are treated differently under Oregon law.

**2. [HB 2546](#) (Ch. 158) E-Cigarettes Barred from the Workplace**

Oregon's Indoor Clean Air Act ([ORS 433.835-433.875](#)) prohibits smoking in the workplace and within 10 feet of all entrances and exits. HB 2546 amends that law to include e-cigarettes and other inhalant devices.

While HB 2546 took effect on passage (May 26, 2015), the provisions amending the Oregon Indoor Clean Air Act do not take effect until January 1, 2016. Therefore, as of January 1, 2016, the use of inhalant devices will be barred in the workplace.

**3. [HB 2960](#) (Ch. 557) Oregon Retirement Savings Board**

This law creates a new seven-member Oregon Retirement Savings Board (Board) within the Oregon State Treasurer's office. The law tasks the Board with developing a statewide defined-contribution retirement plan for private sector Oregon employees whose employers do not otherwise provide for a retirement plan.

The ultimate goal of HB 2960 is to provide a retirement plan for employees who do not otherwise have access to such a plan. Therefore, employers who do not currently offer a retirement plan would be required to automatically enroll their employees in the plan created by the Board (although the individual employees would be able to opt out of the plan). Employers who already sponsor retirement plans will be exempt from offering and enrolling its employees in the Board's plan. Ultimately, HB 2960 may end up serving as an incentive for employers to create their own retirement plans (rather than deal with the Board's plan).

Although the exact terms of the Board's retirement plan are far from clear, one unique feature will be the portability of the employee's account, allowing him or her to maintain the same account even upon switching employers. Additionally, the Board's plan will not require employer contributions to the employee's account.

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### **Practice Tip:**

There is a chance that this new law may ultimately never go into effect, however. It may be deemed to be preempted by the Employee Retirement Income Security Act (ERISA). The Board is specifically tasked with making its own determination regarding whether the proposed retirement plan is preempted. If it is preempted, then the plan does not go into effect.

HB 2960 took effect on June 25, 2015 for rulemaking at other purposes. If the plan is not preempted by ERISA, employees must be able to begin contributing to the plan by July 1, 2017 (a date that purposely provides time for the Board to conduct an 18-month market and legal analysis of the plan's feasibility).

# 14

Alan Sorem

## Land Use

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11. HB 3214 (Ch. 477) Goal Exception Rules
12. HB 3222 (Ch. 374) Definition of Needed Housing
13. HB 3223 (Ch. 260) Updates to Expedited Land Division Rules

**Alan Sorem:** 2006 Willamette University School of Law. Member of the Oregon State Bar since 2006.

## LAND USE

### I. INTRODUCTION

This chapter includes legislation affecting state and local land use and land use planning requirements. The chapter includes several bills written in response to recent court decisions, including 3 measures relating to the potential disincorporation of the City of Damascus. Unless otherwise stated, all legislation takes effect on January 1, 2015.

### II. SPECIAL DISTRICTS

#### 1. [HB 2277](#) (Ch. 544) Drainage Districts

HB 2277 modifies the authority of drainage districts in order to clearly allow them to perform flood control activities.

The current drainage district statute ([ORS Chapter 547](#)), which dates from 1917, was originally enacted so that property owners could form a special district to construct works to drain agricultural land. Federal regulations of flood control and levees have made the management of this system more and more complex.

The Drainage District Act authorizes drainage districts to acquire, construct, reconstruct, repair, improve, or extend improvements to carry out purposes of the Act and requires the board of supervisors of a drainage district to hold a public hearing, with notice given 14 days in advance, before engaging in such activities. The bill authorizes drainage district in Multnomah County to enact ordinances, and provides the relevant procedural provisions for it to do so.

HB 2277 took effect on June 25, 2015, and applies to drainage districts managing federally authorized flood control projects on that date.

#### 2. [HB 3431](#) (Ch. 748) Metolius Resort Application Extension

HB 3431 provides the owner of a Metolius resort site with an additional three years to apply to their county for approval for a small-scale recreation community. This extension applies only to owners who notified the county by June 29, 2010 that they had elected to seek such approval.

HB 3431 took effect on July 21, 2015 and the additional three years runs from that date.

#### 3. [HB 2734](#) (Ch. 631) Hazardous Land Bank

HB 2734 authorizes a local government to organize a land bank authority by act of incorporation adopted by special ordinance. The land bank may take ownership of real property with immunity from legal liability for legacy contamination (e.g. Brownfields) under state law. The bill exempts the land bank from state and local taxation.

### III. CITY OF DAMASCUS MEASURES

In *City of Damascus v. Brown, et. al.*, 266 Or App 416, \_\_\_ P3d \_\_\_ (2014), the Oregon Court of Appeals held the first attempt to provide the citizens of Damascus an opportunity to withdraw from the City ([HB 4029](#)) (2014) was an unconstitutional delegation of legislative authority. HB 3084, 3085, and 3086 collectively provide for a means of withdrawal from Damascus, require a special election for the termination of city, and address reallocation of taxes in the event such termination occurs.

**1. [HB 3084](#) (Ch. 562) Withdrawal of Property from Damascus**

HB 3084 creates a new process for landowners to withdraw their property from the City, after the previous legislatively created process was struck down as an unconstitutional delegation of legislative authority. Among other requirements, the bill requires a determination be made that withdrawal of the property in question would not create an undue hardship on city operations. HB 3084 took effect on June 25, 2015.

**2. [HB 3085](#) (Ch. 603) Disincorporation of Damascus**

HB 3085 refers to the voters in the City of Damascus the question of whether to disincorporate the city. If the referral passes, the city must satisfy all debts, obligations, liabilities and expenses of the city and transfer moneys and all of the city's other property to Clackamas County. The city must surrender its charter on the 61<sup>st</sup> day following the election. In a separate 2013 election, the majority of votes cast favored a measure to dissolve the city. However, city officials determined that state law required a majority of all registered voters in order to pass, and the measure was deemed defeated. HB 3085 specifies that the measure only requires a majority of votes cast in order to pass.

**3. [HB 3086](#) (Ch. 637) Financial Obligations of Damascus**

HB 3086 only takes effect if the referral in HB 3085 passes of vote of the citizens of Damascus. The bill requires that upon disincorporation the city must expend all remaining funds to pay any legal debts or obligations of the city. If any funds remain after satisfying all debts, the city must return those funds to the property taxpayers of the city. HB 3086 took effect on July 1, 2015.

#### IV. SUBMERGED LANDS

1. [HB 2460](#) (Ch. 204) **Department of State Lands Jurisdiction over Submerged Lands**

HB 2460 authorizes the Department of State Lands to establish and impose a one-time application fee on a person applying for an easement to construct a water, gas, electric or communications service line, fixture or other facility on state land.

HB 2460 took effect on June 2, 2015.

2. [HB 2461](#) (Ch. 205) **Leases of Submerged Lands**

Most of the submerged and submersible lands under navigable waters in Oregon are owned by the state. The state then leases out many of these lands for purposes such as docks and marinas. In 2011 the legislature passed [SB 600](#), which created a number of exemptions to the normal leasing requirement for use of submerged and submersible lands. HB 2461 allows the Department of State Lands by rule to provide for additional exemptions to these leasing requirements.

HB 2461 took effect on June 2, 2015.

3. [HB 2463](#) (Ch. 715) **Abandoned Structures on Submerged Lands**

HB 2463 authorizes the Department of State Lands to seize abandoned structures on, under, or over state-owned submerged and submersible lands. The bill requires DSL to adopt rules for seizure of structures, including providing notice and the opportunity for a hearing, and the bill establishes the Submerged Lands Enhancement Fund.

