

2019  
OREGON  
LEGISLATION  
HIGHLIGHTS



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*Many bills passed during the 2019 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, 2020.*

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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 nearly 300 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, 2020.*

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 the 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 2019 Oregon Laws chapter number. A table of bill numbers and Oregon Laws chapter numbers appears at the end of the book.

The legislature’s website offers additional information that the reader of this book may find useful. Individual bills are hyperlinked to that bill’s page in the Oregon Legislative Information System, which contains additional information on that bill. 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 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 be possible.

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 supporting the ongoing work of the Oregon State Bar.



# 2019 Oregon Legislation Highlights

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# 1

Judy Parker  
Matt Barber

## Administrative Law

### I. ADMINISTRATIVE LAW

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| 1. HB 2011 | (Ch. 186) | Regulatory Boards                              |
| 2. HB 3030 | (Ch. 142) | Temporary Licenses for Spouses of Armed Forces |
| 3. HB 3218 | (Ch. 114) | Appraiser Certification                        |
| 4. SB 43   | (Ch. 125) | Continuing Education                           |
| 5. SB 854  | (Ch. 468) | Alternative to Social Security Numbers         |
| 6. SB 935  | (Ch. 682) | Landscape Contractors                          |

### II. PUBLIC RECORDS

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| 1. HB 2430 | (Ch. 107) | Public Records Advisory Council                               |
| 2. HB 2353 | (Ch. 205) | Penalties For Failing To Comply With A Public Records Request |
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### III. OTHER LEGISLATION

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| 1. HB 2488 | (Ch. 50)  | Prohibition On The Use Of Cryptocurrency |
| 2. SB 290  | (Ch. 245) | Good Samaritan Firefighters              |
| 3. SB 933  | (Ch. 352) | Self-Identification                      |

**Matthew Barber:** 2004 Willamette University School of Law. Oregon State Bar member since 2004.

**Judy Parker:** 2006 Willamette University School of Law. Oregon State Bar member since 2006.

## ADMINISTRATIVE LAW

### I. ADMINISTRATIVE LAW

#### 1. [HB 2011](#) (Ch. 186) Regulatory Boards

Cultural competency is the “life-long process of examining the values and beliefs and developing and applying an inclusive approach to health care practice in a manner that recognizes the content and complexities of provider-patient communication and interaction and preserves the dignity of individuals, families, and communities.” OAR 943-090-0010(3).

HB 2011 will add such cultural competency to the continuing education classes that certain professional regulatory boards require. These are primarily health care professionals such as doctors, nurses, and emergency medical service providers.

HB 2011 took effect on September 29, 2019.

#### 2. [HB 3030](#) (Ch. 142) Temporary Licenses for Spouses of Armed Forces

Roughly one-third of active duty military spouses in the United States are underemployed. In an effort to mitigate that figure, the Legislature passed into law HB 3030 (Ch. 142).

This bill allows a professional licensing board to issue a non-renewable temporary authorization to a person who is the spouse of a member of the Armed Forces of the United States and who is stationed in Oregon. The bill applies to spouses who hold a current out-of-state authorization to provide occupational or professional services, are in good standing with the out-of-state regulatory body that issued the authorization, and have demonstrated competency in the occupation or profession.

HB 3030 took effect on September 29, 2019, but becomes operative January 1, 2020.

#### 3. [HB 3218](#) (Ch. 114) Appraiser Certification

HB 3218 limits the time in which the Appraiser Certification and Licensure Board may commence disciplinary proceedings.

Predicated in part on the five-year recordkeeping rule under the Uniform Standards of Professional Appraisal Practice, this law lowers the statute of repose to actions arising out of a real estate appraisal activity or review and clarifies that disciplinary action by the Board is the later of five years (rather than six) after the activity was completed or the expiration of time for record retention

This law will take effect on January 1, 2020, and will apply to real estate appraisal activity and appraisal reviews occurring on or after that date.

4. [SB 43](#) (Ch. 125) Continuing Education

SB 43 authorizes the State Board of Geological Examiners to adopt rules prescribing continuing education requirements. The current requirements for continuing education do not apply to renewals of a certificate of registration; this law clarifies that registered geologists must certify their compliance with the Board’s continuing education requirements when renewing their certificates.

This law will take effect on January 1, 2020

5. [SB 854](#) (Ch. 468) Alternative to Social Security Numbers

At present, Oregon’s professional licensing boards generally accept only social security numbers on applications for issuance or renewal of authorization to practice an occupation or profession.

SB 854 (Ch. 468) expands that requirement by directing such boards to accept a person’s individual taxpayer identification number or other federally-issued identification number in lieu of a SSN. This will primarily affect construction contractors, landscape contractors, athletic trainers, cosmetologist, and nursing assistants.

SB 854 took effect on September 29, 2019, and will first apply to applications for issuance or renewal received on or after, January 1, 2020.

6. [SB 935](#) (Ch. 682) Landscape Contractors

After three fallow years, the legislature has again turned its attention to the formerly fruitful field of regulating landscape construction professionals. SB 935 prohibits the State Landscape Contractors Board from issuing a limited or specialty license that has certain restrictions to the holder of a residential or commercial general contractor endorsement.

SB 935 took effect on September 29, 2019.

## II. PUBLIC RECORDS

1. [HB 2430](#) (Ch. 107) Public Records Advisory Council

## ADMINISTRATIVE LAW

The Public Records Advisory Council was established in 2017. The Council meets to evaluate public records issues and to makes recommendations to the legislature on changes to public records law. The Council also nominates the Public Records Advocate, who is appointed by the Governor.

There once was a temporal limitation on Oregon’s Public Records Advisory Council – but there will not be after December 31, 2019. HB 2430 eliminates the sunset date of the council. This law will take effect on January 1, 2020.

### 2. [HB 2353](#) (Ch. 205) Penalties For Failing To Comply With A Public Records Request

If a public body fails to respond to a public record request within the prescribed period, provides a time frame for responding that the requestor deems unreasonably long, or doesn’t comply with [ORS 192.329](#), the requestor can treat those actions as a denial of the public records request and appeal the public body’s action (or inaction) to the Attorney General, to a district attorney, or to a court.

HB 2353 (Ch. 205) adds new teeth to [ORS 192.407](#) by authorizing the Attorney General, a district attorney, or a court to require that the public body pay the requestor a penalty of \$200 if the public body failed to respond to a request for public records, or responded with undue delay, and order the public body to either waive or reduce a fee imposed for collecting the public records sought by the requestor.

HB 2353 took effect on June 4, 2019.

### 3. [SB 25](#) (Ch. 311) Forensic Evaluations

SB 25 (Ch. 311) directs public bodies and private medical providers in possession of relevant records to comply, within a specified time period, with a court order for release of records to the state mental hospital or other facility designated by the Oregon Health Authority for purposes of forensic evaluation.

SB 25 took effect on June 11, 2019.

## III. OTHER LEGISLATION

### 1. [HB 2488](#) (Ch. 50) Prohibition On The Use Of Cryptocurrency

Cryptocurrency has been a hot topic in the news and in the Legislature. HB 2488 defines cryptocurrency, and provides that state agencies will no longer be permitted to accept payments using cryptocurrency unless authorized by the State Treasurer.

The bill also prohibits making political contributions using cryptocurrency. Previously the Secretary of State had permitted campaign contributions using cryptocurrency, while prohibiting expenditures using cryptocurrency.

These prohibitions will take effect January 1, 2020.

**2. [SB 290](#) (Ch. 245) Good Samaritan Firefighters**

SB 290 is an extension of other Good Samaritan laws Oregon has adopted. The law provides volunteers fighting wildfires with civil immunity for any injury to persons or property resulting from good faith performance of firefighting efforts. This includes private lands such as private cropland, pasture, or rangeland. The law's protections do not apply to trained members of a volunteer fire department or district.

The bill will take effect on January 1, 2020.

**3. [SB 933](#) (Ch. 352) Self-Identification**

According to the Pew Research Center, nearly 7% of the U.S. population could be considered mixed-race in 2015 – and this figure increases annually. SB 933 provides that when a public body asks a person to select a race or ethnicity on a form, that person must be allowed to select multiple races or ethnicities – rather than just one.

SB 933 will take effect on January 1, 2020.

## ADMINISTRATIVE LAW

# Animal Law

## I. ANIMAL LAW

- |            |           |   |
|------------|-----------|---|
| 1. HB 2227 | (Ch. 137) | Animal Control Officers as Mandatory Reporters of Child Abuse |
| 2. HB 2500 | (Ch. 161) | Private Right of Action for Veterinary Care of Abused Animals |
| 3. HB 2076 | (Ch. 154) | Aquatic Invasive Species                                      |
| 4. HB 3035 | (Ch. 274) | Penalties for Violating Wildlife Laws                         |
| 5. SB 1019 | (Ch. 686) | Cage Free Hens  |
| 6. SB 580  | (Ch. 81)  | Cyanide Devices to Control Wildlife                           |
| 7. SB 638  | (Ch. 374) | Adoption of Research Animals                                  |

**Maral Cavner:** 2018 Northwestern School of Law. Oregon State Bar member since 2018.

**I. ANIMAL LAW**

**1. [HB 2227](#) (Ch. 137) Animal Control Officers as Mandatory Reporters of Child Abuse**

Any public or private official must immediately report suspected child abuse when the official has reasonable cause to believe that a child with whom the official comes in contact has suffered abuse or that any person with whom the official comes in contact has abused a child. See [ORS 419B.015](#).

House Bill 2227 identifies animal control officers as public officials and extends to them the duty to report child abuse. This designation is especially significant for reporting purposes given what has come to be known as “The Link,” – a reference to the proclivity of those who harm animals also to harm humans.

This link is so substantial that beginning in 2016, the Federal Bureau of Investigation began tracking crimes against animals in the National Incident-Based Reporting System, in the same way it tracks other serious criminal offenses. This tracking helps to paint a clearer picture of who is committing crimes against animals and will thus also help indicate where humans are also at risk. HB 2227 will assure that animal control officers take steps to protect all survivors of abuse.

HB 2227 takes effect on January 1, 2020.

**2. [HB 2500](#) (Ch. 161) Private Right of Action for Veterinary Care of Abused Animals**

HB 2500 creates a private right of action for an individual to recover expenses incurred for the veterinary care of an abused domestic animal against the person responsible for the abuse (be it abuse by act or by omission). In the State of Oregon a domestic animal is defined as animal other than livestock or equines and is owned or possessed by a person. See [ORS 167.310](#).

The bill requires the expenses incurred by the veterinary treatment and/or via attorney fees to be reasonable, a determination made by the court. HB 2500 also prohibits a court from considering the availability of this private action during criminal restitution hearings.

HB 2500 takes effect on January 1, 2020.

**3. [HB 2076](#) (Ch. 154) Aquatic Invasive Species**

HB 2076 requires a person to remove or open boat devices to drain water removed from state waters before transporting the boat within the state. The legislation is explicit in its demands for removal or opening of all drain plugs, bailers, valves or other devices used to

control the draining of water from ballast tanks, bilges, livewells, and motorwells before transporting the boat within the state of Oregon.

HB 2076 provides a number of exceptions to the aforementioned requirements, namely for marine sanitation devices, persons holding permits to transport live fish, individuals involved in certain authorized fishing activities, and boats operated by peace officers or emergency responders.

HB 2076 takes effect on January 1, 2020.

#### 4. [HB 3035](#) (Ch. 274) Penalties for Violating Wildlife Laws

HB 3035 increases the maximum penalty for certain wildlife law offenses committed without a culpable mental state to a \$2,000 fine. The bill also increases the maximum penalty for several categories wildlife law offenses committed intentionally, knowingly or recklessly to five years' incarceration, \$125,000 fine or both, penalties meant to reduce instances of poaching in the state. Lastly, the bill adds an additional type of offense that can be reported to the Wildlife Division's "TIP" Program.

HB 3035 takes effect on January 1, 2020 and applies to offenses committed on or after this date.

#### 5. [SB 1019](#) (Ch. 686) Cage Free Hens

SB 1019 mandates that commercial farms with 3,000 or more chickens give birds in their care room to move around and stretch their wings. Most estimates state that approximately four million egg-laying hens in Oregon will be impacted by SB 1019.

By 2024, SB 1019 requires that all eggs produced or sold in the state must come from cage-free hens. This change was deemed necessary to protect the health and welfare of consumers, to promote food safety stemming from the intense confinement of animals, to advance animal welfare, and to protect Oregon against the negative fiscal impacts associated with a lack of effective regulation of egg production and sales of eggs and egg products.

This legislation is nearly identical to laws in other states along the West coast, namely California and Washington, as well laws in Massachusetts. Challenges in other states under the Commerce Clause of the United States Constitution to their similar legislation have been unsuccessful.

SB 1019 takes effect on January 1, 2020. However, most provisions of the bill do not become operative until January 1, 2024. Attorneys working in this industry should carefully check the bill for relevant operative dates.

## ANIMAL LAW

### 6. [SB 580](#) (Ch. 81) Cyanide Devices to Control Wildlife

SB 580 prohibits the use of an M44 cyanide device, cyanide trap, cyanide gun or other similar device used to propel a dose of sodium cyanide into an animal for the purpose of taking the animal.

These M44 cyanide devices have resulted in a number of severe injuries in Oregon to humans and their four-legged pets alike. This is because the devices are planted in the ground, allowing little to no notice for an unsuspecting child or dog to avoid them.

SB 580 takes effect on January 1, 2020.

### 7. [SB 638](#) (Ch. 374) Adoption of Research Animals

SB 638 requires research facilities that use dogs or cats for laboratory research to offer dogs or cats no longer used for research up for adoption prior to euthanasia.

Further, the bill provides that a research facility is immune from civil liability for, or resulting from, the transfer of a dog or cat if the research facility acted in good faith concerning the health and physical condition of dog or cat. It also requires certain research facilities to submit annual reports to Secretary of State which provide specific information regarding the release of dogs and cats, as well as the animal shelters with which facilities have entered into written agreements. These reports are confidential and exempt from disclosure except through the release of aggregate data by the Secretary upon public request.

SB 638 takes effect on January 1, 2020.

# 3

Tony Kullen  
Susan Gary  
Pat Inhat

## Business, Consumer and Debtor Creditor Law

### I. DEBTOR AND CREDITOR RIGHTS

- |            |           |  |
|------------|-----------|--|
| 1. HB 2425 | (Ch. 402) | Recording of Instrument Containing Electronic Signatures |
| 2. HB 2459 | (Ch. 140) | Senior Lien Payoffs                                      |
| 3. HB 2530 | (Ch. 405) | Additional Notices in Foreclosure and Eviction Matters   |
| 4. SB 11   | (Ch. 309) | Sale of Redemption Rights                                |
| 5. SB 519  | (Ch. 263) | Exemption from Garnishment                               |
| 6. SB 79   | (Ch. 359) | Collection by Dept. of Revenue (Tax Refund Offsets)      |

### II. BUSINESSES AND CORPORATIONS

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| 1. SB 359 | (Ch. 325) | Correction of Defective Corporate Actions |
| 2. SB 360 | (Ch. 174) | Nonprofit Corporations Code               |
| 3. SB 684 | (Ch. 180) | Data Breaches                             |

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**Pat Inhat:** 1981 University of Arizona School of Law. Oregon State Bar member since 2004.  
Special thanks to Chris Mertens for his assistance with this chapter.

## I. DEBTOR AND CREDITOR RIGHTS

### 1. [HB 2425](#) (Ch. 402) Recording of Instrument Containing Electronic Signatures

HB 2425 amends [ORS 93.804](#) to allow the county clerk to record an electronic instrument, and/or an instrument containing an electronic signature, by expanding the definition of an “Instrument” to include an “electronic record,” and the definitions of “original certification” and “original signature” to include an “electronic signature.”

**Practice Tip** - See [ORS 84.004](#) (Oregon's Uniform Electronic Transactions Act) for more on electronic records and signatures.

HB 2425 was a pre-session bill introduced at the request of the NW Credit Union Association, to clarify what qualifies as a recordable instrument when presented for recording as electronic images or by electronic means, due to differing interpretations between the various county clerks as to which electronic records or signatures were recordable, as the prior law lacked a definition for the term “original signature.” The bill also permits county clerks to charge the same fee for electronic delivery of images of records as is charged for hard copy records.

HB 2425 takes effect on January 1, 2020.

### 2. [HB 2459](#) (Ch. 140) Senior Lien Payoffs

HB 2459 amends [ORS Chapter 105](#) by adding a provision under which the holder of a lien that is an encumbrance on real property (a term defined to mean the holder of a “claim, lien, charge or other liability...or a reservation of title...under a land sales contract”) may request an itemized payoff statement from the holder of another encumbrance against the same real property. The person who receives the request (generally a senior lienholder) may provide the statement without the permission of the obligor unless state or federal law requires such consent.

HB 2459 was proposed by the Oregon State Bar Debtor-Creditor Law Section to allow lienholders to satisfy senior lien obligations after junior lien foreclosures or to otherwise evaluate relative amount and priority of real property liens. The bill was proposed and advanced to address lienholders’ compliance concerns by providing a safe harbor under Gramm-Leach-Bliley Act ([15 USC §6802\(e\)\(8\)](#)) for the disclosure of nonpublic personal information by providing an applicable state law exception. Without the exception provided for by HB 2459, many senior lienholders would not release payoff information to non-borrowers without a signed third party release, even when the requesting party was the fee title owner (i.e., the winning purchaser after a junior lien foreclosure). Foreclosed borrowers would not generally cooperate to sign a release to issue a payoff for the party who just purchased the borrower’s former collateral, so the new owners were sometimes compelled to commence litigation against the senior lender to simply to obtain a payoff.

Special thanks go to Debtor-Creditor Section Legislative Committee for their work on drafting the original version of the proposed bill (particularly, to Pat Wade for the heavy lifting on the first draft), and with additional thanks to Erich Paetsch for providing testimony to the legislature on two occasions on behalf of the Debtor-Creditor Section in support of HB 2459.

HB 2459 takes effect on January 1, 2020.

**3. [HB 2530](#) (Ch. 405) Additional Notices in Foreclosure and Eviction Matters**

HB 2530 amends the form of notice under [ORS 86.756](#) (Notice of Default to grantor for residential trust deed foreclosure) and [105.113](#) (statutory form of summons in residential FED action) to require additional information regarding available services for veterans of the armed forces. This includes contact information for each county’s veterans’ service officer or community action agency, and for the statewide “211” information system, which provides free information and referrals to benefits and social service organizations available to anyone (not just veterans) in need.

The additional information must also be included in a notice of termination of tenancy issued under any provision of [ORS Chapter 90](#), and in any summons issued in any action brought under [ORS 88.010](#) to foreclose a residential trust deed.

HB 2530 was substantially amended from its original form, which proposed the creation of an eleven member “Task Force on Innovative Housing Strategies for Veterans,” to study proposals to address housing shortages for veterans, and to study the creation of a “housing purchasing authority” to buy up vacant housing developments during recessions, to be repurposed for veterans’ housing projects.

The final enrolled bill instead asks the Department of Veterans’ Affairs and the Housing and Community Services Department to file a joint annual report on veterans’ housing issues to a House Veterans committee, but the bulk of the law impacts foreclosure and eviction notices that were nowhere mentioned in the original proposal.

HB 2530 takes effect on January 1, 2020.

**4. [SB 11](#) (Ch. 309) Sale of Redemption Rights**

SB 11 amends and supplements [ORS 18.924](#) and [88.010](#), to address sales of statutory redemption rights and other interests in real property during foreclosure proceedings. Specifically, SB 11 requires a purchaser of rights in real property during a pending judicial foreclosure to provide a proscribed “notice in clear and conspicuous type” advising the seller that the transfer of an interest in real property during a foreclosure may include the transfer of redemption rights and the right to claim surplus funds arising from the foreclosure sale. The purchaser is further required to record an affidavit of compliance with the notice provision

## **BUSINESS, CONSUMER, AND DEBTOR CREDITOR LAW**

prior to, or concurrently with, recording the deed that transfers the interest in the foreclosure property.

SB 11 also amends [ORS 18.924](#) to require that a sheriff's notice of execution sale include a notice to the judgment debtor regarding the sale of redemption rights and the potential impact of selling any rights to a property in foreclosure on potential rights to claim surplus funds. SB 11 amends [ORS 88.010](#) by adding a new provision requiring the inclusion of a statutory notice to lien debtors advising them to carefully consider offers to purchase "redemption rights" or "all rights under ORS chapter 18." The new notice includes a recommendation that the party speak with a lawyer or consumer rights nonprofit organization for assistance, and requires that the notice include the contact information for the OSB Lawyer Referral Service and for additional resources to be proscribed by rule by the Department of Consumer and Business Services.

SB 11 takes effect on January 1, 2020, and applies to transactions occurring and to notices given on or after the effective date.

### **5. [SB 519](#) (Ch. 263) Exemption from Garnishment**

SB 519 amends [ORS 18.385](#), [18.840](#), [18.845](#), and [18.896](#), to increase the minimum net disposable earnings payable to an individual that are exempt from garnishment. The exemption amounts are modified under SB 519 for weekly, bi-weekly, semi-monthly, and monthly payment periods, and the related statutory exemption forms (which must be served with a notice of garnishment) are adjusted accordingly.

The minimum net disposable income numbers were increased under SB 519 for the first time since 2011, to increase the minimum take-home pay for a garnished debtor by approximately 16.5% per pay period. Under current law on garnishments, at least 75% of disposable wages are exempt from garnishment, but additional amounts are exempt under [ORS 18.385\(2\)](#), if the net take home pay would be below the statutory minimum for the pay period.

The statute provides a floor for net take home pay that only can be crossed by federal tax claims and orders of a bankruptcy court.

SB 519 takes effect on January 1, 2020, as the emergency provisions of the introduced bill were dropped during amendments prior to passage.

### **6. [SB 79](#) (Ch. 359) Collection by Dept. of Revenue (Tax Refund Offsets)**

SB 79 expands and clarifies the powers of the Collections Unit of the Department of Revenue (DOR) to collect delinquent debts for state and local government agencies. In addition to state agencies, the bill permits DOR to assist with collection on behalf of:

- Oregon Health Sciences University,
- Public universities and community colleges,
- The Oregon State Bar – for the exclusive purpose of collecting assignments to the Client Security Fund, and
- Local governments, along with semi-independent state agencies listed in [ORS 182.454](#).

SB 79 permits (but does not require) the DOR to collect such delinquent debts on behalf of government agencies, by offsetting such delinquent debts against tax refunds otherwise owing to the taxpayer-debtor.

SB 79 takes effect on January 1, 2020.

## II. BUSINESSES AND CORPORATIONS

### 1. [SB 359](#) (Ch. 325) Correction of Defective Corporate Actions

Numerous new provisions in SB 359 provide structure and procedures by which business corporations and nonprofit corporations may validate, ratify, and approve defective corporate actions. “Defective corporate action” means an overissue of stock, or an action that is and would have been within the corporation’s power to take at the time of the validation and at the time the action was taken. The bill provides for filing Articles of Validation with Secretary of State under certain circumstances.

SB 359 takes effect on January 1, 2020.

### 2. [SB 360](#) (Ch. 174) Nonprofit Corporations Code

This summary identifies some of the more significant provisions of SB 360. For a detailed explanation of the bill and discussion of the purposes behind some of the changes, see the Report on the Nonprofit Organizations Law website: <https://nonprofitlaw.osbar.org/files/2019/05/SB360report.pdf>.

Shell Entities. In 2017 changes to the corporation code addressed problems posed by shell entities. SB 360 adds these changes to Chapter 65.

## BUSINESS, CONSUMER, AND DEBTOR CREDITOR LAW

Notice. [ORS 65.034](#) now provides rules for effective notice for all purposes under Chapter 65. Notice may be delivered orally (in person or by telephone) or in writing (electronically, by mail or by private carrier). The statute includes effective date rules for each type of notice:

- Oral notice is effective when communicated;
- Electronic notice is effective on the earlier of when it is received or two days after it is sent; and
- Written notice delivered by mail or private carrier is effective on the earlier of five days after it is mailed or the date of receipt if sent by certified or registered mail.

Notice is considered to be correctly addressed if it is addressed to the address shown on the records of the corporation for the director or member. The corporation can provide in the Articles and Bylaws for alternative notice rules for members or directors, if the alternative notice provisions are more stringent than the rules required by ORS 65.034.

Members. SB 360 changes [ORS 65.137](#) to reverse the default rule for whether a nonprofit corporation has members. A corporation will not have members unless the articles state that the corporation does have members.

Voting Rights. In current law, provisions regarding voting rights are spread throughout Chapter 65. [ORS 65.144](#) now lists voting rights of members in one place. The list is non-exclusive, but captures most of the rights members have, unless the corporation provides otherwise in its articles or bylaws.

A member is now defined as someone who has one or more of the rights enumerated in [ORS 65.144](#). Two rights are mandatory and cannot be changed by the articles and bylaws: (1) the right to vote on an action that would reduce or eliminate a member's right to vote, and (2) the right to inspect and copy the corporation's records, as provided (and limited) in [ORS 65.774](#). Other than those two rights, [ORS 65.144](#) gives each nonprofit corporation control over its structure and the rights of members. An existing corporation that wants to limit any of the rights members currently have would need to do so with a vote of the members, under [ORS 65.144\(2\)](#).

Removal. A member can be removed without a hearing for failure to pay dues, and otherwise a member can be removed through a procedure that is fair and reasonable. The statute provides two ways of structuring a procedure to be fair and reasonable.

Member Action by Email. Under current law members can take action without a meeting if they act unanimously. SB 360 adds a provision authorizing action taken by email, and if the requirements are followed, the decision need not be unanimous. If ballots are submitted electronically, the number of votes cast constitutes a quorum if the number of members present at a meeting would constitute a quorum.

Super-majority Removed. Under current law, several actions by members require action by the lesser of two-thirds of the votes cast or a majority of the voting power. Because many

public benefit corporations have a large number of inactive members, meeting this requirement can be difficult. SB 360 removes the super-majority requirement for member voting in public benefit corporations and permits those members to take action with a majority of the votes cast.

Changing to a Nonmember Corporation. SB 360 addresses the not infrequent problem of a nonprofit corporation that was set up to have voting members but no longer has a record of members, has not had member action for some years, and has no way to determine who members are. The legislation makes it easier for a corporation to convert to a corporation with no voting members, while still protecting the rights of any members that exist. The proposal adds two new mechanisms.

Section 6 of SB 360 provides that if a nonprofit corporation has voting members, but for at least three years no meeting of the members has been held and no members have actively participated in the corporation, then the directors can amend the Articles to convert the corporation to one without voting members. The corporation must provide notice to known members and post notice on its website. The corporation cannot proceed using this process if a member objects within 30 days of the date of the notice.

Section 16 of the bill amends [ORS 65.038](#). If the corporation cannot identify its members, delegates, or directors or is unable to call a meeting of members, delegates, or directors or otherwise obtain consent from any of them for actions on behalf of the corporation, a director, officer, delegate, member or the Attorney General can petition the court for relief. The court can direct the corporation to call a meeting of the members, delegates, or directors, as under current law, and in addition the court can determine who the members or the directors are, or the court can amend the articles to state that the corporation does not have members.

Members' Right to Inspect List of Members. Under [ORS 65.224](#) a nonprofit corporation must maintain a list of its members, and each member has the right to inspect the list. Due to concerns about personal safety and privacy, SB 360 permits a member to provide an email address as contact information.

Boards of Directors. The bill makes several changes specifically relating to Boards of Directors described below.

Board Action Using Email. A new provision permits a board of directors to take action using electronic mail, if the board follows a procedure set forth in the statute. The new section also states that directors can use email to discuss matters that come before the board, without following the requirements for taking board action. With this amendment, a board can take action in three ways: a meeting at which the board votes, a unanimous written consent signed by all directors under ORS 65.341, or a vote by email.

Election of Directors. A new subsection added to [ORS 65.311](#) clarifies that if a corporation has no directors and no members who can elect directors, the Attorney General can ask a court

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to appoint one or more directors. Occasionally a nonprofit corporation will have assets or liabilities remaining, but all directors will have resigned or are facing removal. Rather than require dissolution, the court can appoint a new board of directors at the request of the Attorney General. An analogous provision for charitable trusts can be found at [ORS 130.615\(4\)](#).

Meetings of Directors. Under [ORS 65.337](#) a nonprofit corporation can permit a director to participate in a meeting if all directors can simultaneously communicate with each other. SB 360 did not change this rule, because “simultaneously communicate” should cover changes in technology. Under current technology, a director can participate by conference call or Skype, but not by email, because email does not permit simultaneous communication.

Quorum. SB 360 amends [ORS 65.351](#) to provide that a quorum consists of a majority of directors in office immediately before the meeting begins. The articles or bylaws can provide otherwise but cannot provide for a quorum of less than one-third of the directors in office immediately before the meeting.

Board Committees. A change clarifies language in [ORS 65.354](#). All voting members of committees exercising the authority of the board must be directors. The board can create committees that do not exercise the authority of the board, with members who are not directors or members of the corporation.

Conflict of Interest Transaction. A corporation can enter into a conflict of interest transaction with a director, without risk that the transaction will be voidable or the director will be liable, if the transaction is fair to the nonprofit corporation. The statute creates a presumption of fairness if certain procedures are followed. SB 360 amends [ORS 65.361](#) to clarify that to avoid liability the transaction must in fact be fair to the nonprofit corporation. The process outlined in the statute creates a presumption of fairness but not a safe harbor. A new subsection clarifies that a director has an indirect interest in a transaction involving a person related to a director or a business associate of a director.

Officers. SB 360 amends [ORS 65.371](#) to require that each nonprofit corporation have a treasurer, adding treasurer to president and secretary, the two officers required under the prior statute. The same individual may simultaneously hold more than one office, but may not serve simultaneously as the president, secretary and treasurer. An officer need not be a director.

Dissolution. When a public benefit corporation dissolves, the assets that had been held by the corporation must be used to pay creditors and then must be distributed to another public benefit corporation. Amendments to [ORS 65.627](#) strengthen the ability of the Attorney General to protect charitable assets when a corporation dissolves. The time period for notice to the Attorney General is increased, and the information provided to the Attorney General showing persons receiving property on dissolution must include creditors.

Definitions. SB 360 improves and adds a number of definitions. New definitions are created for “appointed director” and “designated director,” and the definition of director is amended to

include the new terms. The term “contact address” is changed to “contact information” and is updated to reflect the ways a member or director can receive notice from the corporation, including email.

Under current law, a member is someone who can vote for a director. SB 360 changes the definition and provides that a member is someone entitled to exercise one or more of the rights identified in [ORS 65.144](#). Under the amended definition a corporation could, for example, decide to give its members the right to vote to dissolve the corporation, but not to elect directors.

Several changes reflect the use of electronic tools. A new definition for “document” provides for both tangible documents and electronic documents. A new definition of “written” explains that written means embodied as a document, so reading the definitions together, something written can be written electronically. A new definition of “sign” includes electronic signatures.

SB 360 took effect on May 24, 2019.

### 3. [SB 684](#) (Ch. 180) Data Breaches

SB 684 was the product of a work group formed after a major data breach in 2017 and makes a number of updates and modifications to Oregon’s Consumer Identity Theft Protection Act.

The bill defines a “covered entity” under the Act as one that “licenses, maintains, stores, manages, collects, processes, acquires or otherwise possesses personal information in the course of the person’s business, vocation, occupation or volunteer activities.” The bill further defines a “vendor” as “a person with which a covered entity contracts to maintain, store, manage, process or otherwise access personal information for the purpose of, or in connection with, providing services to or on behalf of the covered entity.”

Among the bill’s major provisions is a new requirement that a vendor must notify a covered entity as soon as possible, but no more than ten days after discovering a data breach. This requirement also applies to vendors who subcontract with other vendors. Further, the bill requires a vendor to notify the Attorney General if the breach involves personal information of more than 250 consumers, or if the vendor cannot determine the number of consumers involved.

SB 684 takes effect on January 1, 2020.



# 4

Mark Peterson  
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## Civil Procedure and Litigation

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## I. INTRODUCTION

This chapter contains Oregon legislation that made changes to either the Oregon Rules of Civil Procedure, or otherwise impacted civil practice in Oregon. Additionally, this chapter includes changes to the ORCP that were promulgated by the Council on Court Procedures, as well as changes to the Uniform Trial Court Rules. All changes to the ORCP promulgated by the Council will go into effect on January 1, 2020. Changes to the Uniform Trial Court Rules took effect on August 1, 2019. Effective dates for all legislation are indicated with the bill.

## II. OREGON LEGISLATION

### 1. [HB 3293](#) (Ch. 448) Actions Relating to Sexual Assault

HB 3293 extends the statute of limitations on civil actions relating to sexual assault from the normal two years to five years from the date the person discovers, or should have discovered, the relationship between the sexual assault and the injury.

HB 3293 applies to actions commenced on or after September 29, 2019, including actions that would have been barred by the prior limitation period.

### 2. [SB 186](#) (Ch. 12) Oregon Tort Claims Act

SB 186 is one of several bills during 2019 that changed references to the Consumer Price Index to account for the Bureau of Labor Statistics discontinuing certain indexes. This bill changes the cost of living index used to make adjustments to the Oregon Tort Claims Act. Previously the statute referenced the Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items. The new language references the Consumer Price Index for All Urban Consumers, West Region (All Items)

SB 186 took effect on March 27, 2019.

### 3. [SB 834](#) (Ch. 182) Apologies Made by Licensed Dentists

In 2003, the Oregon Legislature passed HB 3361, which prohibited the use of expressions of regret or apology made by licensees of the Oregon Medical Board as admissions of fault in legal proceedings.

SB 834 provides similar restrictions against the use of such statements against a person licensed by the Oregon Board of Dentistry or against dental offices, clinics and similar institutions. The bill also provides that listed individuals and entities may not be examined by deposition with respect to such statements.

SB 834 takes effect on January 1, 2020.

### III. CHANGES TO THE OREGON RULES OF CIVIL PROCEDURE BY ORCP CHAPTER

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

This significant change to Rule 7 relates to service by alternative means [ORCP 7 D (6)], often referred to as service by publication or service by posting. When the defendant or respondent cannot readily be found so that personal service, substitute service, office service, or service via other procedures spelled out in ORCP 7 D can be effected, the plaintiff or petitioner may file a motion to allow service of the summons and complaint or petition on the defendant by use of an “other method.”

**Practice Tip:** It should be noted that seeking an order to serve the summons and complaint by use of an “other method” is not appropriate unless the defendant cannot be served “by any method otherwise specified in these rules [the ORCP] or [any] other rule or statute.” Further, the “other method” proposed should meet the ORCP 7 D(1) constitutional standard, i.e., that the “method or combination of methods [chosen] . . . under the circumstances is the most reasonably calculated to apprise the defendant of the existence and pendency of the action” so as to afford the defendant a reasonable opportunity to appear and defend.

