

2018
OREGON
LEGISLATION
HIGHLIGHTS



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Many bills passed during the 2018 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, the bill takes effect on January 1, 2019.

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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 50 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, 2019.*

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 2018 Oregon Laws chapter number. A table of bill numbers and Oregon Laws chapter numbers appears at the end of the book for a quick reference to the discussion in the text.

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

We are grateful to all who were involved in preparing this book. We are especially appreciative of the efforts of our volunteer authors, who take time away from their practices to contribute to this publication and without whom this book would not exist.

We would also like thank the staff of the Oregon Office of Legislative Counsel, who have for years assisted with this publication as well as for their ongoing support of the Oregon State Bar.

2018 Oregon Legislation Highlights

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Administrative Law

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ADMINISTRATIVE LAW

I. DEPARTMENT OF TRANSPORTATION

1. [HB 4111](#) (Ch. 60) REAL ID Compliant documents

Regular readers of the Administrative Law chapter of the Legislation Highlights over the years have tracked the work done in multiple legislative sessions regarding state compliance with the federal REAL ID Act of 2005. That Act requires minimum standards for state-issued driver licenses and identification cards in order for holders to access federal buildings and board commercial airplanes. In 2017, [SB 374](#) created a REAL ID class of driver licenses, detailing the process ODOT must follow. SB 374 also clarified that the applicants for these compliant cards, not the agency itself, bears the costs.

HB 4111 sets forth the fee schedule that was required by SB 374.

HB 4111 took effect on April 3, 2018.

2. [HB 4054](#) (Ch. 21) Homelessness

Homeless has become a growing and pressing concern for the City of Portland. HB 4054 authorizes the Oregon Department of Transportation (ODOT) to enter into an intergovernmental agreement with a city with a population over 500,000 to remove, store, and dispose of personal property from locations that are owned by the department.

The bill is intended to allow the City of Portland to work with ODOT to clear unlawful camping sites within the city that are on ODOT property.

HB 4054 took effect on January 1, 2019, and sunsets January 2, 2023.

II. NEW LICENSING REQUIREMENTS FOR PROFESSIONALS

1. [HB 4048](#) (Ch. 92) Principal Real Estate Professionals

HB 4048 will add to the continuing education classes that principal real estate brokers must complete – thirty hours every two years – to require completion of the requirement when reactivating a license, in addition to the current requirement when renewing an active license. At least three of those hours must be in a course focused on recent changes in real estate laws and regulations. The bill also requires principal brokers to take advanced courses in brokerage practices when renewing or reactivating their licenses.

HB 4048 took effect April 10, 2018.

2. [HB 4073](#) (Ch. 27) Temporary Operating Permits for Cemeteries

HB 4073 extends the provisions of [HB 3242 \(2015\)](#), which gave the State Mortuary and Cemetery Board authority to issue temporary permits to cemeteries without a valid license when those cemeteries had previously sold cemetery plot and funeral arrangement contracts to individuals in advance of their death. In order to honor the pre-existing contracts, the otherwise invalid cemeteries would be breaching those contracts. Because HB 3242 had a sunset date of January 1, 2018, HB 4073 was necessary to continue the Board's authority to grant those temporary operating permits.

HB 4073 took effect March 16, 2018.

3. [HB 4133](#) (Ch. 63) Maternal Mortality and Morbidity Review Committee

Maternal deaths in Oregon have increased threefold in the past decade. HB 4133 establishes a Maternal Mortality and Morbidity Review Committee to conduct studies and reviews of incidence of maternal mortality and severe maternal morbidity. This will be housed with the Oregon Health Authority and members of the committee will be appointed by the governor.

HB 4133 took effect on April 3, 2018.

III. ADMINISTRATIVE RULES PROCEDURES

1. [HB 4052](#) (Ch. 20) Small Business Rules Advisory Committee

Representative Gomberg introduced HB 4052 (Ch.20) to address a general concern that state agencies were not fully considering the impact of their administrative rules on small businesses. The bill attempts to do so in three ways.

First, HB 4052 created a new standing committee, the Small Business Rules Advisory Committee (SBRAC), to serve "as an advisory committee for state agencies adopting new administrative rules and...review[ing] the effectiveness of existing administrative rules." The SBRAC is composed of nine members: seven representatives of small businesses (the Governor, the President of the Senate, and the Speaker of the House each appoint two, and one is appointed by the Office of Small Business Assistance), one representative of state agencies (appointed by the Director of DAS), and "[a] member who is an expert in the rulemaking process..." (appointed by the State Archivist). The State Archives will support the SBRAC.

Members of the SBRAC serve two-year terms and may be reappointed after their term ends. Members serve at the pleasure of their appointing authority. There is no requirement that members of the SBRAC have any familiarity with the subjects addressed by a proposed

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rule, be among the class of persons or businesses that would be affected by the proposed rule, or have an interest in the proposed rule.

Second, the bill added a new subsection to [ORS 183.333](#) authorizing state agencies to appoint the SBRAC as their advisory committee for rulemaking or preparing fiscal impact statements.

Third, the bill amended [ORS 183.405](#) to require that state agencies consider, as part of their required rule reviews, what impacts the rule has had on small businesses. The SBRAC is authorized to, upon an agency's request, complete the rule review and issue a report to the Secretary of State. If a state agency appoints its own advisory committee, then it must provide a report of its rule reviews to the SBRAC in addition to the Secretary of State and the agency's rulemaking advisory committee.

The bill also directs the Secretary of State to compile all of the rule review reports submitted during each calendar year and submit an annual report to the legislature by no later than February 1 of the following year.

HB 4052 will take effect on June 2, 2018.

2. [SB 1559](#) (Ch. 83) Whistleblower Pilot Program

Whistleblowers often put their careers in jeopardy when they report questionable conduct or activity by their employer. Since Congress passed protections for certain federal employee-whistleblowers in the Civil Service Reform Act of 1978, every state in the nation has enacted its own statutory whistleblower protections for state employees.

SB 1559 directs the Bureau of Labor and Industries to prepare a manual of uniform standards and procedures of regulations for whistleblower protection. Furthermore, it requires OHA, ODOT, DHS, and DEQ to develop pilot programs to provide optional procedures for employees to anonymously disclose certain information.

HB 1559 takes effect on January 1, 2019.

IV. OTHER LEGISLATION

1. [HB 4022](#) (Ch. 90) Electric Vehicle Charging Stations

Relating to electricity for motor vehicles

HB 4022 gives the Department of Administrative Services the authority to establish by rule criteria state agencies can use to determine "as appropriate number of locations at which the state agency may install or have installed" devices or facilities for delivering electricity to

the public for electric motor vehicles. The bill also gives state agencies discretion to add more devices or facilities than the DAS rules require.

The bill directs state agencies to set prices for using these devices or facilities at a level that (1) recovers the cost of operating and administering them, and (2) doesn't exceed 110% of the average market price for delivering electricity to the public in the county in which the device or facility is located.

The bill also directs DAS to issue a report to the legislature on February 1 in 2019, 2021, and 2023 concerning agency implementation of this new authority, and lists content DAS must include in its reports.

HB 4022 takes effect on June 2, 2018.

2. [HB 4159](#) (Ch. 118) Public Employees Retirement Board Rules

HB 4159 contains changes to the Oregon Public Service Retirement Plan accounts. Since January 1, 2004, the Plan has been composed of a pension program and an individual account program. Six percent of each PERS Tier 1 and 2, or Oregon Public Service Retirement Plan, members' salary is placed into an IAP account. Funds in the accounts are invested by the Oregon Investment Council on behalf of members and any earnings or losses are credited to members' IAP accounts. Members aren't guaranteed a minimum investment return.

The OIC had invested members' IAP accounts according to the same investment strategy for 13 years. However, in September 2017, it adopted a new investment strategy designed to reduce investment risk and volatility as members age. The new strategy, which took effect on January 2, 2018, shifted members' IAP accounts to a target-date fund investment model.

The target-date fund in which a member's IAP is invested is selected on the basis of the member's birth year. Members born within a four or five-year period will have their IAPs invested in a designated target-date fund, with the target date being about the time when the members in that period turn 65. For example, members born between 1973 and 1977 will be invested in a fund with a target-date of 2040, while members born between 1977 and 1982 will be invested in a fund with a target-date of 2045.