#### V. PROCEDURAL RULES AND REQUIREMENTS

1. [HB 2047](#) (Ch. 150) **Urban Reserve Boundary Corrections**

HB 2047 adjusts the urban reserve boundaries in comprehensive planning maps adopted by Metro and previously adjusted by Legislature in 2014, i.e., the “Grand Bargain.” Metro staff submitted there were 6 instances of inaccuracies in the legal description of certain properties. These inaccuracies are corrected in this bill.

2. [HB 2456](#) (Ch. 248) **UGB Amendment Process**

HB 2456 incorporates a provision that was previously mistakenly omitted in prior legislation. Legislation enacted in 2013 ([House Bill 2254](#)) required the Land Conservation and Development Commission to adopt administrative rules to establish an optional, streamlined

urban growth boundary (UGB) amendment process. After passage, the department and other stakeholders noticed that there was a drafting error in the “large city” section. A subsection that was intended to contain certain specific requirements to guide this rulemaking was inadvertently omitted.

House Bill 2456 would insert the missing wording in the “large city” subsection of the 2013 measure (now codified at [ORS 197A.300 to 197A.325](#)), with the proposed wording based on the similar “small city” section.

**3. [HB 2457](#) (Ch. 104) Parcels Smaller than Minimum Size**

HB 2457 allows a county to create a parcel that is smaller than minimum size standard in resource zone when part of existing unit of land has been included within an urban growth boundary and the area in question zoned for urbanization. If the parcel contains a dwelling, it must be large enough to support a residence. If it does not contain a dwelling, the new parcel is generally not eligible for a dwelling.

HB 2457 took effect on May 20, 2015.

**4. [HB 3282](#) (Ch. 261) Limited Periodic Review**

HB 3282 authorizes the Land Conservation and Development Commission (LCDC), to allow a city to undergo periodic review for the limited purpose of completing changes to proposed amendments to a comprehensive plan that are required on remand after a review by LCDC. Additionally, the bill authorizes a city to adopt, a work program that includes only changes required on remand if periodic review is initiated.

HB 3282 took effect on June 4, 2015.

**5. [SB 120](#) (Ch. 280) Corridor Planning Rules**

SB 120 directs LCDC to adopt new rules authorizing cities and counties to use “highway mobility targets” as a basis for proposing transportation improvements outside of that city or county. This will allow the state to consider the impacts of development on the transportation system over a larger area, and acknowledge mitigation efforts along other portions of the traffic corridor. ODOT and LCDC are to prepare a report regarding such “corridor planning,” which is due to legislature of such on or before September 16, 2016.

SB 120 took effect on June 8, 2015.

## LAND USE

### 6. [HB 2432](#) (Ch. 57) Use of Fireworks to Repel Wildlife

HB 2432 expands list of lands on which fireworks may be used to repel birds or other animals. The bill also requires that fireworks used must be purchased from licensed wholesaler and properly stored in accordance with State Fire Marshall regulations. Under the bill, properties on which fireworks can be used for this purpose include farms, forests, waste and recycling facilities, airports, golf courses, fish or seafood production facilities, estuaries, or any other properties located outside of a city or otherwise permitted by State Fire Marshall rule.

### 7. [HB 2453](#) (Ch. 713) Large Commercial Events on State Forestland

Law enforcement officers testified that current restrictions on state forestlands were insufficient to curtail large commercial events. HB 2453 addresses this issue by requiring organizers to obtain a permit from State Forestry Department prior to conducting large commercial event on state forestlands. This would apply to any event with more than 50 participants or with more than 15 motor vehicles present. The bill authorizes the department to adopt rules, charge fees, and create penalties for violations.

### 8. [HB 2652](#) (Ch. 518) Definition of “Rural Area”

HB 2652 amends the definition of “rural area” to mean the area outside of the UGB of city of 40,000 or more (instead of 30,000) regarding applications for the strategic investment program. However, it grandfathers the current strategic investment zones and eligible projects. The bill means that areas outside of Canby and McMinnville may now be eligible for a partial property tax exemption under the strategic investment program.

HB 2652 took effect on October 5, 2015.

### 9. [HB 2830](#) (Ch. 522) Remand Procedures

HB 2830 extends the time period from 90 to 120 days for a local government to take final action on an application for a permit, limited land use decision, or zone change after remand based on final order of LUBA. The 120 day period does not start until a final order is issued or an applicant requests action upon remand. However, if the applicant fails to make a request within 180 days following remand, the application is deemed terminated. If the parties enter into timely mediation, the 120 day rule may be extended to 365 days.

### 10. [HB 2831](#) (Ch. 423) Measure 49 Property Line Adjustments

HB 2831 restricts property line adjustments on parcels created via Measure 49 final orders to maximum size of two (2) acres for resource-zoned lands located on high value soils and five (5) acres for other resource-zoned lands.

**11. [HB 3214](#) (Ch. 477) Goal Exception Rules**

HB 3214 directs LCDC to amend rules to allow local governments to rezone land developed or committed to residential use without requiring new exceptions to Goals 3 and 4 and to allow rezoning that “authorizes change, continuation or expansion of industrial use in operation for previous five years.”

The bill also specifies that the rules adopted must provide that rezoned land use will maintain the land as rural land in manner consistent with other state planning goal requirements. Further the bill requires that rural uses, density and public facilities and services permitted by rezoning will not commit nearby land to uses not permitted in statewide planning goals related to agriculture and forestlands or uses of nearby resource land uses, and that land to be rezoned is not in area designated as rural or urban reserve.

HB 3214 took effect on June 18, 2015.

**12. [HB 3222](#) (Ch. 374) Definition of Needed Housing**

HB 3222 incorporates the definition of needed housing in [ORS 197.303 into ORS 197.522](#), which requires local governments regulating housing permits to grant an applicant the opportunity to satisfy applicable criteria by the adoption of reasonable conditions of approval prior to the final decision. In the event such a requested condition of approval is made, the applicable 120 or 150 day rules are extended.

**13. [HB 3223](#) (Ch. 260) Updates to Expedited Land Division Rules**

HB 3223 expands the definition of “expedited land division” to include development that either:

- Creates enough lots or parcels to allow building residential units at 80 percent or more of maximum net density permitted by the zoning designation; or
- Will be sold or rented to households with incomes below 120 percent of median income for county.

The bill requires that completeness review for local jurisdictions must be completed within two (2) weeks of submittal.

## LAND USE

# Real Property

## I. INTRODUCTION

## II. MORTGAGES, FORECLOSURES, CONVEYANCES, AND RECORDING

- |            |           |  |
|------------|-----------|--|
| 1. HB 3244 | (Ch. 431) | Obligation Borrowers                   |
| 2. HB 2487 | (Ch. 39)  | Square Footage Corrections             |
| 3. HB 2532 | (Ch. 87)  | Reverse Mortgages                      |
| 4. SB 367  | (Ch. 120) | HOA Fees Assignments                   |
| 5. SB 368  | (Ch. 291) | Judicial Foreclosures                  |
| 6. SB 462  | (Ch. 538) | Financing Statements                   |
| 7. SB 879  | (Ch. 677) | Mortgage Loan Origination Requirements |

## III. HOUSING

- |            |           |                               |
|------------|-----------|-------------------------------|
| 1. HB 2130 | (Ch. 310) | Low Income Housing Exemptions |
| 2. HB 2629 | (Ch. 182) | Rural Rental Housing Loans    |
| 3. HB 3082 | (Ch. 141) | Nonprofit Low Income Housing  |
| 4. HB 3488 | (Ch. 436) | Private Transfer Fees         |

## IV. PROPERTY TAXES

- |            |           |  |
|------------|-----------|--|
| 1. HB 2486 | (Ch. 368) | Measure 5 Revenue  |
| 2. HB 2083 | (Ch. 309) | Homestead Property Tax Deferral Program                            |
| 3. HB 2126 | (Ch. 507) | Vertical Housing Development Zone Program                          |
| 4. HB 2127 | (Ch. 96)  | Property Tax Recording after Sale to Exempt Government Transferees |

## V. OTHER BILLS

- |            |           |                                   |
|------------|-----------|-----------------------------------|
| 1. HB 2034 | (Ch. 414) | Willamette River Greenway Program |
| 2. SB 912  | (Ch. 804) | Submerged or Submersible Lands    |

**Judy Parker:** 2006 Willamette University School of Law. Member of Oregon State Bar since 2006.

## REAL PROPERTY

### I. INTRODUCTION

Included in this chapter are bills affecting mortgages and foreclosures, housing, taxation of real property, and a few unclassified bills. For additional information on tax issues, see the Taxation Chapter. Unless otherwise noted, all bills take effect on January 1, 2016.