**Practice Tip:** It also should be noted that a successful motion that gains a court’s approval to serve by an “other method” does not protect the plaintiff from a collateral attack, typically under ORCP 69 or ORCP 71, alleging that the plaintiff’s attempts to locate or to serve the defendant, or the “other means” of service chosen, were inadequate and that any judgment is void, personal jurisdiction never having been established. See, *In re Marriage of Dhulst*, 61 Or App 383, 657 P2d 231 (1983).

The previous version of the rule, [ORCP 7 D(6)(a)] described publication, posting, and mailing as “other methods” of obtaining service. Although some direction was provided regarding the requirements for publishing and for mailing the summons for the purpose of service, oddly, subsection 7 D(6) offered no guidance as to how service by posting should be accomplished.

The tools for service by alternative means described in the previous version of Rule 7D have proven to be inadequate. Publication is an established alternative method of service, despite the relatively high cost. However, Council members expressed the view that service by publication has little likelihood of providing actual notice to a defendant. Council members essentially agreed with the sentiments expressed in *Dickenson v. Babich*, 213 Or 472, 476, 326 P2d 446, 448 (1958): “Service of process by publication is at best a harsh and technical substitute for personal service of summons . . . even being described as a ‘miserable substitute’

## CIVIL PROCEDURE AND LITIGATION

for personal service . . . .” Some Council members did believe that service by publication might be more effective in rural counties.

Alternative service by mail (first class and another mailing, e.g., certified, that requires a signature from the recipient) is uncertain, as the mailing requiring a signature is often unclaimed or refused. Even when a recipient signs a return receipt, the signature is often undecipherable. Therefore, service has been effected but the plaintiff cannot be confident that a subsequent attack on the validity of that service will not ensue. That said, the primary shortcoming of mailing as an alternative service method is that a reliable address for the defendant often cannot be located.

Although subsection 7 D(6) of the previous version of the rule offered no direction as to where and how to serve by posting, such service is generally understood to be accomplished by posting a copy of the summons and complaint at the local courthouse or at a specific location where the posting might attract the defendant’s attention. The amendment provides better direction on where the summons and complaint are to be posted and includes posting at the courthouse in all cases. If the plaintiff knows of no physical address where the defendant might be found, posting at the courthouse likely provides only the form of service, not the substance.

The Council’s rewrite of subsection 7 D(6) authorizes, if approved by the court, service of the summons and complaint by the methods provided in the previous version of the rule and, also, by e-mail, text message, facsimile transmission, or posting to a social media account. This array of methods of alternative service by electronic means is believed to be the most comprehensive codification that has been put into effect in any jurisdiction in the United States. The inclusion of alternative service by electronic means in the amendment is considered to represent a reliable improvement over the current rule.

The inclusion of alternative service by electronic means was undertaken due to suggestions from the bar. Some defendants have historically been difficult to locate and that problem has been exacerbated by changes in communications and technology. Geography – where a person is physically located – may be less relevant to getting notice to a defendant than is the defendant’s location in cyberspace. For example, many households have abandoned their traditional “land line” telephones and rely solely on cellular telephones.

In addition to providing guidance as to the content of an affidavit or declaration seeking an order to allow alternative service by electronic means, subparagraphs 7 D(6)(b)(i) and 7 D(6)(b)(ii) of the amendment provide direction on the content and placement of the information to make it more likely that the recipient will be notified that he or she is being sued. Finally, paragraph 7 D(6)(b) requires that the certificate of service in cases of alternative service by electronic means must be amended if, subsequent to that service, “it becomes evident that the intended recipient did not personally receive the electronic transmission.”

**Practice Tip:** It should be noted that alternative service by electronic means would essentially foreclose establishing ORCP 4 personal jurisdiction based on the defendant’s presence at a

geographical location at the time of service. See, *Pennoyer v. Neff*, 95 US 714, 24 LEd 565 (1877).

**Practice Tip:** An additional requirement is made applicable to all methods of alternative service. If the plaintiff has knowledge of or can ascertain a current or last-known address for the defendant, the alternative service by mail method must also be used, e.g., the summons and complaint must be mailed to the defendant by both first class mail and by certified mail or another mailing that requests a return receipt.

The amendment's subsection 7 D(6) as a whole provides practical measures for providing notice of the filing of actions to defendants while satisfying defendants' constitutional rights to receiving notice:

- Alternative service is only available when the primary forms of service enumerated in subsection 7 D(2) through subsection 7 D(5) are not possible;
- Alternative service is directed by a judge; Safeguards for service by electronic means are written into the amendment; and
- Judge members on the Council are currently using text messages and other forms of electronic communication to communicate future proceedings in cases, e.g., notifying criminal defendants of upcoming hearings.

In cases where alternative service was made by publication, paragraph 7 D(6)(f) of the previous version of the rule authorized a defendant (or a defendant's personal representative) to, on motion with sufficient cause, appear and defend in a case at any time prior to entry of a judgment and, as allowed by the court's discretion, to be allowed to defend after entry of judgment for a further period of one year. Oddly, the same right to appear and defend after a default or after entry of judgment did not extend to cases where the service was by some other alternative means, e.g., posting, that would generally be thought to be at least as unreliable as service by publication. The amendment, in new paragraph 7 D(6)(d), affords any defendant served by any of the alternative service methods the same opportunity to seek leave to defend after default and after entry of judgment.

**Practice Tip:** Many plaintiffs' attorneys mail the follow-up mailing to complete substitute service or office service. Section E generally makes plaintiffs' attorneys ineligible to serve the summons and complaint. An amendment, in section 7 E, clarifies that a plaintiff's attorney, in addition to being authorized to mail the summons and complaint to effect service by mail as authorized in paragraph 7 D(2)(d), is authorized to complete service for substituted service [paragraph 7 D(2)(b)], office service [paragraph 7 D(2)(c)], and service on a tenant of a mail agent [part 7 D(2)(a)(iv)(B)] by mailing copies of the summons, complaint, and a statement detailing the earlier delivery to the defendant.

There are other amendments to Rule 7 that are of a technical nature; these are not expected to affect the meaning or operation of the rule.

2. [ORCP 15](#) Time for filing pleadings or motions

The primary impetus for an amendment to Rule 15 was to clarify and to correct the previous version of the rule's deadline [at section 15 A] for filing an answer to a cross-claim. That previous language was expressed as the time to respond to a summons. As a cross-claim is not accompanied by a summons, it seemed appropriate to specify the deadline for an answer to a cross-claim as 30 days from the date of service. The clarification was suggested by the Oregon State Bar's Procedure and Practice Committee.

In revising the deadline for responding to pleadings, the time specified for filing a motion or an answer to a complaint or to a third-party complaint is 30 days as specified in the accompanying summons. Rule 7 C(2)'s deadline for responding when the summons is served by publication is restated in section 15 A.

An answer to a cross-claim or motion directed against a cross-claim is required within 30 days of service of the cross-claim. The same is true for a reply to (or a motion responsive to) a counterclaim.

The section's last amendment [the 1994 promulgation] intended to clarify that replies to counterclaims were due within 30 days, not 10 days as the then-existing section seemed to specify. However, the 10-day deadline remained in the section for "any other motion or responsive pleading." In light of Rule 13, that would by default apply only to a "reply to assert any affirmative allegations in avoidance of any defenses asserted in an answer," i.e., a reply to an affirmative defense. A reply to an affirmative defense is not automatically appropriate in every case and the Council was persuaded that the deadline for responding to all pleadings should be uniform – 30 days. Accordingly, the last sentence of section 15 A referring to a 10-day deadline for "any other motion or responsive pleading" is deleted.

**Practice Tip:** Motions or pleadings responsive to pleadings are due 30 days following service.

**Practice Tip:** It should be noted that Rule 15 D does not entitle the movant to seek enlargement of the time for numerous "substantive" motions available to the parties throughout the ORCP. The time for a party to exercise some rights, e.g., motions for judgment notwithstanding the verdict under Rule 63 and motions for a new trial under Rule 64 cannot be enlarged. Before relying on Rule 15 D to obtain more time in which to exercise a right or remedy, counsel must consult case law surrounding the specific right or remedy to determine whether any timeline that is involved is inflexible.

There are other amendments to Rule 15 that are of a technical nature; these are not expected to affect the meaning or operation of the rule.

### 3. [ORCP 16](#) Form of pleadings

An amendment was made to Rule 16, adding a new section B and re-designating the previous section 16 B, section 16 C, and section 16 D as section 16 C, section 16 D, and section 16 E, respectively. The amendment was in response to a comment from a judge noting that supplemental local rules in Multnomah County (SLR 2.035) and in Clackamas County (SLR 2.016) appeared to authorize known parties to engage in litigation under fictitious names. The comment noted that Rule 26 A appears to prohibit the practice: “Every action shall be prosecuted in the name of the real party in interest.” The comment observed that Rule 16 A also appeared to require the use of the parties’ names. (ORCP 20 H authorizes the use of fictitious names “[w]hen a party is ignorant of the name of an opposing party”; such parties are generally designated as “John Doe” or “Jane Doe.”) Further, Article I, Section 10, of the Oregon Constitution seems to mandate open courts: “No court shall be secret, but justice shall be administered openly . . . .” The judge’s comment observed that, contrary to the rules, litigants are seemingly filing and litigating cases using identifiers other than their true names, particularly when the subject matter of the cases is of a personal or embarrassing nature.

The Multnomah and Clackamas counties’ supplemental local rules, nearly identical, allow parties to litigate cases under fictitious names, but only on motion. Council members noted that, when parties file cases using a name other than their true name, they frequently simply file the case and serve the complaint.

The Council determined that, if litigants are filing civil actions using names other than the plaintiffs’ true names, and if the practice is not clearly prohibited by Article 1, Section 10, of the Oregon Constitution, there should be a procedure for the practice. The Council, in part based on Appellate Rule 2.25(4), determined that the practice is not strictly barred by Article I, Section 10. (Also, ORCP 26 A appears to be directed more as a prohibition on the use of proxies in litigation.) Therefore, the Council addressed the issue as procedural. If a party wishes to commence and litigate a case under a name other than his or her true name, a motion seeking leave to proceed under a pseudonym is appropriate. (The Council elected to refer to the practice as the use of a pseudonym, not a fictitious name; fictitious names are for unknown parties.)

**Practice Tip:** If the intent is to protect the identity of the plaintiff, presumably such a motion would be presented *ex parte*, contemporaneously with filing the action. Section 16 B creates a procedure for seeking leave to litigate using a pseudonym; it does not create a substantive right to litigate using a pseudonym. It will be the litigant’s responsibility to establish a basis to be granted leave to proceed using a pseudonym.

**Practice Tip:** The amendment likewise is neutral as to whether a plaintiff is required under Rule 3.5(b) of the Oregon Rules of Professional Conduct and Rule 3.9(A) of the Oregon Code of Judicial Conduct to give notice to the opposing party prior to presenting a motion to proceed using a pseudonym.

## CIVIL PROCEDURE AND LITIGATION

There are other amendments to Rule 16 that are of a technical nature; these are not expected to affect the meaning or operation of the rule.

### 4. [ORCP 22](#) Counterclaims, cross-claims, and third-party claims

One clarifying amendment was made to subsection 22 B(3). Council members observed that instances had occurred where a cross-claim seeking additional relief had been filed by a co-defendant but not served on the opposing defendant because that opposing defendant was in default. Such a failure to serve appears to be based on a misreading of ORCP 9 A: “[n]o service need be made on parties in default for failure to appear . . . .” Indeed, the balance of the sentence reads: “. . . except that pleadings asserting new or additional claims for relief against them shall be served . . . in the manner provided . . . in Rule 7.” The amendment to subsection 22 B(3) makes clear that, if a cross-claim seeks relief against another defendant, it must be served on that defendant, even though that party is in default for the party’s failure to appear and defend.

There are other amendments to Rule 22 that are of a technical nature; these are not expected to affect the meaning or operation of the rule.

### 5. [ORCP 38](#) Persons who may administer oaths for depositions

Rule 38 was amended in subparagraph 38 C(2)(c)(i) to make the reference to the completely revised Rule 55 more specific.

There are further technical amendments to Rule 38; these are not expected to affect the meaning or operation of the rule.

### 6. [ORCP 43](#) Production of documents

Section A is amended by moving the phrase “Any party may serve any other party” from immediately following the section lead line and inserting it at the beginning of each of the two subsections to improve clarity and readability.

There are other amendments to Rule 43 that are of a technical nature; these are not expected to affect the meaning or operation of the rule.

### 7. [ORCP 44](#) Physical and mental examination of persons

Rule 44 required an amendment in section 44 E to replace “individually identifiable health information” where that phrase appeared three times with “confidential health information,” to reflect the concurrent rewrite of Rule 55. Also, two references to “Rule 55 H” are amended to read “Rule 55 D” to be an accurate reference to the completely redrafted Rule 55.

## 8. [ORCP 55](#) Subpoena

Rule 55 has been the subject of criticism as being overly long, organizationally deficient, and lacking in clarity. Rule 55 is completely rewritten in an effort to remedy its flaws while maintaining, to the degree possible, its operation and meaning.

The previous version of the rule was made up of eight sections; the new rule contains four. Section 55 A is an introductory guide to the basics of all subpoenas: 1) the form and contents of a subpoena; 2) from what court a subpoena may be issued; 3) who may issue a subpoena; 4) who may serve a subpoena; 5) how proof of service is made; and 6) the duties of a recipient of a subpoena.

Section 55 B governs subpoenas that require an appearance and testimony. Subsection 55 B(1) describes the kinds of proceedings to which a witness may be subpoenaed to provide testimony. Subsection B(2) specifies particular requirements for service on individuals and organizations as well as offering or tendering a witness fee. Subsections 55 B(3) and 55 B(4) specify requirements for subpoenaing peace officers and prisoners.

Section 55 C specifies timing and service requirements for subpoenas that require only the production of records (other than confidential health information) and things. Section 55 D replaces section 55 H of the previous rule and details the particularized requirements when confidential health information is the subject of a subpoena.

The Council endeavored to redraft Rule 55 in a manner that would not change the rights, obligations, and procedures contained in the previous version of the rule. However, with the improved organization, some inconsistencies became apparent. At least one correction was made in paragraph 55 C(3)(a) and paragraph 55 D(6)(a) to make clear that, in accord with ORCP 9 A, copies of subpoenas need not be served on parties who are in default.

## 9. [ORCP 65](#) Referees

Rule 65 required an amendment in subsection 65 D(2). A reference to “Rule 55 G” is amended to “Rule 55 A(6)(d)” to be an accurate reference to the completely redrafted Rule 55.

## IV. CHANGES TO THE UNIFORM TRIAL COURT RULES

The 2019 Uniform Trial Court Rules (UTCR) took effect on August 1, 2019. You can find the complete rules: <http://www.courts.oregon.gov/programs/utcr/Pages/currentrules.aspx>.

Some important changes of special note are included below. As always, attorneys should consult the full text of the rule if any of these changes appear relevant to your cases.

- **2.010 – Form of Documents**
  - Subsection 7 of this rule was amended to remove the Certificate of Document Preparation requirement. That section previously required an unrepresented litigant to indicate whether they received assistance in completing the document and whether they paid for that assistance. The original purpose of the requirement was to detect and deter the unauthorized practice of law, but testimony indicated the data has not been used for this purpose.
- **2.100, 2.110 – Protected Personal Information, Not Contact Information, Requirements And Procedures To Segregate When Submitting**
  - This change simply removes references to an “affidavit” and uses the term “request” in order to align the wording in the rule with the titles of the forms used for this purpose.
- **2.130 – Confidential Personal Information In Family Law And Certain Protective Order Proceedings**
  - The purpose of this change was to conform the wording in 2.130 to Forms 2.130.1 and 2.130.2. In 2017 those forms were changed to require entry of “Any other names used, now or in the past,” rather than “Former Legal Name(s).” This change updates the UTCR to use the same wording.
- **5.150 – Streamlined Civil Jury Cases**
  - This proposal was submitted by the Civil Justice Improvements Task Force, on behalf of Chief Justice Martha L. Walters. The purpose of this proposal is to amend the expedited trial rule to encourage utilization of the streamlined civil jury trial process. Among other changes, it changes the name to “Streamlined” rather than “Expedited” Civil Jury Cases. Lawyers who use this rule should review the change and familiarize themselves with new timelines.
- **5.180 – Consumer Debt Collection**
  - This proposal was submitted by the Civil Justice Improvements Task Force (CJI) on behalf of Chief Justice Martha L. Walters, on August 23, 2018. The CJI, and this proposal, arose from a 2016 report to the national Conference of Chief Justices.
  - The CJI grouped consumer debt collection cases into two categories: those filed by debt buyers (and debt collectors acting on their behalf);

and those filed by debt collectors. The CJJ studied House Bill 2356 (2017), which established requirements for legal actions filed by debt buyers (or by debt collectors acting on their behalf) to collect on purchased debt. This UTCR change is meant to provide consumers and the court with necessary information about the claim. This is particularly important if a default judgment is sought by the plaintiff.

- Among other changes, the new rule contains pleading requirements that are specific to debt-buyer collection actions. Attorneys who practice in this area should familiarize themselves with the new language.
- **6.050, 6.120, 11.110, 11.120, 21.020, 21.070 – Submission Of Trial memoranda And Trial Exhibits**
  - This proposal was submitted on behalf of the Juvenile Exhibits Work Group. The purpose of this proposal is to develop statewide rules to aid litigants and the circuit courts in complying with changes to ORS 419A.255 that require trial courts to maintain a “record of the case” and a “supplemental confidential file,” including hearing and trial exhibits, for each juvenile case. The proponent explained that the Oregon Department of Justice, the Office of Public Defense Services, and the Appellate Commissioner have continued to report issues in the appellate process caused by delay in the transmission of exhibits from the trial courts to the Court of Appeals. The rule requires each judicial district to establish a process by SLR or presiding judge order for the submission of exhibits in juvenile proceedings. The UTCR committee discussed the possibility of implementing one statewide rule but determined that courts need flexibility according to their budget and staffing availability. Therefore, the rule allows counties to choose whether to require attorneys in juvenile cases to electronically file exhibits, or to require court staff to scan the exhibits and return the hardcopies to litigants.
- **8.010 – Actions For Dissolution Of Marriage, Separate Maintenance And Annulment, And Child Support**
  - The purpose of this proposal is to allow the use of a declaration as an alternative to an affidavit for filings in certain family law proceedings. In recent years, the committee has moved away from affidavit requirements in favor of declarations. Affidavit requirements make it difficult for litigants to complete and use the electronic interactive forms offered on the OJD website. Use of a declaration in place of an affidavit allows a filer to use the online forms without taking a hard copy of the form to a notary.
- **8.040 – Prejudgment Relief Under ORS 107.095(1)**
  - One purpose of this proposal is to allow a party seeking prejudgment relief under ORS 107.095(1) to file a declaration as an alternative to an affidavit. Another purpose is to reduce the filing of duplicative Uniform Support Declarations (USD). The proposal amends the rule to no longer

## CIVIL PROCEDURE AND LITIGATION

require a party filing a motion seeking temporary support to file a USD with the motion if the same party is simultaneously filing a pleading under UTCR 8.010(4) that attaches a USD, or filed such a pleading within the prior 30 days and the circumstances have not changed.

- The UTCR Committee received a large number of public comments on this proposal, and the final adopted changes include important changes from the original proposal. Attorneys who practice in this area should familiarize themselves with the new rules.
- **10.020, 20.170, 21.020 – Preparation And Delivery Of DMV Records On Review**
  - Prior to this rule change, the Department of Motor Vehicles record was exempt from electronic filing requirements and had to be filed conventionally. The purpose of this change is to require the DMV to electronically file the record when a final order of suspension is appealed to a circuit court.
- **21.070 – Special Filing Requirements – Extreme Risk Protection Orders**
  - This change adds extreme risk protection order (ERPO) petitions to the list of documents that must be conventionally filed. The proponents explained that ORS 166.527(2) requires circuit courts to issue or deny ERPO orders on the day the petition is filed or on the judicial day immediately following. This proposal aids the circuit courts in compliance because courts can often respond more quickly to emergency requests that are conventionally filed.

# 5

Justin Monahan  
Gary Christensen  
Andrew Gibson

## Construction Law

### I. CONSTRUCTION LAW

- |            |           |  |
|------------|-----------|--|
| 1. HB 2306 | (Ch. 397) | Building Permits                       |
| 2. HB 2415 | (Ch. 486) | Retainage For Contracts Over \$500,000 |
| 3. HB 2769 | (Ch. 55)  | Public Procurements                    |
| 4. HB 3193 | (Ch. 444) | Claims for Unpaid Wages                |
| 5. SB 369  | (Ch. 327) | Definition of Substantial Completion   |
| 6. SB 455  | (Ch. 549) | Higher Education Qualified Contracts   |

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I. CONSTRUCTION LAW

1. [HB 2306](#) (Ch. 397) Building Permits

HB 2306 prohibits a city or county from denying a building permit allowing the construction of residential dwellings in a subdivision for which the construction of civil engineering improvements and utility improvements have not reached final completion, so long as they have reached substantial completion and the developer posts a bond or other financial guarantee.

HB 2306 will take effect on January 1, 2020.

2. [HB 2415](#) (Ch. 486) Retainage For Contracts Over \$500,000

HB 2415 requires that for any public improvement contract that exceed \$500,000 and for private construction and home improvement contracts that exceed \$500,000, the owner or contracting agency must place any retainage into an interest-bearing escrow account.

HB 2415 applies to contracts entered into on or after January 1, 2020.

3. [HB 2769](#) (Ch. 55) Public Procurements

HB 2769 provides that for public procurements for architectural, engineering, photogrammetric mapping, transportation planning, and land surveying services, local contracting agencies are permitted to provide in their initial notice that they intend to use a two-step process which will include price as a factor in evaluating proposals.

The first step will be as a traditional, qualification-based procurement, with up to three finalists invited to a second step including submission of price, with a weighting up to 15% of the final determination.

HB 2769 takes effect on September 29, 2019.

4. [HB 3193](#) (Ch. 444) Claims for Unpaid Wages

HB 3193 requires the Bureau of Labor and Industries (“BOLI”) to notify the Construction Contractors Board (“CCB”) within 30 days of the receipt of any valid wage claim against a contractor for a construction debt. If the contractor or business fails to pay the wages due within 60 days, the Commissioner will notify the CCB. Under the bill the CCB may use notification of a final order in determining whether to revoke, suspend, or refuse to issue a license, or other relief.

HB 3193 applies to wages owed for labor performed after January 1, 2020.

5. [SB 369](#) (Ch. 327) **Definition of Substantial Completion**

Actions relating to the construction, alteration, or repair of improvements to real property generally must be commenced within 10 years of the “substantial completion” of the project.

SB 369 adds the date when a public body issues a certificate of occupancy or the date when the owner uses or occupies the improvement for its intended purpose as possible triggers of substantial completion of a construction, alteration, or repair of improvement to real property.

SB 369 applies causes of action arising on or after January 1, 2020.

6. [SB 455](#) (Ch. 549) **Higher Education Qualified Contracts**

Under SB 455, public universities and community colleges may award construction contracts of more than \$200,000 only to a contractor who:

- 1) Employs apprentices for at least 15 percent of qualified work,
- 2) Plans outreach efforts to women and minority individuals to work, and
- 3) Requires subcontractors to do the same.

Previous law applied this rule only to the University of Oregon. An apprentice is one engaged with a local joint committee and the Apprenticeship and Training Division of the Bureau of Labor and Industry.

SB 455 takes effect on January 1, 2020. Some provisions of the bill apply to contracts entered into on or after January 1, 2021.



# 6

Whitney Perez  
Erica Herb  
Eric Deitrick  
Gillian Fischer

## Criminal Law

### I. CRIMES AND VIOLATIONS RELATING TO VEHICLES

1. HB 2079 (Ch. 413) Boating Offenses
2. HB 2328 (Ch. 530) Unauthorized use of a vehicle
3. HB 2347 (Ch. 398) Exemptions to safety belt requirements
4. HB 2682 (Ch. 120) Bicycle lanes in intersections
5. HB 3005 (Ch. 200) Ignition interlock devices
6. HB 3214 (Ch. 215) Hardship driver permits
7. SB 509 (Ch. 80) Repeals the crime of unlawfully transporting hay
8. SB 581 (Ch. 337) Increased penalty for improper use of unmanned aircraft
9. SB 810 (Ch. 349) Modifies definition of “vulnerable user of a public way”
10. SB 998 (Ch. 683) Permits bicyclists to roll through stop signs

### II. SEX CRIMES AND SEX OFFENDER REGISTRATION

1. HB 2045 (Ch. 430) Sex offender assessments and reporting
2. HB 2393 (Ch. 304) Unlawful dissemination of an intimate image
3. HB 2428 (Ch. 365) Public Indecency
4. SB 596 (Ch. 179) Reports of person felonies inadmissible in prostitution cases
5. SB 597 (Ch. 338) Use of pseudonyms or initials for victims in Indictments
6. SB 995 (Ch. 353) Sexual abuse protection order (SAPO)

### III. SENTENCING AND REFORM LEGISLATION

1. HB 2462 (Ch. 86) Service members and the criminal justice system
2. HB 2932 (Ch. 437) Immigration Consequences of Criminal Conviction
3. HB 3201 (Ch. 445) Conditional discharge agreements
4. SB 1002 (Ch. 684) Plea negotiation
5. SB 1013 (Ch. 635) Aggravated Murder
6. SB 321 (Ch. 368) Post-conviction DNA testing

## CRIMINAL LAW

### IV. JAILS AND CORRECTIONAL INSTITUTIONS

1. HB 2515 (Ch. 489) Feminine hygiene products provided at no cost in correctional facilities
2. HB 2631 (Ch. 481) Pilot program for legal services for women incarcerated at Coffee Creek Correctional Facility
3. HB 2910 (Ch. 596) Oregon Promise Program for students in correctional facilities
4. HB 3146 (Ch. 213) Reference to persons in custody
5. SB 488 (Ch. 550) Influenza vaccine for incarcerated persons
6. SB 495 (Ch. 333) Use of dogs in cell extraction
7. SB 498 (Ch. 335) Department of Corrections contracts with inmate telephone service providers
8. SB 980 (Ch. 474) Procedures for collecting money from DOC inmates for court-ordered financial obligations

### V. MARIJUANA OFFENSES

1. SB 420 (Ch. 459) Setting aside qualifying marijuana convictions
2. SB 975 (Ch. 473) Reducing offense classification for marijuana convictions

### VI. JUVENILES

1. HB 2042 (Ch. 48) Disclosure of juvenile records
2. HB 3261 (Ch. 216) Custodial interviews of minors
3. SB 1005 (Ch. 685) Omnibus public safety bill
4. SB 1008 (Ch. 634) Omnibus juvenile justice bill

### VII. INSANITY AND FITNESS TO PROCEED

1. SB 184 (Ch. 318) Omnibus fitness to proceed bill
2. SB 24 (Ch. 536) Procedures for criminal defendants lacking fitness to proceed
3. SB 362 (Ch. 326) Notice requirement to assert insanity defense
4. SB 375 (Ch. 329) Guilty except for insanity

### VIII. OTHER LEGISLATION

1. HB 2013 (Ch. 201) Relinquishment of firearms and court protective orders
2. HB 2227 (Ch. 137) Mandatory reporters of child abuse
3. HB 2399 (Ch. 399) Omnibus criminal procedure bill
4. HB 2400 (Ch. 400) Extends deadline to appeal civil commitment cases
5. HB 2401 (Ch. 305) Statistical Transparency of Policing (STOP)
6. HB 2480 (Ch. 306) Hearsay
7. HB 3035 (Ch. 274) Wildlife offenses
8. HB 3117 (Ch. 144) FAPA Order Required Findings

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|-------------|-----------|--|
| 9. HB 3224  | (Ch. 446) | District Attorney Policies   |
| 10. HB 3249 | (Ch. 169) | Client confidentiality   |
| 11. SB 25   | (Ch. 311) | Forensic evaluations   |
| 12. SB 388  | (Ch. 369) | Pardons  |
| 13. SB 490  | (Ch. 679) | Individuals prohibited from providing child care                             |
| 14. SB 522  | (Ch. 297) | Prohibition on refund for beverage containers sold<br>out of state           |
| 15. SB 577  | (Ch. 553) | Renames crime of intimidation to bias crime                                  |
| 16. SB 725  | (Ch. 423) | Background checks for those who provide care                                 |
| 17. SB 962  | (Ch. 472) | Certifying victim's assistance to US Citizenship and<br>Immigration Services |

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Special thanks to Timothy Sylwester for his assistance with this chapter.

## CRIMINAL LAW

### I. CRIMES AND VIOLATIONS RELATING TO VEHICLES

#### 1. [HB 2079](#) (Ch. 413) Boating Offenses

House Bill 2079 modifies and adds laws related to boating offenses.

Section 1 amends [ORS 830.315](#), the crime of reckless operation of a boat. Section 1 renames that crime, replaces obsolete language, and defines “recklessly.”

Section 2 reduces the penalty of failing to carry a personal flotation device from a Class B violation to a Class D violation.

Section 3 amends [ORS 830.994](#) by requiring suspension of an individual’s boating safety education card for one year upon conviction of reckless boating or operating a boat while under the influence of intoxicating liquor, cannabis, or a controlled substance.

Section 13 amends [ORS 830.325](#), which prohibits a person from operating a boat while under the influence of intoxicating liquor, cannabis, or a controlled substance. HB 2079 amends ORS 830.325 by adding a prohibition against operating a boat while under the influence of an inhalant.

Sections 6 and 18 amend [ORS 830.545](#) and [ORS 830.315](#) to comply with the Oregon Supreme Court’s decision in *State v. Banks*, 364 Or 332 (2019). Sections 6 and 18 create a bifurcated process for a peace officer to follow when the officer requests consent and physical cooperation for a breath sample, urine sample, or field sobriety tests. First, the officer must ask for consent to take the test. If the person refuses, the officer then can ask only for physical cooperation, and the person will be informed of the consequences of failing to physically submit to those tests.

HB 2079 also creates a new provision suspending a person’s boating safety education card for three years, if a person’s conviction for boating under the influence shows that the person willfully refused to physically submit to breath, urine, or nontestimonial field sobriety testing.

HB 2079 takes effect on January 1, 2020.

#### 2. [HB 2328](#) (Ch. 530) Unauthorized use of a vehicle

House Bill 2328 amends the crime of unauthorized use of a vehicle (UUV) contained in [ORS 164.135](#). There are three ways to commit UUV. Two of the ways involve a person in possession of a vehicle with the agreement of the owner, who then exceeds the scope of said agreement to such a degree that it constitutes a gross deviation from the agreement. The third manner occurs when a person takes, operates, exercises control over, rides in, or otherwise uses another’s vehicle, aircraft, or boat without the consent of the owner. UUV is a Class C felony.

In prosecutions for UUV, which usually involve allegations of a stolen car, the state must prove beyond a reasonable doubt that the defendant knows the vehicle is being operated without the owner's consent. While a judge or jury may base a conviction on reasonable inferences drawn from circumstantial evidence, the Court of Appeals has concluded that certain fact patterns "require[] the stacking of inferences to the point of speculation." *State v. Korth*, 269 Or App 238 (2015) and *State v. Shipe*, 264 Or App 391 (2014).

HB 2328 modifies the mental state in [ORS 164.135](#). The bill specifies that the person must knowingly take, operate, exercise control over, or otherwise use another's vehicle, aircraft, or boat and the person is aware of and consciously disregards a substantial and unjustifiable risk that the owner does not consent to this action. A person being "aware of and consciously disregarding a substantial and unjustifiable risk" that the vehicle is stolen is a reduced mental state. HB 2328 retains the knowing mental state for those riding in (passengers) a vehicle without the consent of the owner. The bill applies to offenses committed on or after the effective date.

HB 2328 takes effect on January 1, 2020.

### 3. [HB 2347](#) (Ch. 398) Exemptions to safety belt requirements

House Bill 2347 amends [ORS 811.215](#), which provides exceptions to the requirement in [ORS 811.210](#) to wear a seatbelt. There is a current exemption for persons delivering newspapers or mail in the regular course of work. HB 2347 clarifies this exemption by specifying that it applies to any person who is driving a vehicle while on a newspaper or mail route for the purpose of delivering newspapers or mail in the regular course of work.

HB 2347 takes effect on January 1, 2020.

### 4. [HB 2682](#) (Ch. 120) Bicycle lanes in intersections

HB 2682 clarifies that a bicycle lane exists and continues through an intersection if the bicycle lane is marked on opposite sides of the intersection in the same direction of travel.

HB 2682 takes effect January 1, 2020.

### 5. [HB 3005](#) (Ch. 200) Ignition interlock devices

In 2017, the legislature passed [HB 2638](#), which set standards for the installation and maintenance of interlock ignition devices (IID). IIDs are installed in a person's car when a person is convicted of driving under the influence of intoxicants or enters a DUII diversion program. If the IID detects alcohol in a person's breath, the device prevents a person starting his or her car, and it triggers a negative report that is sent to the device service center and ultimately to the court. IIDs are installed by private companies with oversight from the Oregon Department of Transportation.

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HB 3005 defines the responsibilities of an IID manufacturer's representative and service center. It also changes the alcohol blood level that triggers a negative report from .00 percent to .02 percent. It clarifies the background check standards for IID technicians, expands the Department of State Police ability to assess fees to fund the program, and it directs the State Police to develop a process for individuals to contest negative reports.

HB 3005 declared an emergency and took effect on July 1, 2019.

### 6. [HB 3214](#) (Ch. 215) **Hardship driver permits**

[ORS 807.240](#) authorizes the Department of Transportation to issue hardship driver permits to people whose driver's licenses have been suspended or revoked because they are habitual offenders. People whose licenses have been revoked due to a traffic crime may not receive a hardship permit. People may obtain hardship permits to drive to and from work, to get to and from an alcohol or drug treatment or rehabilitation program, to drive a family member to and from required medical treatment on a regular basis, or to get to and from a gambling addiction program.

HB 3214 extends the purposes justifying a hardship permit to include when a person must drive to provide necessary services for the person or to a member of the person's family. Necessary services include, but are not limited to, grocery shopping, driving the person or person's children to school, driving to medical appointments, and caring for elderly family members. HB 3214 also requires the Oregon Department of Transportation to adopt a rule clarifying what will be considered necessary services.

HB 3214 takes effect January 1, 2020.