Members raised a few concerns about the OIC's new strategy, particularly that it could lock in investment losses for members if an economic downturn occurred before a member's IAP investment allocation became more conservative, which would begin at about age 50.

Section 2 of HB 4159 addresses those concerns by directing the Public Employees Retirement Board to, in consultation with the State Treasurer's Office, adopt rules allowing members to elect to have their IAP accounts invested in an investment option approved by

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board, as well as any rules as necessary to implement the bill. Section 3 of the bill authorizes members to elect an investment option once per calendar year, beginning on January 1, 2019.

Of interest is section 4 of the bill, which directs the State Treasurer's Office to review the legal and fiduciary standards applicable to the OIC and the State Treasurer's Office with regard to allowing members to elect an investment option. If the State Treasurer's Office concludes that those legal and fiduciary standards prohibit implementation of an investment strategy which would allow members to elect an investment option, the State treasurer must notify the Board by no later than December 31, 2018. After receiving that notification, the Board may not adopt rules to implement section 2 of the bill.

HB 4159 contained an emergency clause and took effect on its passage, April 13, 2018.

3. [HB 4163](#) (Ch. 98) Program Change Bill

HB 4163 was the Joint Ways and Means Committee program change measure. Specifically of interest to administrative law practitioners are the following measures:

- It moves civil penalties from the OLCC (due to cannabis licensees' violations of laws and rules) to the General Fund;
- It changes cost recovery for financial institutional data matches;
- It provides for actuarial review of PERS.

HB 4163 took effect April 10, 2018.

4. [SB 1536](#) (Ch. 4) Mass Transit Districts

Directors of certain mass transit districts are elected by the residents of that district. SB 1536 changes this to a gubernatorial appointment. Currently elected directors will continue to serve until their term expires.

SB 1536 takes effect on January 1, 2019.

5. [SB 1550](#) (Ch. 104) Food Fish Tracking

SB 1550 authorizes the State Fish and Wildlife Commission to adopt record keeping requirements for people engaged in taking, landing, buying or selling of food fish for commercial purposes or otherwise dealing in food fish for commercial purposes. This will help trace the chain of commercial food fish, one of the charges given to ODFW to promote food fish safety and public confidence thereof.

The bill will take effect January 1, 2019.

6. [SB 1554](#) (Ch. 80) Public Benefits Eligibility

SB 1554 was crafted to help Oregonians save money for higher education expenses by disregarding any moneys in an account established for that purpose from calculations determining the account owner's eligibility for financial or other assistance. Proponents argued that this will encourage additional saving for education among those who would otherwise be unable to do so.

This bill may make significant changes to special needs planning, estate planning recommendations, and Medicaid planning. The exact impact of the bill is currently unclear due to the dual federal/state nature of Medicaid and other means-tested benefits. If Medicaid, SSI, and related benefits fall into the category of programs covered by this bill, 529 education savings plans may take on a much greater role in estate, special needs, and Medicaid planning and could be used to protect significant resources within families.

SB 1554 took effect on June 2, 2018 and applies to eligibility determinations made on or after January 1, 2019.

7. [SB 1555](#) (Ch. 81) Marijuana Tax Allocations

Twenty percent of marijuana tax revenues are allocated to the Oregon Health Authority for use in alcohol and drug abuse prevention, early intervention, and treatment. SB 1555 adds community mental health services as an additional recipient of those funds.

SB 1555 took effect on April 3, 2018, and applies to moneys transferred to the account before July 1, 2019.

Consumer Law

- I. DEBT COLLECTION PRACTICES
 - 1. SB 1553 (Ch. 79) Debt Collectors

- II. MOTOR VEHICLES
 - 1. HB 4087 (Ch. 58) Possessory Liens on Motor Vehicles

- III. PRIVACY
 - 1. SB 1551 (Ch. 10) Oregon Consumer Identity Theft Protection Act

- IV. NET NEUTRALITY
 - 1. HB 4155 (Ch. 88) Government Contracts with ISPs

- V. REAL PROPERTY
 - 1. HB 4134 (Ch. 35) Discriminatory Restrictions on Title

CONSUMER LAW

I. DEBT COLLECTION PRACTICES

1. [SB 1553](#) (Ch. 79) Debt Collectors

SB 1553 amends [ORS 646.639\(2\)\(t\)](#), which was enacted in 2017 through HB 2356. That bill expanded what constitutes an unlawful collection practice and added additional requirements debt buyers must adhere to.

SB 1553 clarifies that this subsection of the statute applies both to debt buyers and to debt collectors acting on behalf of a debt buyer.

SB 1553 takes effect on January 1, 2019.

II. MOTOR VEHICLES

1. [HB 4087](#) (Ch. 58) Possessory Liens on Motor Vehicles

HB 4087 amends [ORS 87.152](#) to provide that a person may not create, attach, assert or claim a possessory lien on a motor vehicle unless the person performs a service that complies with [ORS 646A.480](#) to [646A.495](#) and one of the following applies:

1. The person is a franchised motor vehicle dealership;
2. The person is a licensed tower (“holds a towing business certificate”) and the lien is only for transporting or storing a motor vehicle;
3. The lien is against an abandoned motor vehicle; or
4. The person has a bond of \$20,000 or more.

If a person does not have a valid possessory lien and refuses to release a motor vehicle after the owner of the vehicle requests the release of the vehicle, the owner of the vehicle may bring an action to recover the greater of \$2,000 or twice the value of the vehicle, up to \$20,000 and attorney fees. The owner of the vehicle may also obtain relief in order to regain title to the vehicle, if the person who wrongly asserted the possessory lien changed the title.

HB 4087 will take effect January 1, 2019.

III. PRIVACY

1. [SB 1551](#) (Ch. 10) Oregon Consumer Identity Theft Protection Act

SB 1551 adds a requirement to the Oregon Consumer Identity Theft Protection Act that notice of a breach of security must be made no later than 45 days after discovering or receiving notification of the breach, unless law enforcement requests a delay in providing notice. If a

person offers free credit monitoring services or identity theft prevention and mitigation services when it provides notice of a breach, it cannot require a consumer to provide a credit or debit card number or to agree to enroll in other paid services, in order to receive the service. If the person offers paid credit monitoring services or identity theft prevention and mitigation services, it must also disclose that those services require payment of a fee.

Additionally, a consumer reporting agency may not charge a fee for placing, temporarily lifting or removing a security freeze; creating or deleting a protective record; placing or removing a security freeze on a protective record; or replacing a lost PIN or password.

The bill also amends the safe harbor provisions in [ORS 646A.622\(2\)](#) for what constitutes reasonable safeguards to protect personal information. Finally, the bill cleans up non-substantive edits made by Legislative Counsel in the prior legislative session.

SB 1551 takes effect on June 2, 2018.

IV. NET NEUTRALITY

1. [HB 4155](#) (Ch. 88) Government Contracts with ISPs

HB 4155 prohibits government agencies from contracting with a broadband Internet access service provider that favors some Internet traffic over others; blocks lawful content or devices; throttles some Internet traffic to either discriminate against that traffic or to favor other traffic; or unreasonably interferes with the end user's access to lawful content or ability to use a device.

The bill provides exceptions if the Internet access service provider is the only provider in a particular geographic location or if PUC permits the contract; is addressing copyright infringement, unlawful activity, or the needs of emergency communications or law enforcement; is favoring Internet traffic that the PUC has determined provides significant public interest benefits; or if the provider engages in activities determined by PUC to be reasonable network management.

HB 4155 took effect on April 9, 2018 for rulemaking purposes. However, most provisions do not become operative until January 1, 2019.

V. REAL PROPERTY

1. [HB 4134](#) (Ch. 35) Discriminatory Restrictions on Title

HB 4134 addresses the history of racial covenants and other discriminatory restrictions on titles to real property in Oregon. Like many places in the country, racially restrictive zoning laws and racial covenants were commonly used in Oregon during the first half of the 20th

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century in order to prevent the transfer of property to persons of color. Such mechanisms were found to be unconstitutional in 1948, and since that time have been unenforceable in court. However, many homes in Oregon still contain discriminatory language in the title.

HB 4134 simplifies the process of removing this language from property records by allowing for notice of affected owners by registered or certified mail rather than personal service. If no hearing is requested on a petition to remove the language, the court is required to enter judgment to remove the provision from the title to the property. If a hearing is requested, the only issue the court may consider is whether the provision in question is in violation of ORS 93.270(1)(a). If the court finds the provision is in violation, the court must enter a judgment removing the provision or violating part of the provision.