### II. MORTGAGES, FORECLOSURES, CONVEYANCES, AND RECORDING

#### 1. [HB 3244](#) (Ch. 431) **Obligation Borrowers**

HB 3244 provides that a borrower or borrower's agent may rely on the lender's payoff statement for the purposes of establishing the amount required to discharge a mortgage unless and until the borrower provides an amended payoff statement.

Under current practice, lenders may demand additional sums after closing in order for the lender to release their lien, which can catch new buyers and title companies in what is a dispute between the seller and their mortgage company. This bill functionally eliminates the lender's right to continue to claim a lien after the obligation of the borrower as stated on the payoff statement is met. The bill does not affect the lenders right to collect any other amounts owed to them by the seller.

HB 3244 took effect on June 16, 2015.

#### 2. [HB 2487](#) (Ch. 39) **Square Footage Corrections**

HB 2487 requires a correction of maximum assessed value due to a taxpayer informing the assessor of a correction of square footage of property to be proportional to change in real market value of property that is due to correction of square footage. Under the previous law, any change had to be proportionate to the difference in square footage, which could lead to changes not reflective of actual market conditions.

This bill was subsequently amended by HB 2199 (Ch. 97), and took effect on October 5, 2015.

#### 3. [HB 2532](#) (Ch. 87) **Reverse Mortgages**

HB 2532 applies to reverse mortgage communications on or after January 1, 2016, and requires lenders to provide a summary of certain terms and provisions of the reverse mortgage in advertisements and communications.

These terms and provisions include:

- What fees, costs, and premiums the lender may charge that may be added to the balance of the reverse mortgage loan;
- The fact that the person retaining title to the property is still responsible for taxes and insurance, and that failure to pay these may result in the loan coming due immediately; and
- The fact that at the conclusion of the term of the reverse mortgage, the person will no longer own the property in its entirety, and they may be forced to sell the property or otherwise repay the loan.

For additional information about this bill, please see the Commercial, Consumer, and Debtor-Creditor chapter.

**4. [SB 367](#) (Ch. 120) HOA Fees Assignments**

Property sold in a foreclosure sale can have a redemption period of 180 days during which the mortgage holder, the judgment debtor, any person with a lien against the property, or the successor in interest to any of those, can pay the sum paid by the purchaser in order to redeem the property.

Any amounts paid by the purchaser start the redemption period. During the redemption period, title to the property still technically rests with the previous owner, even though the purchaser – now the certificate holder – has an immediate right to use of the property.

To address the question of who is responsible for homeowner association fees, SB 367 makes the purchaser at an execution sale of real property, in a planned community or condominium community, solely liable for any assessments imposed against the real property during the redemption period. In the event the property is redeemed, the owner is required to repay any fees paid by the certificate holder.

**5. [SB 368](#) (Ch. 291) Judicial Foreclosures**

SB 368 makes it clear that a “money award” is not a requirement in a judicial foreclosure. A judgment of foreclosure now requires a declaration of the amount due in all cases. A money award may be entered when requested by the plaintiff and not prohibited by other law.

Thus, creditors’ counsel may avoid the issue of violation of an automatic stay or discharge injunction by excluding a money award in the form of judgment.

SB 368 took effect on June 8, 2015, and applies to judicial foreclosures pending that day and all foreclosures filed thereafter.

## REAL PROPERTY

### 6. [SB 462](#) (Ch. 538) Financing Statements

This bill brings Oregon in line with 45 other states modifying their versions of the Uniform Commercial Code (UCC). The new law requires the name of the debtor on the financing statement to be the name on an unexpired Oregon-issued driver's license or identification card; if the debtor does not hold a driver license or identification card, then the financing statement must include the debtor's individual name or surname and first personal name. This record will be effective as a financing statement under [Chapter 79](#) of the Oregon Revised Statutes.

SB 462 took effect on June 22, 2015. For additional information on this bill, please see the Commercial, Consumer, and Debtor-Creditor chapter.

### 7. [SB 879](#) (Ch. 677) Mortgage Loan Origination Requirements

In 2008, Congress enacted the Secure and Fair Enforcement for Mortgage Licensing Act to create a national registry of licensed mortgage loan originators. The SAFE Act requires states to pass their own licensing legislation requiring national registration of mortgage loan originators or have them become subject to federal registration.

Under the Oregon Mortgage Lender Law, an attorney does not need a mortgage loan originator license if he or she is negotiating the terms of a residential mortgage loan as an ancillary matter when representing a client and if compensation is not received from a mortgage banker, mortgage broker, mortgage loan originator or lender, or an agent of any such.

SB 879 exempts an attorney who negotiates terms of residential mortgage loan in attorney's representation of client that buys or sells a dwelling unit from the requirement to obtain mortgage loan originator's license in order to perform activities of mortgage loan originator.

## III. HOUSING

### 1. [HB 2130](#) (Ch. 310) Low Income Housing Exemptions

Local governments use property tax abatements to encourage affordable housing. Local jurisdictions may elect to require that developers meet several criteria to receive abatements, including defining "low income" in a particular way and designating low-income housing lands.

HB 2130 permits a city or county to adopt additional criteria to permit property tax abatements for land held for the purpose of developing low income rental housing.

HB 2130 took effect on October 5, 2015.

**2. [HB 2629](#) (Ch. 182) Rural Rental Housing Loans**

The United States Department of Agriculture finances approximately 200 buildings in Oregon. These buildings house over six thousand rental units in rural areas. Property owners must comply with certain terms and conditions to obtain subsidies through USDA Rural Development programs.

One central term concerns affordability for tenants, although the condition ends when the property owner's mortgage is paid off; thereafter, many of those property owners raise the rent to market rates.

HB 2629 requires owners of rental property subject to these federal rural rental housing loans to provide at least one year's notice of date of maturity of loans to tenants, Housing and Community Services Department, housing authorities, and to local governments.

**3. [HB 3082](#) (Ch. 141) Nonprofit Low Income Housing**

When low income individuals and families with an Area Median Income (AMI) of 60% or less rent housing owned by non-profits, the non-profits receive property tax abatements. However, if the renter's income exceeds 60% of the AMI, the property taxes are assessed against the non-profit.

HB 3082 creates an alternative definition of "low income", which a local jurisdictions may adopt if they elect (or they may stay with the current definition of low income). The new definition permits a jurisdiction to adopt "low income" to the effect that a property owner non-profit can benefit from tax abatement if the renter's income is under 60% of AMI during the first year of occupancy, and under 80% during all subsequent years.