### 7. [SB 509](#) (Ch. 80) **Repeals the crime of unlawfully transporting hay**

[ORS 164.815](#) provided that a person committed the crime of unlawfully transporting hay if the person knowingly transported more than 20 bales of hay on a public highway without having in his or her possession a transportation certificate signed by the producer. SB 509 repealed the crime of unlawfully transporting hay.

SB 509 takes effect January 1, 2020.

### 8. [SB 581](#) (Ch. 337) **Increased penalty for improper use of unmanned aircraft**

[ORS 837.374](#) defines reckless interference with an aircraft. It prohibits recklessly using an unmanned aircraft to direct a laser at an aircraft while the aircraft is in the air, to crash into an aircraft while the aircraft is in the air, or to prevent the takeoff or landing of an aircraft. SB 581 amends [ORS 837.374](#) and changes the offense from a Class A violation to a Class A

misfeasance if the person engages in the prohibited conduct using an unmanned aircraft with an intentional or knowingly mental state. It also provides that a person commits a class A misdemeanor if the person recklessly engages in the prohibited conduct using an unmanned aircraft and the person has one or more prior convictions for interference with an aircraft. Upon a person's second or subsequent conviction, SB 581 directs the court, at sentencing, to declare the unmanned aircraft system used in the offense to be contraband and order that it be forfeited.

[ORS 837.360](#) imposes restrictions and requirements on the use of unmanned aircraft systems by public bodies. SB 581 excludes educational institutions from much of these restrictions. It modifies [ORS 837.360](#) and requires educational institutions to register as a user of unmanned aircraft systems with the Oregon Department of Aviation (department), and the department may not charge a fee for that registration. SB 581 also requires educational institutions to maintain records of their use of unmanned aircraft systems.

SB 581 takes effect January 1, 2020.

**9. [SB 810](#) (Ch. 349) Modifies definition of "vulnerable user of a public way"**

[ORS 801.608](#) defines "vulnerable user of a public way" to include a pedestrian, a highway worker, a person riding an animal, or a person operating various equipment on a public way, crosswalk, or highway shoulder. SB 810 amends [ORS 801.608](#) and adds a person operating a moped or a motorcycle to the definition of a vulnerable user of a public highway.

SB 810 takes effect January 1, 2020.

**10. [SB 998](#) (Ch. 683) Permits bicyclists to roll through stop signs**

[ORS 814.410](#) to [ORS 814.480](#) govern the operation of bicycles. SB 998 adds to those statutes and permits a person operating a bicycle who is approaching a stop sign or an intersection where traffic is controlled by a flashing red signal to do any of the following, without stopping, if the person slows the bicycle to a safe speed:

- 1) proceed through the intersection,
- 2) make a right or left turn into a two-way street, or
- 3) make a right or left turn into a one-way street in the direction of traffic upon the one-way street.

SB 998 provides that a person commits the offense of improper entry into an intersection if the person proceeds through the intersection without stopping as the bill permits and:

- 1) fails to yield the right of way to traffic lawfully within the intersection,
- 2) disobeys the directions of a police officer or a flagger,

## CRIMINAL LAW

- 3) fails to exercise care to avoid an accident, or
- 4) fails to yield the right of way to a pedestrian in an intersection or crosswalk.

SB 998 takes effect on January 1, 2020.

## II. SEX CRIMES AND SEX OFFENDER REGISTRATION

### 1. [HB 2045](#) (Ch. 430) Sex offender assessments and reporting

House Bill 2045 makes several changes to sex offender reporting requirements. In 2013, the Legislative Assembly enacted [House Bill 2549](#). HB 2549 directed the Department of Corrections (DOC) to adopt a sex offender risk assessment tool for classifying sex offenders based on individual risk to reoffend. In 2015, the State Board of Parole and Post-Prison Supervision (Board) assumed the task of classifying sex offenders from DOC. HB 2045 extends the current deadline for classification of existing sex offender registrants from December 1, 2022, to December 1, 2026.

Section 2 of HB 2045 requires the Board to report biennially to the Legislative Assembly on the progress made in classifying registrants.

HB 2045 also restores, until January 1, 2022, statutory references to predatory sex offenders for adult offenders who have not yet been classified.

Several statutes govern the circumstances under which a registered sex offender must report, such as within ten days of a change of residence. HB 2045 amends those statutes to require that a registered sex offender must report within ten days of a legal name change and at least 21 days prior to any travel outside of the United States. Failure to make one of those reports will also now constitute the crime of failure to report as a sex offender.

Section 17 of HB 2045 also modifies [ORS 163A.030](#) by clarifying that a juvenile court must ensure that a person who waives the right to a hearing on the issue of reporting as a sex offender complete the notice of registration form. The bill requires the court to send a copy of the form, as well as any order concerning sex offender reporting, to the Oregon State Police.

[ORS 163A.105](#) governs when risk assessments are performed. A person may petition for review of their level two or three sex offender classification within 60 days of notice of the classification. Section 19 of HB 2045 modifies that provision, allowing a good cause exception to the 60 day deadline for the petition for review. It also defines “good cause” and the length of the extension.

HB 2045 took effect on June 20, 2019.

**2. [HB 2393](#) (Ch. 304) Unlawful dissemination of an intimate image**

House Bill 2393 modifies [ORS 163.472](#), which is the offense of unlawful dissemination of an intimate image. The Legislative Assembly created that offense in 2015. It prohibits the unlawful dissemination, through an internet website, of an identifiable image of another person whose intimate parts are visible or who is engaged in sexual conduct with the intent to harass, humiliate, or injure the other person. This offense is a Class A misdemeanor, but it is elevated to a Class C felony if the person has a prior conviction for the same offense.

HB 2393 removes the requirement that the image be disclosed through an internet website, allowing prosecution of offenses that occur through any distribution method. The bill also defines “identifiable.”

HB 2393 also creates a civil cause of action for victims of the offense, regardless of any criminal prosecution. The bill specifies the types of damages available and limits liability of minors or their parents to \$5,000. It also specifies that an award of statutory damages under this provision is not evidence of the existence or amount of economic damages for restitution in a criminal case.

Finally, HB 2393 amends [ORS 166.065](#), which is the crime of harassment. Prior to HB 2393, one way to commit the crime of harassment was to distribute a visual recording of a minor engaged in sexually explicit conduct or in a state of nudity. HB 2393 removes this manner of committing the crime of harassment because this offense is now subsumed in the unlawful dissemination of an intimate image.

HB 2393 takes effect on January 1, 2020.

**3. [HB 2428](#) (Ch. 365) Public Indecency**

House Bill 2428 amends [ORS 163.465](#), which defines the offense of public indecency. Currently, a person commits the offense by performing an act of sexual intercourse, an act of oral or anal sexual intercourse, or exposing the person’s genitals with the intent of arousing the sexual desire of the person or another person while in, or in view of, a public place. Public indecency is a class A misdemeanor, but it is elevated to a class C felony if the person has a prior specified conviction.

HB 2428 expands the offense of public indecency to include masturbating while in, or in view of, a public place.

HB 2428 took effect on September 29, 2019.

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### 4. [SB 596](#) (Ch. 179) Reports of person felonies inadmissible in prostitution cases

[ORS 167.007](#) provides that a person commits the crime of prostitution if the person engages in, or offers to engage in, sexual conduct or sexual contact in return for a fee. SB 596 provides protection from criminal liability for prostitution when a person reports that another person committed a felony against them. It provides that if a person contacts an emergency communications system or law enforcement and reports the commission of a person felony, any statements or other evidence related to the crime of prostitution obtained as a result of the report cannot be used to prosecute that person for prostitution or attempted prostitution.

SB 596 takes effect January 1, 2020.

### 5. [SB 597](#) (Ch. 338) Use of pseudonyms or initials for victims in indictments

[ORS 132.540](#) governs the sufficiency of indictments and [ORS 132.580](#) governs names of grand jury witnesses on indictments. SB 597 amends [ORS 132.540](#) and [ORS 132.580](#). The bill provides that an indictment may use a pseudonym, initials, or other signifier instead of the victim's name if one of the crimes alleged is a sex crime. A separate document with the name of the victim and the corresponding pseudonym, initials, or signifier is filed at the same time as the indictment, and a copy of that document is provided to the defendant's lawyer or, if the defendant does not have a lawyer, to the defendant.

The defendant's attorney may orally inform the defendant of the victim's name, but may not provide a copy of the document containing the victim's name to the defendant. If the defendant is not represented by counsel, the district attorney must provide the defendant with a copy of the document containing the victim's name, but the court must also enter an order prohibiting the defendant from copying the document or providing it to anyone else. SB 597 requires that the document containing the victim's name remain confidential during the pendency of the case.

SB 597 takes effect January 1, 2020.

### 6. [SB 995](#) (Ch. 353) Sexual abuse protection order (SAPO)

Senate Bill 995 makes several changes to the statutes governing Sexual Abuse Protective Order (SAPO).

[ORS 163.763](#) establishes the criteria for obtaining a SAPO. A SAPO is available in certain cases where a person was subjected to sexual abuse by another person who is not a family member or intimate partner. A petitioner may ask for a SAPO as long as the respondent is 18 or older. If a petitioner is under the age of 12, a parent or guardian must file for the petitioner. A guardian ad litem can also be appointed. To be eligible for a SAPO, the respondent must not

already be prohibited from contacting a person by a restraining order from another state, Indian tribe, or territory; a stalking protective order; an Elderly Persons and Persons With Disabilities Abuse Prevention Act restraining order; a no contact order entered in a criminal case; or a restraining order entered in a juvenile court dependency case. To grant a SAPO, the court must find that the person who sexually abused or assaulted the petitioner made the petitioner have sexual contact without the person's consent or made the person have sexual contact when the person was not capable of consenting. The abuse must have happened in the last 180 days and the petition must establish that the person is in reasonable fear for their physical safety. A person is not required to have called the police in order to get a SAPO. The respondent has 30 days from the date of service to ask for a hearing contesting the SAPO. If the respondent does not ask for a hearing, the SAPO will stay in effect for one year from the date it was issued. If the respondent does ask for a hearing, the court will schedule it within 21 days of the request. At the hearing, a petitioner must prove that they have been sexually abused and that they reasonably fear for their physical safety. A SAPO lasts for one year from the date the judge signs it or until a judge terminates it. It can be renewed for one year at a time if the judge finds it is objectively reasonable for a person to fear for their physical safety if the order is not renewed. A respondent may request a modification to an order at any time after 30 days from service.

Section 2 of SB 995 amends [ORS 163.765](#), which specifies the contents of the protection order and service of the order. Previously, these protection orders were effective for one year. Section 2 now provides that the protection order is effective for five years or, if the petitioner is a minor, until the petitioner turns age 19, whichever occurs later. A provision is also added allowing the court to enter a permanent protection order if the respondent has been convicted of a specified crime committed against the petitioner or if the court makes a finding that it is objectively reasonable for a petitioner to fear for their physical safety and the passage of time or a change in circumstances would not dissipate that fear.

**Practice Tip:** Section 2 of the bill adds a provision allowing the court to order service of the petition and the protection order by alternative method in accordance with [Oregon Rules of Civil Procedure 7D\(6\)\(a\)](#), if the petitioner exercised due diligence in attempting to effect service. SB 995 takes effect on January 1, 2020.

### III. SENTENCING AND REFORM LEGISLATION

#### 1. [HB 2462](#) (Ch. 86) Service members and the criminal justice system

House Bill 2462 creates new criminal procedural protections for servicemembers facing criminal charges. For the last several years Oregon has worked on addressing the needs of veterans in the criminal justice system. In 2010, [ORS 135.886](#) was modified to allow district attorney's greater discretion in referring members of the armed services or veterans into diversion programs when charged with certain crimes. At the same time, a definition for "servicemember" was created in [ORS 135.881](#). In 2013, Oregon specified in [ORS 137.090](#) that a

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defendant's status as a servicemember is evidence the court may consider in mitigation of sentence.

HB 2462 requires courts to inform defendants at arraignment on a criminal charge that a defendant's status as a servicemember may make the defendant eligible for treatment programs, specialty courts, or mitigated sentencing. The bill also prohibits the defendant's status as a servicemember from being used as an aggravating factor in sentencing.

**Practice Tip:** HB 2462 provides a definition of "servicemember" that is more expansive than the definition of "servicemember" found in [ORS 135.881](#). Practitioners may want to discuss with their clients whether their own service qualifies.

HB 2462 takes effect on January 1, 2020.

### 2. [HB 2932](#) (Ch. 437) Immigration Consequences of Criminal Conviction

[ORS 135.385](#) requires courts to advise criminal defendants of the rights that they waive before accepting a guilty plea or a plea of no contest. HB 2932 amends [ORS 135.385](#) and requires courts to provide defendants with additional time to consider the decision to enter a guilty or no contest plea after informing the defendant of the potential immigration consequences to criminal convictions. It adds to the required notice of immigration consequences that a criminal conviction may result in removal proceedings for non-citizens of the United States. Finally, HB 2932 prohibits courts from inquiring into a defendant's immigration status at the time of a plea or at any time during a criminal proceeding.

HB 2932 declared an emergency and took effect on June 20, 2019.

### 3. [HB 3201](#) (Ch. 445) Conditional discharge agreements

[ORS 475.245](#) allows a defendant charged with certain drug offenses to enter into a diversion agreement, with the district attorney's consent, and be placed on probation. Oregon law requires that a defendant, prior to entering a diversion, deferred resolution, or conditional discharge agreement, to plead guilty or to stipulate to certain facts establishing guilt to a criminal charge. If the defendant fulfills the obligations of the agreement, the court will dismiss the charges. If the defendant violates probation, the court may enter an adjudication of guilt.

HB 3201 prohibits agreements for conditional discharge from requiring the defendant to admit guilt or facts that establish the defendant's guilt. Instead, it provides that the defendant enter into a probation agreement. As part of that agreement the defendant waives his or her constitutional rights to

- 1) a jury trial,
- 2) a speedy trial,
- 3) present evidence,

- 4) contest evidence, and
- 5) appeal a judgment resulting from an adjudication of guilt, unless the appeal is based on an allegation that the sentence exceeds the maximum allowable by law or is cruel and unusual punishment.

The bill also prohibits the admission of police reports and other documents associated with the criminal charges into evidence and their use as a factual basis for finding the defendant guilty. If the defendant violates the probation agreement, HB 3201 authorizes the court to resume the criminal proceedings and find the defendant guilty of the charges in the charging instrument in accordance with the defendant's waiver of rights in the probation agreement. If the defendant fulfills the terms and conditions of the probation agreement the court must discharge the defendant and dismiss the proceedings.

HB 3201 took effect on June 20, 2019, and it applies to criminal proceedings initiated on or after January 1, 2020.

#### 4. [SB 1002](#) (Ch. 684) Plea negotiation

Senate Bill 1002 modifies a prosecuting attorney's authority to require a defendant to waive certain rights as a condition of a plea offer.

Several statutes govern the terms of plea agreements in criminal cases. In 2013, it was specified that a plea offer could not be conditioned on the defendant waiving the right to receive exculpatory evidence. In 2017, the Legislative Assembly expanded this prohibition to include the right of the defendant to receive audio recording of grand jury proceedings. In 2018, it was again expanded to prohibit prosecutors from conditioning plea offers on the defendant stipulating that an existing law is unconstitutional.

SB 1002 expands this list by prohibiting prosecuting attorneys from conditioning plea offers on the defendant's waiver of eligibility for transitional leave, sentence reductions, or other programs.

SB 1002 takes effect on January 1, 2020.

#### 5. [SB 1013](#) (Ch. 635) Aggravated Murder

Senate Bill 1013 modifies the crimes of murder and aggravated murder. [ORS 163.095](#) defines the crime of aggravated murder.

SB 1013 limits the definition of aggravated murder to:

- intentionally and with premeditation killing at least two people with a terroristic intent,
- committing murder in the second degree while in custody after previously being convicted in any jurisdiction for murder in the first degree or for aggravated murder,

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- the premeditated and intentional homicide of a person under age 14,
- the premeditated and intentional homicide of a police officer that is related to the performance of the victim's official duties, or
- the premeditated and intentional homicide of a correctional or parole and probation officer that is related to the performance of the victim's official duties.

Section 3 of the bill creates a new offense of murder in the first degree. Murder in the first degree is defined as murder in the second degree when it is accompanied by certain specified aggravating factors. The specified aggravating factors mirror those that were previously encompassed within the definition of aggravated murder. Section 3 also establishes the penalty of life imprisonment without the possibility of parole for 30 years, if the person was at least 15 years of age at the time of the murder. The court may sentence the person to life imprisonment without the possibility of parole if the person was at least age 18 at the time of the murder, and the court states the reasons for the sentence on the record. Finally, section 3 establishes the parole board process for murder in the first degree.

The bill also contains sections 3a, 3b, 3c, 3d, and 3e, which are conforming amendments to [Senate Bill 1008](#). SB 1008 is the juvenile justice reform bill that, in part, provides that a youth is eligible for parole after serving 15 years of imprisonment.

Section 4 amends [ORS 163.115](#), which defines the crime of murder. Section 4 renames this offense murder in the second degree.

Section 5 of SB 1013 amends [ORS 163.150](#). [ORS 163.150](#) concerns sentencing proceedings for persons convicted of aggravated murder. Under [ORS 163.150](#), a person convicted of aggravated murder is subject to a separate sentencing proceeding to determine whether the person should receive a sentence of life imprisonment with a minimum confinement of 30 years, life imprisonment with the possibility of release, or death. In order to be subject to the death penalty, a jury must render affirmative findings on four questions following the presentation of evidence at the separate sentencing proceeding. One of those four questions requires the jury to render an opinion on the offender's future dangerousness. Section 5 removes that question as a factor for the jury to consider when deciding on a sentence of death.

One of the remaining three questions for the jury to impose death is whether the defendant should receive a death sentence. Section 5 specifies that the state must prove this issue to the jury beyond a reasonable doubt. The remaining questions were already required to be proven beyond a reasonable doubt.

Section 15a amends [ORS 161.405](#), which defines and classifies the crime of criminal attempt. Section 15a specifies that attempted aggravated murder is a Class A Felony. Section 30 of the bill specifies that it applies to crimes committed before, on, or after the effective date that are subject to sentencing proceedings occurring on or after the effective date.

SB 1013 takes effect on September 29, 2019.

**Practice Tip:** The application of this bill to sentences imposed before its enactment is unclear. This issue is partially addressed in [SB 1005](#), but recent court decisions and statements made by the Oregon Department of Justice call this into question.

## 6. [SB 321](#) (Ch. 368) Post-conviction DNA testing

Senate Bill 321 modifies procedures related to post-conviction DNA testing. Section 2 of the bill defines key terms for post-conviction DNA testing. For example, it defines “exculpatory results” and “exculpatory evidence” as those results or evidence that are material to a determination of the identity of the person who committed the crime or to a determination as to whether a crime had been committed.

Section 3 of the bill amends ORS 138.690, which previously set out the process for filing a motion for post-conviction DNA testing. Section 3 substantially modifies ORS 138.690 by specifying that a person may now petition the commencement of a DNA testing proceeding and request counsel for the purpose of determining whether to file a motion for the testing of DNA on specific evidence. It also removes the requirement that the DNA evidence is relevant to an element of the offense and replaces it with the DNA evidence is “related to the investigation or prosecution that resulted in the judgment of conviction.” It specifies that a petitioner may dismiss a petition for post-conviction DNA testing without prejudice, procedures for discovery, victim notification, and it specifies that the court may not impose a filing fee for those motions. [ORS 138.692](#) previously specified court procedures following a motion filed under [ORS 138.690](#). Section 4 substantially amends that section by establishing the requirements for a petitioner to file a motion for post-conviction DNA testing following the petition under [ORS 138.690](#). It specifies how the state must respond to the motion and creates both a mandatory and a permissive standard for when the court can order post-conviction DNA testing. It also eliminates the requirement that the petitioner make a prima facie showing that DNA testing would lead to a finding of actual innocence. In its place, Section 4 requires an explanation of how there is a reasonable probability that, if exculpatory DNA results had been available at the time of prosecution, the petitioner would not have been prosecuted or convicted of the offense, or the petitioner would have obtained a more favorable outcome. Finally, Section 4 modifies [ORS 138.692](#) by placing certain discovery obligations on the petitioner and specifying that a motion may be filed even if the petitioner has given a confession or entered a plea of guilty or no contest.

Section 8 of SB 321 creates a process for the court to order, upon motion, an unidentified DNA profile produced following a motion for post-conviction DNA testing to be compared against DNA profiles in the State DNA Index System or the National DNA Index System, when certain standards have been met.

[ORS 138.694](#) establishes petitioners’ eligibility for appointed counsel in these proceedings. Section 5 of the bill amends [ORS 138.694](#) by specifying a person’s eligibility for appointed

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counsel at the proceedings following the finding of an unidentified DNA profile, as outlined in Section 8.

SB 321 takes effect on January 1, 2020.

### IV. JAILS AND CORRECTIONAL INSTITUTIONS

1. [HB 2515](#) (Ch. 489) **Feminine hygiene products provided at no cost in correctional facilities**

HB 2515 requires all correctional facilities, including youth correctional and juvenile detention facilities, lockup facilities, and Department of Corrections' institutions to provide tampons, sanitary pads, postpartum pads, and panty liners at no cost to all confined detainees and prisoners. The bill requires correctional facilities to maintain a sufficient supply of those products and to store, dispense, and dispose of them in a sanitary manner. Finally, HB 2515 requires the facilities supply of products to include: (1) regular absorbent tampons, (2) regular absorbent and super absorbent sanitary pads, (3) postpartum pads, and (4) regular absorbent panty liners.

HB 2515 takes effect January 1, 2020.

2. [HB 2631](#) (Ch. 481) **Pilot program for legal services for women incarcerated at Coffee Creek Correctional Facility**

HB 2631 directs the Department of Corrections, in cooperation with the Oregon Criminal Justice Commission, to establish a pilot program to provide legal services that assist women who are incarcerated at Coffee Creek Correctional Facility to reenter and reintegrate into local communities, to reduce their vulnerability to domestic violence, and to obtain employment, housing services, and other benefits. It directs the Oregon Justice Resource Center to evaluate the program and report the results of that evaluation to the legislative interim committee on corrections no later than September 15, 2021.

HB 2631 declared an emergency and took effect on June 25, 2019.

3. [HB 2910](#) (Ch. 596) **Oregon Promise Program for students in correctional facilities**

The Oregon Promise is a grant program that began in 2016. The grants cover the cost of tuition at Oregon community colleges for recent high school graduates or General Education Development (GED) graduates. To enroll in the Oregon Promise program, students apply for the program within six months of completing their high school diploma or their GED. The program is available to students in correctional facilities, and they are subject to the same six-month deadline.

HB 2910 provides that students incarcerated in a correctional facility are no longer required to apply for the Oregon Promise program within six months of completing their education. It gives incarcerated students a deadline of six months after their release date to apply for the program.

HB 2910 takes effect January 1, 2020.

**4. [HB 3146](#) (Ch. 213) Reference to persons in custody**

HB 3146 replaces the term “inmate” with “adult in custody” in all statutes in the Oregon Code that refer to inmates.

HB 3146 takes effect January 1, 2020.

**5. [SB 488](#) (Ch. 550) Influenza vaccine for incarcerated persons**

Senate Bill 488 was crafted to ensure that every individual incarcerated in the Department of Corrections (DOC) has the option to receive the influenza vaccine. SB 488 requires DOC to offer each inmate in the physical custody of DOC immunizations against influenza at no charge each year. SB 488 does not apply to persons incarcerated at a local correctional facility.

SB 488 took effect on July 15, 2019.

**6. [SB 495](#) (Ch. 333) Use of dogs in cell extraction**

[ORS 161.205](#) and [ORS 161.267](#) authorize jail, prison, and correctional facility officers to use physical force when and to the extent that the officers think is reasonably necessary for a variety of specified reasons. SB 495 amends [ORS 161.205](#) and [ORS 161.267](#) by prohibiting the use of dogs to extract inmates from their cells. It allows the use of dogs in correctional facilities to track and locate inmates, detect contraband, quell disturbances, prevent inmate escape, and address immediate health or safety risks to inmates or staff members. It also permits the use of dogs in correctional facilities as part of an inmate dog training program for purposes related to rehabilitation, treatment, vocational education, and skill building of inmates.

SB 495 takes effect January 1, 2020.

**7. [SB 498](#) (Ch. 335) Department of Corrections contracts with inmate telephone service providers**

SB 498 prohibits the Department of Corrections (DOC) from entering into contracts with telephone service providers in which DOC receives a fee or a commission. It allows DOC to enter into contracts with telephone service providers in which the provider reimburses DOC for internal and external oversight and management costs or payment to a third party provider.

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SB 498 limits the fee or commission that an inmate telephone service provider may provide to a correctional facility to five cents per minute or less. It requires correctional facilities to deposit any fee or commission received into the Inmate Welfare Fund Account and prohibits certain uses of those funds.

SB 498 requires correctional facilities that issue requests for proposal to procure inmate telephone services to consider call quality when evaluating proposals. Finally, it requires that all contracts between correctional facilities and inmate telephone service providers include a requirement that the provider submit a monthly report to the correctional facility that contains: revenue earned, fees charged, money paid to the correctional facility, the number of completed calls, the number of dropped calls, and the number of complaints concerning call quality.

SB 498 declared an emergency and took effect on July 1, 2019.

### 8. [SB 980](#) (Ch. 474) **Procedures for collecting money from DOC inmates for court-ordered financial obligations**

In 2017, the legislature enacted [SB 844](#), codified as [ORS 423.105](#), which created procedures for the Department of Corrections (DOC) to collect money from an inmate's trust account for a transitional fund and payment of court-ordered financial obligations. [ORS 423.105](#) requires the Department of Justice (DOJ) and Oregon Judicial Department (OJD) to provide DOC with an accounting of each inmate's court-ordered financial obligations, and DOJ and OJD are required to apply the money received from DOC to the inmate's court-ordered financial obligations.

[ORS 423.105](#) provided for three levels of priority for the application of collected money to court-ordered financial obligations, with Level I obligations having the highest priority and Level III obligations having the lowest priority. SB 980 adds a Level IV obligation. It changed what were Level III obligations to Level IV obligations. Level IV obligations are civil judgments resulting from an action for the inmate's assault or battery of a DOC or Oregon Correction Enterprises employee. It changed what were Level II obligations to Level III obligations, which are child support obligations. SB 980 also removed from Level III obligations money awards for crime victims entered against an inmate. Finally, SB 980 added as Level II obligations civil judgments that include a money award in which DOJ is a judgment creditor.

SB 980 takes effect January 1, 2020.

## V. MARIJUANA OFFENSES

### 1. [SB 420](#) (Ch. 459) **Setting aside qualifying marijuana convictions**

Senate Bill 420 creates procedures for setting aside a conviction for a qualifying marijuana conviction.

[ORS 137.225](#) specifies what offenses are eligible to be set aside. [ORS 137.226](#) governs when certain marijuana convictions may be set aside.

In 2014, Oregon voters approved [Ballot Measure 91](#). Ballot Measure 91 and subsequent legislation decriminalized recreational marijuana and allowed for homegrown marijuana production, delivery, and use of marijuana.

SB 420 allows for persons convicted of marijuana offenses prior to July 1, 2015, that are no longer considered criminal under [ORS 475B.301](#) or for possession of less than one ounce of marijuana to apply to the court for an order setting aside the conviction. The prosecuting attorney may object to the application, but only on the basis that the person's conviction is not a qualifying conviction. SB 420 details the procedures for the application process, hearing, and defines key terms. The procedures created in SB 420 are distinct from those in [ORS 137.225](#) and [ORS 137.226](#).

SB 420 takes effect on January 1, 2020.

**2. [SB 975](#) (Ch. 473) Reducing offense classification for marijuana convictions**

SB 975 establishes that a person may file a motion requesting that the court reduce the offense classification for his or her marijuana conviction if, since entry of the judgment of conviction, the marijuana offense has been:

- 1) reduced from a felony to a misdemeanor,
- 2) reduced from a higher level felony to a lower level felony,
- 3) reduced from a higher level misdemeanor to a lower level misdemeanor, or
- 4) reduced from a crime to a violation.

Prosecutors must file any objection to a motion filed under SB 975 within 30 days. A prosecutor may object only on the basis that the person's conviction is not eligible for reduction or that the person has not completed and fully complied with or performed the sentence originally imposed. If the prosecutor does not object to the motion, SB 975 directs the court to grant the motion and enter an amended judgment of conviction, if the conviction is eligible for reduction and the petitioner has fully complied with or performed the sentence.

SB 975 provides that if the prosecutor files an objection, the court must hold a hearing on the motion. At the hearing, the petitioner has the burden of establishing by a preponderance of the evidence that the conviction is eligible for reduction and that he or she has completed and fully complied with or performed the sentence. If the court determines that the conviction is eligible for reduction and the petitioner completed and fully complied with or performed the sentence, the court must grant the motion and enter an amended judgment.

SB 975 takes effect January 1, 2020.

## VI. JUVENILES

### 1. [HB 2042](#) (Ch. 48) Disclosure of juvenile records

House Bill 2042 makes permanent an existing law allowing the Oregon Youth Authority and county juvenile departments to disclose reports and other materials relating to a child, ward, youth, or youth offender to the Department of Corrections for specified purposes.

This record sharing was first authorized in 2015 by [House Bill 2313](#) and was scheduled to sunset on June 30, 2017. The sunset was extended to January 1, 2020 in 2017 in [House Bill 2248](#). HB 2042 removes the sunset and makes the law permanent.

HB 2042 took effect on May 2, 2019.

### 2. [HB 3261](#) (Ch. 216) Custodial interviews of minors

[ORS 133.400](#) requires that custodial interrogations conducted in a law enforcement facility in connection with an aggravated murder investigation be electronically recorded. It also requires the electronic recording of custodial interrogations of minors conducted in a law enforcement facility in connection with felony investigations.

HB 3261 expands [ORS 133.400](#) and requires the electronic recording of all custodial interviews of minors conducted by a peace officer, a school resource officer, or a special campus security officer, inside a law enforcement facility or outside of a law enforcement facility if the officer is equipped with a body camera, and if the interview is in connection with an investigation into a felony or a misdemeanor.

HB 3261 takes effect January 1, 2020.

### 3. [SB 1005](#) (Ch. 685) Omnibus public safety bill

Senate Bill 1005 is an omnibus public safety bill that addresses two issues. In 2014, the Legislative Assembly created the Task Force on School Safety. The Task Force is focused on strengthening safety in schools. Section 1 of SB 1005 expands the Task Force on School Safety from 16 to 18 members by adding a member of the Oregon Health Authority and a member of the Office of Emergency Management. Section 2 of the bill extends the sunset of the Task Force to December 31, 2021.

The final portion of the bill amends [Senate Bill 1008](#), which was enacted earlier in the 2019 session. [SB 1008](#) makes several changes to prosecution and sentencing of juveniles charged with criminal offenses. Section 32 of [SB 1008](#) states that it applies to sentences imposed on or after January 1, 2020. SB 1005 amends section 32 of [SB 1008](#) by adding that it does not apply to persons who were originally sentenced before January 1, 2020, and who are resentenced on or after January 1, 2020, as the result of an appeal or post-conviction relief.

SB 1005 took effect on July 1, 2019.

**4. [SB 1008](#) (Ch. 634) Omnibus juvenile justice bill**

Senate Bill 1008 is an omnibus juvenile justice bill that makes several substantive changes to juvenile delinquency and criminal proceedings.

Section 1 of the bill amends [ORS 137.071](#), which specifies what must be included in a criminal judgment. The bill adds a requirement that the court, if it sentences the defendant to a term of incarceration, indicate in the judgment the age of the defendant at the time of committing the offense, if the physical custody of the defendant will be determined based on the age of the defendant at the time of committing the offense. Section 1 also specifies how the court is to determine the defendant's age at the time of the offense when the defendant is convicted of two or more offenses occurring on different days or when the offense occurred within a range of dates.

Section 2 of the bill amends [ORS 137.124](#), which governs where a defendant will serve their physical place of confinement. [ORS 137.124\(5\)\(a\)](#) currently allows a youth who has been committed to the Department of Corrections under [ORS 137.707](#) and who was under age 18 at the time of committing the offense and under age 20 at the time of sentencing to serve their sentence in the physical custody of the Oregon Youth Authority until age 25. SB 1008 adds an additional provision to this section allowing a youth to be transferred to the Oregon Youth Authority (OYA) if the person was under age 18 at the time of the offense, but the criminal proceedings were initiated after the person turned age 18.

Section 3 contains conforming amendments to [ORS 420.011](#) based on Section 1 and Section 2.

Sections 4 through 21 of the bill address the waiver of juveniles to adult court. Youth who commit what would be a crime if committed by an adult are in juvenile delinquency court. One common exception to that is Measure 11 for persons aged 15, 16, or 17 contained in [ORS 137.707](#). Under prior law, a youth charged with an offense contained in [ORS 137.707](#) is automatically waived into adult court. Other youth charged with certain serious offenses can be waived into adult court following a court hearing pursuant to [ORS 419C.349](#) and [ORS 419C.352](#).

SB 1008 eliminates the automatic waiver provisions contained in [ORS 137.707](#), requiring that a court hold a waiver hearing pursuant to [ORS 419C.349](#) in order for a youth to be charged as an adult with the crimes specified in [ORS 137.707](#). A court must hold a waiver hearing for these youth when the state files a motion requesting one. If a youth is waived to criminal court for an offense listed in [ORS 137.707](#), the youth is subject to the mandatory minimum sentence specified in [ORS 137.707](#).

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Section 6 of the bill also amends the waiver hearing process contained in [ORS 419C.349](#). The bill specifies that the victim has a right to appear at the hearing and to provide the court with information, that the youth has a right to counsel at the hearing, and that the state has the right to have the youth examined by a psychiatrist or psychologist.

Sections 22 and 23 address second look for youth. [ORS 420A.203](#) specifies who is eligible for second look. Second look allows youth who meet eligibility requirements to receive a second look hearing, or conditional release hearing, after the person has served half of their sentence. SB 1008 amends [ORS 420A.203](#) by allowing youth sentenced under [ORS 137.707](#) or [ORS 137.712](#) to receive a second look hearing. It also adds a provision providing a second look hearing for youth who were under age 18 at the time of the offense, are in the physical custody of OYA, and have a projected release date on or after the person's 25<sup>th</sup> birthdate and before the person's 27<sup>th</sup> birthdate.