HB 4134 took effect on March 16, 2018.

Criminal Law

I. DRIVING OFFENSES

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| 2. HB 4116 | (Ch. 32) | Driving a Motor Vehicle While Using a Mobile Electronic Device |
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| 2. HB 4056 | (Ch. 23) | Civil Forfeiture Proceeds |
| 3. HB 4145 | (Ch. 5) | Protective Orders and Firearms |
| 4. HB 4149 | (Ch. 37) | Waivers in Plea Offers and Release Agreements |
| 5. SB 1543 | (Ch. 120) | Omnibus Public Safety Bill |
| 6. SB 1562 | (Ch. 84) | Strangulation |

I. DRIVING OFFENSES

1. [HB 4055](#) (Ch. 22) Failure to Perform the Duties of a Driver

HB 4055 amends several statutes that define the obligations of a motor vehicle driver following an accident, when the accident results in damage to property, injuries to persons, and injuries to domestic animals. [ORS 811.700](#) – [811.710](#) establish several degrees of offenses for failure to perform the duties of a driver (commonly referred to as “hit and run”), which occurs when a person fails to meet their legal obligations following an accident. Those offenses range from a violation offense (injury to domestic animals), to a class A misdemeanor (damage to property), to a class C or B felony (injuries to persons). Those obligations typically include remaining at the accident scene, exchanging required information, and rendering aid when necessary.

In *State v. Garcia-Cisneros*, 285 Or App 252 (2017), the Oregon Court of Appeals interpreted [ORS 811.705](#) and held that a driver’s affirmative legal obligations to remain at the scene and/or provide certain identifying information only arises when the person becomes aware of the damage to property or injuries to persons or domestic animals at the time of the accident. If (as in *Garcia-Cisneros*), the driver discovers after-the-fact that she was involved in an accident resulting in damage or injury, the person has no legal obligation to take affirmative steps.

HB 4055 makes several modifications to the three “hit and run” statutes. It changes the language from “accident” to “collision.” It applies the duty to exchange information to drivers who “know” or “have reason to believe” that they have been involved in a collision. Formerly, it only applied to those who “knew” they were in an accident. “Reason to believe” means that the driver is aware of a circumstance that would cause a reasonable person to be aware of a substantial and unjustifiable risk that the driver’s vehicle has been in a collision. The risk must be of such nature or degree that failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person

Additionally, it creates an affirmative obligation for those who later learn of damage or injury after they leave the scene of the accident. If a driver discovers she was involved in a collision that caused damage to property or domestic animals after having left the scene of the accident, the driver “shall as reasonably possible make a good faith effort” to perform their affirmative obligations. If a driver discovers she was involved in a collision that caused damage to a person, the driver shall take those same steps, plus call 9-1-1 and report the necessary information.

The bill takes effect January 1, 2019.

2. [HB 4116](#) (Ch. 32) Driving a Motor Vehicle While Using a Mobile Electronic Device

HB 4116 modifies [ORS 811.507](#), which establishes the offense of driving a motor vehicle while using a mobile electronic device. In 2017, the Oregon legislature enacted [HB 2597 \(2017\)](#), which further defined the scope of permissible mobile electronic device use for those operating a motor vehicle. It also defined exceptions, affirmative defenses, and created increased penalties for those who repeatedly violate the statute within a ten year period.

HB 4116 modifies the definition of “driving” and “hands-free accessory.” Specifically, “hands-free accessory” is now defined as “an attachment or built-in feature for or an addition to a mobile electronic device that gives a person the ability to keep both hands on the steering wheel at all times while using the device or requires only the minimal use of a finger, via a swipe or tap, to active or deactivate a function of the device.”

Additionally, HB 4116 provides an exemption to truck drivers who use a hands-free device in the scope of their employment. It also exempts those using a two-way radio device in certain circumstances, such as transporting livestock, vehicles larger than a lane of travel, or certain slow-moving vehicles. Additionally, it clarifies that the repeat offender provisions apply to convictions occurring on or after July 1, 2018.

The bill declared an emergency and became effective March 16, 2018.

3. [SB 1538](#) (Ch. 76) Driving Privileges

SB 1538 modifies provisions relating to driving privileges, suspensions, revocations, and the ability of individuals to obtain driving privileges following a suspension or revocation.

SB 1538 arose from the Task Force on Reentry, Employment, and Housing. The bill eliminates many driving license suspensions that arise from events unrelated to driving. Specifically, the bill eliminates the driving privilege suspensions for littering, uncollectible payment to the Department of Transportation, failure to use the same name, giving false information to a police officer, misrepresentation of age, perjury of false affidavit for certain vehicle transactions, and theft of gasoline. It modifies suspensions for controlled substance offenses, minors in possession of alcohol, and cannabis offenses.

Additionally, the bill simplifies the process for someone with a suspended or revoked license to obtain limited driving privileges. Currently, there are two ways a person with suspended or revoked driving privileges can obtain limited driving privileges – a probationary permit or a hardship permit. SB 1538 eliminates probationary permits and streamlines all requests for limited driving privileges into the hardship permit process. It also establishes rules on who is eligible for a hardship permit.

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SB 1538 takes effect January 1, 2019.

II. ANIMALS

3. [HB 4030](#) (Ch. 14) **Compensatory Fines for Wildlife Offenses**

HB 4030 amends [ORS 496.992](#), which establishes the penalties for the unlawful taking of wildlife.

[ORS 496.705](#) authorizes the State Fish and Wildlife Commission to initiate litigation to recover damages for the taking or killing of wildlife. In 2016, the Oregon legislature enacted [HB 4046 \(2016\)](#), which amended [ORS 496.705](#), and increased the financial penalties that can be assessed against those who unlawfully kill or take wildlife, with differing penalties for different animals. In 2017, the Oregon Court of Appeals decided *State v. Shockey*, 285 Or App 718 (2017), which held that the financial penalties arising from [ORS 496.705](#) do not constitute economic damages. Accordingly, the sentencing court in a wildlife prosecution can only order a restitution amount that constituted “objectively verifiable economic losses.” *Id.* It cannot substitute the legislatively established civil damage amount for the restitution amount.

HB 4030 amends [ORS 496.992](#) and establishes compensatory fines for wildlife prosecutions. The maximum fine for wildlife offenses is now the civil damage amounts authorized by [ORS 496.705](#). Following a conviction for the unlawful taking or killing of wildlife, the court may order a compensatory fine and transfer amounts collected to the State Fish and Wildlife Commission. The measure does not preclude the State Fish and Wildlife Commission from initiating litigation for civil damages.

The bill takes effect January 1, 2019.

4. [HB 4050](#) (Ch. 19) **Cockfighting Equipment**

HB 4050 amends [ORS 167.428](#) and [167.431](#), which govern the offenses of unlawful cockfighting and the unlawful participation in cockfighting, both class C felonies.

One provision of [ORS 167.428](#) defined cockfighting to include any person who knowingly manufactures, buys, sells, barter, exchanges, possesses, advertises or otherwise offers to sell a gaff, slasher or other sharp implement designed for attachment to a fighting bird with the intent that the gaff, slasher or other sharp implement be used in cockfighting.

HB 4050 removed that behavior from [ORS 167.428](#) and inserted that conduct into [ORS 167.431](#), the offense of unlawful participation in cockfighting.

The bill takes effect January 1, 2019.

III. OTHER LEGISLATION

1. [HB 4049](#) (Ch. 55) Sexual Assault Forensic Evidence Kits

HB 4049 modifies [ORS 181A.323](#) through [181A.326](#), which establishes provisions for the storage and testing of sexual assault forensic evidence (SAFE) kits. In 2016, Oregon began testing a backlog of untested SAFE kits, and it established a Task Force on the Testing of Sexual Assault Forensic Evidence Kits.

HB 4049 directs the Oregon State Police to establish a committee that will track SAFE kits and develop recommendations for a statewide tracking system. The bill requires all law enforcement agencies, medical facilities, crime laboratories, and other facilities to fully participate in SAFE kit tracking within one year of the tracking system's initial date of operation.