This bill became operative on October 5, 2015, and has a sunset of June 30, 2027.

**4. [HB 3488](#) (Ch. 436) Private Transfer Fees**

In March 2012, the federal Housing Finance Agency issued a rule prohibiting Fannie Mae from purchasing or investing in any mortgage or properties encumbered by a private transfer fee covenant unless they are given an exception in rule. The exception applies to certain tax-exempt organizations that use the proceeds from the private transfer fees to benefit the property.

HB 3488 provides that under Oregon law, affordable housing covenants are exempt from the prohibition on private transfer fees if the fee is used exclusively to benefit the property or to support the activities directly benefiting the residents of the affordable housing.

## REAL PROPERTY

### IV. PROPERTY TAXES

#### 1. [HB 2486](#) (Ch. 368) Measure 5 Revenue

This bill removed statutory provisions ([ORS 310.155](#) subsections 2 and 3) relating to categorization of property tax revenue under Ballot Measure 5 (1990) that were held unconstitutional by *Urhausen v. Eugene*.

The court in *Urhausen* held that the statute providing for the all-or-nothing categorization of revenues in a mixed-purpose levy by a non-school taxing unit is not constitutional. Thus property tax revenues are deemed to be dedicated to funding the public school system if the revenues are used exclusively for educational services. It is the use of revenues not the source that determines under what category (education or general government) Measure 5 limits are calculated.

HB 2486 took effect on October 5, 2015.

#### 2. [HB 2083](#) (Ch. 309) Homestead Property Tax Deferral Program

Certain homeowners – those qualifying as disabled or over 62 – may be permitted to defer payment of their property taxes until the owner dies or sells the property. Under such a deferment, any taxes owed are paid by the state which obtains a lien against the property.

HB 2083 creates an exception to certain ownership requirements, especially related to the length of time an individual must have owned the home, allowing more individuals to qualify for the program. The bill requires the property to be insured, and if it is not permits the Department of Revenue to insure the property and add any costs to the lien.

HB 2083 took effect on October 5, 2015.

#### 3. [HB 2126](#) (Ch. 507) Vertical Housing Development Zone Program

The Housing and Community Services Department can approve partial property tax exemptions for certain vertical housing developments, which are either new construction or modifications to existing property. Upon certification, the exemption is available for ten consecutive years. This bill adds a new definition of “nonresidential use” for the program, as any use that is not exclusively residential use.

HB 2126 took effect on October 5, 2015.

4. [HB 2127](#) (Ch. 96) **Property Tax Recording after Sale to Exempt Government Transferees**

This bill requires any person who wants to record an instrument of sale to an exempt government transferee to pay the property taxes charged against the real property (or the estimated taxes, if the exact amount of taxes owed cannot be determined). HB 2127 also permits an agent to withhold and pay the property taxes on the real property to the county if the transferor gives written instructions to do so. This law prohibits a county clerk from recording a fee title if the certificate issued by the county assessor does not accompany the instrument conveying or contracting to convey the fee title. Any unpaid property tax will be considered a personal debt and not a lien on the property and must be collected as delinquent taxes on personal property. Once all the charges against the real property have been paid as of the date of recording, the assessor must issue a certificate which the Department of Revenue will prepare.

HB 2127 took effect on October 5, 2015.

## V. OTHER BILLS

1. [HB 2034](#) (Ch. 414) **Willamette River Greenway Program**

Established in 1967, the Willamette River Greenway Program is a cooperative state and local government effort to maintain and enhance the scenic, recreational, historic, natural, and agricultural qualities of the Willamette River and its adjacent lands. There are over 3,800 acres designated Willamette River Greenway properties.

The Oregon State Parks and Recreation Department may exercise the power of eminent domain in the acquisition of lands that are situated within the boundaries of the Willamette River Greenway for state parks or recreation areas in the parcels of land described in section 8a, chapter 558, Oregon Laws 1973.

This bill eliminates the ORPD authority to exercise the power of eminent domain over certain lands within the boundaries of the Willamette River Greenway near Bowers Rock State Park.

This bill took effect on June 16, 2015.

2. [SB 912](#) (Ch. 804) **Submerged or Submersible Lands**

This bill clarifies “new lands” and “historically filled lands” for those lands which were created upon submersible or submerged lands by artificial fill or deposit. The Department of State Lands formed the Filled Lands Advisory Group in the 2013 Legislature. FLAG then developed the framework for this bill.

## **REAL PROPERTY**

SB 912 authorizes the State Land Board to adopt a rule for the Department to sell, lease or trade historically filled lands owned by the state but prohibits the Board from asserting title in historically filled lands unless certain procedures are met before the end of 2025.

It was immediately effective upon passage on July 27, 2015.

# Taxation Law

## I. INTRODUCTION

## II. INCOME TAX

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| 1. | HB 2488 | (Ch. 32)  | New Measurement for Substantial Understatement Penalty       |
| 2. | SB 61   | (Ch. 755) | Tax Havens   |
| 3. | HB 2566 | (Ch. 468) | No Automatic Nexus Caused by Presence Due to Disaster Relief |
| 4. | HB 2171 | (Ch. 701) | Residence of Active-Duty Military Personnel (§§ 50-54)       |

## III. INCOME TAX CREDITS

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| 2. | HB 2171 | (Ch. 701) | Omnibus Tax Credit Bill    |

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| 2. | SB 161  | (Ch. 444) | “Business” Personal Property Tax Lien Disclosure                          |
| 3. | HB 2128 | (Ch. 52)  | Enhanced Collection Mechanisms Against Taxable Lessees from Public Bodies |
| 4. | HB 2129 | (Ch. 97)  | Maximum Assessed Value Corrections  |
| 5. | HB 2482 | (Ch. 36)  | Industrial Property Classification and Appeals – to Tax Court             |
| 6. | HB 2483 | (Ch. 37)  | Limitation on Partial Appeals of Unit of Property                         |
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## TAXATION LAW

10. HB 3001	(Ch. 92)	Destroyed or Damaged Property: Longer Filing Deadline
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3. HB 3125	(Ch. 827)	Food Processors
4. HB 2148	(Ch. 65)	Permanent Improvements on Tribal Land
5. HB 2643	(Ch. 648)	Enterprise Zones
6. SB 129	(Ch. 757)	“Gain Share” Amendment to Strategic Investment Program Property Tax Exemption
7. HB 2083	(Ch. 309)	Senior and Disabled Persons’ Homestead Deferral
8. HB 2690	(Ch. 520)	Land Held for Development as Low-Income Housing
9. HB 2610	(Ch. 34)	Nonprofit Agricultural Workforce Housing
10. HB 2126	(Ch. 507)	Vertical Housing Partial Exemption
11. HB 2130	(Ch. 310)	Low-Income Housing in City or County Adopting ORS 307.515 to 307.523
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| 3. HB 2171 | (Ch. 701) | Tax Reform   |
| 4. HB 3016 | (Ch. 217) | Sales of Manufactured Housing  |

**Robert Manicke:** 1992 University of Illinois School of Law. Member of the Oregon State Bar since 1995.

## I. INTRODUCTION

This chapter covers legislation affecting personal and business income taxes, property taxes and changes to the estate tax in Oregon. It also covers legislation affecting the Oregon Tax Court and the Department of Revenue. Some measures relate to and may cite to federal law. Unless otherwise indicated, all legislation takes effect on January 1, 2016. However, many measures contain language specifying which tax years they apply to. Always confirm applicability of a change to the tax year in question.