Sections 24 through 30 address sentencing issues for youth subject to life sentences or the equivalent of life sentences. The U.S. Supreme Court has placed limits on when a youth may be subject to a life sentence. See *Miller v. Alabama*, 567 U.S. 460 (2012). Several states have enacted legislation addressing life and life equivalent sentences for youth following *Miller*. Section 24 of the bill prohibits the imposition of a life sentence without the possibility of parole for a person who was under age 18 at the time of the offense. It specifies factors for the court to consider in determining an appropriate sentence for a person under age 18 at the time of the offense, such as age and psychological examinations. It also prohibits the use of age as an aggravating factor, when the person was under age 18 at the time of the offense. Section 25 of the bill provides that a person who was under age 18 at the time of the offense is eligible for parole after the person has served 15 years of imprisonment. The eligibility for parole after 15 years applies even if the person was sentenced to consecutive sentences or mandatory minimum sentences. It also specifies factors for the parole board to consider that are similar to the sentencing factors referenced in section 24. A youth has the right to counsel at board expense at a parole hearing under this section.

Section 30 of SB 1008 directs the Department of Justice to adopt model policies for providing victim notification concerning second look and waiver hearings. It also directs district attorneys' victim assistance programs to provide services that are culturally specific, where available.

SB 1008 takes effect on September 29, 2019. However, it applies to sentences imposed on or after January 1, 2020.

## VII. INSANITY AND FITNESS TO PROCEED

### 1. [SB 184](#) (Ch. 318) Omnibus fitness to proceed bill

Senate Bill 184 is an omnibus bill relating to fitness to proceed in criminal cases.

[ORS 161.309](#) defines “certified evaluator.” A certified evaluator includes psychiatrists or psychologists who are qualified to perform fitness to proceed evaluations. SB 184 replaces the terms “psychiatrist or psychologist” in [ORS 161.365](#) and [ORS 161.370](#) with the term “certified evaluator.”

Criminal proceedings are suspended when a defendant is found unfit. The defendant is then committed or released on supervision to attempt to restore the defendant’s fitness to proceed. Pursuant to [ORS 161.370](#), a court may dismiss the criminal charge if so much time elapses during commitment or release that it would be unjust to resume the criminal proceeding. In so doing, the statute allows the court to initiate a civil commitment proceeding. Section 2 adds a provision allowing the court to initiate a commitment proceeding under [ORS 426.701](#).

In *Sell v. United States*, 539 US 166 (2003), the United States Supreme Court articulated stringent standards for when a criminal defendant can be involuntarily medicated for the sole purpose of restoring the defendant’s fitness to proceed. The Oregon Supreme Court followed those standards in *State v. Lopes*, 355 Or 72 (2014). Section 4 of SB 184 codifies *Sell* and *Lopes* by creating a process for the court to order the involuntary medication of a defendant in order for the defendant to gain or regain fitness to proceed.

SB 184 takes effect on January 1, 2020.

**2. [SB 24](#) (Ch. 536) Procedures for criminal defendants lacking fitness to proceed**

Under current law, a person cannot be prosecuted for a crime unless that person is able to “aid and assist” in his or her defense. Thus, the person must meet a certain bar of competency before the person’s criminal case moves forward. In order to help defendants to achieve this level of competency people accused of low-level crimes, including misdemeanors, are often sent to the state hospital when community-based restoration would be more appropriate.

SB 24 amends the processes that relate to the court ordering defendants to the Oregon State Hospital (OSH). It incentivizes processes that require the court to review whether a defendant could receive restorative services safely in the community. The legislation seeks to separate and divert people charged with misdemeanors and felonies (who do not need a hospital level of care) to be restored to competency in the community rather than sending those people to OSH. SB 24 requires the court to consult with community mental health program (CMHP) directors and designees. CMHP and designees must provide consultation and recommendations to the court related to whether services and supervision are available to allow a defendant to be safely restored to competency in the community.

**Section 1a**

This section of the bill amends [ORS 161.365](#), which governs the process for when a court

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has reason to doubt a defendant's fitness to proceed. It permits the court to consult with any local entities that would be responsible for supervising the defendant if the defendant were to be released in the community to determine whether the defendant can gain fitness to proceed in the community. It limits the duration of time that OSH can retain custody of a defendant to the time necessary to complete the examination, which may include a period of observation, but not to exceed 30 days.

The bill provides that at the conclusion of the examination, OSH may return the defendant to the facility from which the defendant was transported, or inform the court and the parties that the defendant requires a hospital level of care due to the defendant's dangerousness and the acuity of the defendant's symptoms, and request that the defendant remain at the hospital pending a hearing or order under [ORS 161.370](#). The bill provides that if both parties consent, the court may, without holding a hearing, enter an order under [ORS 161.370](#) based on the report generated from the aid and assist examination.

The bill further requires that the report from an aid and assist examination include a determination of whether a hospital level of care is required for the defendant to gain capacity based on the defendant's dangerousness and acuity of symptoms. It requires the examiner to file the aid and assist report with the court and provide copies of the report to the appropriate CMHP director or designee.

### Section 2a

Section 2a of the bill amends [ORS 161.370](#), which governs the court's determination of whether a defendant is fit to proceed. It provides that once a court determines that a defendant is unfit to proceed, the court must consider a recommendation from a CMHP director or designee and any local entity that would be responsible for supervising the defendant in the community to determine whether services and supervision necessary to safely allow the defendant to gain fitness to proceed are available in the community.

The bill requires that the court to determine the appropriate action in the case at a hearing based on:

- 1) the release criteria defined in [ORS 135.230](#),
- 2) the least restrictive option appropriate for the defendant,
- 3) the needs of the defendant, and
- 4) the interests of justice.

The court may, but is not limited to, order commitment for the defendant to gain fitness to proceed under subsection (3) or (5) of this section, community restoration as recommended by the CMHP director or designee, release on supervision, commencement of a civil commitment proceeding, commencement of protective proceedings, or dismissal of the charges.

The bill further provides that if, for any defendant in custody, the court determines that the defendant does not require a hospital level of care, but that the services and supervision necessary for the defendant to gain fitness to proceed are not available in the community, the court must set a review hearing seven days from the date the court determined that the defendant lacked fitness to proceed. At the hearing the court must consider all relevant information and determine an appropriate action in the case. If the defendant remains in custody following the initial review hearing, the court must hold additional review hearings every seven days thereafter until the defendant is no longer in custody.

The bill provides that if the court determines that a hospital level of care is necessary due to the defendant's dangerousness and acuity of symptoms, and if the services necessary to allow the defendant to gain fitness to proceed are not available in the community, the court must commit the defendant to the custody of the superintendent of a state mental hospital or director of a facility designated by the Oregon Health Authority.

It new language requires that if the defendant is committed under this subsection, the CMHP director shall, at regular intervals, review available community resources and maintain communication with the defendant and the director of OSH to facilitate transition of the defendant to the community when ordered. The bill provides that if the court does not commit the defendant to OSH, the court may order a CMHP director providing treatment to the defendant in the community to provide the court with status reports on the defendant's progress in gaining fitness to proceed and requires a CMHP director to notify the court if the defendant gains fitness to proceed.

Importantly, this section prohibits the court from committing a defendant to OSH if the most serious offense in the charging instrument is a misdemeanor, unless there is a finding that the defendant requires a hospital level of care due to the defendant's dangerousness and acuity of symptoms, and that finding is based on a recommendation by a certified evaluator as defined in [ORS 161.309](#) or a CMHP director. If at the time the court is determining the appropriate action in the case, the court has not received a recommendation as to whether the defendant requires a hospital level of care due to the defendant's dangerousness and acuity of symptoms, the court must order a certified evaluator or CMHP director to make a recommendation. If the court does not order commitment to the state mental hospital or other facility, the court must hold a hearing to determine and order an appropriate action.

The bill provides that if the director of the state mental hospital or facility to which the defendant is committed determines that the defendant no longer requires a hospital level of care based on the defendant's dangerousness and acuity of symptoms or that the services necessary to allow the defendant to gain fitness to proceed are available in the community, the director shall file notice of that with the court. Within five judicial days of receipt of that notice, the court must order that a CMHP director consult with the defendant and any local entity that would supervise defendant if the defendant were released into the community and provide the court and the parties with recommendations from the consultation.

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Within 10 judicial days of receiving that recommendation, the court must hold a hearing to determine an appropriate action and, after consideration of the defendant's dangerousness, acuity of symptoms, and whether services are available in the community to allow the defendant to regain fitness, make findings and continue the commitment, or not make findings and terminate the commitment and set a review hearing seven days from the date of the termination. At that review hearing, the court must consider all relevant information and determine an appropriate action. If the defendant remains in custody, the court must hold review hearings every seven days until the defendant is no longer in custody.

Finally, the bill protects the confidentiality of fitness to proceed examinations and mental health defense reports by making those reports available only to the court, the prosecuting and defense attorneys and their agents, the defendant, and the CMHP director of any facility in which the defendant is housed.

### Section 3a.

This section of the bill amends [ORS 161.315](#), which governs the right of the state to obtain mental examinations of defendants asserting a guilty except for insanity defense. This bill provides that if a court has committed a defendant to OSH or another facility, the facility can retain custody of the defendant for the time necessary to complete the examination, which may include a period of observation, but not to exceed 30 days.

The bill provides that if during an examination on the issue of insanity of the defendant, the examiner determines that the defendant's fitness to proceed is in doubt, the examiner must report the issue to the court and the superintendent of OSH or the director of the facility to which the defendant is committed. The superintendent or director may either return the defendant to the facility from which the defendant was transported, or inform the court and the parties that the defendant should remain at the facility for an examination pursuant to [ORS 161.365](#). If neither party objects, the court may order an examination under [ORS 161.365](#) without holding a hearing.

This section likewise protects the confidentiality of reports of examinations made under the section by making those reports available only to the court, the prosecuting and defense attorneys and their agents, the defendant, and the CMHP director of any facility in which the defendant is housed.

### **3. [SB 362](#) (Ch. 326) Notice requirement to assert insanity defense**

Senate Bill 362 amends the notice requirement contained in [ORS 161.309](#) for asserting an insanity defense in a criminal case.

In *State v. Robinson*, 288 Or App 194 (2017), the Oregon Court of Appeals interpreted the notice requirement contained in [ORS 161.309](#). The Court held that a defendant may provide notice of this defense at any time prior to trial, if the defendant had just cause for failing to

provide notice at the time the defendant enters a plea of not guilty. In so holding, the Court noted that this could make trial preparation difficult for the state or require the state to request a continuance.

SB 362 modifies the notice requirement by specifying that it must be given at least 45 days prior to trial. SB 362 also provides a good cause exception to the 45 day notice requirement.

SB 362 takes effect on January 1, 2020.

#### 4. [SB 375](#) (Ch. 329) **Guilty except for insanity**

Senate Bill 375 modifies statutes pertaining to guilty except for insanity findings. [ORS 161.309](#), in part, addresses when a court may accept a plea of guilty except for insanity in a felony case. SB 375 adds a provision to [ORS 161.309](#) requiring the court to inform the defendant of the potential for commitment or conditional discharge, and the maximum length of commitment or conditional discharge, prior to accepting a plea of guilty except for insanity to a felony.

[ORS 161.325](#) addresses the entry of judgment in guilty except for insanity cases. SB 375 adds a requirement to the statute that if the court enters an order of commitment or conditional discharge of a person found guilty except for insanity of a felony, the court shall state on the record the maximum period of commitment or conditional discharge to which the person is subject.

SB 375 takes effect on January 1, 2020.

## VIII. OTHER LEGISLATION

#### 1. [HB 2013](#) (Ch. 201) **Relinquishment of firearms and court protective orders**

Current Oregon law prohibits certain individuals from knowingly possessing firearms or ammunition. Among those excluded are persons subject to a court order, such as a Family Abuse Prevention Act (FAPA) order and Elderly Persons and Persons with Disabilities Abuse Prevention Act (EPPDAPA) order, and individuals convicted of a qualifying misdemeanor against a family or household member.

Prior to the passing of House Bill 2013, to be prohibited based on a qualifying protective order a respondent must have had actual notice and the opportunity to be heard in a hearing on the order. Oregon law authorizes judges to grant ex-parte protective orders to petitioners based on sworn affidavits without a hearing. Therefore, in practice, respondents choosing not to contest an order entered ex-parte were not prohibited from possessing firearms having not had an opportunity to be heard as required.

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House Bill 2013 eliminates the requirement that a person be present in court to establish that an order is valid in restricting the possession of firearms. Instead, an order restricting possession of firearms under [ORS 166.255](#) is valid if a person has received notice of the opportunity to request a hearing in which to be heard and the person did not request a hearing. House Bill 2013 also establishes protocols to dispossess individuals of firearms when a court has made findings associated with a conviction or court order described in the measure prohibiting an individual from possessing firearms. It establishes procedures under which a person convicted of a qualifying offense, or subject to an order described in [ORS 166.255](#), must provide proof of transferring the person's firearms to a local law enforcement agency or a third party as directed. The person must transfer the firearms as directed within 24 hours of becoming subject to a court order, during which time the person may possess the firearm, unloaded, for the purpose of transferring the firearm in compliance with the court order. The bill directs a party ordered to transfer firearms under this section to submit a declaration, within 48 hours of the court's order, attesting that all firearms in the person's possession have been transferred in accordance with the court's order.

The bill also provides that a district attorney may initiate contempt proceedings if a respondent does not file a declaration as required by the measure. It requires the Department of Justice to notify a petitioner of a receipt of a request to return a firearm relinquished pursuant to a court order. Finally, it requires law enforcement to hold any firearm for 72 hours after receiving a request for return and confirm the person receiving the firearm is the lawful owner and may legally possess firearms under state or federal law.

HB 2013 took effect on June 4, 2019.

### 2. [HB 2227](#) (Ch. 137) Mandatory reporters of child abuse

House Bill 2227 amends [ORS 419B.005](#). [ORS 419B.005](#) defines key terms for the statutes governing the reporting of child abuse.

In Oregon, any public or private official must immediately report suspected child abuse when the official reasonably believes that a child the official has come into contact with has suffered abuse or that any person the official has come into contact with has abused a child. SB 2227 makes animal control officers mandatory reporters by adding them to the definition of public or private official in [ORS 419B.005](#).

HB 2227 takes effect on January 1, 2020.

### 3. [HB 2399](#) (Ch. 399) Omnibus criminal procedure bill

House Bill 2399 is an omnibus bill that makes several technical fixes to a number of statutes. Section 1 of the bill amends [ORS 138.261](#), which provides for expedited state's appeals in felony cases where the defendant is in custody, and the appeal is from a pretrial order dismissing a count or a pretrial order suppressing evidence. Section 1 of the bill adds a provision allowing

expedited review for a state’s appeal from a demurrer when the defendant is in custody charged with a felony.

Section 2 of HB 2399 amends procedures in post-conviction relief (PCR) cases. Currently, in a PCR where the petitioner is in Department of Corrections’ custody, on parole, or on conditional pardon, the defendant is the superintendent of the institution where the petitioner is or was most recently confined, and the Attorney General represents the defense. Section 2 amends [ORS 138.560](#) to include a person on post-prison supervision within this provision, thus requiring the Attorney General to assume responsibility for these cases.

Section 3 corrects terminology in [ORS 138.625](#) by replacing “defense” with “petitioner.” ORS 138.625 governs testimony and contact with a victim in PCR proceedings. The statute erroneously referred to the defense, which, at the PCR stage, is the State of Oregon.

Section 4 of the bill amends [ORS 138.650](#) by setting time limits for filing a notice of cross-appeal in a PCR proceeding. It also specifies that the Attorney General represents the defendant on appeal of a PCR case.

Section 5 amends [ORS 164.115](#), which establishes how to value property for certain criminal offenses. Previously, in theft cases, if the value of property could not be ascertained, the value was presumed to be under \$50. Section 5 provides that it is now presumed to be less than \$100.

Section 6 modifies the procedures for financial institutions to disclose certain account information to law enforcement contained in [ORS 192.603](#). Section 6 defines “secure electronic message” and requires financial institutions to use secure electronic messaging whenever law enforcement makes a request for account information by sending a secure electronic message.

Section 7 amends [ORS 133.545](#) by allowing an affiant to electronically sign a search warrant affidavit, when the affiant swears to the affidavit by telephone.

HB 2399 takes effect on January 1, 2020.

#### **4. [HB 2400](#) (Ch. 400) Extends deadline to appeal civil commitment cases**

House Bill 2400 amends [ORS 19.255](#), which governs the deadline for filing a notice of appeal. A notice of appeal must be filed within 30 days of the entry of judgment. However, Oregon law allows for a late appeal in criminal, delinquency, dependency, and post-conviction relief cases when the failure to timely file an appeal is not attributable to the person appealing. HB 2400 amends [ORS 19.255](#) by extending the deadline to appeal civil commitment cases when the person establishes, by clear and convincing evidence, that the failure to timely file a notice of appeal is not attributable to the person, and there is a colorable claim of error.

HB 2400 took effect June 17, 2019.

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### 5. [HB 2401](#) (Ch. 305) Statistical Transparency of Policing (STOP)

House Bill 2401 amends [ORS 131.930](#), which is one of the definition statutes for the law enforcement profiling statutes. In 2017, the Legislative Assembly enacted House Bill 2355, which requires law enforcement agencies to collect certain data on officer-initiated pedestrian stops.

HB 2401 broadens the definition of “officer-initiated pedestrian stop,” by removing the requirement that the stop result in a citation, arrest, or search.

HB 2401 took effect on June 11, 2019.

### 6. [HB 2480](#) (Ch. 306) Hearsay

Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. In *State v. Montoya-Franco*, the Court of Appeals of Oregon held that an out-of-court translation of a non-English speaker's statements to a third party constitutes hearsay because the interpreter's translation constitutes an assertion of the English meaning of the original translation. *State v. Montoya-Franco*, 250 Ore. App. 665, (2012). Interpreted statements are only been admissible under the residual hearsay exception under [ORS 40.460](#) if the proponent has provided necessary notice and satisfies the statutory requirements for admissibility pertaining to relevance and necessity.

House Bill 2480 provides an exception to this rule when the interpreter is present at trial and subject to cross examination, allowing the underlying statement to be introduced as non-hearsay if it was otherwise admissible but for the interpretation of the statement.

HB 2480 took effect on June 11, 2019.

### 7. [HB 3035](#) (Ch. 274) Wildlife offenses

House Bill 3035 increases the maximum penalties for certain wildlife offenses.

[ORS 496.992](#) establishes penalties for violating wildlife laws. Section 1 of HB 3035 amends [ORS 496.992](#) by specifying that a violation of certain wildlife laws without a culpable mental state is a Class A violation. It also adds a provision that the intentional, knowing, or reckless violation of wildlife laws, or a rule adopted pursuant to the wildlife laws, is a Class C felony under several specified conditions including unlawfully taking threatened or endangered species, and unlawfully taking wildlife with the intent to sell, import, or export the wildlife.

The bill also amends [ORS 497.112](#) by adding another type of offense to be included in either a preference point or reward program for reporting violation of certain wildlife laws.

HB 3035 takes effect on January 1, 2020.

## 8. [HB 3117](#) (Ch. 144) FAPA Order Required Findings

Oregon’s Family Abuse Prevention Act (FAPA) restraining order statutes are set out in [ORS 107.700](#) et.seq. Prior to the passage of HB 3117, the law under [ORS 107.710](#) and [107.718](#) provided that a victim of abuse may apply for and receive an ex parte emergency protection order if: the petitioner has been a victim of qualifying abuse by a family or household member within the 180 days before filing the order; the petitioner is in imminent danger of further abuse; and the respondent represents a credible threat to the physical safety of the petitioner or the petitioner’s child.

The emergency order becomes a final order good for one year if the order is upheld at a contested hearing, or if there is no contested hearing requested within the 30-day response time. If there is a contested hearing after the issuance of the emergency order, [ORS 107.716](#) currently requires that the petitioner meet the immanency that was required on issuance.

A recent decision by the Court of Appeals, *M.A.B. v. Buell*, (March 6, 2019) found that the immanency requirement was not met in a case where a trial court found that the Respondent had sexually assaulted the victim twice, threatened to kill her and take their child, and subsequently repeatedly intimidated and threatened her during ongoing divorce mediation proceedings. The Court of Appeals reasoned that because a victim had not experienced additional sexual abuse after moving out of the respondent’s home and in with her parents, she was not in imminent danger of the same form of abuse even when the respondent had conceded the finding of abuse.

House Bill 3117 eliminates the imminent danger requirement when a court is considering continuing an existing FAPA order and requires the court find that the respondent represents a credible threat to the physical safety of the petitioner or the petitioner's child.

## 9. [HB 3224](#) (Ch. 446) District Attorney Policies

HB 3224 requires the district attorney in each county to develop and adopt written policies regarding the following subject areas:

- 1) pretrial discovery,
- 2) prosecutorial ethics and compliance with the rules of professional conduct,
- 3) the obtaining and handling of confidential information,
- 4) the use of certified law students,
- 5) charging decisions,
- 6) the decision of whether to present evidence for the purpose of seeking the death penalty,
- 7) plea offers,
- 8) civil compromise,
- 9) diversion programs,
- 10) requests for the imposition of fines and fees,

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- 11) eligibility and standard disposition recommendations for early disposition programs,
- 12) eligibility and standard disposition recommendations for treatment courts,
- 13) eligibility for any pre-arrest diversion programs,
- 14) the consideration of collateral consequences of a conviction,
- 15) (14) sentencing programs – including alternative incarceration programs, conditional release, work release, earned time, and short-term transitional leave,
- 16) the filing of an affidavit and motion for a change of judge,
- 17) victim engagement and involvement, and
- 18) pretrial release.

The district attorneys must make their policies available on their websites, and they must review their policies every five years to make revisions and readopt the policies. They must make their initial policies available to the public no later than December 1, 2020.

HB 3224 takes effect January 1, 2020.

### **10. [HB 3249](#) (Ch. 169) Client confidentiality**

HB 3249 establishes that clients have the right to communicate privately with their lawyers and representatives of their lawyers. It also prohibits the admission of any evidence that is derived from a confidential communication between a client and the client's lawyer or a representative of the lawyer, if the confidential communication was obtained or disclosed without the consent of the client.

HB 3249 takes effect January 1, 2020.

### **11. [SB 25](#) (Ch. 311) Forensic evaluations**

Senate Bill 25 pertains to forensic evaluations in criminal cases.

Section 2 of SB 25 creates a provision directing all public bodies and private medical providers in possession of relevant records of a defendant to comply with a court order for release of those records to the state mental hospital or other designated facility for the purpose of conducting a fitness to proceed examination.

Section 3 amends [ORS 161.315](#), which governs the right of the state obtain an examination of the defendant when the defendant has given notice of an insanity defense. Section 3 specifies that a report from that examination may be electronically filed with the court and is confidential.

Similarly, Section 4 amends [ORS 161.365](#) by specifying fitness to proceed reports of an examination may also be electronically filed and are likewise confidential. Section 5 contains a similar amendment to [ORS 161.370](#), which addresses fitness proceedings. Section 4 and 5

specify timelines for courts to deliver orders relating to fitness to proceed to specified persons and entities.

SB 25 took effect on June 11, 2019.

**12. [SB 388](#) (Ch. 369) Pardons**

Senate Bill 388 creates procedures for sealing criminal records following a pardon and amends [ORS 144.650](#), which is the statute outlining the pardon process. Article V, Section 14, of the Oregon Constitution gives the Governor power to grant pardons following conviction, subject to regulations that may be provided by law.

[ORS 144.650](#) establishes the process for a person to apply for a pardon and allows the Governor to request documents from certain persons or agencies, such as the Department of Corrections. SB 388 amends [ORS 144.650](#) by requiring the district attorney of the county of conviction to notify the victim of the crime at issue in the pardon application. It also gives the victim the right to provide the Governor with any information relevant to the pardon decision. The bill specifies information that the district attorney must provide to the governor, such as police and investigative reports.

SB 388 also creates a process for sealing the record of conviction for a person granted a pardon. It requires the Governor to notify the presiding judge and district attorney of the circuit court of the county of conviction within ten days of granting the pardon. The presiding judge must then issue an order sealing the record of conviction and other official records in the case. The district attorney must notify the victim of the pardon and the sealing of the records. SB 388 also creates a process to seal the records for those persons who were pardoned prior to the bill's enactment.

SB 388 takes effect on June 13, 2019.

**13. [SB 490](#) (Ch. 679) Individuals prohibited from providing child care**

Child care providers in Oregon must be licensed, registered, or certified with the Office of Child Care (OCC) within the Early Learning Division (ELD) of the Department of Education. [ORS 329A.030](#) requires all staff and any individual who may have unsupervised access to children, such as adults living in the home, volunteers, maintenance staff, office staff, and regular visitors to enroll in the Central Background Registry (registry) administered by OCC. Registry applicants undergo a background check to determine whether they are permitted on the premises.

SB 490 expands the list of individuals prohibited from providing child care for five years to include those who have a suspended certification, registration, or enrollment in the register, and those whose certification or registration has been revoked. It permanently prohibits people from providing child care or enrolling in the registry who are required to report as sex offenders or who have been the subject of a substantiated report of child abuse in which the

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victim suffered serious harm or death in any state. SB 490 also requires individuals who have been the subject of a substantiated report of child abuse to apply and enroll in the registry prior to providing child care, and it requires OCC to remove from the registry individuals who are prohibited from enrolling.

SB 490 took effect August 9, 2019.

### 14. [SB 522](#) (Ch. 297) **Prohibition on refund for beverage containers sold out of state**

[ORS 459A.705](#) provides for refunds on beverage containers that are purchased in Oregon with a deposit. SB 522 creates a new offense and prohibits a person, with the intent to defraud, from returning for the refund value specified in [ORS 459A.705](#), during one day, 50 or more individual beverage containers that the person knows were not sold in Oregon. SB 522 provides that a violation of the act is a Class D violation and that each day a violation occurs is a separate offense.

SB 522 takes effect January 1, 2020.

### 15. [SB 577](#) (Ch. 553) **Renames crime of intimidation to bias crime**

[ORS 166.155](#) and [ORS 166.165](#) define the crimes of intimidation in the second and first degree respectively. Intimidation in the second degree constitutes a variety of conduct one person engages in against another based on the actor's perception of the other person's race, color, religion, sexual orientation, disability, or national origin. Intimidation in the first degree constitutes two or more persons acting together to engage in a variety of conduct against another person based on the actors' perception of the other person's race, color religion, sexual orientation, disability, or national origin.

SB 577 renames the crime of intimidation to a bias crime. It adds gender identity to the list of traits that serve as a basis for the commission of both first and second-degree bias crimes. It defines gender identity as an individual's gender-related identity, appearance, expression, or behavior regardless of whether the identity, appearance, expression, or behavior differs from that associated with the gender assigned to the individual at birth. SB 577 removes the requirement from what was intimidation in the first degree that two or more people act together to commit the crime and requires only one person to engage in the prohibited conduct for the commission of a bias crime in the first degree.

SB 577 directs the Oregon Criminal Justice Commission (CJC) to add gender identity, as it is defined in the bill, to the rules of the CJC concerning sentencing departure factors as a characteristic of the victim that constitutes an aggravating factor when the characteristic was the motivation, entirely or in part, for the commission of the crime. It requires the CJC, in consultation with the Oregon District Attorneys Association and the Department of State Police, to develop and implement a standardized method for district attorneys to record data relating

to investigations, arrests, prosecutions, and sentencing of crimes motivated in whole or in part by bias of the actor. It requires the CJC to report its analysis of the data it receives to the legislature no later than July 1, 2021.

SB 577 requires the Department of Justice (DOJ) to establish and staff a hate crimes telephone hotline to respond to reports of bias crimes and incidents. It also requires the department to establish a Hate Crimes Response Coordinator position to respond to all reports of bias crimes and incidents and provide culturally competent assistance to victims of bias crimes and incidents. SB 577 requires the DOJ to collect data concerning the character, location, and impacted protected class of any bias crime or incident and report that data to the CJC quarterly.

SB 577 requires the CJC to review all data pertaining to bias crimes and incidents that is submitted to it from the district attorneys, the Department of State Police, and the department, analyze that data, and report the results of that analysis annually to the governor, the legislature, the attorney general, the Oregon District Attorneys Association, the Department of State Police, and the Department of Public Safety Standards and Training.

SB 577 took effect on July 15, 2019.

**16. [SB 725](#) (Ch. 423) Background checks for those who provide care**

[ORS 181A.195](#) authorizes state agencies to request that the Department of State Police conduct a criminal records check on a person for non-criminal justice purposes. Under that statute, the Department of Human Services (DHS) makes fitness determinations for people under consideration for employment by entities that provide care or placement services or that license or certify others to provide care or placement services for children, elders, and dependent persons.

SB 725 amends [ORS 181A.195](#) and requires DHS to inform an entity requesting a criminal records check to evaluate the fitness of an employee, contractor, or volunteer, if the employee, contractor, or volunteer has a conviction or pending indictment for certain crimes that would prohibit their employment in positions dealing with vulnerable populations. It prohibits DHS from considering criminal convictions that are more than 10 years old, arrests without conviction, a charge relating to marijuana if the charge is no longer a criminal offense, and participation in deferred sentencing or diversion programs. It also prohibits DHS from considering a conviction for driving under the influence of intoxicants if it is a single conviction and over five years have passed since the conviction. Lastly, SB 725 prohibits DHS from completing a criminal records check more than once during a two-year period, subject to certain exceptions.

SB 725 took effect on September 29, 2019.

17. [SB 962](#)

(Ch. 472)

**Certifying victim's assistance to US Citizenship and Immigration Services**

The U Nonimmigrant Visa (U visa) is available to victims of certain crimes who have suffered mental or physical abuse and who are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. SB 962 codifies procedural requirements for certifying agencies to certify U visas, provides uniform data collection requirements, and centralizes analysis to ensure equitable distribution of U visa certifications.

SB 962 requires the certifying official to certify in writing to the United States Citizen and Immigration Services that a victim of a qualifying criminal activity has been helpful, is being helpful, or is likely to be helpful to the detection, investigation, or prosecution of the qualifying criminal activity. SB 962 provides for a rebuttable presumption that a victim is helpful, has been helpful, or is likely to be helpful. The certifying agency must grant or deny a request for certification within 90 days of the date of the request or within 14 days of the date of the request if the victim is in removal proceedings. If the certifying agency denies certification, it must notify the petitioner in writing of the reason for the denial. After receiving a notice of denial, a petitioner may provide supplemental information to the certifying agency and request that the denial be reviewed by the certifying agency.

SB 962 also requires certifying agencies to report annually to the Criminal Justice Commission (CJC) beginning June 1, 2021, and directs the CJC to submit a comprehensive report to the committees of the Legislative Assembly related to judiciary. The reporting requirements of SB 962 sunset on January 2, 2023.

SB 962 takes effect January 1, 2020.

# Domestic Relations

## I. CUSTODY AND PARENTING TIME

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## DOMESTIC RELATIONS

### I. CUSTODY AND PARENTING TIME

#### 1. [SB 318](#) (Ch. 288) Detailed Parenting Plans

Senate Bill 318 is not a joint custody bill. It does not create a presumption of joint custody or equal parenting time. Courts are neither required nor encouraged as a matter of law to order joint custody or 50/50 parenting time in every (or any) case as a result of SB 318.

[ORS 107.102](#) provides guidance to courts when implementing parenting schedules in cases involving minor children. A judgment establishing or modifying parenting time with a child must include a parenting plan. The plan may be general or detailed.

A general parenting plan may include a general outline of how parental responsibilities and parenting time will be shared and may allow the parents flexibility to develop more detailed arrangements on an informal basis. But all general parenting plans must include the minimum amount of parenting time and access a noncustodial parent is entitled to have. This is exactly why many judgments include the following provisions:

*1.1. **Parenting Schedule.** Marcia, Jan, and Cindy shall be with Father at such times as the parties may mutually agree, but in no event less than is set forth in the attached Exhibit 2, the specifics of which by this reference are made a part of this judgment.*

*1.2. **Parental Rights.** Pursuant to ORS 107.154, each parent shall have, to the same extent as the other parent, the following authority:*

*1.2.1. To inspect and receive school records and to consult with school staff concerning Marcia, Jan, and Cindy's welfare and education;*

*1.2.2. [...]*

Detailed parenting plans, meanwhile, may include (but need not be limited to) provisions relating to:

- Residential schedule;
- Holiday, birthday, and vacation planning;
- Weekends, including holidays, and school in-service days preceding or following weekends;
- Decision-making and responsibility;
- Information sharing and access;
- Relocation of parents;
- Telephone access;
- Transportation; and
- Methods for resolving disputes.

The court must develop a detailed parenting plan when either parent requests or the parents are unable to develop a parenting plan on their own or through the mediation process.

Senate Bill 318 clarifies that courts continue to have the discretionary authority to order equal parenting time. The only new requirement imposed on courts by the passage of SB 318 is that if a parent requests that the court order equal parenting time and the court declines to so order, the denial must be supported by written findings in the judgment that equal parenting time is not in the best interests of the child or endangers the safety of the parties.

SB 318 takes effect on January 1, 2020.

**2. [SB 356](#) (Ch. 289) Notification Required by Parenting Plans**

Senate bill 356 authorizes a judge to require a parent with legal custody to notify the other parent of specific child related matters and to provide an opportunity for comment. In practice, many judges, attorneys, and mediators regularly include these sorts of required notice provisions in their judgments and parenting plans. However, SB 356 now codifies that authority for judges.

The specific statutory wording is: “A detailed parenting plan may include one or both of the following requirements:

- a) That the custodial parent notify the noncustodial parent regarding specified matters concerning the child.
- b) That the custodial parent provide the noncustodial parent with an opportunity to comment regarding specified matters concerning the child.

SB 356 takes effect on January 1, 2020.

**3. [SB 385](#) (Ch. 293) Optional Alternative Dispute Resolution Process**

Senate Bill 385 provides authority to the presiding judge in each judicial district to establish a procedure in custody and parenting time modification and enforcement proceedings for an informal, non-recorded conference with a trained mediator, attorney, or court staff to identify problems, suggest trial solutions, report back progress, and if necessary, report a recommendation to the judge.

This informal process is intended to be a step following mediation, if mediation is unsuccessful and is an option for courts rather than a requirement.

Conference officers must have specific training in mediation, child development, and domestic violence as prescribed by the presiding judge or local rules and must be either an

## DOMESTIC RELATIONS

employee of the Judicial Department or an attorney or trained mediator appointed by the court.

This alternative dispute resolution conference must, at a minimum:

- Require advance notice to the parties that the conference will be conducted in an informal manner and will not use the rules of evidence;
- Provide each party with a full opportunity to present that party's position;
- Accommodate safety concerns of the parties;
- Allow a party's attorney to be present; and
- Notify the parties that if no agreement is reached, the conference officer may make a recommendation to the court, but that neither party will lose the right to a judicial hearing as a result of the conference.

SB 385 takes effect on January 1, 2020. Courts interested in enacting this sort of informal alternative dispute resolution conference should review the full text of SB 385.