It allows sexual assault victims, or a parent or guardian if the victim is a minor, to anonymously access the tracking system to receive updates on the testing of their SAFE kit. Additionally, the bill reauthorized a continuation on the Task Force on the Testing of Sexual Assault Forensic Evidence Kits, and directed it to monitor the implementation of the tracking system.

HB 4049 took effect on April 4, 2018.

2. [HB 4056](#) (Ch. 23) Civil Forfeiture Proceeds

HB 4056 amends [ORS 131A.360](#) and [131A.365](#), which govern the process for county and state governments to disburse forfeiture proceeds. Following forfeiture, the county or state must first apply forfeiture proceeds to the costs incurred by the seizing and forfeiting agencies. Following the payment of costs, forfeiture proceeds are transferred to various funds, including the Illegal Drug Cleanup Fund, the Asset Forfeiture Oversight Account, the Criminal Justice Commission to fund specialty courts, and the Early Learning Division Fund.

HB 4056 creates an additional recipient of forfeiture proceed funds and requires county and state government to transfer 10% of remaining forfeiture proceeds to the Oregon 529 College Saving Plan Subaccount established for disbursement to the scholarship program for children of public safety officers established under [ORS 348.270](#). HB 4056 amends [ORS 348.270](#) as well, and defines eligibility for the scholarships, as well rules and criteria for disbursement. The scholarships are available to qualifying students who are the child of a public safety officer who suffers a qualifying death or disability.

HB 4056 declared an emergency and took effect March 16, 2018.

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3. [HB 4145](#) (Ch. 5) Protective Orders and Firearms

HB 4145 modifies several statutes relating to firearms, firearm offenses, ammunition, background checks, and firearm reporting requirements of prosecuting attorneys and the Department of State Police.

The bill modifies [ORS 166.255](#), which establishes a Class A misdemeanor for certain people who unlawfully possess firearms or ammunition. Specifically, the offense applies to those who knowingly possess a firearm or ammunition, and are precluded from doing so by (1) an existing court order, such as a Family Abuse and Prevention Act (FAPA) order or a Stalking Protective Order (SPO), or (2) certain qualifying misdemeanor convictions involving the use or attempted use of physical force, or the threatened use of a deadly weapon. HB 4145 makes several changes that expand the application of this offense.

The bill replaces the term “intimate partner” with “family or household member,” which aligns the statute with other statutes governing domestic violence. Currently, a person subject to a SPO or FAPA order can be prosecuted for contempt if they possess a firearm or ammunition in violation of the order. And that person can additionally be prosecuted for violation of [ORS 166.255](#), so long as the person protected in the order is an intimate partner of the defendant. The current definition of “intimate partner” includes persons who are in a sexual relationship, but only if they reside, or have resided, together. This bill extends those subject to prosecution for violation of [ORS 166.255](#) to cases in which the protected party is a sexual partner, regardless of whether the protected party and defendant have ever resided together.

The bill also extends the application of the qualifying misdemeanor provision. Currently, a person is prohibited from possessing firearms or ammunition if the person has been convicted of a qualifying misdemeanor and, at the time of that offense, the victim was a family member. This section extends the prohibition to those convicted of qualifying misdemeanors when, at the time of that offense, the person was a family or household member of the victim, a parent or guardian of the victim, or has been convicted of stalking.

Additionally, the bill requires Department of State Police to report attempted transfers or purchases of firearms by prohibited individuals within 24 hours to all federal, state, and local law enforcement agencies, including district attorneys having jurisdiction in the location of the sale or transfer. It also requires the Department of State Police to prepare an annual report on the number of attempted purchases, the number of investigations resulting from these attempts, and the charges and dispositions of charges arising from these attempts.

HB 4145 takes effect on January 1, 2019.

4. [HB 4149](#) (Ch. 37) Waivers in Plea Offers and Release Agreements

HB 4149 is responsive to jurisdiction-specific practices regarding pretrial plea offers and release agreements. The bill does two things. It precludes a court from conditioning pretrial release on a person's agreeing to be tried in absentia if they fail to appear at a court date. Additionally, it adds a provision precluding the district attorney from conditioning a plea offer on the defendant stipulating to the unconstitutionality of a law.

HB 4149 takes effect January 1, 2019.

5. [SB 1543](#) (Ch. 120) Omnibus Public Safety Bill

SB 1543 is an omnibus public safety bill that includes new legislative concepts and technical fixes to previous legislation.

Section 1 of the bill amends [ORS 180.700](#) which establishes the Attorney General's advisory committee on batterers' intervention. The bill requires that membership of the advisory committee shall include persons who are experienced with evidence-based practices regarding recidivism and risk assessment, as well persons who represent diverse groups that interact with violence prevention. Additionally, it requires the committee to develop separate batterers' intervention program standards for male offenders, female offenders, and those whose offense was against a same-sex partner.

Section 2 of the bill amends [ORS 147.397](#) which establishes procedures funding, obtaining, and preserving sexual assault forensic evidence. This bill requires law enforcement agencies to preserve a sexual assault forensic kit for at least 60 years, and any related evidence for at least six months.

Section 3 defines "sexual assault forensic kit."

Section 4 amends [ORS 161.390](#), and it directs community mental health programs and health care providers to provide the Psychiatric Security Review Board (PSRB) with medical records for person subject to jurisdiction of the PSRB.

Section 5 amends [ORS 161.336](#), which addresses conditional release and the jurisdiction of the PSRB. The bill allows a supervising entity or designee to order return of person found guilty except for insanity and on conditional release to be returned to state hospital or other facility. Additionally, it specifies that the order shall be executed by a peace officer, unless the order provides otherwise.

Section 6 is a technical fix to [ORS 837.365](#), which establishes several offenses for those who unlawfully operate unmanned aircraft system ("drones"). In 2017, the legislature enacted [HB 3047 \(2017\)](#), which intended to create tiered penalties for those who unlawfully operate

CRIMINAL LAW

unmanned aircraft systems. Depending upon the conduct, the offense could be classified as a class B felony, class C felony, or class A misdemeanor. There was an error in drafting HB 3047 (2017), and this section corrects the error to create the tiered penalties.

Section 7 is an update to [SB 249 \(2017\)](#), authorized the court to vacate a person's conviction for the state statutory offense of prostitution, if the person could show they were a victim of sex trafficking at or near the time of the event. This section expands the remedy of vacating convictions from state statutes to prostitution-related municipal ordinances as well.

Section 8 modifies [ORS 423.105](#), which governs Department of Corrections' inmate trust accounts. In 2017, the legislature enacted [SB 844 \(2017\)](#), which established new rules on access to inmate trust accounts, and created transitional accounts to aid a person in reentry following incarceration. This section shields those transitional accounts from garnishment, which was the intent of [SB 844 \(2017\)](#), but never incorporated.

Section 9 modifies [ORS 162.375](#), which defines the offense of initiating a false report, a class A misdemeanor. Currently, if a person initiates a false report that results in a SWAT team being deployed, the person must serve at least 10 days in jail. This section increases the mandatory minimum to 30 days jail if the SWAT deployment results in death or serious physical injury to another person.

Section 10 modifies [ORS 137.540](#), which governs the court's authority to impose probation conditions. The amendment makes it a general condition of probation to follow reasonable recommendations arising from a risk assessment.

Section 11 modifies [ORS 161.705](#), which grants the court authority to reduce class C felonies and certain marijuana felonies to a class A misdemeanor either at sentencing, or upon the completion of their probation. In 2017, the legislature enacted [HB 2355 \(2017\)](#), which established the presumptive penalty for the possession of controlled substances (PCS) as a class A misdemeanor. Those offenses can be elevated to a felony when certain criteria are met. Depending upon which controlled substance is possessed, some PCS offenses become elevated to a class C felony, while others are elevated to a class B felony. This section clarifies that motions to reduce a class C felony to a class A misdemeanor may be made at the time of sentencing. Additionally, this amendment grants the court authority to reduce class B and class C felony PCS cases to a misdemeanor upon the successful completion of probation.

Section 12 modifies [ORS 137.225](#), which governs motions to set aside, commonly referred to as "expungement." Currently, a person convicted of a class C felony drug possession offense may seek expungement after three years, while a person convicted of a class B felony drug possession offense must wait twenty years. This section places all simple drug possession offenses on equal footing, and authorizes expungement following three years, so long as all of the other requirements are satisfied.