## II. INCOME TAX

### 1. [HB 2488](#) (Ch. 32) **New Measurement for Substantial Understatement Penalty**

HB 2488 replaces the former penalty for a substantial understatement of taxable income with a penalty for the substantial understatement of net tax and indexes the net tax threshold amounts for inflation.

The Department sponsored this bill and cited occurrences of part-year residents who understated their Oregon tax owed, but avoided penalty because they reported the full amount of their federal taxable income. The net tax understatement amount that would trigger a 20 percent penalty is \$2,400 for purposes of the personal income tax and \$3,500 for purposes of the corporation excise tax.

HB 2488 took effect October 5, 2015 and applies to tax years beginning on or after January 1, 2015.

### 2. [SB 61](#) (Ch. 755) **Tax Havens**

A 2013 law created a list of countries – generally referred to as tax havens. The 2013 law requires an Oregon corporate taxpayer filing a consolidated return to add to its taxable income the taxable income or loss of a unitary corporation that is formed under the law of a listed (tax haven) jurisdiction. The 2013 law also requires the apportionment factors of the tax haven corporation to be taken into account on the Oregon corporate return.

SB 61 modifies the list of jurisdictions, replacing a reference to the former Netherlands Antilles—which ceased to exist in 2010—with the names of former constituent islands Bonaire, Curaçao, Saba, Sint Eustatius, and Sint Maarten; adding Trinidad and Tobago and Guatemala; and deleting Monaco. After much discussion, the Netherlands and Switzerland, among others, remained off the list.

The new law also deletes the requirement to take the apportionment factors of the tax haven company into account. The law adds a provision stating that nothing precludes a taxpayer or the Department from asserting that a modified apportionment method is necessary to equitably apportion the taxpayer's income, pursuant to [ORS 314.667](#).

The 2013 law requires the Department to biennially recommend additions or deletions to the list. SB 61 creates criteria for the Department to use in developing its recommendations. SB 61 also adds a requirement that the Legislative Revenue Office report by March 15, 2017 on the cost-effectiveness of the tax haven law and other policies governing the treatment of offshore corporations.

SB 61 took effect on October 5, 2015 and applies to tax years beginning on or after January 1, 2016.

**3.     [HB 2566](#)           (Ch. 468)           **No Automatic Nexus Caused by Presence Due to Disaster Relief****

HB 2566 provides that disaster- or emergency-related work conducted by an out-of-state business may not be used as the sole basis for determining that the company is doing business in Oregon and therefore subject to Oregon's income taxes. Similarly, nonresident employees who do not normally work in Oregon but perform disaster- or emergency-related work in Oregon are not subject to personal income tax or wage withholding on their compensation for that work. The new law requires a business requesting the services of an out-of-state business to report that fact to the Department of Administrative Services within 30 days after the business enters Oregon.

HB 2566 applies to disaster response periods beginning on or after October 5, 2015.

**4.     [HB 2171](#)           (Ch. 701)           **Residence of Active-Duty Military Personnel (§§ 50-54)****

Section 50 of HB 2171 amends the definition of an Oregon resident to exclude active-duty military personnel whose residence is outside Oregon as reflected in the records of the Defense Finance and Accounting Service.

This provision applies to tax years beginning on or after January 1, 2012.

### III. INCOME TAX CREDITS

1. [HB 2448](#) (Ch. 545) Energy Conservation Credit

HB 2448 modifies the energy conservation credit statutes in [ORS 469B.270 to 469B.306](#) by requiring owners of projects with a cost of at least \$1 million to enter into a performance agreement and receive annual recertification.

This provision applies to certifications submitted on or after September 1, 2015 and to tax years beginning on or after January 1, 2015.

2. [HB 2171](#) (Ch. 701) Omnibus Tax Credit Bill

HB 2171 is an omnibus credit bill that revises and/or extends numerous income tax credits.

Long-Term Care Insurance Credit Repealed (§§ 39-40)

This credit is repealed for tax years beginning on or after January 1, 2015.

Working Family Child and Dependent Care Credit “Merged” (§§ 2-5)

The legislature did not modify the dependent care credit allowed by ORS 316.204, or the working family credit allowed by ORS 316.262, and thus allowed these credits to sunset after December 31, 2015 and January 1, 2016, respectively. In their place, the legislature adopted a new provision to be codified in chapter 315, referred to in the legislative history as the “working family child and dependent care” credit. The new credit ranges up to \$12,000 for one individual or \$24,000 for two or more individuals and is an income-based credit for employment-related dependent care expenditures. Press reports describe the new credit as a “merger” that kept the substance of both prior credits alive. This provision applies to tax years beginning on or after January 1, 2016 and before January 1, 2022.

Individual Development Accounts (“IDAs”) (§§ 6-11)

The legislature removed the \$75,000 annual cap on credit for contributions to a fiduciary organization for distribution to an IDA and replaced the cap with a flat 70 percent credit for all such contributions. The allowable purposes for establishing an IDA are expanded to include, for example, rental of a primary residence, purchase of a vehicle, payment of certain medical expenses, and certain rollovers to the Oregon College Savings Fund. The sunset is extended to allow the credit to be claimed for contributions made on or before December 31, 2021. A \$7.5 million ceiling applies to the total amount of credit allowed to all taxpayers in any one year.

Means-Testing for Credits for Child with a Disability (§§ 14-17)

Sections 14-17 modify the credits allowed pursuant to [ORS 316.099](#) and [316.758](#) by means-testing both credits (no credit if adjusted gross income exceeds \$100,000) and limiting the additional personal exemption credit to the amount of the taxpayer's personal exemption credit for the year. As modified, the credits are extended to tax years beginning on or after January 1, 2022.

Rural Medical Care Provider Credit Reduced (§§ 18-19)

Sections 18-19 modify [ORS 315.613](#), reducing the maximum amount of the credit for providers near major population centers and extending the credit to tax years beginning before January 1, 2018.

Contributions to Office of Child Care Capped (§§ 20-25)

Sections 20-25 cap the credit pursuant to [ORS 315.213](#) at the lesser of 50 percent of the amount contributed or the taxpayer's tax liability for the year, eliminate the roles of tax credit marketers, eliminate nonprofit community agencies as potential donees, and extend the credit to tax years beginning before January 1, 2022.

Residential Energy Tax Credit (§§ 26-37)

Sections 26-40 amend the statutes governing the residential energy tax credit, including [ORS 316.116](#), modifying the cap and increasing the incentive for certain solar thermal projects. The sunset date (generally tax years beginning before January 1, 2018) is unchanged.

The following credits were extended:

- [ORS 315.624](#): Medical care to residents of Oregon Veterans' Home. Extended to tax years beginning before January 1, 2022. (§ 12)
- [ORS 734.835](#): Credit against corporation excise tax for certain insurers to offset certain assessments imposed by Oregon regulatory authority. Extended to tax years beginning before January 1, 2022. (§ 13)
- [ORS 315.514](#): Film production. Extended to tax years beginning before January 1, 2024. (§§ 41-42)

## TAXATION LAW

### Corporate Minimum Tax: No Credits Allowed (Con-way repeal)

HB 2171, §§ 43-45, amends [ORS 317.090](#) to prohibit the reduction of the annual minimum tax by any tax credit. The amendment applies for tax years beginning on or after January 1, 2015 through 2020.

The new law does not create any exception for tax credits that the taxpayer first became entitled to use before 2015 and that are being claimed over more than one year or carried forward.