## II. SPOUSAL SUPPORT

### 1. [SB 1011](#) (Ch. 354) Conviction for Murder or Attempted Murder

[ORS 107.135](#) provides generally that a spouse seeking to modify or terminate a spousal support award must demonstrate a substantial change in economic circumstances. Failure to do so is a bar to any change in the underlying support award. As a practical matter, a conviction for attempted murder or conspiracy to commit murder is not in and of itself a substantial change in economic circumstances. That means the spouse paying support would have no basis to return to court to modify the support award even if the spouse receiving support had been convicted of either attempted murder or a conspiracy to commit murder.

Senate Bill 1011 makes an obligee's conviction for the attempted murder or conspiracy to commit the murder of the obligor a sufficient change in circumstances for reconsideration of support provisions in a judgment.

The court retains discretion in any such filed modification proceeding to determine whether it is appropriate to modify or terminate an ongoing award of spousal support in the aftermath of a conviction for attempted murder or conspiracy to commit murder.

### III. DOMESTIC VIOLENCE

#### 1. [HB 2013](#) (Ch. 201) Prohibitions on Possessing Firearms

Current Oregon law prohibits certain individuals from knowingly possessing firearms or ammunition. This prohibition extends to individuals subject to certain court orders such as a Family Law Prevention Act (FAPA) order, Sexual Abuse Protective Order (SAPO), and Elderly Persons and Persons with Disability Abuse Prevention Act (EPPDAPA) order, so long as the order restrains the person from stalking, intimidating, molesting, or menacing an intimate partner or child, and includes a finding of a credible threat to the physical safety of the other party. Prior to enactment of HB 2013, however, a person subject to such an order must have had actual notice and opportunity to be heard in a hearing on the order. Otherwise, the order would not be valid in restricting the possession of firearms.

House Bill 2013 eliminates the requirement that a person be present in court in order to establish that an order is valid in restricting the possession of firearms. Instead, an order restricting possession of firearms will be valid if a person has received notice of the opportunity to request a hearing in which to be heard and the person did not request a hearing.

The bill also establishes protocols to dispossess individuals of firearms when a court has made findings associated with a conviction or court order described in the bill prohibiting an individual from possessing firearms.

HB 2013 took effect on June 4, 2019.

#### 2. [HB 3117](#) (Ch. 144) FAPA Orders

The requirements for issuance of a Family Abuse Prevention Act Restraining Order are:

- The petitioner must have been a victim of qualifying abuse by the respondent within 180 days preceding the filing of the petition;
- There must be an imminent danger of further abuse to the petitioner by the respondent; and
- The respondent must represent a credible threat to the physical safety of the petitioner.

A number of recent Court of Appeals decisions could be read to support an argument that the petitioner must demonstrate the “imminent danger of further abuse” factor ***at the time of the contested hearing*** and that a failure to do so is fatal to the underlying protection order. That is, if a respondent does not have any contact with the petitioner during the period between issuance of the protection order and the contested hearing, that should be taken as

## DOMESTIC RELATIONS

support for the assertion that no imminent danger of further abuse to the petitioner by the respondent exists.

HB 3117 amends [ORS 107.716](#) to make clear that at a contested hearing on the FAPA order, a petitioner need not prove imminent danger as of the date of the hearing. At the hearing, the court must find that:

- Qualifying abuse has occurred within 180 days preceding the filing of the petition;
- The petitioner reasonably fears for the petitioner’s physical safety; and
- The respondent represents a credible threat to the physical safety of the petitioner or the petitioner’s child.

This change to the FAPA statute removes the need for a petitioner to prove that the petitioner remains in imminent danger of further abuse at the time of the contested hearing.

HB 3117 took effect on July 1, 2019.

### 3. [SB 995](#) (Ch. 353) Sexual Assault Protection Orders

Oregon law provides for Sexual Assault Protection Orders (SAPO) in certain cases where a person was subjected to unwanted sexual abuse by another person and the relationship between the two people does not meet the definition of family member or intimate partner under the Family Abuse Prevention Act, and who is not covered by any other form of protection order.

Changes to the SAPO requirements and protections brought about by Senate Bill 995 include:

<b>Prior law:</b>	<b>SB 995:</b>
A petitioner must seek relief within six months of the alleged assault. Failure to do so makes a petitioner ineligible for relief.	No time restriction for requesting relief.
Length of SAPO is 1 year unless terminated earlier by the court.	Length of SAPO is five years, except if: <ul style="list-style-type: none"><li>• Petitioner is under 18 years of age at the time of entry, SAPO continues either five years or until Petitioner turns 19, whichever is later; or</li><li>• SAPO <i>shall</i> be permanent if the respondent is convicted of a sexual</li></ul>

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assault crime ([ORS 163.355](#) to [163.445](#)) against the petitioner; or

- SAPO *may* be permanent if the court finds it is objectively reasonable for a person in the petitioner’s situation to fear for the person’s physical safety and that the passage of time or a change in circumstances would not dissipate that fear (i.e., serious indicators of lethality); or
- Circuit court still has authority to renew, modify, or terminate SAPOs.

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Personal service of SAPO required on the respondent.

The court may order service by an alternative method in accordance with [ORCP 7 D\(6\)\(a\)](#) upon a showing by the petitioner of due diligence in attempting to effect personal service.

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#### IV. JUVENILES

##### 1. [SB 905](#) (Ch. 561) Resident School District

Senate Bill 905 clears up unintended confusion created by an amendment to [ORS 339.133](#) passed in 2017. That statute was amended to reflect federal law requiring that school residency for children in foster care would be their district of origin (i.e., the district in which they resided prior to placement in foster care).

The problem with the 2017 amendments to the law was that they dealt with involuntary placements only. That is, a child involuntarily placed in foster care would attend their original school unless enrolling in another school district would be in the child’s best interest. The amendments were silent, however, on where the child would go to school in the case of a voluntary placement.

Senate Bill 905 requires that the default school district or a child voluntarily placed in foster care will be the district in which the child is voluntarily placed. The change makes sense because children voluntarily placed in foster care typically reside in that system longer than children involuntarily placed.

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There are specific criteria in [ORS 339.134](#) by which a child voluntarily placed in foster care may remain in the district of origin. SB 905 adds staff from the school of origin as being able to demonstrate a reason for the child to maintain residency in the district of origin.

The bill also clarifies that the district in which the child attends school, whether the district of placement or origin, is responsible for the child's transportation to and from school.

SB 905 took effect on July 1, 2019.

### 2. [SB 994](#) (Ch. 631) Placement With Noncustodial Parent

A child may be taken into protective custody when the child's conditions or surroundings reasonably appear to jeopardize the child's welfare, when a court has ordered that the child be taken into protective custody, or when it reasonably appears that the child has run away from home. Absent a court order that the child be taken into protective custody or facts that suggest the welfare of the child or others may be jeopardized, the child must subsequently be released to the custody of their parent or other responsible person.

The issue Senate Bill 994 aims to address is when a child is removed from a custodial parent and subsequently placed with a noncustodial parent. Prior to enactment of SB 994, there was no requirement for any sort of background check on the noncustodial parent prior to placement.

SB 994 requires the person who receives the child into protective custody to request a criminal records check from the Department of Human Services (DHS) on the noncustodial parent and all adults in the noncustodial parent's home prior to releasing the child to the noncustodial parent.

In many situations, placement with the noncustodial parent will continue to be appropriate. But SB 994 provides a mechanism to better ensure the child is released into an environment that will not jeopardize the child's welfare.

The bill also requires Department of Human Services to comply with requests for criminal records checks in these situations.

# Elder Law

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## I. GUARDIANSHIPS AND LONG TERM CARE

### 1. [HB 2524](#) (Ch. 117) Notification Regarding Long Term Care Ombudsman

HB 2524 accomplishes two goals relevant to elder law. First, it provides that persons who move into long term care facilities, residential facilities, or adult foster homes must be informed of the existence and services of the Long Term Care Ombudsman (LTCO). This will help elder law attorneys in helping clients assert and protect their rights as needed in care settings. The bill also removes a potential conflict between federal and state law regarding the LTCO being a mandatory reporter for elder abuse.

HB 2524 took effect on May 14, 2019.

### 2. [HB 2601](#) (Ch. 198) Guardian Authority to Limit Access to Protected Persons

HB 2601 places some limits on a guardian's authority to limit protected person's preferred associations with third parties.

This bill is the result of a few years of back and forth over promoting self-determination for protected persons and protecting against guardians improperly denying access to protected persons. It makes a number of procedural changes and codifies many things that guardians were generally already doing, but it does so in a manner that is vague and increases the exposure of guardians to litigation. The changes made by this bill include, but are not limited to:

- Prohibiting a guardian from limiting “a protected person’s preferred associations” unless specifically allowed by a court or if “necessary to avoid unreasonable harm to the protected person’s health, safety or well-being.” The bill provides no definition of “preferred associations,” but does state that, for protected persons who cannot communicate, “preferred associations” will be presumed based on prior relationships.
- Creating a motion process to challenge restrictions on association with a mandatory hearing, which can result in removal as guardian and an award of attorney fees and costs associated with the motion if a guardian is found to have unreasonably limited association.
- Requiring the guardian to
  - o “Become or remain personally acquainted with the protected person, and maintain sufficient contact with the protected person, including through

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- regular visitation, to know the protected person’s abilities, limitations, needs, opportunities and physical and mental health.”
  - o Get to know, to the extent practicable, the protected person’s values and preferences and including the protected person in decision making.
  - o Make “reasonable efforts to identify and facilitate supportive relationships and services.”
  - o Make the decision they reasonably believe the protected person would make, based on previous or current instructions, preferences, opinions, values, and actions, to the extent known or reasonably ascertainable, unless that decision would unreasonably harm or endanger the protected person.
  - o Decide in the protected person’s best interest based on information from professionals and interested persons, information the guardian believes the protected person would consider, and other factors a reasonable person would consider, including consequences for others, only if the guardian is unable to make a decision the protected person would make.
- Adding an item to the annual guardian’s report regarding any limitations on association.

**Practice Tip** - Given the extensive nature of these changes, attorneys should review the statute in detail, update the letter sent to newly appointed or prospective guardians regarding their duties as guardian, update guardian report forms, and send a letter to all existing guardian clients to advise them of these changes before they go into effect on January 1, 2020.

HB 2601 takes effect on January 1, 2020.

### 3. [SB 20](#) (Ch. 276) **Services for Individuals with Developmental Disabilities**

SB 20 makes a number of changes regarding eligibility for services provided to children and adults with developmental disabilities.

**Practice Tip** - The changes in this bill may come into play for attorneys helping implement special needs planning and other supports for adults with developmental disabilities. The bill grants individuals receiving developmental disability services through the Department of Human Services the right to be informed about their services and to be included to the greatest extent practicable in the decision-making process for these services, including decisions about where to live, who to receive services from, and what is important in quality assurance for those services.

SB 20 takes effect on January 1, 2020.

### 4. [SB 31](#) (Ch. 96) **Oregon Public Guardian**

SB 31 codifies and expands the Oregon Public Guardian and Conservator's (OPGC) screening process, using high-risk teams of area service providers to identify those most in need of intervention and working to find appropriate interventions, up to and including use of the OPGC and state hospital if no less restrictive alternatives are viable.

**Practice Tip** - Elder law attorneys should identify the entities involved in the high-risk team in their area both as a resource for clients whose needs have grown to exceed their resources and to consider making themselves available in cases where a guardian is necessary but the OPGC is unable to intervene due to service priorities and budget constraints.

SB 31 takes effect on January 1, 2020.

5. [SB 178](#) (Ch. 239) **Health Care Representatives Election of Hospice Treatment**

SB 178 clarifies the powers of an unappointed health care representative to elect hospice treatment. An unappointed health care representative can act under [ORS 127.635](#) if an individual is incapable, does not have a health care representative appointed in an advance directive or appointment of health care representative, and:

- has a terminal condition,
- is permanently unconscious,
- has a condition in which life support would cause permanent and severe pain without causing meaningful improvement, or
- has a progressive illness that will be fatal and has reached a stage where the individual is consistently and permanently unable to communicate by any means, swallow food or drink, care for themselves, and recognize family and others, when that condition is very unlikely to substantially improve.

Under those circumstances, the first available of the following becomes the unappointed healthcare representative:

- guardian,
- spouse,
- adult chosen by others on this list,
- majority of adult children,
- either parent, or

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- any adult relative or friend.

Under the new provisions of this bill, the unappointed health care representative may elect hospice treatment, which focuses on palliative care, including care for acute pain and symptom management, rather than curative treatment, provided to an individual with a terminal condition.

SB 178 will take effect on January 1, 2020.

### 6. [SB 376](#) (Ch. 77) Notice of Appointment of Guardians

SB 376 adds a notice requirement after the appointment of a guardian similar to the notice of appointment of a personal representative. After a guardian is appointed, the guardian must send notice to the entities listed in [ORS 125.060 \(3\)](#) (and therefore [ORS 125.060 \(8\)](#)) and file proof of service within 30 days of appointment. The notice must include:

- Title of court and case number;
- Name and address of protected person, guardian, and the attorney for each, if any;
- Date of appointment;
- Description of guardian's authority and limitations; and
- Statement advising recipients that protected person has the right to seek removal of guardian and/or termination of guardianship.

SB 376 also adds requirements related to the annual guardian's report. If a guardian indicates a guardianship should not continue or does not provide "adequate information in the report supporting the continuing need for the guardianship," the court shall order the guardian to provide supplemental information or move to terminate the guardianship. If the guardian fails to provide information or file the motion to terminate within 30 days, such failure is made grounds for removal of the guardian, and the court is required to hold a show cause hearing. The court is required to send notice of any order issued under these new provisions.

**Practice Tip** - These changes likely mean attorneys should be advising guardian clients to provide greater detail in annual reports indicating why a guardianship should continue. It is unclear exactly what information will be required and attorneys would be well advised to reach out to their local probate departments for guidance on how each county intends to implement this provision as there is no standard articulated in the bill.

SB 376 takes effect on January 1, 2020.

7. [SB 815](#) (Ch. 554) Notice Requirements for Residential Care Facilities

SB 815 creates a number of new notice requirements applicable to residential care facilities.

**Practice Tip** - The notice required by this statute will be helpful in explaining to guardian and Medicaid clients the limits on what a given facility can provide and are something attorneys should draw attention to when working with clients to facilitate placements.

SB 815 took effect on September 29, 2019.

8. [SB 1039](#) (Ch. 477) Health Care Advocates

SB 1039 provides for appointment of a “health care advocate” as an alternative to guardianship for making health care decisions for individuals with developmental disabilities who receive developmental disability services under an individualized written service plan (IWSP). An individual can have a health care advocate named for them if they are incapable of making medical decisions according to a court or treating physician and have no guardian and no health care representative. A health care advocate must initially be approved by two-thirds of the IWSP team, including the individual for whom decisions will be made. A health care advocate serves for one year and can be reappointed by a majority of the IWSP team.

The bill specifies a number of decisions that the advocate is not allowed to make, such as withholding life support, most experimental treatments, and use of seclusion or restraint. The bill also provides that any treatment requiring hospitalization or general anesthesia must be approved by a majority of the IWSP team in an in-person meeting with documented consideration of alternatives, risks, benefits, impact of the treatment, and any expressed preference of the individual. The bill provides procedural safeguards for informing the individual and allowing the individual to challenge the advocate chosen and to protest any decision made by the advocate. A protest by the individual revokes the decision and the advocate’s authority related to that decision and must be communicated to the relevant medical provider by the advocate or IWSP team.

This process can be a boon to families of individuals with developmental disabilities operating under supported decision-making agreements and otherwise trying to avoid the appointment of a guardian to encourage independence.

**Practice Tip** - Once this bill goes into effect, this will be one of the alternatives that attorneys will need to help clients consider prior to petitioning for guardianship, pursuant to [ORS 125.055 \(2\)\(g\)](#).

SB 1039 takes effect on January 1, 2020.

## II. ABUSE

### 1. [SB 474](#) (Ch. 461) **Decedents Who Had Been Abused or Neglected by a Parent or Stepparent**

SB 474 makes a number of changes including preventing parents who are found to have abused or neglected their children from receiving damages from a wrongful death action.

**Practice Tip** - Elder law attorneys who deal with probate administrations, especially those with wrongful death and/or personal injury claims, need to be aware of this change in parent and stepparent forfeiture timelines. The changes related to intestate estates are effective in estates commenced prior to the effective date of the statute if the estate is pending on the effective date. This means that attorneys representing personal representatives need to assess their open intestate estates to ensure these rules do not apply and attorneys representing heirs or potential heirs need to reevaluate whether forfeiture rules apply.

SB 474 took effect on June 20, 2019.

### 2. [SB 729](#) (Ch. 93) **Abuse of “Elderly Persons”**

The current definition of “elderly person” in [ORS 124.005](#), which provides definitions for restraining orders based on abuse of elderly persons and persons with disabilities has an exclusion for persons who are covered by the long term care resident abuse reporting requirements in [ORS 441.640-441.665](#). SB 729 removes that exception, making all persons 65 years old or older “elderly persons” for purposes of [ORS 124.005 -124.040](#). This bill allows persons age 65 or older who are residents in long term care settings to access the same restraining order protections available to all other persons age 65 or older.

SB 729 takes effect on January 1, 2020.

### 3. [SB 783](#) (Ch. 345) **Bishop v. Waters Fix**

SB 783 changes the prior requirement to notify the Attorney General of an elder abuse proceeding to clarify that failure to provide such notice is not a jurisdictional defect.

**Practice Tip:** The current (before January 1, 2020) service requirement in [ORS 124.100 \(6\)](#) has been interpreted by the Oregon Court of Appeals as being a jurisdictional issue, requiring dismissal of claims where notice was not served on the Attorney General within 30 days of commencing the action. *Bishop v. Waters*, 280 Or App 537, 548-549 (2016).

SB 783 expressly states “Failure to mail a copy of the complaint or pleading is not a jurisdictional defect and may be cured at any time prior to the entry of judgment.” The bill further prohibits the court from entering judgment until proof of mailing to the Attorney

General is filed. The bill does not apply to actions initiated before the effective date, regardless of whether a judgment has been entered or not.

SB 783 takes effect on January 1, 2020.

### III. TAXATION

#### 1. [HB 2460](#) (Ch. 488) Senior Property Tax Deferral Program

HB 2460 generally provides that a transferee of tax-deferred homestead is only liable for amounts of outstanding deferred property taxes if the transferee is using homestead more than 90 days following taxpayer's death and is a potential recipient of homestead.

**Practice Tip** - The OSB Elder Law Section put this bill forward during the 2019 legislative session. This is a fix for situations where a property involved in the senior tax deferral program is underwater at the death of the owner. Prior to passage of this law, the letter of the statute seemed to suggest an heir was jointly and severally liable for the deferred property tax debt, even if that heir took no beneficial interest in the property or any other property of the estate. The Oregon Department of Revenue issued a number of tax demands to heirs under these circumstances. The bill ensures that an heir is only jointly and severally liable if they occupy, lease, or use the property for more than ninety days after the death of the deferral program participant, receive the property from the estate, or receive the property by gift or assignment from an insolvent owner.

HB 2460 took effect on September 29, 2019.

#### 2. [HB 2587](#) (Ch. 591) Reverse Mortgages

Understanding HB 2587 requires a bit of legislative history. The senior property tax deferral program (the program), in which the State pays a financially eligible senior's property taxes, places a lien against the property, and is repaid with interest at sale or transfer of the property. Historically, seniors with reverse mortgages were allowed to participate in the program. After the economic collapse, the program could not sustain its financial commitments and needed to be constricted. Among other things, the legislature added a prohibition against using a property that was subject to any outstanding debt under the program as security for a reverse mortgage. As the economy recovered and the program not only became solvent, but started running at a surplus, the legislature has moved to loosen the restrictions on participation. In 2012, and 2013, the legislature allowed seniors with reverse mortgages to access the program if those reverse mortgages had been executed within a period ending on June 30, 2011.

HB 2587 does two basic things. First, it switches the prohibition on pledging a property with outstanding debt under the program as security for a reverse mortgage to a prohibition on accessing the program if there is an existing a reverse mortgage. Second, the bill exempts

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reverse mortgages executed on or after July 1, 2011 (i.e. after the previous exemption expired) and before January 1, 2017, provided the equity in the homestead is 40% or more. The January 1, 2017 date is based on a change in federal standards for reverse mortgages that went into effect for reverse mortgages on or after that date and requires an analysis of the borrower's ability/willingness to pay taxes and requires a life-expectancy set-aside for those taxes if there are concerns. This federal change makes it extremely unlikely that any senior with a reverse mortgage executed on or after January 1, 2017 would qualify for the program.

**Practice Tip** - These changes are important to keep in mind for estate planning and Medicaid planning as both a reverse mortgage and the senior property tax deferral program can both be useful tools in those processes.

HB 2587 took effect on September 29, 2019.

### 3. [SB 163](#) (Ch. 511) ABLE Program

The ABLE program is a tax-free, state-based savings account that individuals may establish to pay for disability related expenses. The program was created by Congress in 2014.

SB 163 allows for application, account, and administrative fees to be collected to defray the cost of the ABLE program. Attorneys should inform clients of this change when considering the use of an ABLE account for special needs planning. Also, since many states' ABLE programs allow out-of-state individuals to maintain accounts and offer a variety of costs, access options, and investment options, attorneys should encourage clients to shop around to ensure the ABLE program they choose best meets their needs.

SB 163 took effect on September 29, 2019.

## IV. OTHER LEGISLATION

### 1. [HB 2088](#) (Ch. 8) Endowment Care Cemeteries

HB 2088 allows Department of Consumer and Business Services to take a number of actions with respect to endowment care cemeteries that may be in violation of statutory requirements in their operation of the endowment.

**Practice Tip** - This bill may prove important for clients looking to care for deceased loved ones and for those looking to be buried in an endowment care cemetery. Should such clients run into problems with the management or care of such cemeteries, this bill provides tools for seeking State assistance rectifying the situation.

HB 2088 took effect on March 27, 2019.

## 2. [HB 2285](#) (Ch. 191) Receivers for Abandoned Property

HB 2285 clarifies receivership proceedings and reporting and notice requirements for residential properties that city or county determines are a threat to public health, safety or welfare. The bill further allows a city or county to obtain a judgment against the property in lieu of receivership.

**Practice Tip** - Attorneys representing personal representatives, conservators, trustees, and others managing properties that may be sitting vacant need to be aware of the increased authority that this bill gives to city and county governments to require abatement of housing and building code violations. City and county governments can, in lieu of having a receiver appointed, get a general judgment for the estimated cost of abatement against property that is not being occupied as a dwelling if the estimated cost of abatement is greater than 25% of the real market value in the last certified tax roll. This judgment can be entered as a lien with priority over nearly all existing liens, pursuant to [ORS 105.445](#).

HB 2285 takes effect on January 1, 2020.

## 3. [HB 2598](#) (Ch. 162) Noncharitable Business Purpose Trusts

HB 2598 permits the creation of certain noncharitable business purpose trusts. This bill came forward to address concerns of owners of purpose driven business who want to ensure the purpose of their business carries on after they retire or die. Oregon currently has statutes allowing for benefit corporations, which allow for a charitable mission to be incorporated into a for profit business' structure, and allowing for non-charitable purpose trusts, which exist without a specified beneficiary for the purpose of accomplishing a specific non-charitable mission. However, benefit corporations are easily changed by future owners and purpose trusts are limited to ninety years by the rule against perpetuities. This bill addresses these shortcomings by creating a new type of trust called a stewardship trust with several specific traits, including the new positions of "trust enforcer" and "trust stewardship committee." A stewardship trust:

- Must be created for a business purpose, that purpose can seek economic and noneconomic benefits;
- May hold an ownership interest in any corporation, partnership, limited partnership, cooperative, limited liability company, limited liability partnership, or joint venture;
- Must have a trust enforcer who is not a trustee or a member of the trust stewardship committee. The trust enforcer is not a beneficiary of the trust but has all the rights of a qualified beneficiary. The trust enforcer has a fiduciary duty to enforce the terms and purpose of the trust. A trust can appoint one or more trust enforcers and provide a method for appointing successors, if no trust enforcer is acting, the court shall name

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one or more trust enforcers. If more than one trust enforcer is acting, action may be taken by a majority of the persons acting as trust enforcers.

- Must have a trust stewardship committee with at least three members, each of whom shall exercise authority as a fiduciary. The initial trust stewardship committee members can be named in the trust, along with successors or a process for selecting successors. If there is a vacancy on the trust stewardship committee that must be filled, it shall be filled in the following order of priority: according to the trust, by a person appointed by unanimous agreement of the trust enforcer(s), or by a person appointed by the court. Generally, the trust stewardship committee may act by a majority vote. Unless otherwise provided in the trust, the trust stewardship committee shall have the following powers in carrying out the purposes of the trust and after notice to the trust enforcer(s):
  - o Remove a trustee, with or without cause;
  - o Appoint one or more successor trustees or co-trustees;
  - o Remove a trust enforcer, with or without cause
  - o Remove a member of the trust stewardship committee by unanimous vote of all other members of the trust stewardship committee;
  - o Direct distributions from the trust; and
  - o Exercise all rights of the trustee, including voting stock;
- Trust stewardship committee members and trust enforcers may resign with 30 days' notice to the trustee, all trust enforcers, and all members of the trust stewardship committee, or upon approval of a court, unless otherwise provided in the trust;
- Trust stewardship committee must send a report to the trustee and to the trust enforcer(s) at least annually showing receipts and disbursements and listing trust property and liabilities and keep the trustee and trust enforcer(s) reasonably informed to allow them to fulfill their duties;
- Trustee shall act on direction of the trust stewardship committee unless manifestly contrary to the trust or a breach of fiduciary duty. Trustee is only liable for willful misconduct, not for reliance on documents provided by the trust stewardship committee or the trust enforcer(s);
- May be modified or terminated by unanimous action of the trust stewardship committee and the trust enforcers;
- Upon termination, all remaining property shall be distributed as the terms of the trust provide, or if the terms of the trust do not provide for complete distribution of the property, as a court determines to be consistent with the purposes for which the trust was created;

- Can elect to be exempt from the rule against perpetuities by specific reference to [ORS 105.965\(8\)](#) and by provision for a specific duration in excess of ninety years or provision for an indefinite duration.

**Practice Tip** - This could be a powerful new estate/succession planning tool for business owners with a passion for serving their communities who want to ensure that service lives on. However, attorneys will need to be very careful and specific in drafting to ensure that all of the statutory requirements are properly embodied in the trust to ensure it is able to take advantage of the new provisions. Additionally, attorneys representing a settlor, or any fiduciary involved in a stewardship trust, should send a detailed letter to their client(s) outlining their duties under the trust. Attorneys also need to be very careful in representing parties related to a stewardship trust to avoid conflicts of interest that might arise from serving more than one party. As this is a brand new type of trust in Oregon, it will be important for attorneys to look to other states, such as Delaware, where similar trusts have been attempted and to share with each other as appropriate documents are developed.

HB 2598 takes effect on January 1, 2020.

#### 4. [HB 3006](#) (Ch. 414) No-Asset Probates

HB 3006 is the first of the three bills put forward by the Probate Modernization Work Group this session. This bill establishes procedures for probate in cases where there are no assets in the probate estate, but a personal representative (PR) is needed to pursue a wrongful death claim, obtain medical records, or deal with other affairs of the decedent. The bill waives or defers many requirements of the probate process that don't make sense in the absence of assets, doing the following:

- Adding an option to state in the petition for probate that the estate has no assets and, in such cases, requiring a statement of the purpose for appointing a PR
- Waiving the bond, the publication of notice, the declaration of compliance and notice to creditors, and the deadline for allowance or disallowance of claim, unless assets are later discovered;
- Allowing for an inventory to be filed stating no property of the estate has come into the knowledge or possession of the PR and requiring the filing of a supplemental inventory if property of the estate comes into the knowledge or possession of the PR at a later date;
- Allowing for a verified statement in lieu of annual accounting, similar in form to the verified statement in lieu of final accounting; and
- Allowing for a motion to close the estate, with requirements established in the bill, in lieu of a final accounting.

## ELDER LAW

HB 3006 takes effect on January 1, 2020. For additional information about this bill, see the Estate Planning and Probate Law Chapter.

### 5. [HB 3007](#) (Ch. 165) Revisions to Small Estate Statutes

HB 3007 is the second of three bills from the Probate Modernization Work Group. The bill modifies the process for use of the small estate affidavit (affidavit) in probate proceedings involving estates with less than \$75,000 in personal property and \$200,000 in real property.

The modifications include, but are not limited to

- Specifying that the fair market value of the estate is determined at the time of the death of the decedent or, if the date of death is more than one year before the date of filing, then within 45 days of the filing;
- Prohibiting use of the affidavit if the affiant would be disqualified from acting as a personal representative or if person has been convicted of a felony in Oregon or another jurisdiction;
- Providing a process for filing an amended affidavit;
- Specifying that if the value of the property of the estate exceeds the limitations for a small estate, the authority of the affiant is terminated and a personal representative must be appointed;
- Increasing the information that must be disclosed in an affidavit;
- Providing notice of the duty of others to pay to the affiant any debt owed to the decedent and to turn over property of the decedent to the affiant and requiring notice of those duties to be included on the first page of the affidavit, which must be sent to potential debtors and creditors;
- Updating the process for compelling payment of debt or transfer of property;
- Prohibiting creditor from using summary review provisions if a claim was properly presented and disallowed and summary review was not sought within the time required;
- Allowing attorney fees to a prevailing party in cases in which a court finds an affiant filed a motion to compel payment of a debt or delivery of property without an objectively reasonable basis, or the other party refused to deliver the property or pay the debt without an objectively reasonable basis;

- Specifying the procedure for claims against a small estate;
- Updating the process for the court to make a summary determination of a claim against a small estate;
- Affirming that the affiant is a fiduciary with a general duty to administer, preserve, settle, and distribute the estate and prohibiting commingling of property of estate with that of the affiant or any other person;
- Updating rules on selling or transferring property of the estate;
- Detailing liability of the affiant, including liability for losses due to neglect, commingling, self-dealing, or negligence in administration of the estate;
- Removing automatic transfer provisions; and
- Updating process for an heir, beneficiary, or creditor to obtain amounts owed from estate through summary review.

The bill also clarified [ORS 112.238](#), which allows a petition to show that a writing was intended to be a decedent's will, even if not properly executed, along with numerous other provisions that required clerical amendments to adapt to the substantive changes in the small estate statutes.

HB 3007 will take effect on January 1, 2020.

## 6. [HB 3008](#) (Ch. 166) Personal Injury and Wrongful Death Probates

HB 3008 is the last of the three bills put forward by the Probate Modernization Work Group this session. This bill addresses the probate process for cases where there is a personal injury (PI) or wrongful death (WD) claim attached to the decedent. It makes the following changes in PI and WD cases:

- Clarifying that a personal representative (PR) can petition for court approval of a settlement without having filed a claim on the underlying PI or WD matter;
- Requiring that a petition to approve a PI or WD settlement must include a declaration:
  - o Stating whether the claim is PI or WD;
  - o Describing the incident leading to injury/death and the injuries incurred;
  - o Stating the amount of the claim, the settlement, the attorney fees and costs, any reimbursements owed under [ORS 30.030\(3\)](#) and, for PI, [ORS 416.540](#), and any PR fee attributable to a WD claim;
  - o Stating reasons for settlement and efforts to maximize recovery;
  - o Stating the attorney has examined the applicable medical records; and

## ELDER LAW

- o Explaining why it is appropriate to settle.
- Requiring the court, in cases where a PI claim that has not been adjudicated or settled is the only asset of the estate, to defer bond until settlement is approved and accept an update on the status of the PI case in lieu of an accounting.

HB 3008 also provides the following in cases where the sole purpose of filing a probate is to appoint a PR to pursue a WD case:

- The following must be included with the petition to appoint PR:
  - o A statement that the petitioner is filing for the sole purpose of pursuing a WD claim;
  - o The names relationship to decedent, and post office address of beneficiaries, and age of minor beneficiaries; and
  - o A statement that reasonable efforts have been made to locate and identify all beneficiaries and indicating any omissions;
- Information must be sent to the beneficiaries and to Department of Human Services (DHS) and Oregon Health Authority (OHA) (this notice goes to the Estate Administration Unit (EAU)):
  - o Title of the court in which the estate is pending and the case number;
  - o Name of decedent and place and date of death;
  - o Name and address of PR, attorney for the WD case, and attorney for the estate;
  - o Date of the appointment of the PR; and
  - o Statement that beneficiaries' rights may be affected and information can be obtained from court, attorneys, or PR in notices to beneficiaries or whatever DHS/OHA require by rule in notices to EAU;
- If the PR has actual knowledge that the petition omitted a beneficiary, the PR has a duty to make reasonable efforts to find the beneficiary and send them notice;
- The following requirements are waived if no assets are discovered:
  - o Information to devisees, heirs, and interested persons under [ORS 113.145](#);
  - o Publication of notice;
  - o PR Bond;
  - o Proof of compliance of diligent search under [ORS 115.003](#); and
  - o Inventory;
- PR may file an annual status report on the WD case in lieu of an accounting;

- PR may file a motion to close rather than a final accounting. The motion to close may be filed after the resolution of the WD claim and distribution of any funds recovered, but no sooner than 4 months after notice to beneficiaries and EAU. The motion must:
  - o State no assets have been found and the WD claim has been resolved;
  - o Include receipts or other evidence of distribution of the WD claim proceeds; and
  - o Be sent to each beneficiary not less than 20 days before the time for filing objections;
- PR is discharged by granting of motion to close and that discharge may only be challenged for one year after the judgment is entered; and
- WD settlement proceeds must be placed in the IOLTA account of the attorney for the PR in the WD or probate case or a court restricted account before being distributed pursuant to [ORS 30.030](#).

HB 3008 also updates the PR fee statute to add PI and WD proceeds to the amount of the estate for calculating the fee and clarifies that the highest correctly reported value of each asset is to be use in the calculation, excluding any materially misstated values. Finally, the bill adds any county where a PI or WD claim could be maintained to the list of acceptable venues for a probate.

HB 3008 takes effect on January 1, 2020.

**7. [HB 3447](#) (Ch. 605) Filing Fees**

HB 3447 raises filing fees for filings on or after October 1, 2019. The filing fees most relevant to elder law will be increased to the following:

- Guardianship \$124
- Petition to appoint PR or conservator for estate with value:
  - o Less than \$50,000 \$278
  - o \$50,000 or more, but less than \$1 million \$591
  - o \$1 million or more, but less than \$10 million \$882
  - o More than \$10 million \$1,176
- Accounting for estate or conservatorship with value:
  - o Less than \$50,000 \$35
  - o \$50,000 or more, but less than \$1 million \$298
  - o \$1 million or more, but less than \$10 million \$591
  - o More than \$10 million \$1,176

## ELDER LAW

HB 3447 took effect on July 23, 2019. The new fees go into effect on October 1, 2019.