Section 13 modifies [ORS 137.372](#), which governs the amount of credit for time served offenders receive when their probation is revoked. Currently, a person is entitled to credit for time served when a presumptive probation sentence is revoked, but not for optional probation and downward departure probations. This amendment authorizes credit for time served on optional probation revocations.

Section 14 confers jurisdiction upon the Oregon Supreme Court to provide direct review of civil and criminal appeals regarding the constitutionality of [HB 3078 \(2017\)](#) (“Safety and Savings Act”). Typically, the Oregon Court of Appeals is the court of first review for appellate matters, with a number of exceptions. This bill directs the Oregon Supreme Court to directly review the matter in an expedited manner when the defendant elects and the only assignment of error relates to the constitutionality of [HB 3078 \(2017\)](#).

Sections 15 and 16 are conflict amendment with [HB 4145 \(2018\)](#). Sections 17 through 20 govern operative and effective dates. The bill declared an emergency, and became effective April 13, 2018.

6. [SB 1562](#) (Ch. 84) Strangulation

SB 1562 amends [ORS 163.187](#), which defines the offense of strangulation. Currently, a person commits the offense by knowingly impeding the normal breathing or circulation of the blood of another person, by applying pressure to the throat or neck of the person, or by blocking the nose or mouth of that person. The offense is a class A misdemeanor, but is elevated to class C felony when committed in the presence of, or witnessed by, the person’s or victim’s minor child, stepchild, or a child residing within the same household.

SB 1562 amends [ORS 163.187](#) in two ways. First, it expands the definition of strangulation to include conduct that impedes the normal breathing or circulation of another person by applying pressure to the chest. Second, it reclassifies the offense as a class C felony if the victim is a family or household member as defined by [ORS 135.230](#). Currently, the Criminal Justice Commission classifies strangulation as a level 6 offense for the Oregon sentencing guidelines. That classification will remain, except for the new class C felonies arising from cases in which the victim is a family or household member. Those offenses will be classified as level 5 offenses.

The bill takes effect January 1, 2019.

4

Christopher Hamilton
Hilary Newcomb
Megan Lane

Elder Law and Estate Planning

I. ELDER LAW AND ESTATE PLANNING

1. HB 4073 (Ch. 27) Temporary Operating Permits for Cemeteries
2. SB 1554 (Ch. 80) Public Benefits Eligibility
3. HB 4129 (Ch. 61) Residential Care Facilities
4. HB 4135 (Ch. 36) Advance Directives
5. SB 1534 (Ch. 75) Training for Care Providers
6. SB 1549 (Ch. 43) Medical Assistance

Christopher Hamilton: 2012 Willamette University School of Law. Member of the Oregon State Bar since 2012.

Megan Lane: 2010 Northwestern School of Law. Member of the Oregon State Bar since 2010.

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

ELDER LAW AND ESTATE PLANNING

I. ELDER LAW AND ESTATE PLANNING

1. [HB 4073](#) (Ch. 27) Temporary Operating Permits for Cemeteries

HB 4073 extends the provisions of [HB 3242 \(2015\)](#), which gave the State Mortuary and Cemetery Board authority to issue temporary permits to cemeteries without a valid license when those cemeteries had previously sold cemetery plot and funeral arrangement contracts to individuals in advance of their death. In order to honor the pre-existing contracts, the otherwise invalid cemeteries would be breaching those contracts. Because HB 3242 had a sunset date of January 1, 2018, HB 4073 was necessary to continue the Board's authority to grant those temporary operating permits.

HB 4073 took effect March 16, 2018.

2. [SB 1554](#) (Ch. 80) Public Benefits Eligibility

SB 1554 was crafted to help Oregonians save money for higher education expenses by disregarding any moneys in an account established for that purpose from calculations determining the account owner's eligibility for financial or other assistance. Proponents argued that this will encourage additional saving for education among those who would otherwise be unable to do so.

This bill may make significant changes to special needs planning, estate planning recommendations, and Medicaid planning. The exact impact of the bill is currently unclear due to the dual federal/state nature of Medicaid and other means-tested benefits. If Medicaid, SSI, and related benefits fall into the category of programs covered by this bill, 529 education savings plans may take on a much greater role in estate, special needs, and Medicaid planning and could be used to protect significant resources within families.

SB 1554 took effect on June 2, 2018 and applies to eligibility determinations made on or after January 1, 2019.

3. [HB 4129](#) (Ch. 61) Residential Care Facilities

HB 4129 establishes licensure requirements for residential care facility administrators (RCFA) under the Health Licensing Office (HLO). The HLO is directed to adopt rules to:

- Approve training and continuing education for RCFAs, and
- Establish continuing education requirements for RCFAs.

The bill renames the Nursing Home Administrator Board under the HLO to the Long Term Care Administrators Board and changes the composition of the Board membership to

include RCFAs. The bill requires the Long Term Care Administrators Board to adopt rules to determine the subject, scope and content of examinations for licensure.

HB 4129 took effect on April 3, 2018. Some substantive provisions become operative on January 1, 2019.

4. [HB 4135](#) (Ch. 36) Advance Directives

HB 4135 updates the Oregon Advance Directive form currently in statute, and establishes an Advance Directive Adoption Committee (ADAC) to review and propose modifications to the form every four years. Current advance directives remain in effect as do advance directives completed on previous forms.

Under the bill, the modified advance directive form is operative on January 1, 2019. The new form should not be used until that date. This form sunsets on January 1, 2022, because the Advance Directive Adoption Committee is expected to have a newly proposed form by that time. New forms proposed by the ADAC do not go into effect automatically, but must be approved by the legislature.

This BILL was the biggest change for elder law and estate planning in the 2018 Legislative session. The bill is the product of work by a number of groups since 2015 to begin the process of updating Oregon's advance directive to make it easier for consumers to understand and use in expressing their wishes. The bill establishes requirements for the form of an advance directive and calls for a committee to review the advance directive form at least every four years and propose any necessary changes.

The committee will consist of 13 individuals including the Long Term Care Ombudsman and three members of the Bar, one each with expertise in elder law and advising individuals on how to execute an advance directive, estate planning and advising individuals on how to make end-of-life decisions, and health law. Before any proposed changes take effect, they must be ratified by the Legislative Assembly during an odd-numbered year regular session in the manner required for passage of bills and signed by the Governor.

The bill creates a statutory form for the appointment of a health care representative and an alternate health care representative, equivalent to Parts A, B, D, and E of the current form. The bill also adopted a temporary form for the advance directive, which includes the form for the appointment of a health care representative and an alternate health care representative and adds the equivalent of Part C of the current form. The bill gave the committee authority to propose changes only to the form of the advance directive. Both new forms include an explicit notice that if the person does not appoint a health care representative, one will be appointed for them if they become too sick to speak for themselves in the order of priority set in ORS 127.635(2). The advance directive form also replaces the three lines for additional conditions or

ELDER LAW AND ESTATE PLANNING

instructions on the current form with a specific note that additional instructions may be attached on additional pages.

Currently valid advance directives will continue to be valid and advance directives inadvertently executed on old forms will have full effect. However, current templates and forms used with clients to make appointments or create new advance directives should be updated by January 1, 2019, when the new forms go into effect.

The bill allows for a notary to witness either document instead of the two witnesses currently required for an advance directive. The bill also changes the current form by replacing “physician” with “health care provider” which is defined as “a person licensed, certified or otherwise authorized or permitted by the laws of this state to administer diagnosis, treatment or care of disease, injury and congenital or degenerative conditions, including the use, maintenance, withdrawal or withholding of life-sustaining procedures and the use, maintenance, withdrawal or withholding of artificially administered nutrition and hydration in the ordinary course of business or practice of a profession [or a health care facility].” The bill made a number of other technical changes that largely serve to remove confusing language and make the statute easier to understand.

Effective June 2, 2018 with a January 1, 2019 operative date.

5. [SB 1534](#) (Ch. 75) Training for Care Providers

SB 1534 creates the classification of “personal support worker” separate from the “home care worker” classification but retains the same requirements for both classifications. It requires the Department of Human Services to establish minimum training standards and procedures for home care workers and personal support workers beginning on January 1, 2020. The bill provides a nonexclusive list of topics that may be included in training, and specifies that training must be geographically assessable to all areas of the state and culturally appropriate for workers of all language abilities.