## IV. PROPERTY TAX ADMINISTRATION

### 1. [HB 2127](#) (Ch. 96) **Withholding of Property Tax upon Conveyance to Public Body**

Case law in Oregon generally precludes collection of delinquent property tax from a government body. *E.g., Chizek v. Port of Newport*, 252 Or 570 (1969). HB 2127 addresses an aspect of this issue by requiring a person seeking to record an instrument of conveyance to first pay all “charges against the real property,” including tax and interest, if the transferee is exempt from tax as a federal or state government body. An “authorized agent” providing closing and settlement services is allowed to withhold and pay the tax (actual or estimated) from the proceeds.

This provision applies to conveyances that become final, and to instruments presented for recording, on or after October 5, 2015.

### 2. [SB 161](#) (Ch. 444) **“Business” Personal Property Tax Lien Disclosure**

Existing law creates a lien for property tax attributable to personal property and also makes the tax a debt of the owner. See [ORS 311.405](#), [311.455](#). SB 161 requires the seller of personal property to provide the purchaser with a “disclosure notice” that includes (1) whether property taxes that were assessed against the property are outstanding; (2) whether there are any liens against the property; (3) if known, whether any counties other than the county where the property is located at the time of the transfer have assessed tax against the property; (4) if known, the name and address of any other person who has owned or possessed the property; and (5) that the bona fide purchaser provisions of the new law apply to the transaction.

SB 161 provides that a bona fide purchaser is not liable for assessed taxes if purchased in good faith, for value, at arms-length, and without notice of delinquent taxes. The criteria for meeting the “without notice” standard include checking a new state registry of delinquent tax liens that SB 161 establishes as part of the Uniform Commercial Code filing system.

SB 161 allows a county tax collector to accept a compromise payment on property from a bona fide purchaser, in an amount to be determined based on the facts and circumstances. The amount not forgiven remains a personal debt of the prior owner and a lien against the prior owner's other property of the same class. If the total outstanding amount of the tax is paid after receipt of the compromise payment, the compromise payment will be refunded, without interest. SB 161 took effect on October 5, 2015.

**Practice Tip:**

Despite the defined term "business personal property" used throughout the law, the law applies to "tangible personal property" and to certain machinery and equipment treated as personal property. There is no requirement that the property be used in a trade or business.

**3. [HB 2128](#) (Ch. 52) Enhanced Collection Mechanisms Against Taxable Lessees from Public Bodies**

Pursuant to [ORS 307.060](#) and [307.110](#), property of a public body loses its exemption and becomes taxable when a person whose property is taxable takes a leasehold or other non-fee interest in the property. HB 2128 establishes personal liability of the lessee or other interest holder for the property taxes and allows the county to sue to collect the unpaid tax. This provision applies to property tax years beginning on or after July 1, 2015.

**4. [HB 2129](#) (Ch. 97) Maximum Assessed Value Corrections**

HB 2487, a Department of Revenue bill that was passed on April 15, 2015, amended [ORS 311.234](#), which generally allowed a taxpayer to petition the assessor for a correction in the maximum assessed value ("MAV") of property attributable to a difference between the actual square footage of property and the square footage shown in the assessor's records.

HB 2129, an overlay passed on May 11, repeals HB 2487 and adds a requirement that the taxpayer show that the new property or improvement that was added to the tax roll in a prior tax year did not exist as of the assessment date for that prior tax year or any subsequent tax year. HB 2129 allows the assessor to determine the manner of the correction, but the correction must reflect removal of the new property or improvements.

The new law also adds a provision to [ORS 308.153](#), the statute that details how to determine the MAV of new property. The provision declares that property constitutes new property or new improvements if it constitutes an integral part of the land or improvements, has been continuously in existence since the prior tax year, and was not included in any assessment for prior tax years. This new provision does not include a cross-reference to the standards required for omitted property or roll correction. See [ORS 311.205](#) et seq.

HB 2129 took effect on October 5, 2015. It applies to property tax years beginning on or after July 1, 2015 and to petitions filed on or after October 5, 2015.

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### 5. [HB 2482](#) (Ch. 36) **Industrial Property Classification and Appeals – to Tax Court**

HB 2482 makes nomenclature and procedural changes to the statutes governing appraisal of industrial property, responsibility for which is divided between county assessors and the Department of Revenue. The nomenclature changes eliminate the terms “principal” and “secondary” industrial property, which were based solely on the value of the property. The new term “state-appraised” industrial property refers to any industrial property with improvements having a real market value of more than \$1 million on the prior year’s roll, unless the state has delegated appraisal responsibility to the county, in which case the property is “county-appraised” industrial property.

All appeals of the assessed value of state-appraised industrial property must be brought in the Oregon Tax Court. See HB 2482, § 2 (amending [ORS 305.403](#)). All appeals of the assessed value of county-appraised industrial property must be brought in the county board of property tax appeals. [ORS 309.100\(1\)](#); HB 2482, § 13 (amending [ORS 311.208](#), relating to omitted property). The deadline in either case remains December 31. These changes apply to the property tax year beginning July 1, 2015, i.e., to appeals that must be filed on or before December 31, 2015.

The new law allows a county to request permission to appraise any industrial property, regardless of value, but requires the county to pay the entire cost of such an appraisal and to continue to appraise the property for five consecutive years. The cost of all state appraisals is required to be reimbursed from the County Assessment Function Funding Assistance Account.

HB 2482 took effect on October 5, 2015.

### 6. [HB 2483](#) (Ch. 37) **Limitation on Partial Appeals of Unit of Property**

Existing [ORS 305.287](#) allows another party to a valuation dispute to expand the scope of the appeal to include components of property not raised in the appeal. Typically, this rule affects taxpayers who appeal a single component, such as the improvements only, by allowing the county to put the value of the land at issue as well. HB 2483 extends this rule to allow the non-appealing party to put property in other tax accounts at issue, if the property in all accounts make up a single unit of property as defined in [ORS 310.160\(1\)](#) (all contiguous property under common ownership within a single code area in a county, if used and appraised for a single, integrated purpose).

HB 2483 took effect on October 5, 2015.

7. [HB 2484](#) (Ch. 38) **No More Extensions for Personal Property Tax Returns; New Deadline**

HB 2484 extends the deadline for filing a personal property tax return from March 1 to March 15. The new law also eliminates the extension that previously was allowed until April 15. The Department sponsored the bill and testified that the practice of granting extensions did not improve the quality of filed returns, and variations in standards among counties and between counties and the Department led to taxpayer confusion.

This provision applies to property tax years beginning on or after July 1, 2016.

8. [HB 2485](#) (Ch. 31) **Property Tax Refunds**

HB 2485 amends [ORS 311.806](#), specifying that a refund made for a roll correction generally will be issued to the owner of record at the time of the refund, while a roll correction refund resulting from an appeal will be made to the person in whose name the appeal was filed.

HB 2485 took effect on October 5, 2015.

9. [HB 2486](#) (Ch. 368) **Measure 5 Limitations: Conformity to *Urhausen***

HB 2486 deletes portions of [ORS 310.155](#) that formerly declared that taxes levied by a school district were subject to the \$5-per-thousand cap on real market value, unless the “sole purpose” of the levy was to fund items other than educational services. The deleted language also stated that taxes imposed by a non-educational taxing district were subject to the \$5-per-thousand cap only if “sole purpose” of the levy was to fund the public school system. This deletion conforms to the Oregon Supreme Court’s decision in *Urhausen v. City of Eugene*, 341 Or 246 (2006), which declared those provisions in conflict with Measure 5.

This provision took effect on October 5, 2015.

10. [HB 3001](#) (Ch. 92) **Destroyed or Damaged Property: Longer Filing Deadline**

HB 3001 allows a taxpayer to file an application for determination of the value of property destroyed or damaged between January 1 and July 1 to be filed on or before December 31, instead of within 60 days after the event, upon payment of a late fee. This allows time for the county to generate the tax bill for the year, providing more information to the taxpayer about whether an application is needed.