### 8. [SB 294](#) (Ch. 246) Pioneer Cemeteries

SB 294 authorizes the annexation of land to pioneer cemetery districts upon a petition by the owner of the land and approval of the district.

**Practice Tip** - This is an estate and burial planning consideration for clients in rural areas that have land outside of the urban growth boundaries of all Oregon cities. Such clients may petition for land to be annexed to an existing pioneer cemetery maintenance district if they wish that land to be held and maintained as a pioneer cemetery under [ORS 265](#). This may be particularly appealing to clients with longstanding family land holdings and multi-generational family history in Oregon.

SB 294 takes effect on January 1, 2020.

### 9. [SB 361](#) (Ch. 546) Uniform Prudent Investor Act

SB 361 was proposed to address concerns over comments promulgated with the Uniform Prudent Investor Act and at the legislative hearings when Oregon adopted its prudent investor act that created an ambiguity regarding whether environmental, social, and governance factors can be considered by trustees when investing.

The bill clarifies that trustees can consider any factors the trust directs them to consider regarding how to invest, “including whether to engage in one or more sustainable or socially responsible investment strategies in addition to or in place of other investment strategies, with or without regard to investment performance.” The bill also added two new circumstances to be considered when selecting investments. First, “the intent, desire and personal values of the settlor, including the settlor’s desire to engage in sustainable or socially responsible investment strategies that align with the settlor’s social, environmental, governance or other values or beliefs to the extent known by the trustee.” Second, “the needs of the beneficiaries, including but not limited to the beneficiaries’ personal values and desire that the trustee engage in sustainable or socially responsible investing strategies that align with the beneficiaries’ social, environmental, governance or other values or beliefs, as well as the financial needs of the beneficiaries.”

SB 361 takes effect on January 1, 2020.

### 10. [SB 454](#) (Ch. 678) Unclaimed Property

SB 454 transfers the administration of Uniform Disposition of Unclaimed Property Act, unclaimed estates and escheating funds from Department of State Lands to State Treasurer.

**Practice Tip** - Elder law attorneys need to watch for upcoming administrative rules and policies related to this change in administration of the unclaimed property act to ensure they are

following correct procedures for checking for unclaimed property and retrieving any such property as appropriate for clients and estates.

SB 454 took effect on September 29, 2019. Operative dates start phasing in July 1, 2021.



# Environmental Regulation

## I. ENVIRONMENTAL RELGULATION

- |            |           |                                |
|------------|-----------|--------------------------------|
| 1. HB 2007 | (Ch. 645) | Diesel Engine Standards        |
| 2. HB 2250 | (Ch. 138) | Anti-Rollback Bill             |
| 3. SB 1044 | (Ch. 565) | Transportation Electrification |
| 4. SB 320  | (Ch. 421) | Daylight Savings Time          |
| 5. SB 471  | (Ch. 294) | Conflict Minerals              |

**Mike Freese:** 2012 Willamette University School of Law. Oregon State Bar member since 2013.

## ENVIRONMENTAL REGULATION

### I. ENVIRONMENTAL REGULATION

#### 1. [HB 2007](#) (Ch. 645) Diesel Engine Standards

This bill establishes new diesel standards for medium and large trucks in the Portland metro counties (Washington, Multnomah and Clackamas). Owners of vehicles that do not comply with the new standards will not be permitted to title such vehicles in those counties. Additionally the bill permits the use of Volkswagen settlement funds to help governments and businesses transition to newer, cleaner burning diesel engines.

#### 2. [HB 2250](#) (Ch. 138) Anti-Rollback Bill

HB 2250 requires the Department of Environmental Quality and the Oregon Health Authority to regularly assess final changes to the federal Clean Water, Clean Air, and Safe Drinking Water Acts to determine whether changes are “significantly less protective” of public health, environment, or natural resources than standards and requirements contained in those federal environmental laws, as in effect on January 19, 2017.

HB 2250 takes effect on January 1, 2020.

#### 3. [SB 1044](#) (Ch. 565) Transportation Electrification

This bill establishes legislative findings related to transportation electrification. It directs the Oregon Department of Energy to submit a biennial report on the adoption of zero-emission vehicles and associated greenhouse gas reductions. Additionally, the bill directs state agencies to make 25 percent of new light-duty vehicle purchases zero-emissions vehicles, with exceptions, and to include information on these purchases in annual reports. This requirement is extended to all new light-duty vehicles purchased by on January 1, 2029.

SB 1044 takes effect on January 1, 2020.

#### 4. [SB 320](#) (Ch. 421) Daylight Savings Time

SB 320 authorizes the abolition of the annual one-hour change in time from standard time to daylight saving time and maintains most of Oregon on daylight saving time year round. This provision only applies to the portion of Oregon in the Pacific Time Zone, and not to that portion of Oregon in the Mountain Time Zone (primarily parts of Malheur County).

This bill will only go into force if Washington and California enact similar changes and Congress approves the change. The bill would take effect on the first Sunday in November once Washington and California’s changes take effect. Operative provisions of the bill are functionally repealed if the change has not occurred by December 1, 2029.

5. [SB 471](#) (Ch. 294) Conflict Minerals

SB 471 requires prospective contractors to state in their bid for a public contract whether they will use conflict minerals in performing the contract. Additionally they must state whether their disclosures, policies, practices and procedures with respect to procuring conflict minerals comply with the Organization for Economic Cooperation and Development's Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Area.

SB 471 took effect on September 29, 2019.

## ENVIRONMENTAL REGULATION

# Estate Planning and Probate Law

## I. PROBATE MODERNIZATION

- |            |           |   |
|------------|-----------|---|
| 1. HB 3006 | (Ch. 414) | No-Asset Probates                           |
| 2. HB 3007 | (Ch. 165) | Revisions to Small Estate Statutes          |
| 3. HB 3008 | (Ch. 166) | Personal Injury and Wrongful Death Probates |

## II. OTHER LEGISLATION

- |            |           |  |
|------------|-----------|--|
| 1. HB 2417 | (Ch. 487) | PERS Death Benefit for Surviving Spouses                             |
| 2. HB 2460 | (Ch. 488) | Senior Deferred Property Taxes Following Death                       |
| 3. HB 2598 | (Ch. 162) | Stewardship Trusts   |
| 4. HB 2601 | (Ch. 198) | Social Contacts of Protected Persons                                 |
| 5. SB 361  | (Ch. 546) | Social and Environmental Investing                                   |
| 6. SB 376  | (Ch. 77)  | Notice of Guardianship   |
| 7. SB 474  | (Ch. 461) | Decedents Who Had Been Abused or Neglected by a Parent or Stepparent |
| 8. SB 1039 | (Ch. 477) | Health Care Advocates for Developmentally Disabled Persons           |

**Holly Mitchell:** 1984 Northwestern School of Law. Oregon State Bar member since 1984.  
**Phil Jones:** 1976 Northwestern School of Law. Member of the Oregon State Bar since 1976.

## I. PROBATE MODERNIZATION

The following three bills were the work of the Probate Modernization Work Group of the Oregon Law Commission. A detailed summary of the three bills has been prepared by Prof. Susan Gary and is available on the website of the OSB Estate Planning and Administration section:

<https://estateplanning.osbar.org/files/2019/04/Report2019ProbateModernBillsProfGary319.pdf>

### 1. [HB 3006](#) (Ch. 414) No-Asset Probates

HB 3006 was intended to codify and make uniform the probate procedures applicable to no-asset probates. These include probates that have been opened solely to facilitate the prosecution of a wrongful death action, or to deal with other litigation that needs a personal representative to be appointed, or to facilitate the exercise of a testamentary power of appointment by a decedent who left no probate assets.

Previously, some county probate courts waived many of the procedural requirements of a probate when the probate was opened solely to allow a personal representative to file a wrongful death action, but many other counties pointed out that the probate code did not permit such waivers. Under the revised statute, the requirement to post a bond is waived, as are the requirements to publish notice to interested persons and to search for claimants and creditors. Each of these waivers requires that the probate petition state that no probate assets are known to the petitioner, and that no probate assets have come into the knowledge or possession of the personal representative. This legislation is intended to allow the filing of a no-asset probate even if the decedent owned a small amount of tangible personal property.

A parcel of real estate subject to foreclosure with no equity in the property is not considered to be a non-asset. If a claim is presented to a no-asset estate, the personal representative is under no obligation to disallow the claim until such time that the personal representative files an amended or supplemental inventory showing that assets have come into the possession of the estate, and such an inventory is required if such assets are found. The bill also permits abbreviated accountings and prompt closure of the estate if the personal representative represents to the court that the purpose of the appointment has been satisfied. If assets are later found, the bill provides procedures for notifying the court and satisfying the procedural requirements that were waived when the estate was thought to be without assets.

HB 3006 is effective as to probates filed on or after January 1, 2019, and to accountings required to be filed on or after that date.

### 2. [HB 3007](#) (Ch. 165) Revisions to Small Estate Statutes

This bill significantly modifies the small estate procedures of [ORS Chapter 114](#), but it does not increase the monetary limits on small estates. However, the date for valuing the assets of a small estate is now permitted to be either the date of death, or (if more than one year has elapsed), within forty-five days before filing the affidavit.

The qualifications for serving as a claiming successor are made uniform with the qualifications for serving as a personal representative. The bill provides detailed procedures for filing an amended small estate affidavit. The bill also requires that the affidavit begin with a bold-faced warning to persons holding assets (such as banks and other financial institutions) that they are obligated to surrender the assets, or be subject to a court order and possibly attorney fees. If the decedent was incarcerated in Oregon within the last fifteen years, a copy of the affidavit must be mailed to the Oregon Department of Corrections. The bill also contains provisions for dealing with a safe deposit box in the context of a small estate affidavit, and also for dealing with claims.

**Practice Tip:** HB 3007 prohibits the claiming successor from commingling estate assets with the personal assets of the claiming successor, or entering into self-dealing transactions. This means that one or more separate bank accounts may need to be established and an EIN might need to be obtained. Obtaining an EIN is relatively easy if the application (Form SS-4) treats the small estate in a manner similar to a probate estate. Because of the above-described changes, small estate affidavit forms previously used under old law will need to be revised.

HB 3007 applies to deaths on or after January 1, 2020, and to certain deeds executed after January 1, 2020.

### 3. [HB 3008](#) (Ch. 166) Personal Injury and Wrongful Death Probates

HB 3008 requires personal representatives to receive court approval before settling a personal injury suit, not just a wrongful death suit.

**Practice Tip:** A personal injury suit is one which alleges injuries sustained before death. Therefore, the associated damages become part of the probate estate, are subject to the claims of creditors, and are distributable to the beneficiaries of the estate (either through intestacy or under the provisions of a will). On the other hand, a wrongful death suit results in damages that are not part of the probate estate, are not subject to the claims of creditors, and are distributed to a statutory list of parties. (See [ORS Chapter 30](#).)

One of the purposes of this legislation is to clarify the treatment of personal injury suits and wrongful death suits, because often the two are difficult to tell apart. Similar to HB 3006, this bill waives requirements for the publication of notice, the filing of a bond, proof of search for creditors, the filing of an inventory, and the filing of a detailed accounting for no-asset wrongful death probates.

## ESTATE PLANNING AND PROBATE LAW

The bill requires that wrongful death proceeds must be placed in an attorney trust account, and it permits the calculation of the personal representative's fee based on the amount recovered in a wrongful death suit. The bill also clarifies that a personal representative can commence the probate in the county where a personal injury suit or a wrongful death suit could be maintained, in addition to the other eligible venues (e.g. where the decedent lived, where the decedent owned property, or where the decedent died).

HB 3008 takes effect on January 1, 2020.

## II. OTHER LEGISLATION

### 1. [HB 2417](#) (Ch. 487) PERS Death Benefit for Surviving Spouses

This legislation changes the PERS death benefit available to surviving spouses of public employees, but requires an election to be made within sixty days following the date of death.

HB 2417 applies to deaths occurring on or after January 1, 2020.

### 2. [HB 2460](#) (Ch. 488) Senior Deferred Property Taxes Following Death

This legislation limits the types of beneficiaries who might be liable for the decedent's property taxes deferred under the senior citizen property tax program authorized by [ORS Chapter 311](#).

Previously, family members who received nothing from the estate might be held responsible for the deferred property taxes.

HB 2460 took effect on September 29, 2019. The amendments to [ORS 311.695](#) in the bill apply to all transfers occurring on or after that date, as well as some transfers that occurred before that date. Please consult the text of the bill for a fuller description of applicability.

### 3. [HB 2598](#) (Ch. 162) Stewardship Trusts

HB 2598 creates a new type of trust within [ORS Chapter 130](#) (the Oregon version of the Uniform Trust Code) that is not charitable in nature and has no beneficiaries, but can hold a business interest (such as shares in a corporation or units in a partnership) and maintain control over the business in order to perpetuate the goals of the settlor. Typically, the settlor of such a trust would be the founder and/or owner of the business. This bill was enacted partly to enable a Eugene organic produce company to secure its long-term future by allowing the owner to place a controlling interest in the business into a perpetual stewardship trust.

The legislation allows the trust to be operated by a trustee, and be overseen by a stewardship committee and a trust enforcer. The drafters intend that all of the tax consequences of the business will be borne by the business, not by the trust. Distributions

from the business can be made to various stakeholders, including employees, customers, investors, and the community, but because no distributions are made to the trust, the trust bears no income tax consequences.

A stewardship trust is different than a purpose trust, which is already authorized by [ORS 130.190](#) (and which remains unchanged). A purpose trust is not charitable in nature, but it has no known or ascertainable beneficiaries. Instead, it has a non-charitable purpose. Purpose trusts established under existing Oregon law have two disadvantages: they are subject to the rule against perpetuities (the life is limited to ninety years), and the court has the power to reduce the assets held by a purpose trust if the assets exceed the amount needed to carry out the purpose. A stewardship trust is not subject to the rule against perpetuities if the trust so states, and the legislation does not authorize the courts to remove assets from the trust.

HB 2598 takes effect on January 1, 2020.

#### 4. [HB 2601](#) (Ch. 198) Social Contacts of Protected Persons

HB 2601 is designed to limit the ability of a guardian to restrict the protected person's access to friends and other social contacts. It also requires the guardian to promote the self-determination of the protected person and to maintain a personal acquaintance with the protected person through regular visitation. The statutory form of a guardian's report is modified by this new bill.

HB 2601 takes effect on January 1, 2020.

#### 5. [SB 361](#) (Ch. 546) Social and Environmental Investing

This legislation permits trustees to consider the personal desires of the settlor regarding social and environmental investments, and to consider the views of the beneficiaries on those subjects and the financial needs of the beneficiaries.

The bill takes effect on January 1, 2020.

#### 6. [SB 376](#) (Ch. 77) Notice of Guardianship

SB 378 requires guardians to give notice of the authority granted to the guardian and of the right to seek removal of the guardian. The notice must be given to the same persons who received notice of the guardianship petition. The legislation also authorizes the court to act if the annual report does not justify the continuation of the guardianship.

The bill takes effect on January 1, 2020.

#### 7. [SB 474](#) (Ch. 461) Decedents Who Had Been Abused or Neglected by a Parent or Stepparent

## ESTATE PLANNING AND PROBATE LAW

This legislation limits the rights of parents and/or stepparents to inherit from a child who had been who had abused or neglected. The forfeiture relates to an intestate share, wrongful death proceeds, and shares passing by way of a transfer on death deed, but not a share under a will.

SB 474 took effect on June 20, 2019.

### 8. [SB 1039](#) (Ch. 477) **Health Care Advocates for Developmentally Disabled Persons**

SB 1039 authorizes the appointment of health care advocates for persons whom the court or a treating physician have determined to be incapable of making health care decisions. The legislation generally provides that the health care advocate may make health care decisions for the individual, but provides exceptions for certain medical or other procedures.

The bill takes effect on January 1, 2020.

# Health Law

## I. BEHAVIORAL HEALTH

1. HB 2215	(Ch. 19)	Civil Commitment
2. HB 2257	(Ch. 583)	Substance Abuse as a Chronic Illness
3. HB 2400	(Ch. 400)	Civil Commitment Appeals
4. HB 2691	(Ch. 87)	Oregon Psychiatric Access Line
5. SB 1	(Ch. 616)	System of Care Advisory Council
6. SB 133	(Ch. 363)	Patient Brokering and False Advertising
7. SB 184	(Ch. 318)	Fitness Restoration
8. SB 24	(Ch. 538)	Criminal Aid & Assist Procedures
9. SB 25	(Ch. 311)	Competency Evaluations
10. SB 485	(Ch. 178)	OHA Role in Youth Suicide Prevention
11. SB 52	(Ch. 172)	Student Suicide Prevention
12. SB 665	(Ch. 375)	Naloxone in Schools
13. SB 707	(Ch. 341)	Youth Suicide Prevention
14. SB 918	(Ch. 471)	Information Sharing Regarding Suspected Suicides
15. SB 973	(Ch. 563)	Reinvestment Program

## II. COMMUNITY HEALTH

1. HB 2005	(Ch. 700)	Paid Family Leave
2. HB 2032	(Ch. 574)	TANF Pilot
3. HB 2524	(Ch. 117)	Availability of Long Term Care Ombudsmen
4. HB 2563	(Ch. 109)	Newborn Screening
5. HB 2600	(Ch. 592)	Disease outbreaks in long-term and residential care facilities
6. HB 2601	(Ch. 198)	Substitute Judgment Standard
7. HB 3165	(Ch. 601)	School Based Clinics
8. SB 1039	(Ch. 477)	Appointment of Health Care Advocate
9. SB 178	(Ch. 239)	Election of Hospice Treatment
10. SB 19	(Ch. 455)	Adult Foster Home Licensing
11. SB 20	(Ch. 276)	Eligibility for Services to Children and Adults with Developmental Disabilities
12. SB 31	(Ch. 96)	High Risk Teams
13. SB 376	(Ch. 77)	Notice of Guardian Appointment

## HEALTH LAW

- |            |           |  |
|------------|-----------|--|
| 14. SB 492 | (Ch. 514) | Support to Parents with Disabilities                               |
| 15. SB 493 | (Ch. 296) | Oregon Human Rights Commission                                     |
| 16. SB 669 | (Ch. 680) | Training Requirements for In-Home Care Services                    |
| 17. SB 725 | (Ch. 423) | Fitness Determinations   |
| 18. SB 729 | (Ch. 93)  | Elderly Persons and Persons with Disabilities Abuse Prevention Act |

### III. HOSPITAL AND MEDICAL OPERATIONS

- |            |           |   |
|------------|-----------|---|
| 1. HB 2375 | (Ch. 105) | Sexual Assault Response team                                |
| 2. HB 3076 | (Ch. 497) | Nonprofit Hospital Community Benefit                        |
| 3. SB 1027 | (Ch. 476) | Needlestick Injury  |
| 4. SB 23   | (Ch. 537) | Discharge Records   |
| 5. SB 579  | (Ch. 624) | Death with Dignity  |
| 6. SB 62   | (Ch. 229) | Medical Imaging Employment                                  |
| 7. SB 63   | (Ch. 230) | Temporary Permits for Limited X-Ray Machine Operators       |
| 8. SB 64   | (Ch. 358) | Board of Nursing updates                                    |
| 9. SB 66   | (Ch. 257) | Military Education  |
| 10. SB 67  | (Ch. 231) | Duties of Circulating Nurses in Ambulatory Surgical Centers |
| 11. SB 684 | (Ch. 180) | Data Security Breach  |
| 12. SB 823 | (Ch. 350) | Workplace Violence  |

### IV. LICENSING/SCOPE OF PRACTICE

- |            |           |  |
|------------|-----------|--|
| 1. HB 2011 | (Ch. 186) | Cultural Competency Continuing Education                               |
| 2. HB 2220 | (Ch. 58)  | Vaccines by Dentists   |
| 3. HB 2265 | (Ch. 3)   | Optometrists Pain Management Education                                 |
| 4. HB 2472 | (Ch. 68)  | Sex Offender Therapist   |
| 5. HB 3030 | (Ch. 142) | Temporary Authorization to Spouse of Member of Armed Forces            |
| 6. SB 128  | (Ch. 128) | Qualified Advanced Practice Registered Nurses to Supervise Fluoroscopy |
| 7. SB 129  | (Ch. 234) | Telemedicine by Optometrist  |
| 8. SB 136  | (Ch. 129) | Prescribing Authority of Certified Registered Nurse Anesthetists       |
| 9. SB 16   | (Ch. 171) | Assessments for Special Education Services Eligibility                 |
| 10. SB 177 | (Ch. 238) | Hospice Program Palliative Care  |
| 11. SB 29  | (Ch. 456) | OHA and PHD Clean-up Bill  |
| 12. SB 742 | (Ch. 378) | Licensing of Athletic Trainers   |
| 13. SB 824 | (Ch. 467) | Dental License Examinations  |
| 14. SB 834 | (Ch. 182) | Admission of Liability   |
| 15. SB 835 | (Ch. 379) | Advertising by Dentists  |
| 16. SB 854 | (Ch. 468) | Federally Issued Identification Number in Lieu of                      |

		Security Number
17. SB 855	(Ch. 469)	Professional Practice Authorizations
V. MEDICAID/CCO		
1. HB 2267	(Ch. 529)	CCO Community Health Assessment
2. HB 2270	(Ch. 525)	Tobacco Tax
3. HB 2706	(Ch. 593)	COFA Dental Study
4. SB 1041	(Ch. 478)	CCO Oversight
5. SB 134	(Ch. 364)	Behavioral Health
VI. INSURANCE		
1. HB 2010	(Ch. 2)	Reinsurance
2. HB 3074	(Ch. 441)	Rate Review
3. SB 249	(Ch. 284)	Prior Authorizations
4. SB 250	(Ch. 285)	ACA Alignment
5. SB 251	(Ch. 151)	NAIC Alignment
6. SB 256	(Ch. 14)	Universal Newborn Home Visits
7. SB 740	(Ch. 466)	Proton Beam Therapy
8. SB 770	(Ch. 629)	Health Care for All Oregonians/ Medicaid Buy In
9. SB 796	(Ch. 265)	Living Organ Donors
10. SB 889	(Ch. 560)	Health Care Cost Growth Benchmark Program
11. SB 9	(Ch. 95)	Insulin Emergency Refills
VII. PHARMACIES		
1. HB 2185	(Ch. 526)	Pharmacy Benefit Managers Requirements
2. HB 2609	(Ch. 53)	Dental Director Access to Prescription Monitoring System
3. HB 2658	(Ch. 463)	High Cost Drugs
4. HB 2935	(Ch. 438)	Prescription Reader
5. HB 3273	(Ch. 659)	Drug Take Back Program
6. SB 698	(Ch. 465)	Prescription Drug Labeling
7. SB 910	(Ch. 470)	Naloxone Kit Distribution

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## I. BEHAVIORAL HEALTH

### 1. [HB 2215](#) (Ch. 19) Civil Commitment

[ORS 426.385](#) is part of Oregon’s civil commitment laws and provides a set of rights for individuals who have been civilly committed. HB 2215 adds a right to reasonable privacy and security in resting, sleeping, dressing and personal hygiene activities, which may be limited when it would create a significant risk of harm.

HB 2215 took effect on April 10, 2019.

### 2. [HB 2257](#) (Ch. 583) Substance Abuse as a Chronic Illness

Oregon has one of the highest rates of prescription opioid misuse in the nation. In 2017, Governor Brown created the Opioid Epidemic Task Force to combat opioid abuse and dependency. HB 2257 is a result of Task Force activity. The law declares substance use disorder (SUD) to be a chronic illness. In addition, the law prompts several different initiatives, which are aimed at curbing the problem of opioid abuse. This includes establishing a pilot program to treat pregnant individuals suffering from SUDs; directing the Department of Corrections to study and report on SUD treatment options for individuals in custody; enhancing access for individuals receiving treatment for SUD services that are publicly funded; establishing accreditation standards for SUD programs; and improving the state’s prescription drug monitoring program.

HB 2257 took effect on July 23, 2019.

### 3. [HB 2400](#) (Ch. 400) Civil Commitment Appeals

In criminal, delinquency and dependency cases, a process exists which permits an untimely appeal if certain requirements are met and the notice of appeal is filed within ninety days. A motion must be filed which includes a showing of “a colorable claim of error.” HB 2400 creates a similar timeline and process for late appeals in civil commitment cases under [ORS chapter 426](#).

HB 2400 took effect on June 17, 2019.

### 4. [HB 2691](#) (Ch. 87) Oregon Psychiatric Access Line

The Oregon Psychiatric Access Line (OPAL) is an OHSU program (in collaboration with professional societies) that provides psychiatric care telephone and electronic consults to primary care providers in Oregon who have patients with mental disorders. OPAL has been providing these services for providers treating children and adolescents. HB 2691 establishes

the program for both children and adults, sets business hours, and requires psychiatrists to consider prescribing protocols.

HB 2691 takes effect on January 1, 2020.

**5. [SB 1](#) (Ch. 616) System of Care Advisory Council**

In 2018, the Children and Youth with Specialized Needs work group was formed by the Governor, Senate President, and Chief Justice to study reforms to state and local systems providing services to youths with mental and behavioral health challenges. The work group issued a report in June 2018.

SB 1 implements some of the recommendations of the work group by establishing a System of Care Advisory Council and directing the Council to develop a comprehensive long range plan for developing a coordinated statewide system of care. The measure also includes reporting requirements and allows the Council to propose legislation. Finally, SB 1 allows the Oregon Health Authority, Oregon Youth Authority, and the Department of Human Services to contract for public and private interdisciplinary assessment teams to provide services to youth.

SB 1 takes effect on January 1, 2020.

**6. [SB 133](#) (Ch. 363) Patient Brokering and False Advertising**

The purpose of SB 133 is to protect consumers in Oregon by prohibiting kickbacks and false or misleading advertisements by substance use, problem gambling, and other behavioral health service providers. In particular, SB 133 prohibits providers from accepting fees, commissions, bonuses, rebates, or other compensation for patient referrals. It also prohibits false advertising that misstates or misrepresents eligibility to participate in medical assistance programs and/or the need for an Oregon resident to obtain services out of state. The law does not provide for any enforcement mechanism.

SB 113 took effect on September 29, 2019.

**7. [SB 184](#) (Ch. 318) Fitness Restoration**

SB 184 amends Oregon statutes regarding one aspect of competency restoration for criminal defendants. The measure creates procedures for a court order requiring involuntary medication to aid in restoring competency, if certain criteria are met. The legislation is intended to conform to United States Supreme Court and Oregon Supreme Court cases setting standards for when involuntary medication can be used for fitness restoration. The question of when the state can involuntarily medicate a person in order to move forward with criminal prosecution raises significant constitutional issues.

## HEALTH LAW

SB 184 takes effect on January 1, 2020.

### 8. [SB 24](#) (Ch. 538) Criminal Aid & Assist Procedures

If a criminal defendant may be unable to aid and assist in their defense due to incapacity, the court is required to take steps to determine if the person is fit to proceed. If an evaluation results in a finding of unfitness to proceed, the person historically has been sent to the state hospital for treatment until competency is restored. The area of “aid and assist” in criminal cases has been the subject of much discussion and recent litigation due to significant delays in the process due to lack of adequate resources. Significant constitutional issues are involved.

SB 24 is a complex measure which changes aid and assist procedures in a number of ways. Overall, the intent of the measure is to reduce delays in the aid and assist process, reduce admissions to the Oregon State Hospital, divert those charged with lower level crimes or violations related to mental disorders from the criminal justice system, and provide for more judicial oversight. As of the time this summary was written, trial courts are reporting some struggles in implementing the new laws.

SB 24 took effect on July 15, 2019.

### 9. [SB 25](#) (Ch. 311) Competency Evaluations

SB 25 also makes changes to procedures for competency evaluation and restoration services in criminal cases. There has been high profile litigation about delays in these processes, which must meet constitutional requirements. SB 25 amends statutes to create timelines for delivery of court orders, and for delivery of relevant mental health records to fitness evaluators. It also changes filing procedures per Oregon’s e-court standards.

SB 25 took effect on June 11, 2019.

### 10. [SB 485](#) (Ch. 178) OHA Role in Youth Suicide Prevention

The suicide rate in Oregon for those aged 10 to 24 years of age doubled between 2010 and 2017, and is well above the national average. SB 485 is one of a set of measures designed to address this major public health problem.

The bill expands [ORS 418.735](#) to require the Oregon Health Authority to be a resource for public and private schools, colleges and universities, and local mental health authorities when a suspected suicide involves a person 24 years of age or younger. The statute includes a requirement to develop a communication plan for providing support and preventing contagion risk. Under previous law OHA could offer these services but was not required to. SB 485 also requires educational institutions to inform OHA of their response to a suspected student suicide.

SB 485 takes effect on January 1, 2020.

**11. [SB 52](#) (Ch. 172) Student Suicide Prevention**

SB 52 is named “Adi’s Act” in honor of Adi Staub, a transgender Portland student who committed suicide in 2017. According to the OHA, youth suicides in Oregon have been increasing since 2011, with 107 recorded deaths in 2017.

SB 52 directs school districts to adopt a policy requiring a comprehensive plan on student suicide prevention. The plan must ensure school employees act within the authorization and scope of their credentials and licensure in relation to diagnosing and treating mental illness. In developing the plan, school districts may consult with suicide prevention experts, the Oregon Department of Education, parents, school employees, and other parties.

The plan must be adopted by the beginning of the 2020-2021 school year, and be operative by July 1, 2020. SB 52 took effect on May 24, 2019.

**12. [SB 665](#) (Ch. 375) Naloxone in Schools**

In 2016, there were 312 opioid-related overdose deaths in Oregon, which is a rate of 7.6 deaths per 100,000 persons compared to the national rate of 13.3 deaths per 100,000. The purpose of SB 665 is to provide expanded availability of naloxone in schools to address opioid overdoses. SB 665 directs the State Board of Education to adopt rules for administering naloxone to reverse opioid overdoses. It also permits school districts to adopt rules to allow trained school personnel to administer naloxone and similar medications if a student or other individual overdoses on opioids at school, on school property, or at a school-sponsored activity. SB 665 provides immunity from criminal and civil actions related to good faith administration of naloxone or similar medication by trained school personnel.

SB 665 takes effect on January 1, 2020.

**13. [SB 707](#) (Ch. 341) Youth Suicide Prevention**

According to the Oregon Health Authority (OHA), suicide was the second leading cause of death among Oregonians aged 10 to 24 in 2016. SB 707 establishes a Youth Suicide Intervention and Prevention Advisory Committee to advise the OHA on suicide intervention and prevention for youth who are 10 to 24 years old. It requires the OHA to provide staffing and appoint members that reflect cultural, linguistic, geographic, and economic diversity.

SB 707 also directs the Youth Suicide Intervention and Prevention Coordinator to consult with the Committee to update the Youth Suicide Intervention and Prevention Plan, and to include recommendations for administrative and legislative changes to address service gaps in the Coordinator’s annual report to the Legislative Assembly.

## HEALTH LAW

SB 707 took effect on September 29, 2019.

### 14. [SB 918](#) (Ch. 471) Information Sharing Regarding Suspected Suicides

SB 918 expands [ORS 418.735](#) information sharing requirements by directing local mental health authorities that learn of a suspected suicide of person aged 24 years of age or younger to notify local entities that have been involved with the person. The purpose is to permit effective response and communication efforts by schools, public agencies, and other programs. Information sharing is required when there is “third party notification”, meaning the suicide is reported by someone other than a patient in a program administered by the mental health authority.

SB 918 takes effect on January 1, 2020.

### 15. [SB 973](#) (Ch. 563) Reinvestment Program

This law creates a reinvestment program to provide funding to local and tribal communities to improve delivery of services to people with complex behavioral health needs. The policy goal is to provide more coordinated early intervention resources to avoid mental health crises that result in law enforcement and emergency medicine involvement.

SB 973 establishes the Improving People’s Access to Community-based Treatment, Supports and Services Program along with a grant committee to invest funds in evidence based programs. The Council of State Governments' Justice Center consulted in the development of this program. The measure also allocates \$10,000,000 in funds to be administered by the grant committee per statutory criteria.

SB 973 took effect on July 15, 2019.

## II. COMMUNITY HEALTH

### 1. [HB 2005](#) (Ch. 700) Paid Family Leave

HB 2005 creates a family and medical leave insurance program to provide partially or fully compensated time away from work to covered individuals who meet certain criteria while on family leave, medical leave or safe leave. It requires employer and employee contributions to fund program.

HB 2005 took effect on September 29, 2019. For additional information about this bill please see the Labor and Employment Chapter.

**2. [HB 2032](#) (Ch. 574) TANF Pilot**

HB 2032 creates the Temporary Assistance for Needy Families (TANF) Housing Pilot Program in Housing and Community Services Department to provide housing stabilization services to families receiving services from the TANF program through grants awarded to local housing services providers. It also requires the Oregon Health Authority (OHA) in consultation with the Department of Human Services (DHS) to establish and administer a Mental and Behavioral Health Pilot Program. The program may award grants to up to four CCOs to assess need for mental health and substance abuse treatment for individuals enrolled in the TANF program, refer individuals in need of services for appropriate care, and track the results of referrals. HB 2032 creates Education and Training Pilot Program in DHS to provide funding to community-based entities through competitive application process.

HB 2032 took effect on July 23, 2019; the Mental and Behavioral Health Pilot Program is operative February 1, 2020.

**3. [HB 2524](#) (Ch. 117) Availability of Long Term Care Ombudsmen**

HB 2524 requires long term care facilities, residential facilities and adult foster homes to provide residents with information describing availability and services of Long Term Care Ombudsmen upon admission. It also clarifies that Long Term Care Ombudsmen complies with federal law that governs disclosure of information.

HB 2524 took effect on May 14th, 2019.

**4. [HB 2563](#) (Ch. 109) Newborn Screening**

HB 2563 establishes the Newborn Bloodspot Screening Advisory Board in the Oregon Health Authority (OHA). The Board will report findings and recommendations to the Legislature.

HB 2563 took effect on May 13, 2019.

**5. [HB 2600](#) (Ch. 592) Disease outbreaks in long-term and residential care facilities**

HB 2600 establishes new protocols, training and inspection requirements for long-term and residential care facilities in order to prevent and control disease outbreaks. It requires the Department of Human Services (DHS) to conduct annual inspections of kitchens and food preparation areas and allows DHS to impose an inspection fee on facilities that are inspected.