An issue for elder law practitioners to keep an eye on is how this bill will impact the availability and cost of in-home care services for clients. The possible increase in the cost of such services may affect Medicaid planning, both when looking at how long resources might last before needing benefits and in determining whether applying for benefits makes financial sense for clients.

SB 1534 takes effect on January 1, 2019.

6. [SB 1549](#) (Ch. 43) Medical Assistance

SB 1549 allows the Oregon Health Authority (OHA) and the Department of Human Services (DHS) to continue Medicaid coverage for a person admitted to a state hospital and

allows individuals with Medicaid coverage that is terminated while admitted to a state hospital to apply for Medicaid 120 days prior to their expected release date.

The bill also allows the Department of Consumers and Business Services (DCBS) to approve a health benefit plan that requires a deductible for a specific health care service despite a provision in Oregon law prohibiting a deductible for the service if the plan is offered by the carrier as a plan that qualifies for a distribution from a health savings account (HSA) and meets all other statutory requirements. This provision applies to health benefit plans issued or renewed on or after January 1, 2019.

SB 1549 requires health insurers to reimburse out-of-network providers for emergency or other covered services provided at an in-network health care facility at an amount established by DCBS in rule. DCBS is required to adopt rules to calculate the reimbursement methodology; the reimbursement must be equal to the median allowed amount paid to in-network health care providers by commercial insurers based on data collected in the All Payer All Claims (APAC) database adjusted annually using the U.S. City Average Consumer Price Index for All Urban Consumers (All Items) as published by the Bureau of Labor Statistics of the United States Department of Labor. DCBS may adjust the reimbursement amount to reflect geographic differences. This provision is operative January 1, 2019 and sunsets on January 2, 2022.

DCBS is also required to report the following to the legislative committees on health care by July 1, 2020:

- Consumer complaints concerning billing,
- Adequacy of provider networks,
- Effects on premiums and
- Recommendations for compliance.

SB 1549 took effect on March 16, 2018

5

Megan Lane
Hilary Newcomb

Health Law

I. HEALTH LAW

- | | | |
|-------------|-----------|--|
| 1. HB 4005 | (Ch. 7) | Prescription Drug Pricing |
| 2. HB 4018 | (Ch. 49) | Coordinated Care Organizations |
| 3. HB 4020 | (Ch. 50) | Extended Stay Center |
| 4. HB 4104 | (Ch. 9) | Coverage of Hearing Loss Treatments |
| 5. HB 4107 | (Ch. 31) | Coverage of Osteopathic Services |
| 6. HB 4129 | (Ch. 61) | Residential Care Facilities |
| 7. HB 4133 | (Ch. 63) | Maternal Mortality and Morbidity Review
Committee |
| 8. HB 4135 | (Ch. 36) | Advance Directives |
| 9. HB 4143 | (Ch. 45) | Drug Treatment |
| 10. HB 4162 | (Ch. 66) | Long Term Care Facility Assessment |
| 11. SB 1534 | (Ch. 75) | Training for Care Providers |
| 12. SB 1547 | (Ch. 121) | Concussions Sustained by Young Athletes |
| 13. SB 1549 | (Ch. 43) | Medical Assistance |

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I. HEALTH LAW

1. [HB 4005](#) (Ch. 7) Prescription Drug Pricing

HB 4005 establishes a statewide prescription drug cost and price transparency program. It defines the terms “manufacture”, “manufacturer”, “prescription drug”, and “price”; and directs Department of Consumer and Business Services (DCBS) to define the term “new prescription drug.” The bill requires prescription drug manufacturers to report specified information regarding certain prescription drugs to DCBS. It also requires drug manufacturers to report production, marketing and research costs, use of consumer assistance programs and current prices or planned price increases for certain prescription drugs during a certain time period.

HB 4005 grants DCBS the authority to impose civil penalties for drug manufacturers that fail to comply with reporting requirements. It also grants DCBS authority to establish manufacturer fees to implement the transparency program via rulemaking. HB 4005 requires health insurers with a prescription drug benefit to report information to DCBS related to certain prescription drugs. It also requires DCBS to hold a public hearing annually regarding prescription drug prices. DCBS is then required to submit an annual report to the Legislative Assembly that addresses prescription drug prices and cost containment recommendations.

HB 4005 took effect on March 12, 2018. The first report on drug pricing, other than the pricing of new drugs, by pharmaceutical manufacturers is due July 1, 2019 and is on March 15 in 2020 and later. The first report on new drugs is due March 15, 2019. Thereafter the new drug report must be submitted no later than 30 days after the introduction of the drug to the market. Insurers must report drug prices along with their rate filings after January 1, 2019.

2. [HB 4018](#) (Ch. 49) Coordinated Care Organizations

HB 4018 modifies requirements for coordinated care organizations (CCOs). The bill establishes meeting requirements for governing bodies of CCOs such that meetings during which substantive decisions are made are open to the public. It also modifies the composition of a CCO’s governing body require only one person, not a majority of the governing body, represent persons that share in the financial risk of the organization.

HB 4018 requires a CCO to spend earnings above specified threshold on services designed to address health disparities and social determinants of health consistent with federal terms and conditions under Section 1115 of the Social Security Act. The bill defines “benefit period” and “renew” and codifies contract provisions for notice of nonrenewal. It specifies that a CCO’s refusal to renew a contract results in termination of existing contract at the end of the benefit period. Finally, the bill grants the Director of OHA the authority to waive newly created compliance requirements if consistent with administration of the state’s Medicaid program.

The bill took effect on April 3, 2018. Sections 1 & 2, related to public meeting requirements, are effective January 1, 2019.

3. [HB 4020](#) (Ch. 50) Extended Stay Centers

HB 4020 specifies criteria for licensing of extended stay centers and requires Oregon Health Authority (OHA) to adopt rules. It also requires extended stay centers to report discharge data to OHA upon request. It requires OHA to apply for authorization from the Centers for Medicare and Medicaid Services to receive federal matching funds for services of extended stay centers provided to medical assistance recipients and to permit extended stay centers and ambulatory surgical centers to operate under single license.

HB 4020 creates new requirements related to hospital financial assistance policies. Hospitals must have written financial assistance policies that comply with the statutory plain language requirements for consumer contracts. Hospitals must display policies in publicly accessible areas and provide written copies to patients upon request. Hospital billing statements must also include notice of financial assistance policies including an internet direct link to such policies. OHA is required to make a uniform financial assistance application form available that consumers may use with any Oregon hospital.

HB 4020 took effect on April 3, 2018. However, the majority of the substantive sections (Sections 2-9) are effective January 1, 2019. OHA has until January 1, 2020 to create the uniform application form for financial assistance.

4. [HB 4104](#) (Ch. 9) Coverage of Hearing Loss Treatments

HB 4104 modifies the requirements for health benefit plan coverage of hearing loss treatments. Under the bill, insurers must cover costs related to bilateral cochlear implants including programming, reprogramming and repair. The bill defines hearing assistive technology system and requires health insurers to cover ear molds, replacement ear molds and hearing assistive technology system for pediatric enrollees and students. The bill also requires health insurers to provide notice of coverage limits to enrollees and offer education materials. Health insurers are required to ensure that enrollees have access to pediatric audiologists.

HB 4104 takes effect on January 1, 2019 and applies to health benefit plans beginning in 2020.

5. [HB 4107](#) (Ch. 31) Coverage of Osteopathic Services

HB 4107 requires health insurers that offer a benefit plan that covers the cost of an osteopathic manipulative treatment to reimburse osteopathic physicians for osteopathic evaluation. The insurer may not deny reimbursement on the basis that the evaluation and treatment occurred on the same date.

HEALTH LAW

HB 4107 takes effect June 2, 2018 and applies to health benefit plans that are issued, renewed or extended after that date.

6. [HB 4129](#) (Ch. 61) Residential Care Facilities

HB 4129 establishes licensure requirements for residential care facility administrators (RCFA) under the Health Licensing Office (HLO). The HLO is directed to adopt rules to:

1. Approve training and continuing education for RCFAs, and
2. Establish continuing education requirements for RCFAs.

The bill renames the Nursing Home Administrator Board under the HLO to the Long Term Care Administrators Board and changes the composition of the Board membership to include RCFAs. The bill requires the Long Term Care Administrators Board to adopt rules to determine the subject, scope and content of examinations for licensure.

HB 4129 took effect on April 3, 2018. Some substantive provisions become operative on January 1, 2019.