HB 3001 applies to property tax years beginning on or after July 1, 2014.

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### 11. [SB 296](#) (Ch. 348) **Elderly Rental Assistance program Transferred; Conforming Changes**

Existing law reimburses low-income senior citizens for certain property taxes that were paid as part of their rent. SB 296 repeals the provisions of ORS chapter 310 that placed responsibility for administering this program on the Department of Revenue and adds new provisions in chapter 458 that transfer responsibility to the Housing and Community Services Department. Certain definitions (e.g., “household income”) in the repealed provisions of chapter 310 are moved to chapters 311 and 316, purportedly without substantive change.

SB 296 took effect on October 5, 2015, but different sections have various operative dates.

## V. CENTRAL ASSESSMENT CHANGES

### 1. [SB 611](#) (Ch. 23) **Intangibles, Data Centers, Fiber Projects**

SB 611 addresses various issues stemming from the fact that “centrally assessed” businesses (historically, regulated utilities, but also unregulated companies in businesses such as “communication” and “electricity”) are subject to property tax on their intangible property, which can include their entire brand value as allocated to Oregon by a formula. The new law reflects multi-year negotiations among historically centrally assessed businesses and newer entrants such as Facebook, Google, and Apple that were concerned about becoming centrally assessed pursuant to the definition of “communication” in [ORS 308.505\(3\)](#). See *Comcast v. Department of Revenue*, 356 Or 252 (2014), *rev’g*, 20 OTR 319 (2011). Among other issues, the construction of high-cost data centers could cause large amounts of overall company value to be assigned to Oregon, based on the existing formula, which is based primarily (75 percent) on the value of real property and tangible personal property.

The new law includes a generally applicable cap on the value of intangible property assessable by Oregon: 130 percent of a company’s historical or original cost of real property and tangible personal property. If this exemption applies, other exemptions do not.

The new law also allows specific full or partial exemptions from property tax for communication franchises, certain communication satellites, and certain residential high-speed communication services (*see also* HB 2485).

Finally, the law expands a 2012 provision that prohibited central assessment of a company whose Oregon property was limited to certain data center operations. The new law increases and expands the scope of non-data center property that may be held without causing central assessment and lists certain kinds of property that specifically must be locally assessed.

SB 611 took effect on October 5, 2015 and the new provisions generally apply to tax years beginning July 1, 2016.

## VI. PROPERTY TAX EXEMPTIONS

### 1. [HB 3492](#) (Ch. 571) Exemption and PILOT for Solar Energy Projects

HB 3492 allows a county, or a county and a city if the property is within city boundaries, to enter into an agreement for up to 20 years that exempts a solar electricity generation facility from property tax in consideration of a fee (“PILOT”) of \$7,000 per megawatt of nameplate capacity. The owner or person controlling the facility must apply for a calculation of the PILOT on or before December 31 of the year preceding the exemption and pay the fee on or before March 1. The new law generally prohibits tacking of the PILOT-based exemption onto a prior exemption pursuant to the Rural Renewable Energy Development Zone program or the Strategic Investment Program.

HB 3492 applies to property tax years beginning on or after July 1, 2016. Repeals exemption and PILOT for property first qualifying for exemption on or after January 2, 2022.

### 2. [HB 2171](#) (Ch. 701) History or Science Museums (§§ 46-49)

Sections 46-49 of HB 2171 temporarily provide exemption specifically for certain history or science museums, including food service facilities, museum shops if 90 percent of the inventory is museum-related, and certain parking, theater, vacant, display, storage, meeting, and educational space. Space used for commercial enterprises, hotels, chapels, and water parks is not covered by the exemption.

These provisions apply to property tax years July 1, 2015 through June 30, 2019.

### 3. [HB 3125](#) (Ch. 827) Food Processors

HB 3125 expands the existing property tax exemption for qualified machinery and equipment used in food processing to include machinery and equipment used to process grains, bakery products, dairy products, and eggs. The qualified machinery and equipment used to process grains and bakery products must have a real market value of at least \$100,000 when placed in service. The expanded exemption applies to property tax years beginning on or after July 1, 2016. Starting with tax years beginning on or after July 1, 2015, the law also expressly

## TAXATION LAW

excludes from exemption the machinery and equipment of a person engaged in the business of producing alcoholic beverages or any product that contains marijuana or a marijuana extract.

### 4. [HB 2148](#) (Ch. 65) **Permanent Improvements on Tribal Land**

HB 2148 extends the existing exemption for certain tribal land in [ORS 307.181](#), exempting permanent improvements located on federal land held in trust for a federally recognized Indian tribe or a tribe member from state and local property taxes, fees, charges, and assessments. HB 2148 took effect on October 5, 2015.

### 5. [HB 2643](#) (Ch. 648) **Enterprise Zones**

Among other changes, HB 2643 eliminates the cap on the number of enterprise zones statewide and allows cities, counties, and ports to designate zones without approval from the state Business Development Department, other than a finding that statutory requirements have been satisfied. HB 2643 took effect on October 5, 2015.

### 6. [SB 129](#) (Ch. 757) **“Gain Share” Amendment to Strategic Investment Program Property Tax Exemption**

SB 129 modifies the portion of income tax revenue attributable to new or retained jobs associated with Strategic Investment Program projects that is distributed to counties where the projects are located. The new law caps a county’s annual share at \$16 million and requires a county receiving funds to distribute portions to other local taxing districts. The “Gain Share” program is extended from 2019 to 2029. SB 129 took effect on July 21, 2015.

### 7. [HB 2083](#) (Ch. 309) **Senior and Disabled Persons’ Homestead Deferral**

This deferral program, amended numerous times since 2009, generally allows homeowners age 62 and older, and certain disabled homeowners, to defer payment of property tax until death or transfer of the property. HB 2083 creates an exception to the five-year ownership requirement if the claimants moved to the current homestead from a dwelling that met all the homestead requirements, sold the prior home within one year of purchasing the new home, satisfied the lien for deferral on the prior home, and owed no more than 80 percent of the purchase price of the new homestead. The new law imposes casualty insurance requirements and increases the county median real market value qualification limits for taxpayers who have continuously owned and lived in the homestead at least 21 years.

The Department of Revenue must electronically notify the appropriate state welfare office if the taxpayer does not respond within 35 days after the recertification notice is sent. New provisions apply to property tax years beginning on or after July 1, 2016.

**8. [HB 2690](#) (Ch. 520) Land Held for Development as Low-Income Housing**

HB 2690 provides a new exemption from property tax for land acquired and held by a nonprofit corporation for the purpose of building on the land residences to be sold to individuals with income not greater than 80 percent of area median income as adjusted for family size. As discussed in committee hearings, the purpose of the exemption is to prevent taxation of the land during the pre-construction development period, which can be lengthy. The new law requires the nonprofit corporation, within 10 years immediately preceding filing of claim for exemption, to have sold at least one residence to individuals with income not greater than 80 percent of area median income as adjusted for family size. The exemption ends at time of title transfer. Absent a title transfer, the exemption ends after seven consecutive years, subject to an option for a three-year extension.

These provisions apply to property tax years beginning on or after July 1, 2015.

**9. [HB 2610](#) (Ch. 34) Nonprofit Agricultural Workforce Housing**

HB 2610 redefines the safety and health inspection standards for tax-exempt agricultural workforce housing and child care facilities of certain nonprofit corporations eligible for an exemption pursuant to [ORS 307.485](#).

The bill applies to tax years beginning on or after July 1, 2014. The new law defines the circumstances and procedure to obtain abatement and refund of applicable property taxes for years beginning on or after July 1, 2014 and before July 1, 2016.