HB 2600 takes effect on January 1, 2020; new requirements apply to licenses issued or renewed on or after January 1, 2021.

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### 6. [HB 2601](#) (Ch. 198) **Substitute Judgment Standard**

HB 2601 adopts the standards of practice from the National Guardianship Association into Oregon law, including the requirement that guardians of protected persons are to use a substitute judgment standard for decision making in guardianships. It also prohibits a guardian from limiting a protected person's associations with others unless allowed by court or the guardian deems it necessary to avoid unreasonable harm to the protected person and specifies a process for challenging restrictions.

HB 2601 takes effect on January 1, 2020.

### 7. [HB 3165](#) (Ch. 601) **School Based Clinics**

HB 3165 funds schools and education services districts to plan for and pilot school-based health centers and services. The Oregon Health Authority (OHA) is required to provide planning grants to ten school districts or education service districts to evaluate community needs for school-based health services. After a two year planning period, OHA is required to provide operating funds to at least six school-based health sponsors to open state-certified school-based health centers. HB 3165 permits OHA to provide operating funds for up to four school districts or education service districts to implement five-year pilot projects that test providing school-based health services as alternatives to school-based health centers. The pilots must include a community partner such as a Coordinated Care Organization (CCO), Federally Qualified Health Center (FQHC), local public health authority or other sponsor and to identify funding sources for service costs. The bill appropriates \$950,000 of the General Fund.

HB 3165 took effect on July 23, 2019.

### 8. [SB 1039](#) (Ch. 477) **Appointment of Health Care Advocate**

SB 1039 authorizes the appointment of a health care advocate to make health care decisions for individuals with an intellectual or developmental disability that do not have a guardian or health care representative. It also provides applicable parameters and scope to the appointment process.

SB 1039 takes effect on January 1, 2020.

### 9. [SB 178](#) (Ch. 239) **Election of Hospice Treatment**

SB 178 defines "hospice treatment" and allows a designated health care representative to elect hospice treatment on behalf of incapacitated individual with terminal condition in the absence of a valid advance directive.

SB January 1, 2020.

**10. [SB 19](#) (Ch. 455) Adult Foster Home Licensing**

SB 19 requires the Department of Human Services (DHS) and the Oregon Health Authority (OHA) to adopt specific licensing rules for each type of adult foster home, including those providing residential care to older adults, persons with physical disabilities, persons with intellectual disabilities and persons with mental illness. It also authorizes DHS to impose civil penalties for violations of programs or service delivery within its scope of responsibility.

SB 19 takes effect on January 1, 2020.

**11. [SB 20](#) (Ch. 276) Eligibility for Services to Children and Adults with Developmental Disabilities**

SB 20 eliminates the distinction between developmentally disabled children and adults for the purpose of eligibility and access to services. The bill requires the Department of Human Services (DHS) to use case management entities and to contract with support service brokerages and with each community developmental disabilities program.

SB 20 takes effect on January 1, 2020.

**12. [SB 31](#) (Ch. 96) High Risk Teams**

SB 31 allows the Oregon Public Guardian and Conservator (OPGC) to establish county and statewide high-risk teams to address situations in which highly vulnerable adults are experiencing harm or at-risk of experiencing harm. The bill makes information acquired by the team(s) confidential, however, a member of a team may use or disclose protected health information without obtaining a release if necessary to prevent or lessen a serious threat to the health or safety to the public or any person.

SB 31 takes effect on January 1, 2020.

**13. [SB 376](#) (Ch. 77) Notice of Guardian Appointment**

SB 376 requires notice of the guardian appointment to be sent by the newly appointed guardian to a list of interested persons, including the protected person. It also requires the guardian to initiate termination of the guardianship when no longer needed.

SB 376 takes effect on January 1, 2020.

**14. [SB 492](#) (Ch. 514) Support to Parents with Disabilities**

SB 492 requires Oregon to provide parents and guardians with disabilities reunification opportunities that are equal to those provided to parents and guardians without disabilities.

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SB 492 took effect on June 27, 2019.

### 15. [SB 493](#) (Ch. 296) Oregon Human Rights Commission

SB 493 establishes the Oregon Human Rights Commission within the Department of Human Services (DHS) in order to safeguard the dignity and basic human rights of individuals that possess intellectual or developmental disabilities. The Commission will establish a statewide regional advisory committee system by rule to conduct informational hearings regarding violations of rights of individuals who have an intellectual or developmental disability.

SB 493 takes effect on January 1, 2020.

### 16. [SB 669](#) (Ch. 680) Training Requirements for In-Home Care Services

SB 669 requires the Oregon Health Authority (OHA) to establish training requirements by rule that an individual must meet before providing in-home care services as an employee or contractor of an in-home care agency, home health agency or hospital. It also permits OHA to assess fines and penalties upon in-home care agencies for failure to comply with training requirements. SB 669 requires the Department of Human Services (DHS) to develop recommendations for methods to assess and monitor home health services.

SB 669 takes effect on January 1, 2020. Training requirements become operative January 1, 2021.

### 17. [SB 725](#) (Ch. 423) Fitness Determinations

SB 725 ensures that individuals convicted of certain crimes are excluded from employment in any capacity that involves contact with a recipient of support services or a resident of a residential facility or adult foster home. It also requires the Department of Human Services (DHS) to inform a requesting entity if a criminal records check conducted to evaluate the fitness of a volunteer, employee or contractor reveals that the volunteer, employee or contractor has a conviction or impending indictment for certain crimes that would prohibit placement in a position that has contact with vulnerable populations.

In making fitness determinations on person under consideration for employment by entities that work with vulnerable populations SB 725 prevents DHS from considering criminal convictions that are more than 10 years old, arrests without conviction, certain marijuana offenses, and participation in deferred sentences or diversion programs. Individuals prohibited by federal law from the activity are excluded and not entitled to a fitness determination.

SB 725 took effect on September 29, 2019.

**18. [SB 729](#) (Ch. 93) Elderly Persons and Persons with Disabilities Abuse Prevention Act**

SB 729 applies the Elderly Persons and Persons with Disabilities Abuse Prevention Act to elderly persons who are residents of long term care facilities, thus providing this population with the rights and protections afforded under the act.

SB 729 January 1, 2020.

**III. HOSPITAL AND MEDICAL OPERATIONS**

**1. [HB 2375](#) (Ch. 105) Sexual Assault Response team**

HB 2375 requires district attorney to include sexual assault nurse examiner or hospital representative on a sexual assault response team.

HB 2375 takes effect on January 1, 2020.

**2. [HB 3076](#) (Ch. 497) Nonprofit Hospital Community Benefit**

HB 3076 directs the OHA to establish a community benefit spending floor applicable to nonprofit hospitals and requires nonprofit hospitals to maintain financial assistance policies that include specified reductions based on the patient's household income. The bill imposes reporting requirements and transparency requirements. It also provides that insurers may not prohibit hospitals from waiving all or part of copayments or deductibles as a condition of reimbursement for services under the policy.

HB 3076 takes effect on January 1, 2020.

**3. [SB 1027](#) (Ch. 476) Needlestick Injury**

SB 1027 allows health care practitioners who receive a needlestick injury during the treatment of an unconscious patient to perform a blood draw on the patient, without the patient's consent, to determine any necessary treatment for the practitioner. The patient's health insurer may not be charged for the cost of testing.

SB 1027 took effect on September 29, 2019.

**4. [SB 23](#) (Ch. 537) Discharge Records**

SB 23 requires OHA to obtain discharge records from hospitals, ambulatory surgical centers and extended stay centers. Data will be used by Office of Health Analytics to inform health policy development, program implementation and system evaluation.

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SB 23 takes effect on January 1, 2020.

5. [SB 579](#) (Ch. 624) **Death with Dignity**

SB 579 creates an exception to statutory waiting periods under the Death with Dignity Act that applies if the patient's attending physician medically confirms that the patient will die before the expiration of the waiting period.

SB 579 takes effect on January 1, 2020.

6. [SB 62](#) (Ch. 229) **Medical Imaging Employment**

SB 62 prohibits employment of a person that an employer knows, or should have known with exercise of reasonable care, is not licensed or permitted to practice medical imaging.

SB 62 takes effect on January 1, 2020.

7. [SB 63](#) (Ch. 230) **Temporary Permits for Limited X-Ray Machine Operators**

SB 63 deletes statutes governing issuance of temporary limited X-ray machine operators permits and instead directs the Oregon Board of Medical Imaging to adopt rules.

SB 63 took effect on June 4, 2019.

8. [SB 64](#) (Ch. 358) **Board of Nursing updates**

SB 64 updates various statutory provisions to clarify that the Board provides licensure to nurse practitioners and approves nursing education programs.

SB 64 took effect on June 13, 2019.

9. [SB 66](#) (Ch. 257) **Military Education**

SB 66 authorizes the Oregon State Board of Nursing to recognize military training education and programs as a nursing education program sufficient to meet requirements for licensure as licensed practical nurse.

SB 66 took effect on June 6, 2019.

**10. [SB 67](#) (Ch. 231) Duties of Circulating Nurses in Ambulatory Surgical Centers**

SB 67 defines ambulatory surgical center for the purpose of defining the scope of duties of circulating nurses.

SB 67 takes effect on January 1, 2020.

**11. [SB 684](#) (Ch. 180) Data Security Breach**

SB 684 provides a mechanism for third-party vendors to notify covered entities and the Attorney General when a breach of personal information has occurred. The bill provides an exemption for entities in compliance with federal law such as HIPAA and GLBA.

SB 684 takes effect on January 1, 2020.

**12. [SB 823](#) (Ch. 350) Workplace Violence**

SB 823 builds upon Oregon's existing workplace safety laws by protecting reporters of workplace violence requiring health care employers to conduct and report a comprehensive security and safety evaluation. DCBS to conduct rulemaking to adopt common recording form.

SB 823 takes effect on January 1, 2020.

#### **IV. LICENSING/SCOPE OF PRACTICE**

**1. [HB 2011](#) (Ch. 186) Cultural Competency Continuing Education**

HB 2011 directs specified health professional licensing boards to require completion of cultural competency continuing education as a condition of authorization to practice. The cultural competency continuing education requirements do not apply to health care professionals that are retired or not practicing in the state.

HB 2011 took effect on September 29, 2019, and the continuing education requirement is takes effect on July 1, 2021.

**2. [HB 2220](#) (Ch. 58) Vaccines by Dentists**

HB 2220 authorizes dentists to prescribe and administer vaccines to patients in accordance with rules adopted by the Oregon Board of Dentistry.

HB 2220 took effect on May 6, 2019, and becomes operative on January 1, 2020.

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### 3. [HB 2265](#) (Ch. 3) **Optometrists Pain Management Education**

HB 2265 adds optometrists to the list of health care practitioners who must complete pain management education. It also changes the appointing authority for the Health Plan Quality Metrics Committee from the Governor to the Oregon Health Policy Board.

HB 2265 takes effect on January 1, 2020.

### 4. [HB 2472](#) (Ch. 68) **Sex Offender Therapist**

HB 2472 prescribes the standards for licensure as a sex offense therapist and changes the term “sexual or sex offender” to “sexual or sex offense”. It also prohibits mental health providers from practicing in this modality without the required licensure in order to ensure that all providers complete the same training and are subject to the same oversight.

HB 2472 took effect on September 29, 2019 and the operative provisions go into force on January 1, 2020.

### 5. [HB 3030](#) (Ch. 142) **Temporary Authorization to Spouse of Member of Armed Forces**

HB 3030 allows professional licensing boards to issue a temporary authorization to practice to individuals whose spouse is a member of the Armed Forces of the United States and is stationed in Oregon. The board may issue such an authorization if the individual holds a current authorization issued by another state, is in good standing with the out-of-state licensing board and demonstrates competency. The temporary authorization issued under the circumstances is nonrenewable and is revocable when the spouse completes the term of military service in Oregon or when the out-of-state authorization expires.

HB 3030 took effect on September 29, 2019 and the operative provisions go into force on January 1, 2020.

### 6. [SB 128](#) (Ch. 128) **Qualified Advanced Practice Registered Nurses to Supervise Fluoroscopy**

SB 128 allows advanced practice registered nurses (APRN) to supervise fluoroscopy and directs the Oregon Board of Medical imaging to issue permits to qualified APRNs.

SB 128 took effect on May 20, 2019 and the operative provisions go into force on January 1, 2020.

7. [SB 129](#) (Ch. 234) **Telemedicine by Optometrist**

SB 129 allows licensed optometrists to engage in the practice of telemedicine under certain conditions and outlines parameters for the practice of telemedicine by optometrists operating through an exclusively online platform. It also defines terms such as “telemedicine”, “telehealth” and “Optometric clinical health care services”.

SB 129 took effect on June 4, 2019, and becomes operative January 1, 2020.

8. [SB 136](#) (Ch. 129) **Prescribing Authority of Certified Registered Nurse Anesthetists**

SB 136 removes 10-day supply limitation on prescriptions for certain controlled substances issued by certified registered nurse anesthetists, which is consistent with certified nurse practitioners and certified nurse clinical specialists.

SB 136 took effect on May 20, 2019, and becomes operative January 1, 2020.

9. [SB 16](#) (Ch. 171) **Assessments for Special Education Services Eligibility**

SB 16 expands the list of health practitioners that may conduct medical exams for special education evaluations to include naturopathic physicians, nurse practitioners, physician assistants, and if applicable to the exam, optometrists and audiologists. It also requires the health practitioner to report exam results to school district where child is enrolled.

SB 16 took effect on May 24, 2019.

10. [SB 177](#) (Ch. 238) **Hospice Program Palliative Care**

SB 177 allows hospice programs to provide palliative care without being licensed as an in-home care agency. The intent of the bill is to support seriously ill patients and their families.

SB 117 took effect on September 29, 2019.

11. [SB 29](#) (Ch. 456) **OHA and PHD Clean-up Bill**

SB 29 modifies and clarifies provisions governing the Public Health Division (PHD) and Oregon Health Authority (OHA) administration of duties and responsibilities to align with current practice and terminology. Examples include modification of terms “venereal disease” and “sexually transmitted disease” to “sexually transmitted infection”. The bill also modifies licensure requirements for lactation consultants, music therapists, art therapists, respiratory therapists, emergency medical services providers, and environmental health specialist trainees

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and modifies membership of the State Trauma Advisory board and State Emergency Medical Service Committee.

SB 29 authorizes OHA to contract with third parties to operate the Oregon State Cancer Registry (OSCaR) and modifies the review process and contested case hearing procedures for facilities that require certificates of need. The bill also clarifies confidentiality of Health Licensing Office (HLO) complaints and investigation reports and abolishes the State Police Tobacco Law Enforcement fund while granting authority to OHA to partner with federal, state and local agencies to assist in monitoring and enforcing federal provisions governing tobacco and inhalant delivery systems.

SB 29 took effect on June 20, 2019.

### 12. [SB 742](#) (Ch. 378) Licensing of Athletic Trainers

SB 742 modifies the existing registration requirements for athletic trainers to instead require licensure by the Health Licensing Office. The bill sets out additional requirements for licensure.

SB 742 took effect on September 29, 2019 and the operative provisions go into force on January 1, 2020

### 13. [SB 824](#) (Ch. 467) Dental License Examinations

SB 824 modifies the standards by which the Oregon Board of Dentistry evaluates the fitness of applicants to practice dentistry or dental hygiene. It requires the Board to accept results from regional and national testing agencies or clinical board examinations administered in other states to satisfy the laboratory or clinical examination requirement. It allows the Board to accept results of national standardized examinations to satisfy the written examination requirement under specified circumstances.

SB 824 took effect on June 20, 2019, and becomes operative on January 1, 2020.

### 14. [SB 834](#) (Ch. 182) Admission of Liability

SB 834 protects Oregon Board of Dentistry licensees against the use of an expression of regret or apology as an admission of fault in legal proceedings. It also ensures that the person making the statement cannot be examined about it during a civil or administrative proceeding. These protections are intended to preserve the ability of providers to communicate with patients when something goes wrong and are the same ones afforded to Oregon Medical Board licensees.

SB 834 takes effect on January 1, 2020.

**15. [SB 835](#) (Ch. 379) Advertising by Dentists**

SB 835 allows a dentist licensed by the Oregon Board of Dentistry to advertise as a specialist in one or more areas if the dentist meets specific requirements.

SB 835 took effect on June 13, 2019.

**16. [SB 854](#) (Ch. 468) Federally Issued Identification Number in Lieu of Security Number**

SB 854 directs professional and occupational licensing boards to accept individual taxpayer identification number or other federally issued identification number in lieu of Social Security number on applications unless prohibited by state or federal law. This bill is intended to remove barriers for immigrants and refugees from obtaining professional or occupation licensure.

SB 854 took effect on September 29, 2019 and the operative provisions go into force on January 1, 2020.

**17. [SB 855](#) (Ch. 469) Professional Practice Authorizations**

SB 855 requires professional licensing boards to study the manner in which immigrants and refugees become licensed, certified or authorized in the occupational or professional service that the board regulates. Each professional licensing board is directed to develop and implement methods to reduce barriers to licensure, certification or authorization for immigrants and refugees.

SB 855 took effect on June 20, 2019 and the operative provisions go into force on July 1, 2020.

## V. MEDICAID/CCO

**1. [HB 2267](#) (Ch. 529) CCO Community Health Assessment**

HB 2267 requires Coordinated Care Organizations (CCOs) to conduct a community health assessment in collaboration with the local public health authority and hospitals in order to adopt a community health improvement plan. This community health improvement plan must address the health of children and youth residing the community. HB 2267 tasks the Oregon Health Authority (OHA) with rulemaking authority in order create parameters for the health assessment and improvement plans.

HB 2267 also creates a CCO Reinsurance Program within OHA in order to better manage costs systemically by reimbursing CCOs that incur substantially high costs caring for members. It

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sets out the program eligibility and parameters for reimbursement and specifies that OHA will take reinsurance payments into account when determining the global budget for the CCO.

CCOs are governed by a community advisory council; HB 2267 modifies the composition of the community advisory council to increase from at least one to at least two members who currently receive or who have received medical assistance within the last six months for themselves or for an individual for which they are the parent, guardian or primary caregiver.

CCOs operate under a global budget; HB 2267 authorizes OHA to adjust the global budget of a CCO, retroactive to the beginning of the calendar year, within the first eight months of the effective date of the contract in order to account for changes in membership or member health status.

HB 2267 takes effect on January 1, 2020.

### 2. [HB 2270](#) (Ch. 525) Tobacco Tax

HB 2270 increases the tax rate on the distribution of cigarettes and includes inhalant delivery systems in the definition of “tobacco products” for tax purposes. The bill specifies that the increased tax revenues will be distributed to the Oregon Health Authority (OHA) to be used to fund the state’s medical assistance program and programs addressing tobacco and nicotine use related health and mental health issues.

By its terms, HB 2270 and is referred to the people for their approval or rejection at the next regular general election held throughout the state; if approved the operative sections take effect January 1, 2021.

### 3. [HB 2706](#) (Ch. 593) COFA Dental Study

In 2016 the Oregon Legislature established the Compact of Free Association (COFA) Premium Assistance Program. The Program provides financial assistance with health insurance coverage to low-income COFA citizens residing in Oregon. However, the Program does not include adult dental coverage.

HB 2706 directs the Department of Consumer and Business Services (DCBS) to determine interest and capacity of dental care organizations to provide oral health care to COFA citizens. It also directs DCBS to conduct a demographic study of the dental needs and geographic locations of COFA citizens in the state and appropriates moneys to fund the analysis.

HB 2706 took effect on July 23, 2019.

#### 4. [SB 1041](#) (Ch. 478) CCO Oversight

SB 1041 authorizes the Oregon Health Authority (OHA) to regulate the financial condition of Coordinated Care Organizations (CCOs) in alignment with the authority of the Department of Consumer and Business Services to regulate commercial health insurers. It requires OHA to adopt rules for regulating the financial solvency of CCOs that align with certain provisions of the Insurance Code. CCOs will be required to submit quarterly and annual financial reports and OHA is tasked with convening an advisory group to make recommendations regarding standardization of reports.

SB 1041 requires OHA to conduct a financial audit on every CCO at least once every five years or as needed. OHA is authorized to place a CCO under supervision if certain conditions are met, and, if the conditions giving rise to supervision are not remedied, OHA may impose rehabilitation or liquidation proceedings on the CCO.

This complex measure marks a significant change in the financial oversight of CCOs and is intended to promote transparency and ensure sustainable growth for the state Medicaid program.

SB 1041 takes effect on January 1, 2020.

#### 5. [SB 134](#) (Ch. 364) Behavioral Health

Coordinated Care Organizations (CCOs) emphasize the integration and coordination of behavioral health. SB 134 is intended to reduce barriers to care by requiring CCOs to publish information online to educate consumers about behavioral health best practices, expectations regarding quality of care, screening, treatment options and other resources available to those with mental illness and substance use disorders. The bill also authorizes the Oregon Health Authority (OHA) to establish standards that accept tribal-based practices for mental health and substance use prevention for Native Americans and Alaska Natives.

SB 134 took effect on September 29, 2019; the operative date for CCOs to publish information is January 1, 2020.

## VI. INSURANCE

#### 1. [HB 2010](#) (Ch. 2) Reinsurance

HB 2010 extends Oregon's provider tax and reinsurance program to fund health insurance coverage in the state and extends the Oregon Reinsurance Program. Under the bill, the Department of Consumer and Business Services (DCBS) is authorized to seek an extension of the existing federal waiver for state innovation, and DCBS is authorized to modify the attachment point or coinsurance rate for the reinsurance program. The assessment on

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commercial insurers and managed care assessment is extended to December 21, 2026, with the amount of the assessment increased from 1.5 percent to 2 percent. The assessment on Diagnostic Related Groups (DRG) and rural type A/B hospitals is extended to September 30, 2025.

HB 2010 takes effect on January 1, 2020.

### 2. [HB 3074](#) (Ch. 441) Rate Review

HB 3074 Directs the Department of Consumer and Business Services (DCBS) to issue a preliminary decision to approve, disapprove, or modify a commercial insurance rate filing after the close of the public comment period, and notify the insurer. The bill allows DCBS to issue a proposed order 30 days after issuing a preliminary decision, and authorizes DCBS to issue a final order if an insurer or a person adversely affected by the proposed order does not request a review within 10 days after the date the proposed order was issued. The bill directs DCBS to issue final order no later than 30 days after the receipt of request for review.

HB 3074 takes effect on January 1, 2020.

### 3. [SB 249](#) (Ch. 284) Prior Authorizations

SB 249 prohibits specified unfair claim settlement practices by health insurers making prior authorization determinations. Specifically, the bill prohibits health insurers from engaging in a pattern or practice of refusing to approve requests for prior authorization of covered items without just cause, and modifies the deadline for insurers to respond to requests for prior authorization to request additional information if needed. Under the bill, the definition of "adverse benefit determination" is modified to include both the whole or a partial denial of requests for prior authorization.

SB 249 takes effect on January 1, 2020.

### 4. [SB 250](#) (Ch. 285) ACA Alignment

SB 250 seeks to further stabilize the insurance market and reduce the number of uninsured Oregonians in light of uncertainty regarding the continued availability of the Affordable Care Act and potential gaps in protections under the Insurance Code. The bill prohibits health benefit plans from discriminating on the basis of actual or perceived race, color, national origin, sex, sexual orientation, gender identity, age, or disability. In addition, the bill exempts master group policies validly issued in another state from the definition of "transact insurance."

The Director of Department of Consumer and Business Services (DCBS) is authorized to assess fees on exempt health benefit plans for the purposes of mitigating inequity in the health insurance market. The bill applies chemical dependency coverage requirements to individual

health benefit plans that are not grandfathered and exempts individual health benefit plans paid for through a health reimbursement arrangement from provisions applying to group health benefit plans. Pursuant to the bill, carriers of individual health benefit plans, other than a grandfathered plan, are required to issue plans without preexisting condition exclusions, waiting periods, or different terms or conditions based on health status. DCBS may allow carriers to cap the number of enrollees in an individual health benefit plan if DCBS finds that issuing the plan to more individuals would have a material adverse effect on the carrier's ability to fulfill its contractual obligations.

SB 250 takes effect on January 1, 2020, with the provisions of the bill applicable to health insurance policies issued or renewed on or after the effective date.

**5. [SB 251](#) (Ch. 151) NAIC Alignment**

SB 251 updates various statutes in the Insurance Code to reflect changes in the National Association of Insurance Commissioners model provisions related to reducing reserve requirements for domestic ceding insurers that cede insurance to reinsurers and to regulating insurance adjusters and insurance consultants.

SB 251 takes effect on May 22, 2019

**6. [SB 256](#) (Ch. 14) Universal Newborn Home Visits**

SB 526 directs the Oregon Health Authority to design, implement and maintain a voluntary statewide program to provide nurse home visiting services to families with infants up to six months of age, including adopted and foster children. Health benefit plans offered in this state must reimburse the cost of universal newborn nurse home visiting services without any cost-sharing, coinsurance or deductible, and cannot penalize members from declining the services. Health plans must notify a member of the availability of these services whenever a member adds a newborn to coverage. The Oregon Health Authority shall, in collaboration with the Department of Consumer and Business Services, develop criteria for universal newborn nurse home visiting services that must be covered by health benefit plans.

SB 526 took effect on September 29, 2019.

**7. [SB 740](#) (Ch. 466) Proton Beam Therapy**

Under SB 740, a health benefit plan that covers radiation therapy for cancer must cover proton beam therapy on basis no less favorable than other covered benefits, with the ability for such coverage to be subject to prior authorization or other utilization review.

This coverage requirement applies to health benefit plans issued, renewed, or extended on or after January 1, 2020.

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### 8. [SB 770](#) (Ch. 629) Health Care for All Oregonians/ Medicaid Buy In

SB 770 creates the Task Force on Universal Health Care to recommend the design of a Health Care for All Oregon Plan to ensure that publicly funded, high quality health care is available to every individual residing in Oregon. The task force consists of 20 members, comprised of two members of the Senate and two members of the House of Representatives, with the remaining members appointed by the Governor. The task force must provide an interim report to the Legislative Assembly no later than March 15, 2020, with final findings and recommendations due to the Legislative Assembly no later than February 1, 2021.

SB 770 took effect on July 23, 2019.

### 9. [SB 796](#) (Ch. 265) Living Organ Donors

SB 796 amends the definition of “serious health condition” under Oregon’s Family Leave law to include any period of absence for the donation of a body part, organ or tissue, including preoperative or diagnostic services, surgery, post-operative treatment and recovery. The bill also amends the Insurance Code to prohibit life, health, and disability insurers insurance from discriminating against applicants or existing insureds based solely on such individual’s status as a living donor or a potential donor of a body part, organ or tissue. This prohibited conduct includes discrimination in the application of its underwriting standards or rates, declining to provide or otherwise limiting coverage, or prohibiting an applicant or an insured from donating a body part, organ or tissue as a condition of receiving or continuing to receive coverage.

SB 796 takes effect on January 1, 2020.

### 10. [SB 889](#) (Ch. 560) Health Care Cost Growth Benchmark Program

In 2017, SB 419 established the Task Force on Health Care Cost Review (Task Force) to study the feasibility of creating a hospital rate-setting process in Oregon modeled on the process used by Maryland. The task force recommended that Oregon should establish its own health care spending benchmark to control total health care expenditures across all payers and providers.

SB 889 adopts the Task Force’s recommendation to implement a health care cost growth benchmark program to help control health care cost expenditures across all payers and providers in Oregon. The program will be administered by the Oregon Health Authority in collaboration with the Department of Consumer and Business Services, subject to the oversight of the Oregon Health Policy Board. The Health Care Cost Growth Benchmark Implementation Committee is established under the direction of the Oregon Health Policy Board and is required to submit its recommendations relating to the implementation plan for the Health Care Cost Growth Benchmark program by September 15, 2020, including the imposition of performance improvement action plans or other enforcement actions when a provider or payer fails to remain at or below the health care cost growth benchmark.

SB 889 took effect on July 15, 2019.

**11. [SB 9](#) (Ch. 95) Insulin Emergency Refills**

SB 9 authorizes a pharmacist to prescribe and dispense emergency refills of insulin and associated insulin-related devices and supplies to a person who has evidence of a previous prescription from a licensed health care provider. Insulin prescribed and dispensed under this bill must be the lesser of a 30-day supply or the smallest available package. Such emergency refills are limited to three per year.

Pharmacists who prescribe and dispense emergency refills must:

- 1) Complete a training program;
- 2) Assess whether the prescription of emergency refills of insulin and associated insulin-related devices and supplies is appropriate;
- 3) Document the patient visit; and
- 4) Attempt to inform the person's primary care provider and the previous prescriber of the pharmacist's prescription for emergency refills of insulin and associated insulin-related devices and supplies.

Health plans must pay for emergency insulin and the related pharmacist services. The Board of Pharmacy will adopt rules to carry out this bill. The bill includes an amendment removing the training requirement as of January 1, 2023.

SB 9 took effect on May 13, 2019, with the training, assessment, documentation, and notification requirements effective January 1, 2020.

## **VII. PHARMACIES**

**1. [HB 2185](#) (Ch. 526) Pharmacy Benefit Managers Requirements**

HB 2185 prohibits pharmacy benefit managers (PBMs) from requiring an enrollee to fill or refill prescriptions at a mail order pharmacy. It allows PBMs to require specialty drugs to be filled at specialty pharmacies, except PBMs must allow enrollees to receive specialty drugs from network long term care pharmacies.

HB 2185 prohibits PBMs from penalizing a network pharmacy for informing enrollees about the difference between the out-of-pocket cost of a drug and the pharmacy's retail price. It also defines the terms "enrollee," "long term care pharmacy," "mail order pharmacy," "pharmacy benefit," "specialty drug," "specialty pharmacy," and "generally available for purchase." It specifies materials and information PBMs must supply to pharmacies relating to setting of

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maximum allowable cost and specifies appeal process by network pharmacies of PBM reimbursements.

HB 2185 took effect on September 29, 2019; it becomes operative January 1, 2021.

### 2. [HB 2609](#) (Ch. 53) **Dental Director Access to Prescription Monitoring System**

In 2009 the Oregon Legislature passed SB 355, which directed the Oregon Health Authority (OHA) to develop a Prescription Drug Monitoring Program (PDMP) in order to identify potential misuse, abuse, or diversion of prescription drugs. The PDMP contains information on Schedule II, III and IV controlled substances provided by Oregon-licensed retail pharmacies.

HB 2609 makes the PDMP accessible to dental directors in addition to medical directors and pharmacy directors for purposes of overseeing operations of the clinic or system and ensuring the delivery of quality care.

HB 2609 took effect on May 2, 2019.

### 3. [HB 2658](#) (Ch. 463) **High Cost Drugs**

HB 2658 requires a drug manufacturer of prescription drugs to report to the Department of Business and Consumer Services (DCBS) increases in the price of prescription drugs that meet specified thresholds at least 60 days before the date of the increase. For brand name drugs, increases of 10% or more or an increase of \$10,000 or more during the previous 12-month period triggers the reporting requirement. For generic drugs a cumulative increase of 25% or more and an increase of \$300 or more during the previous 12-month period triggers the reporting requirement. Generic drugs that meet certain specifications and are manufactured by four or more companies are exempted from the reporting requirements.

HB 2658 takes effect on January 1, 2020.

### 4. [HB 2935](#) (Ch. 438) **Prescription Reader**

HB 2935 requires pharmacies to notify of the availability, and provide access to, prescription readers for blind and visually impaired customers. The bill defines “person who is blind” and “prescription reader” and exempts institutional drug outlets from the requirements.

HB 2935 took effect on June 20, 2019.

### 5. [HB 3273](#) (Ch. 659) **Drug Take Back Program**

HB 3273 creates a drug take-back program to allow for the safe disposal of prescription

drugs. Drug manufacturers are required to participate and submit program plans that comply with requirements established by rule to the Environmental Quality Commission.

HB 3273 took effect on September 29, 2019 with an operative date of January 1, 2020. The first take back programs will be operational July 1, 2021.

**6. [SB 698](#) (Ch. 465) Prescription Drug Labeling**

SB 698 requires pharmacies to label prescription drugs in English and other languages upon the request of a practitioner, patient or patient representative and to include an informational insert if appropriate. It allows the State Board of Pharmacy (Board) to determine prescription drugs for which additional information insert in English and other languages may be included. SB 698 directs the Board to reassess and update available languages at least every 10 years. It exempts institutional drug outlets from the requirements and requires the Board to determine by rule which pharmacies the requirements apply to, including at a minimum retail drug outlets and other drug outlets that dispense prescription drugs.

SB 698 takes effect on January 1, 2020; the labeling requirements become operative January 1, 2021.

**7. [SB 910](#) (Ch. 470) Naloxone Kit Distribution**

In 2017 the Governor convened an Opioid Epidemic Task Force to combat the opioid epidemic. The Task Force released a report in 2018 that contained a comprehensive set of recommendations to address substance use disorders, including removing barriers to acute and long term treatment.

SB 910 removes barriers to access to naloxone for acute treatment by making naloxone kits more readily available. It allows pharmacists to offer to prescribe and provide naloxone kits when presented with a prescription for an opiate or opioid of specified strength. It also allows pharmacists, pharmacy or health care professionals to distribute naloxone kits to social service agencies or persons who work with at-risk individuals. Retail or hospital pharmacies are required to provide written notice in conspicuous manner of availability of naloxone.

SB 910 also removes barriers to access of methadone for long term treatment of substance use disorder by giving local authorities flexibility to waive methadone clinic siting restrictions. It permits OHA to identify other drugs subject to monitoring under prescription drug monitoring program by rule and also permits OHA to review prescription monitoring information of person who dies from drug overdose.

SB 910 took effect on September 29, 2019.