7. [HB 4133](#) (Ch. 63) Maternal Mortality and Morbidity Review Committee

HB 4133 establishes the Maternal Mortality and Morbidity Review Committee under the Oregon Health Authority (OHA) to conduct studies and review incidences of death during or caused by pregnancy. The bill provides OHA with authority to request information from health care organizations, state and local governments and medical examiners.

HB 4133 exempts the Committee from public meeting laws and from civil or criminal liabilities. It also grants immunity to reporting entities and individuals. The first biennial report is due by July 1, 2021 with a progress report due to the Legislative Assembly by January 1, 2019.

HB 4133 took effect April 3, 2018.

8. [HB 4135](#) (Ch. 36) Advance Directives

HB 4135 updates the Oregon Advance Directive form currently in statute, and establishes an Advance Directive Adoption Committee (ADAC) to review and propose modifications to the form every four years. Current advance directives remain in effect as do advance directives completed on previous forms.

Under the bill, the modified advance directive form is operative on January 1, 2019. The new form should not be used until that date. This form sunsets on January 1, 2022, because the Advance Directive Adoption Committee is expected to have a newly proposed form by that

time. New forms proposed by the ADAC do not go into effect automatically, but must be approved by the legislature.

The ADAC is comprised of 13 members representing a variety of stakeholders named in the bill. Three of the members must be among those proposed by the Oregon State Bar, and must have experience in elder law, estate planning, and health law respectively.

Effective June 2, 2018 with a January 1, 2019 operative date.

9. [HB 4143](#) (Ch. 45) Drug Treatment

HB 4143 requires the Department of Consumer and Business Services to study the barriers to medication-assisted treatment for substance use disorder and submit findings to the Legislative Assembly by June 30, 2018. The bill also requires the Oregon Health Authority to establish a pilot project to determine the effectiveness of establishing immediate access to appropriate evidence-based treatment for persons who suffer opioid and opiate overdoses and report annually to the Legislative Assembly. The pilot project is funded by \$2 million dollar appropriation from the general fund and sunsets January 2, 2021.

HB 4143 requires health care professionals who are licensed to prescribe opioids and opiates to register with Oregon’s Prescription Drug Monitoring Program. This requirement is effective July 1, 2018.

HB 4143 took effect March 27, 2018.

10. [HB 4162](#) (Ch. 66) Long Term Care Facility Assessment

HB 4162 extends the sunset of the Long Term Care Facility Assessment to June 30, 2026. It also modifies the methodology the Department of Human Services uses to reimburse long term care facilities for Medicaid patients.

HB 4162 takes effect on June 2, 2018.

11. [SB 1534](#) (Ch. 75) Training for Care Providers

SB 1534 creates the classification of “personal support worker” separate from the “home care worker” classification but retains the same requirements for both classifications. It requires the Department of Human Services to establish minimum training standards and procedures for home care workers and personal support workers beginning on January 1, 2020. The bill provides a nonexclusive list of topics that may be included in training, and specifies that training must be geographically assessable to all areas of the state and culturally appropriate for workers of all language abilities.

HEALTH LAW

An issue for elder law practitioners to keep an eye on is how this bill will impact the availability and cost of in-home care services for clients. The possible increase in the cost of such services may affect Medicaid planning, both when looking at how long resources might last before needing benefits and in determining whether applying for benefits makes financial sense for clients.

SB 1534 takes effect on January 1, 2019.

12. [SB 1547](#) (Ch. 121) Concussions Sustained by Young Athletes

SB 1547 expands the list of qualified health professionals authorized to provide medical release of a young athlete suspected of a concussion. Additional persons include: licensed chiropractic physicians, naturopathic physicians, psychologists, physical therapists, occupational therapists, physician assistants and nurse practitioners.

The bill requires Oregon Health and Science University to implement an online certification program that qualified health professionals will be required to complete in order to receive a certification to provide medical releases. The online certification program will become operative July 1, 2020, however, psychologists, physician assistants and nurse practitioners are authorized to provide medical releases without a certificate issued by the program until July 1, 2021.

SB 1547 took effect on April 13, 2018.

13. [SB 1549](#) (Ch. 43) Medical Assistance

SB 1549 allows the Oregon Health Authority (OHA) and the Department of Human Services (DHS) to continue Medicaid coverage for a person admitted to a state hospital and allows individuals with Medicaid coverage that is terminated while admitted to a state hospital to apply for Medicaid 120 days prior to their expected release date.

The bill also allows the Department of Consumers and Business Services (DCBS) to approve a health benefit plan that requires a deductible for a specific health care service despite a provision in Oregon law prohibiting a deductible for the service if the plan is offered by the carrier as a plan that qualifies for a distribution from a health savings account (HSA) and meets all other statutory requirements. This provision applies to health benefit plans issued or renewed on or after January 1, 2019.

SB 1549 requires health insurers to reimburse out-of-network providers for emergency or other covered services provided at an in-network health care facility at an amount established by DCBS in rule. DCBS is required to adopt rules to calculate the reimbursement methodology; the reimbursement must be equal to the median allowed amount paid to in-network health care providers by commercial insurers based on data collected in the All Payer All Claims (APAC) database adjusted annually using the U.S. City Average Consumer Price Index

for All Urban Consumers (All Items) as published by the Bureau of Labor Statistics of the United States Department of Labor. DCBS may adjust the reimbursement amount to reflect geographic differences. This provision is operative January 1, 2019 and sunsets on January 2, 2022.

DCBS is also required to report the following to the legislative committees on health care by July 1, 2020:

- Consumer complaints concerning billing,
- Adequacy of provider networks,
- Effects on premiums and
- Recommendations for compliance.

SB 1549 took effect on March 16, 2018.

6

Christopher Hamilton
Matt Shields
Amy Zubko

Judicial Administration

I. JUDICIAL BUDGET

- | | | |
|------------|----------|-----------------------|
| 1. HB 4163 | (Ch. 98) | Program Change |
| 2. HB 5201 | (Ch. 99) | Budget Reconciliation |

II. OTHER LEGISLATION

- | | | |
|------------|----------|---|
| 1. SB 1546 | (Ch. 41) | Judicial Retirement Benefits |
| 2. HB 4008 | (Ch. 11) | Future Earnings Potential |
| 3. HB 4094 | (Ch. 59) | Personal Injury Settlements and Removal of
Fiduciaries |
| 4. HB 4095 | (Ch. 2) | Communication with a Lawyer Referral Service |

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JUDICIAL ADMINISTRATION

I. JUDICIAL BUDGET

This chapter addresses legislation related to the operation of the Oregon Judicial Department and to the court system in general, as well as legislation affecting the Oregon State Bar. In 2018, the legislature updated the 2017-2019 budgets of the Criminal Justice Commission, the Oregon Judicial Department and the Public Defense Services Commission.

1. [HB 4163](#) (Ch. 98) Program Change

HB 4163 updates statutory changes necessary to support the 2017 – 2019 biennial budget. Statutory changes affecting the Criminal Justice Commission and the Oregon Judicial Department, among others, were made in in the bill. For additional information on this issue see [HB 5201](#).

Judicial Salaries

In Sections 19-22 of the bill, the Oregon Legislature increased the annual salaries of Oregon’s state judges by \$5,000 a year. These include the Supreme Court, Court of Appeals, circuit judges, and Tax Court judges.

2. [HB 5201](#) (Ch. 99) Budget Reconciliation

HB 5201 is the omnibus General Fund budget reconciliation bill for the 2018 legislative session. Funding for projects and programs within the Criminal Justice Commission, Oregon Judicial Department and the Public Defense Services Commission, among others, were appropriated in this bill.

Case Management System for Specialty Courts

In Section 51 of the bill, the Oregon Legislature allowed for an additional \$450,000 of other funds to be used by the Criminal Justice Commission for the creation of a case management system for Oregon Specialty Courts. There are approximately 70 Specialty Courts in Oregon including adult and juvenile drug courts, family treatment courts, veteran courts, mental health courts, and DUII courts.

Judicial Salaries

In Section 153 of the bill, the Oregon Legislature appropriated \$736,683 to pay for the increase in judicial salaries through the end of the biennium. See HB 4163 for additional information.