**10. [HB 2126](#) (Ch. 507) Vertical Housing Partial Exemption**

HB 2126 extends the sunset date for a new vertical housing zone designation and application for exemption from January 1, 2016 to January 1, 2026. The law also adds a definition of “nonresidential use” and allows any local taxing district to opt out of the vertical housing development zone.

HB 2126 applies to tax years beginning on or after July 1, 2015.

**11. [HB 2130](#) (Ch. 310) Low-Income Housing in City or County Adopting ORS 307.515 to 307.523**

HB 2130 allows a city or county that has chosen to provide the optional property tax exemption pursuant to [ORS 307.515 to 307.523](#) to establish reasonable maximum holding times for land designated for low-income housing development and allows additional qualifying criteria.

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The changes made in HB 2130 apply only to applications for an exemption received on or after October 5, 2015 and the date on which the city or county adopts the reasonable maximum holding times and/or additional criteria.

### 12. [HB 3082](#) (Ch. 141) **Definition of “Low Income” for Locally Elective Property Tax Programs**

HB 3082 provides an alternate definition of “low income” for the purposes of the exemption in [ORS 307.540 to 307.548](#) for a nonprofit corporation providing affordable housing. The new definition raises the income ceiling from 60 percent of area median income to 80 percent after the tenant’s initial year. Committee testimony indicates that the intention of the bill is to facilitate the tenant’s transition into market-rent housing or home ownership.

HB 3082 took effect on October 5, 2015 and sunsets on June 30, 2027.

## VII. CONNECTION TO FEDERAL LAW

### 1. [SB 63](#) (Ch. 442) **Reconnection**

Oregon’s “rolling reconnect” provisions generally mean that Oregon income tax law automatically incorporates the Internal Revenue Code provisions relating to the definition of “taxable income” to the extent Congress makes changes. However, the legislature (with input from the OSCPA) typically passes a reconnection bill each session to update the numerous other references to the Internal Revenue Code that are not related to the definition of “taxable income.”

SB 63 updates references to the Internal Revenue Code and to other provisions in federal tax law from December 31, 2013 to December 31, 2014. Examples include the definition of shareholders in S corporations who may represent their companies in proceedings before the tax court magistrate or the Department of Revenue; the definition of organizations that may qualify for consideration for a charitable tax checkoff; and statutes governing the Oregon College Savings Plan, IDAs, and unemployment insurance.

SB 63 took effect on October 5, 2015.

### 2. [HB 2478](#) (Ch. 629) **Same-Sex Marriage**

This law changes numerous references to “husband and wife” to “spouses in a marriage” and makes other similar changes to reflect recent federal court decisions legalizing same-sex marriage.

## VIII. TAX COMPLIANCE AND COLLECTIONS

### 1. [SB 675](#) (Ch. 539) Public Contract Bidder’s Attestation of Compliance with State Tax Laws

Prior law required contractors bidding on certain public contracts to represent that they have complied with Oregon state and local income and payroll tax laws. SB 675 modifies existing law, among other things, by replacing the requirement of a notarized affidavit with the requirement of an attestation acceptable to the contracting agency. SB 675 took effect on June 22, 2015 and became operative on September 21, 2015.

### 2. [HB 2089](#) (Ch. 643) Suspension of Collections from Low-Income Individuals

Prior law, [ORS 305.155](#), allowed the Department of Revenue to **cancel** certain unpaid tax amounts that the Department determined to be uncollectible. HB 2089 retains that grant of authority but adds a requirement that the Department offer to **suspend collection** against an individual if the individual’s income is no more than 200 percent of federal poverty guidelines and the individual has less than \$5,000 in assets, and the sole source of the individual’s income is exempt from garnishment. During suspension, interest continues to apply, and the Department may file a lien against the individual’s property. The individual may make voluntary payments without jeopardizing the suspension. The Department may resume collection if the individual incurs additional unpaid tax, or if the Department determines that the individual’s income has risen or the individual otherwise ceases to satisfy the eligibility requirements. Applies to debt outstanding as of January 1, 2016.

## IX. OTHER TAX LEGISLATION

### 1. [SB 864](#) (Ch. 301) Estate Tax: Natural Resource Credit

SB 864 revises the definition of “natural resource property” for the purposes of the natural resource credit to include only property located in the State of Oregon. This change is intended to address concerns that some farm and ranch estates that have property both inside and outside of Oregon were unfairly excluded from use of the natural resource credit under previous law.

Proponents described the difficulty in this way:

“In order to utilize the credit, the Oregon natural resource property must comprise at least 50 percent of the total estate value. While out-of-state natural resource properties are counted in the total estate, they are not counted towards the credit because they are not located in Oregon. Disqualification from the credit has devastated some families, and we do not believe this was the intent of the natural resources credit...”

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“SB 864 is a fix to this issue; it modifies definition of natural resource property to mean property in the state. The bill provides that determination of eligibility for credit is based on ratio of in-state property to in-state portion of gross estate.”

SB 864 took effect on October 5, 2015 and applies to estate of decedents dying on or after January 1, 2015.

### 2. [HB 2334](#) (Ch. 45) **Oregon Tax Court: Hardship Exception from Pay-to-Play Rule; Payment of Tax After Special Designation**

Prior to HB 2334, Oregon law ([ORS 305.419\(3\)](#)) allowed a taxpayer to seek hardship relief from the requirement to pay all assessed tax, interest, and penalty in order to pursue an appeal in the Oregon Tax Court Regular Division. This process required a taxpayer seeking relief to file an affidavit “with the complaint.” Taxpayer Leslie Scott filed his affidavit after the complaint, and the Regular Division dismissed his appeal. *Scott v. Department of Revenue*, 21 OTR 313 (2013). HB 2334, sponsored by the Oregon State Bar and developed in consultation with Judge Breithaupt, allows the taxpayer to file an affidavit alleging undue hardship within 30 days after receiving notice of a lack of this affidavit from the court.

The law also allows payment of taxes, penalties, and interest found to be deficient to be made within 30 days after an order to specially designate a complaint to the Regular Division of the Tax Court from the Magistrate Division. If a dispute exists about whether a tax is imposed on or measured by net income (recent examples include the wage withholding tax and the corporate minimum tax), the tax, penalties, and interest must be paid within 30 days after a decision or order finding that the matter involves a deficiency of taxes imposed on or measured by net income.

HB 2334 applies to complaints filed on or after October 5, 2015.

### 3. [HB 2171](#) (Ch. 701) **Tax Reform**

HB 2171 requires the Legislative Revenue Officer to coordinate with the Department of Revenue to analyze options for restructuring Oregon’s state and local revenue system, including income, property, and consumption taxation, as well as commercial activity and value-added taxation. The agencies are to analyze the effects of the options on the state’s economy, state and local revenues, distribution of the state and local tax burden, and stability of the system.

HB 2171 took effect on October 5, 2015. A progress report must be presented to the interim revenue committees by December 1, 2015.

**4. [HB 3016](#) (Ch. 217) Sales of Manufactured Housing**

HB 3016 modifies [HB 4038](#) (2014), which created a process for residents to compete for the purchase of their manufactured home community. Sections 9 and 10 of HB 3016 incorporate an exemption from income tax for the seller's proceeds first enacted in an uncodified 2007 law. HB 3016 also modifies the time limit for tenants to organize to submit a purchase offer. Among other provisions, the new law cancels unpaid property taxes and fees on abandoned manufactured homes.

HB 3016 applies to tax years beginning January 1, 2015, and before January 1, 2020.



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