Judicial Operations Budget

In Section 153 of the bill and Section 180 of the bill, the Oregon Legislature appropriated \$2.4 million and removed the limitation on \$3.5 million from the General Fund to support the

Oregon Judicial Department's operations budget. These funds, in addition to funds rolled over from the previous biennium, fulfilled the department's 2018 funding request submitted to the Legislature.

Parent Child Representation Program

In Section 154 of the bill, the Oregon Legislature appropriated an additional \$1.34 million to the Public Defense Services Commission to expand the Parent-Child Representation Program into Coos and Lincoln counties. The program began in August 2014 in Linn and Yamhill counties and expanded into Columbia County in 2015.

Caseloads Standards Study

In Section 154 of the bill, the Oregon Legislature appropriated \$450,000 for a study exploring Oregon-specific caseload standards and an assessment of Oregon public defense services.

II. OTHER LEGISLATION

1. [SB 1546](#) (Ch. 41) Judicial Retirement Benefits

SB 1541 addressing a vesting problem faced by some judges who were Oregon Public Service Retirement Plan (OPSRP) members prior to their appointment to the bench. Historically, individuals who worked for PERS employers prior to service as a judge are able to count years in Judge PERS toward Tier 1 or Tier 2 vesting requirements. SB 1546 ensures that years in Judge PERS will similarly count toward vesting in OPSRP.

SB 1546 took effect on June 2, 2018.

2. [HB 4008](#) (Ch. 11) Future Earning Potential

In many civil cases, damages are awarded to a prevailing plaintiff to compensate for the loss of income they would have received but for an injury sustained. Historically, the calculation of potential future earnings could take into account numerous factors, including the race and ethnicity of the plaintiff. Proponents of HB 4008 argue that permitting these factors to be considered has in some cases resulted in plaintiffs receiving lessor compensation than otherwise similarly situated plaintiffs, and can perpetuate racial discrimination and wage gaps.

HB 4008 makes any calculation of future earning potential that takes race or ethnicity of a defendant into account inadmissible in a civil action. The bill further provides that the court must instruct the jury to not consider the race or ethnicity of a plaintiff in determining either whether to award damages for future earnings or the amount of such earnings.

JUDICIAL ADMINISTRATION

3. [HB 4094](#) (Ch. 59) **Personal Injury Settlements and Removal of Fiduciaries**

HB 4094 seeks to address two separate issues. First, the type of detailed financial and other personal information required in an affidavit to support a petition for approval of a settlement agreement should not be public record, and can endanger the incapacitated people, minor children, and estates that approval process is intended to protect. With this bill, that affidavit can now be filed confidentially, as long as the caption states it is confidential, so that it is only subject to inspection pursuant to a court order entered after showing of good cause.

Second, there was an incident of a professional fiduciary who was removed for cause in a protective proceeding in Eastern Oregon petitioning to be appointed in a Metro Area protective proceeding without disclosing that removal. Upon investigation, the judge involved and the bar found there was no requirement for a proposed fiduciary to disclose having been removed. This bill corrects that by requiring disclosure of any prior removal under ORS 125.225 or any conduct that caused a surcharge under ORS 125.025(3)(e). The bill also requires notice of any such removal or conduct in any ongoing protective proceedings the fiduciary is involved in. It should be noted that ORS 125.225 only covers the removal of a fiduciary. Resignation of a fiduciary is covered by ORS 125.085(2). Moving forward, it will be important to cite the correct authority for resignations under settlement agreements and any other circumstances to avoid confusion with removals that must be disclosed.

HB 4094 will take effect January 1, 2019.

4. [HB 4095](#) (Ch. 2) **Communications with a Lawyer Referral Service**

Under Rule 503 of the Oregon Evidentiary Code (ORS 40.225), Oregon law provides statutory authority for attorney-client privilege. Under the privilege, with limited exceptions, a lawyer may not disclose information shared by the client with the lawyer or his or her representative without the client's consent.

In the case of a lawyer referral service, such as the service operated by the Oregon State Bar, there has been some uncertainty about whether the attorney-client privilege would extend to information clients share with the lawyer referral service in order to find a lawyer.

HB 4095 adds communications between a client, or a representative of the client, and a lawyer referral service to the statute to ensure that these communications fall under the same protection.

HB 4095 takes effect on January 1, 2019 and applies to all confidential communications whether made before or after the effective date of the bill.

7

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Taxation Law

I. TAXATION

- | | | |
|------------|-----------|----------------------------------|
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| 2. SB 1555 | (Ch. 81) | Oregon Medical Marijuana Account |
| 3. SB 1528 | (Ch. 108) | Oregon Income Tax |
| 4. HB 4139 | (Ch. 64) | Heavy Equipment Rental Tax |
| 5. SB 1529 | (Ch. 101) | Income Tax |
| 6. HB 4026 | (Ch. 52) | Charitable Activities |

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TAXATION

I. TAXATION

1. [HB 4028](#) (Ch. 111) Tax Credits

HB 4028 makes numerous changes to Oregon tax credit provisions. These changes include limiting expenses for which dependent care income tax credit may be claimed to a new formula. The bill clarifies provisions of the bovine manure credit, and changes the Oregon affordable housing lender credit to include provisions related to manufactured home. The bill also provides for Oregon production investment fund contributions mechanics.

The bill takes effect on June 2, 2018.

2. [SB 1555](#) (Ch. 81) Oregon Medical Marijuana Account

SB 1555 modifies purposes for which Oregon Marijuana Account funds may be used by eliminating the specific restriction that the funds may be used solely for mental health treatment or for alcohol and drug abuse and instead specifying that the moneys may be used for the same purposes as funds within the Mental Health Alcoholism and Drug Services Account under [ORS 430.380](#).

The bill took effect on April 3, 2018.

3. [SB 1528](#) (Ch. 108) Oregon Income Tax

Senate Bill 1528 was passed in part in response to the federal Tax Cuts and Jobs Act that was signed into law in December 2017. The bill decouples Oregon from section 199A of the Internal Revenue Code beginning on January 1, 2018. Absent this change, certain pass through entities in Oregon would have received a deduction on their Oregon income taxes due to the deduction allowed by federal law and Oregon's connection to the federal definition of taxable income. The revenue impact to Oregon of following 199A treatment is estimated at \$200 million.

Additionally, SB 1528 creates a charitable contribution fund that taxpayers can use to pay state taxes. Under the bill up to a total of \$14 million per year can be claimed by taxpayers as a tax credit for contributions made to the Oregon Opportunity Grant Fund.

The bill also updates Oregon's conformity date for specified personal income tax provisions to 12/31/2017.

The bill takes effect on June 2, 2018.

4. [HB 4139](#) (Ch. 64) Heavy Equipment Rental tax

HB 4139 replaces ab Personal property tax on heavy equipment rentals replaced with a 2% “transaction” tax on the rental transaction. Driven by Eastern Oregon Rentals. The Heavy Equipment Rental Tax (HERT) is intended to be equal to the existing tax so the Department of Revenue will issue refunds to owners as appropriate. However, the incidence of sales tax is on user of equipment, so refunds issued may not be issued to taxpayer who themselves overpaid.

The bill takes effect on June 2, 2018.

5. [SB 1529](#) (Ch. 101) Oregon Income Tax

SB 1529 updates Oregon’s conformity date for various corporate income tax provisions to December 31, 2017. The bill also fixes a problem with Oregon “DRD” (dividends-received deduction) by requiring the addback of the federal dividend received deduction related to repatriation.

SB 1529 repeals tax haven legislation, effective January 1, 2017, and provides a credit for taxes previously paid under tax haven provisions for tax years 2014 through 2016. The credit is limited to the lesser of additional tax paid on with the inclusion of the transition tax and the additional tax paid pursuant to tax haven provisions for tax years 2014 through 2016. The credit cannot exceed the taxpayer’s 2017 tax liability, but can be carried over for five years

6. [HB 4026](#) (Ch. 52) Charitable Activities

HB 4026 prohibits the Oregon Department of Revenue from considering the charitable contributions or activities of an individual or of that individual’s spouse as part of their determination as to whether that individual is domiciled in Oregon.

This change addresses a concern that former Oregon residents who have left the state are dissuaded from donating to Oregon charities for fear that the DOR will use such charitable giving to determine they are still Oregon residents and subject to Oregon tax. This change eliminates a potential disincentive to donate to Oregon charities.

HB 4026 took effect on June 2, 2018 and applies to tax years beginning on or after January 1, 2019.

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