# Housing and Real Property

## I. HOUSING AND REAL PROPERTY

- |             |           |   |
|-------------|-----------|---|
| 1. HB 2118  | (Ch. 57)  | Consumer Price Index  |
| 2. HB 2285  | (Ch. 191) | Residential Property and Receivership Proceedings             |
| 3. HB 2306  | (Ch. 397) | Building Permits  |
| 4. HB 2312  | (Ch. 584) | Residential Property and Flood Insurance Warnings             |
| 5. HB 2423  | (Ch. 401) | Small Home Construction Code                                  |
| 6. HB 2425  | (Ch. 402) | Recording Electronic Documents                                |
| 7. HB 2459  | (Ch. 140) | Lien Information Statements                                   |
| 8. HB 2460  | (Ch. 488) | Liability of transferee for deferred homestead property taxes |
| 9. HB 2466  | (Ch. 66)  | Owners Associations, Financial Practices and Fidelity Bonds   |
| 10. HB 2485 | (Ch. 69)  | Condominium Associations                                      |
| 11. HB 2486 | (Ch. 403) | Condominium Reports   |
| 12. HB 2530 | (Ch. 405) | Housing for Veterans  |
| 13. HB 2587 | (Ch. 591) | Homestead property tax deferral program                       |
| 14. HB 2835 | (Ch. 409) | Recreational use of waterways                                 |
| 15. SB 11   | (Ch. 309) | Rights of redemption  |
| 16. SB 359  | (Ch. 325) | Correction of defective corporate actions                     |
| 17. SB 369  | (Ch. 327) | Actions Arising Out of Construction, Alteration or Repair     |
| 18. SB 484  | (Ch. 251) | Residential Rental Applicant Screening Charges                |
| 19. SB 608  | (Ch. 1)   | Residential Tenancies   |
| 20. SB 970  | (Ch. 268) | Landlord Screening  |

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Special thanks to the Real Estate and Land Use Section's Real Estate Legislative Committee or their assistance and participation during the 2019 session.

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### I. HOUSING AND REAL PROPERTY

#### 1. [HB 2118](#) (Ch. 57) Consumer Price Index

HB 2118 updates numerous statutes to reference the West Region CPI for All Items rather than the previous reference to the Portland-Salem CPI for all Items. The previously used CPI has been discontinued by the Bureau of Labor Statistics.

HB 2118 takes effect on January 1, 2020.

#### 2. [HB 2285](#) (Ch. 191) Residential Property and Receivership Proceedings

HB 2285 clarifies reporting and notice requirements for city or county initiated receivership proceedings involving residential properties that a city or county determines are threat to public health, safety or welfare.

New provisions allow a city or county, in lieu of receivership proceedings, to file a motion for a general judgment against the property in the amount of the estimated abatement costs. Judgment is to be entered if the court makes specific findings. The general judgment has lien priority superior to all other liens and encumbrances except taxes, assessments, mining labor liens, irrigation power liens, and purchase-money security interests under limited circumstances.

HB 2285 takes effect on January 1, 2020.

#### 3. [HB 2306](#) (Ch. 397) Building Permits

HB 2306 prohibits a city or county from denying issuance of building permits for construction of residential dwellings in a residential subdivision if substantial completion of public improvements required as condition of development occurs and the developer obtains a bond or undertakes alternative form of financial guarantee acceptable to city or county securing completion of remaining public improvements. The bill defines substantial completion. Under the new law, a city or county may refuse to issue final certificates of occupancy for any residential dwellings if all conditions of development are not fully completed or conditions for release of bond are not fulfilled.

HB 2306 will take effect on January 1, 2020.

#### 4. [HB 2312](#) (Ch. 584) Residential Property and Flood Insurance Warnings

HB 2312 adds an additional disclosure required upon the sale of residential property. Immediately following the existing question regarding whether the property is in a designated

floodplain, the following new note is added to the seller property disclosure statement required in connection with sales of residential property: “Note: Flood insurance may be required for homes in a floodplain.”

HB 2312 takes effect on January 1, 2020.

5. [HB 2423](#) (Ch. 401) **Small Home Construction Code**

HB 2423 adopts the Small Home Specialty Code to regulate construction of homes not more than 400 square feet in size.

HB 2423 took effect on October 1, 2019.

6. [HB 2425](#) (Ch. 402) **Recording Electronic Documents**

HB 2425 allows county clerk to record electronic documents and document bearing an electronic signature. The bill provides that the county clerk may charge for electronic delivery of record or file images.

HB 2425 takes effect on January 1, 2020.

7. [HB 2459](#) (Ch. 140) **Lien Information Statements**

HB 2459 provides that a person holding an encumbrance against real property may request an itemized statement of the amount necessary to pay off another encumbrance from the person that holds the other encumbrance on the same property. The person that receives a request may provide the itemized statement without permission from the obligor unless federal or state law requires obligor’s consent. “Encumbrance” is defined as “claim, lien, charge or other liability that is attached to and is binding upon real property in this state as security for payment of a monetary obligation.” No required time for response is provided. No remedy for failure to respond is provided.

HB 2459 takes effect on January 1, 2020.

8. [HB 2460](#) (Ch. 488) **Liability of transferee for deferred homestead property taxes**

HB 2460 provides that the transferee of a tax-deferred homestead property is liable to Department of Revenue for amounts of outstanding deferred property taxes only if transferee is using homestead more than 90 days following death of qualifying taxpayer, and if transferee is a potential recipient of homestead property under intestate succession, by devise, from estate of deceased taxpayer, or by gift or assignment from insolvent taxpayer.

HB 2460 took effect on September 29, 2019.

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### 9. [HB 2466](#) (Ch. 66) Owners Associations, Financial Practices and Fidelity Bonds

HB 2466 requires some planned community homeowners associations and all condominium unit owners associations to carry fidelity bond coverage in amount specified by statute.

After the turnover meeting ([ORS 94.616](#)), the association's board of directors may elect to maintain a bond in an amount less than statutory requirement or to not maintain a bond provided this action is approved by owners. This board decision requiring owners' approval must be made on an annual basis.

HB 2466 takes effect on January 1, 2020 and applies to condominiums created before, on or after that date.

### 10. [HB 2485](#) (Ch. 69) Condominium Associations

HB 2485 creates procedures for the adoption, by a condominium association, of a restated declaration, restated assignment of use of limited common elements and restated bylaws to correct scriveners' errors or to conform format and style. The bill creates new specific provisions governing amended or restated bylaws.

Additionally, the bill requires the amendment procedures contained in the bylaws of a condominium to be consistent with provisions of law in effect at time of recording. Various other provisions of the bill address re-designation of withdrawable variable property, the termination date of a condominium consisting of nonresidential units, and the amendment of floor plans. New specific provisions are created governing document submission requirements and procedures for approval by the Real Estate Commissioner, as well as new notice to prospective purchasers.

HB 2485 takes effect on January 1, 2020.

### 11. [HB 2486](#) (Ch. 403) Condominium Reports

HB 2486 was a companion bill to [HB 2485](#). Among other things, this bill authorizes the Real Estate Agency to facilitate the condominium reporting process electronically, and reduce the number of signatures required on the Condominium Information Report and amendments.

HB 2486 takes effect on January 1, 2020.

### 12. [HB 2530](#) (Ch. 405) Housing for Veterans

HB 2530 requires persons who send or serve documents related to termination of tenancy,

forcible entry or detainer, and residential foreclosures to include certain information regarding assistance that may be available to veterans of United States armed forces.

HB 2530 takes effect on January 1, 2020.

13. [HB 2587](#) (Ch. 591) **Homestead property tax deferral program**

Prior to passage of this bill, the statute prohibited the owner of homestead tax-deferred property from pledging said property as security for a reverse mortgage. This bill amends [ORS 311.700](#) to provide that real property which secures a reverse mortgage is not eligible for homestead tax deferral. This prohibition does not apply to property securing a reverse mortgage obligation entered on or after July 1, 2011, and before Jan 1, 2017, provided the taxpayer has 40% or more equity in the homestead property at the time of filing the deferral claim.

HB 2587 took effect on September 29, 2019.

14. [HB 2835](#) (Ch. 409) **Recreational use of waterways**

HB 2835 creates numerous new statutory provisions. The first section of the bill applies to restrictions or closures of public access sites. Before a state agency may restrict or close access to a public access site, the agency must post notice on the agency's website for 30 days. Exceptions to this requirement include:

- Emergency restrictions or closure due to fire prevention,
- Critical wildlife management activities,
- Restrictions or closure adopted by rule by the State Land Board,
- Temporary restrictions or closure for not more than 30 days, or
- Routine maintenance or construction.

Any state agency that restricted, closed, opened or reopened access to a public access site in the previous calendar year must submit a report to the legislature. "Public access site" is defined as "a site on state public lands where the public may access the lands for recreational use of a floatable natural waterway."

The second section of HB 2835 applies to an ODOT "project" defined as construction of new bridge across a floatable natural waterway, or improvements to an existing bridge that crosses a floatable natural waterway. ODOT must notify the Department of State Lands, the State Parks and Recreation Department, and the State Marine Board when ODOT proposes such a project for funding under a draft Statewide Transportation Improvement Program. The notified

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agencies may propose changes to the project to enable or maintain public access to any affected floatable natural waterway. Certain exceptions apply to the ODOT notice requirement.

HB 2835 took effect on September 29, 2019.

### 15. [SB 11](#) (Ch. 309) Rights of Redemption

SB 11 requires a purchaser of residential real property after a foreclosure complaint has been filed and before the end of redemption period to provide notice to the seller regarding the seller's relinquishment of rights and interests in connection with conveyance of the real property, including redemption rights and rights to surplus funds. The purchaser must record an affidavit confirming compliance with the new notice requirements, and the affidavit may be attached to the deed transferring the real property.

New provisions in the bill require the sheriff's notice of execution sale to the judgment debtor to include a new provision regarding transfer of property by debtor, offers to sell redemption rights and rights to surplus funds. The new provisions require a foreclosure complaint in an action to foreclose residential trust deed to include the new statutory warning regarding offers to purchase property, redemption rights and rights to surplus funds. The complaint also must include contact information for Division of Consumer and Business Services, OSB Lawyer Referral, and other legal assistance programs.

SB 11 takes effect on January 1, 2020.

### 16. [SB 359](#) (Ch. 325) Correction of Defective Corporate Actions

Numerous new provisions in SB 359 provide structure and procedures by which business corporations and nonprofit corporations may validate, ratify, and approve defective corporate actions. "Defective corporate action" means an overissue of stock, or an action that is and would have been within the corporation's power to take at the time of the validation and at the time the action was taken. The bill provides for filing Articles of Validation with Secretary of State under certain circumstances.

SB 359 takes effect on January 1, 2020.

### 17. [SB 369](#) (Ch. 327) Actions Arising Out of Construction, Alteration or Repair

SB 369 modifies the definition of "substantial completion" for purposes of the statute of limitations applicable to actions arising out of construction, alteration or repair of improvement to real property.

SB 369 takes effect on January 1, 2020.

18. [SB 484](#) (Ch. 251) Residential Rental Applicant Screening Charges

SB 484 limits a landlord to one applicant screening charge per 60-day period, for each applicant who applies to rent multiple dwelling units owned or managed by landlord. The bill further requires the landlord to refund the screening charge if a vacancy is filled before screening or if no screening occurs.

SB 484 takes effect on January 1, 2020.

19. [SB 608](#) (Ch. 1) Residential Tenancies

SB 608 included several changes to [ORS Chapter 90](#), with the purpose to enhance rights to tenants in Oregon, due to a recent history of limited rental availability, coupled with a growing trend of uncommonly large increases in residential rents throughout Oregon.

Section 1 of the bill included several changes to [ORS 90.427](#), which deals with the termination of periodic tenancies, both tenancies for fixed terms and month to month tenancies. The most significant change is the partial elimination of the ability to terminate a tenancy with no cause. Generally speaking, in a month-to-month tenancy, the landlord may still evict for no reason, using a 30-day notice. However, once the tenant has remained in occupancy for longer than one year, then the ability to remove the tenant for no reason is generally nonexistent.

There are a few specific exceptions to this. For example, a landlord could evict if the landlord intends to demolish the unit or convert it to non-residential use. Another situation is the landlord's intent to undertake repairs or renovations to the unit. However, this scenario requires that the premises is unsafe or unfit for occupancy, or will be during the repairs or renovations. An additional permitted situation is the landlord's, or a member of the landlord's immediate family's, intent to occupy the unit as their primary residence. Finally, the landlord could evict based on a situation where the landlord has accepted an offer to buy the property, the property is the only one that is in the purchase-sale transaction, and the buyer intends to occupy the unit as the buyer's primary residence. This also requires that the landlord furnish the written real estate purchase-sale agreement to the tenant. Under any situation explained in this paragraph, the landlord can deliver to tenant a 90-day notice to vacate, must include one of the reasons just described, and must provide proof of the reason(s) described. Note that, in any type of eviction situation explained in this paragraph, if the landlord owns more than 4 residential dwelling units, the landlord is also required to pay one month's rent to the tenant.

In a scenario where the tenancy is in a dwelling that is also occupied by the landlord, or that is on the same property as the landlord's primary residence, assuming more than 2 dwelling units on the property the landlord may evict with a 60-day notice. A 30-day notice is possible if the property is sold in a transaction in which no other property is being purchased, the buyer intends to reside in the property, and the landlord delivers to the tenant written proof of the purchase/sale transaction.

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Note that even in a tenancy that is not month-to-month, i.e., a fixed term lease, section 1 of SB 608 provides that fixed term tenancies are also subject to the prohibition on no-cause evictions after one year of occupancy. A penalty for violations of some of the above provisions amounts to 3 months' rent plus actual damages.

Section 2 of the Bill includes changes to the manner in which rent may be increased. The purpose of this is to regulate potentially excessive rent increases.

The bill amends [ORS 90.323](#) to prohibit any rent increases during the first year of the tenancy. It further affixes a rent cap of 7% plus the consumer price index (which provides a running average change). There is an exception, which provides that the landlord is not subject to those regulations if the certificate of occupancy for the dwelling was issued less than 15 years from date of notice of increase, or if the landlord is providing reduced rent to the tenant as part of a federal, state, or local program or subsidy. Any rent increase requires a 90-day written notice. The 90-day notice has specific provisions on what information to include.

If the tenancy is terminated without cause during the first year of tenancy, a landlord may not reset the rent in the subsequent tenancy in excess of the previous rent plus 7% and the consumer price index adjustment. Any damages for violations of the rent increase provisions may result in a penalty of 3 months' rent plus actual damages.

Section 3 of the bill also enacted virtually identical provisions relating to rent increases in [ORS 90.600](#), which addresses spaces rented for manufactured homes or floating homes.

Section 6 of the bill also made a few changes to [ORS 90.100](#). This statute defines various terms frequently cited within ORS Chapter 90. Noteworthy are the references to the changes in [ORS 90.427](#) (explained above), as well as a change in the model Forcible Entry and Detainer Complaint set forth in the bill. The section in the model complaint form that is essentially a checklist of what type of notice is at issue has been updated to the correct subsections in a notice subject to [ORS 90.427](#). Also, a new line item has been inserted into the model complaint form, which is the 90-day notice provision, the basis for which is explained above.

Section 11 of the Bill specifies that the amendments to [ORS 90.427](#) apply to fixed term tenancies entered into or renewed on or after the effective date of the 2019 Act (which was on February 28, 2019), and terminations of month-to-month tenancies occurring on or after the 30th day after the effective date. This could be relevant in a scenario where a fixed-term lease (say, a one year term) had been entered into by the parties prior to the effective date of the act, but does not expire until after the effective date. Those cases can be dealt with per the statutes in place prior to the effective date. This, of course, makes a significant difference on whether and under what circumstances a "no-cause" eviction notice may apply.

Section 12 of the Bill specifies that, as to the "rent-cap" statutes explained above, those provisions apply to rent increase notices delivered on or after the effective date.

SB 608 took effect on February 28, 2019.

20. [SB 970](#) (Ch. 268) Landlord Screening

SB 970 creates a number of new restrictions applicable to landlords. Under the, a residential landlord may not consider medical marijuana use, a prior drug conviction based solely on the use or possession of marijuana, the possession of a medical marijuana card, or an applicant's status as a medical marijuana patient when evaluating a rental applicant.

Additionally, a landlord may not prohibit a tenant from engaging a real estate broker or licensed manufactured structure dealer to facilitate the sale or sublease of tenant's manufactured or floating home under [ORS 90.555](#), and a landlord of a manufactured or floating home facility must provide the applicant, purchaser or tenant with a copy of an informational handout in a form prescribed by Housing and Community Services Department. A facility landlord may not prohibit facility tenant from subleasing while the facility tenant actively markets for sale the tenant's manufactured or floating home if landlord has a policy of renting manufactured or floating homes that are listed for sale by the landlord.

SB 970 takes effect on January 1, 2020.



# Judicial Administration and Attorney Regulation

## I. OREGON JUDICIAL DEPARTMENT

- |            |           |   |
|------------|-----------|---|
| 1. HB 2240 | (Ch. 60)  | Central Violations Bureau                       |
| 2. HB 2377 | (Ch. 643) | Program Change Bill                             |
| 3. HB 3447 | (Ch. 605) | Filing Fee Increases                            |
| 4. HB 5005 | (Ch. 661) | Bonding Limits and Courthouse Construction      |
| 5. HB 5006 | (Ch. 662) | Courthouse Construction Expenditure Limitations |
| 6. HB 5029 | (Ch. 670) | Lottery Allocation                              |
| 7. HB 5050 | (Ch. 644) | Budget Reconciliation                           |
| 8. SB 977  | (Ch. 426) | Residency Requirements for Circuit Court Judges |
| 9. SB 5513 | (Ch. 691) | 2019-2021 Oregon Judicial Department Budget     |

## II. OREGON STATE BAR ACT

- |           |           |                                     |
|-----------|-----------|-------------------------------------|
| 1. SB 358 | (Ch. 248) | Changes to the Oregon State Bar Act |
|-----------|-----------|-------------------------------------|

**Amy Zubko:** 2007 University of Oregon School of Law. Oregon State Bar member since 2007.  
**Amber Hollister:** 2003 University of Washington School of Law. Oregon State Bar member since 2003.  
**Matthew Shields:** 2004 Northwestern School of Law. Oregon State Bar member since 2004.

**I. OREGON JUDICIAL DEPARTMENT**

**1. [HB 2240](#) (Ch. 60) Central Violations Bureau**

Under current law, individual counties have the authority to establish violations bureaus, which can handle many appearances and filings with respect to violations. HB 2240 allows the State Court Administrator to establish a Central Violations Bureau and permits county courts to refer violations to the Central Violations Bureau for processing. The bill provides limits to the scope of authority of the Central Violations Bureau and restricts some individual's uses of the bureau.

HB 2240 took effect on September 29, 2019.

**2. [HB 2377](#) (Ch. 643) Program Change Bill**

HB 2377 implements statutory changes necessary to support the 2019 – 2021 biennial budget. Statutory changes affecting the Oregon Judicial Department and the Department of Justice among others were made in the bill. For additional information on these issues, see HB 5050 and SB 5513.

Judicial Compensation

Sections 15-18 of the bill increase the annual salary of statutory judgeships by \$5,000. Funding for the salary increase is included in SB 5513, the Oregon Judicial Department budget.

Section 19 of the bill eliminates the possible connection of legislator salaries to the salary of circuit court judges.

Legal Aid

Sections 13 and 14 of the bill repeal ORS 9.577, which includes the Legal Aid Account and the distribution of circuit court fees and charges to fund legal aid services. These funds are now directed to the General Fund. In SB 5513, the Oregon Judicial Department now receives a General Fund appropriation for distribution to the Oregon State Bar to be used to fund legal aid services in Oregon.

New Judgeships

Section 18a adds two new statutory judgeships and additional position authority. The judgeships will be located in Jackson County and Marion County. Funding for the salary increase is included in HB 5050, the budget reconciliation bill.

HB 2377 took effect on August 9, 2019.

**3. [HB 3447](#) (Ch. 605) Filing Fee Increases**

HB 3447 increases court filing fees. Most fees increased 6% as of October 1, 2019. Eight and one half percent of the filing fee revenue is deposited in the State Court Technology Fund to support Oregon eCourt while the remaining 91.5% is deposited in the General Fund. The Oregon Judicial Department's Operating Account receives all funds from the marriage solemnization fee.

HB 3447 took effect on July 23, 2019.

**4. [HB 5005](#) (Ch. 661) Bonding Limits and Courthouse Construction**

HB 5005 establishes bonding limitations for state agencies, including the Oregon Judicial Department. The bill addresses a number of projects, including:

- Clackamas County Courthouse. Section 1 5(m)(A) approves almost \$32,000,000 for the construction of a replacement courthouse.
- Lane County Courthouse. Section 1 5(m)(B) approves approximately \$88,500,000 for the construction of a replacement courthouse.
- Linn County Courthouse. Section 1 5(m)(C) approves over \$16,000,000 for the construction of a replacement courthouse.
- Multnomah County Courthouse. Section 1 5(m)(D) approves \$8,625,000 to purchase furniture, fixtures, and equipment for the new courthouse.
- Oregon Supreme Court Building. Section 1 5(m)(E) approves \$28,230,000 to renovate the Oregon Supreme Court building.

The amount listed above includes both the bonding amount and the cost of issuing the bonds.

**5. [HB 5006](#) (Ch. 662) Courthouse Construction Expenditure Limitations**

HB 5006 establishes the expenditure limitations for the 2019 – 2021 biennium. In Section 1(8) the bill addresses a number of projects, including the Oregon Supreme Court and the Multnomah County Courthouse. The bill provides for \$27,820,000 for the Oregon Supreme Court Building Renovation. In addition, it provides \$8,500,000 for furnishings and equipment for the Multnomah County Courthouse.

**6. [HB 5029](#) (Ch. 670) Lottery Allocation**

HB 5029 makes and adjusts a number of allocations of the net proceeds of the Oregon State Lottery, the Criminal Fines Account, and the Oregon Marijuana Account.

Security and Emergency Preparedness for State and County Courts

## JUDICIAL ADMINISTRATION AND ATTORNEY REGULATION

Section 19 allocates \$3,784,490 from the Criminal Fines Account for the state court security and emergency preparedness. This is a 4.7% increase from the 2017-2019 Legislatively Approved Budget. In addition, in section 19, the legislature allocated \$2,931,528 to county court facilities security, a 3.8% increase.

### State Court Technology Fund

In Section 20, \$3,887,500 was allocated from the Criminal Fine Account to the State Court Technology Fund. This is a 25% increase from the 2017-2019 Legislatively Approved Budget. For additional information on the State Court technology Fund, see HB 3447.

### Veterans' Specialty Courts

In 2016, the Oregon Constitution was amended to require 1.5% of net lottery proceeds to be transferred to the Veterans' Service Fund. This year, Section 13b of HB 5029 allocates \$555,000 to the Criminal Justice Commission from the Veterans' Service Fund for veterans' specialty courts. Additional funding was allocated to the Department of Veterans' Affairs, the Bureau of Labor and Industries, and the Oregon Health Authority.

## **7. [HB 5050](#) (Ch. 644) Budget Reconciliation**

HB 5050 is the omnibus General Fund budget reconciliation bill for the 2019 legislative session. Funding for projects and programs within the Oregon Judicial Department, the Oregon Department of Justice, and the Public Defense Services Commission were appropriated in this bill.

### Aid and Assist and Behavioral Health

In Section 144, the Oregon Judicial Department received approximately \$1.8 million and approval for nine new positions to support the implementation of SB 24 (2019) and SB 973 (2019).

See the Criminal Law Chapter for additional information on SB 24 and the Health Law Chapter for additional information on SB 973.

### Courthouse Construction and Renovation

In support of the Oregon Judicial Department's Supreme Court Building Renovation Project, the legislature approved an expenditure limitation of \$410,000 to allow for the cost issuance of \$28,230,000 in bonds in Section 143.

Renovation of county courthouses will continue with \$136,695,000 added to the Oregon Judicial Department budget for projects associated with the Clackamas, Lane, and Linn county courthouses. In addition, the budget also included an expenditure limitation for debt service

costs and \$2 million from the General Fund for the planning costs association with replacing the Benton County Courthouse.

Grand Jury Recordation

SB 505, passed in the 2017 legislative session, requires grand jury proceedings to be recorded. With the beginning of statewide rollout, the legislature has earmarked \$3 million from the General Fund for its implementation. In addition, a “Budget Note” was approved requiring the Oregon Judicial Department, the District Attorneys and the Association of Oregon Counties to develop a joint plan that provides for “the most efficient, consistent, and cost effective delivery of grand jury recordation across the state . . .”

If the \$3 million allocated in Section 75 is not allocated before December 1, 2020, any remaining funds become available to the legislature for general purposes.

New Judgeships

In Sections 145 and 146, the Legislature approved two new circuit court judge positions, one in Jackson County and one in Marion County. In addition, six judicial services specialist positions were also approved. In total, the Oregon Judicial Department will receive just over \$1 million to support these positions.

Parent-Child Representation Program

Effective July 1, 2020, the Public Defense Services Commission Parent-Child Representation Program will be expanded into Multnomah County with a \$3.5 million appropriation and authority for one permanent full-time Deputy General Counsel position found in Section 74.

Public Defense Services Commission

In late 2018, the Sixth Amendment Center released a report entitled “The Right to Counsel.” The report focused on Oregon Public Defense Services Commission and its efforts to provide indigent public defense services. The Legislature requested that the Commission return to the legislature with additional review, analysis, and recommendations regarding two issues:

- 1) Identify data public defense contractors should be required to submit to the Office of Public Defense Services as part of its contractual agreement.
- 2) Evaluate options for delivering indigent public defense services and adopt an approach that delivers quality public defense services.

The legislature has earmarked \$20 million for the Public Defense Services Commission in Section 4. If the \$20 million is not allocated before December 1, 2020, any remaining funds become available to the legislature for general purposes.

## JUDICIAL ADMINISTRATION AND ATTORNEY REGULATION

### 8. [SB 977](#) (Ch. 426) Residency Requirements for Circuit Court Judges

Prior to SB 977, a circuit court judge was required to either be a resident of, or have a principal office in, the judicial district for which the judge was elected or appointed. However, there was an exception made for Multnomah County, allowing judges to reside outside the district but within 10 miles of the county line.

Under SB 977, this rule is changed to simply require that a judge in any judicial district must reside in, or have a principal office in, the judicial district in which they are to serve as judge, or in any adjacent judicial district.

SB 977 took effect on June 17, 2019.

### 9. [SB 5513](#) (Ch. 691) 2019-2021 Oregon Judicial Department Budget

SB 5513 is the budget bill for the Oregon Judicial Department (OJD). The 2019-2021 total funds budget for OJD is \$565.8 million.

#### Legal Aid

Section 8 adds a General Fund appropriation of \$12,275,000 for distribution to the Oregon State Bar to be used to fund legal aid services in Oregon. Sections 13 and 14 of HB 2377 repeal ORS 9.577 which provided a direct statutory allocation for legal aid services since 2011. Funding for legal aid will now be contained in the budget for the Oregon Judicial Department. This appropriation is approximately a 3% increase in funding for legal aid, and is the first increase in state funding since the 2011 legislative session.

## II. OREGON STATE BAR ACT

### 4. [SB 358](#) (Ch. 248) Changes to the Oregon State Bar Act

SB 358 makes several changes to ORS Chapter 9 in order to address four distinct issues related to the governance of the Oregon State Bar.

First, SB 358 amends ORS 9.191 to repeal the explicit prohibition on charging a membership fee to an Oregon State Bar member who has been admitted to practice for 50 years. The bill does not require charging such a fee however, and as the amount of the OSB membership fee is not set in statute, SB 358 does not make any immediate changes to the fee at this time.

Second, SB 358 grants statutory authority to the Department of Revenue to provide the Oregon State Bar with the name and address of a person admitted to practice law in Oregon if the Department has reasonable grounds to believe one of the following:

## JUDICIAL ADMINISTRATION AND ATTORNEY REGULATION

- That the attorney prepared a tax return or report for another individual in a manner that violated ORS 9.460 to 9.542, ORS 9.705 to 9.757, or any disciplinary rules adopted under those provisions;
- That the attorney failed to file a required return and has not filed an appeal contesting the tax;
- That the attorney failed to withhold or remit personal income taxes on behalf of an employee another entity, has been held liable for the failure under ORS 316.207, and has not filed an appeal contesting the tax; or
- That the attorney failed to withhold or remit personal income taxes on behalf of an employee of an entity in which the attorney has a direct ownership interest and has not filed an appeal contesting the tax.

The Bar is not required to take any particular action upon receipt of information from the Department, and may only use the information received from the Department in the enforcement of ORS 9.460 to 9.542, ORS 9.705 to 9.757, or any disciplinary rules adopted under those provisions.

Third, bill amends ORS 9.675 to modify the reporting timelines for confirming compliance with the Interest on Lawyer Trust Account (IOLTA) requirements. This change was made in order to mirror the reporting timelines with those put in place through SB 381 in 2015.

Finally, SB 358 clarifies the functions and authority of the OSB Board of Governors. The bill specifies that the board is required to serve the public interest by:

- Regulating the legal profession and improving the quality of legal services;
- Supporting the judiciary and improving the administration of justice; and
- Advancing a fair, inclusive and accessible justice system.

The bill also makes clear that nothing in the Bar Act should be construed as to limit the inherent authority of the Oregon Supreme Court to adopt rules for the operation of the courts or to regulate the practice of law.

SB 358 took effect on September 29, 2019. Changes to ORS 9.080 relating to the functions and authority of the Board of Governors become operative on January 1, 2020.



# Juvenile Law

## I. ABUSE

- |            |           |   |
|------------|-----------|---|
| 1. HB 2227 | (Ch. 137) | Animal Control Officers made mandatory reporters of child abuse |
| 2. SB 415  | (Ch. 176) | Mandatory reporting of child abuse                              |
| 3. SB 804  | (Ch. 181) | Cross-reporting of child abuse                                  |

## II. SCHOOLS AND EDUCATION

- |            |           |   |
|------------|-----------|---|
| 1. HB 2571 | (Ch. 208) | Higher education tuition waivers for foster children  |
| 2. SB 155  | (Ch. 618) | Investigation of all reports of suspected abuse or sexual conduct by school employees, contractors, agents and volunteers |
| 3. SB 475  | (Ch. 295) | Abbreviated school day programs for foster youth  |
| 4. SB 905  | (Ch. 561) | Establishing resident school district for children voluntarily placed in foster care                                      |

## III. PROTECTIVE CUSTODY

- |            |           |   |
|------------|-----------|---|
| 1. HB 2849 | (Ch. 594) | Protective custody of children  |
| 2. SB 924  | (Ch. 382) | Prohibiting placement of children taken into protective custody in detention facilities |
| 3. SB 994  | (Ch. 631) | Criminal records checks prior to release of a child from custody                        |

## IV. DEPARTMENT OF HUMAN SERVICES AND OTHER AGENCIES

- |            |           |   |
|------------|-----------|---|
| 1. HB 2033 | (Ch. 153) | Modifying minimum degree requirements for Caseworkers                                       |
| 2. SB 181  | (Ch. 513) | Expanding definition of "child-caring agency"   |
| 3. SB 492  | (Ch. 514) | Providing aid to parents or guardians with disabilities                                     |
| 4. SB 493  | (Ch. 296) | Establishes Oregon Human Rights Commission  |
| 5. SB 707  | (Ch. 341) | Establishing Youth Suicide Intervention and Prevention Advisory Committee                   |
| 6. SB 725  | (Ch. 423) | Fitness determinations for individuals who provide care; criminal records checks            |
| 7. SB 809  | (Ch. 517) | Criteria to be considered in making fitness determinations for individuals providing direct |

## JUVENILE LAW

- |                      |         |           |  |
|----------------------|---------|-----------|--|
| 8.                   | SB 832  | (Ch. 555) | care services<br>Critical Incident Review Teams  |
| V. OTHER LEGISLATION |         |           |  |
| 1.                   | HB 2464 | (Ch. 141) | Modifying terminology regarding Child Abuse<br>Multidisciplinary Intervention Program                    |
| 2.                   | SB 171  | (Ch. 619) | Congregate Care Placements   |
| 3.                   | SB 490  | (Ch. 679) | Modifying the definition of 'exempt prohibited<br>individual' in relation to the provision of child care |
| 4.                   | SB 813  | (Ch. 266) | Investigations of child care facilities  |
| 5.                   | SB 917  | (Ch. 381) | Employers of care providers  |

**Inge Wells:** 1987 University of Washington School of Law. Oregon State Bar member since 1988.

**Joanne Southey:** 1997 Willamette University School of Law. Oregon State Bar member since 1997.

## I. ABUSE

1. [HB 2227](#) (Ch. 137) **Animal Control Officers made mandatory reporters of child abuse**

HB 2227 amends Section 1 and Section 2 of [ORS 419B.005\(5\)](#) to include an animal control officer as defined in [ORS 609.500](#) under “public or private official” for the purpose of mandatory reporting of suspected child abuse.

The bill goes into effect on January 1, 2020.

2. [SB 415](#) (Ch. 176) **Mandatory reporting of child abuse**

SB 415 expands the list of “public or private official[s]” who are mandatory reporters of child abuse to include Department of Education employees, school district board members, and members of a public charter school governing body.

SB 415 takes effect on January 1, 2020.

3. [SB 804](#) (Ch. 181) **Cross-reporting of child abuse**

SB 804 amends [ORS 419B.015](#) to require the Department of Human Services (DHS) to report alleged child abuse to law enforcement in the county where the alleged abuse occurred, or if that county is unknown, the county where the child resides, or if that county is unknown, the county where the reporter came into contact with the child or alleged perpetrator of the abuse. The bill also provides that when a law enforcement agency receives a report of alleged child abuse, the agency must notify DHS by making a report to the child abuse reporting hotline.

SB 804 took effect on May 24, 2019.

## II. SCHOOLS AND EDUCATION

1. [HB 2571](#) (Ch. 208) **Higher education tuition waivers for foster children**

HB 2571 amends [ORS 350.300](#) to provide that a current or former foster child under the age of 25, and who is enrolled in courses totaling one or more credit hours at an institution of higher education shall receive a tuition waiver in pursuit of an initial undergraduate degree. For the purposes of this statute, an “institution of higher education” refers to an Oregon public university, community college or to OHSU.

This bill took effect on June 4, 2019.

## JUVENILE LAW

2. [SB 155](#) (Ch. 618) **Investigation of all reports of suspected abuse or sexual conduct by school employees, contractors, agents and volunteers**

### New requirements for school districts:

SB 155 requires school boards to adopt policies on the reporting of suspected abuse and suspected sexual conduct by school employees, contractors, agents, and volunteers. The bill also creates multiple new definitions. The school board is also required to designate a licensed administrator to receive reports and inform the Teacher Standards and Practices Commission (TSPC) of the Department of Education (DOE) of reports.

The bill provides that a school employee must immediately submit a report if the school employee has reasonable cause to believe that a student has been subjected to abuse or sexual conduct by another school employee or by a contractor, agent, or volunteer. Upon receipt of a report of suspected abuse, a law enforcement agency or the Department of Human Services (DHS) must determine if the report can be substantiated, and if it cannot, determine if the employment policy has been violated. Upon receipt of a report of suspected sexual conduct, the TSPC or the DOE must determine if it can be substantiated, and if action must be taken according to the employment policy.

Upon request from a law enforcement agency, DHS, TSPC, or DOE, an education provider shall provide any requested documents, to the extent allowed by state and federal law, in connection with an investigation related to suspected abuse or suspected sexual conduct.

### New requirements for the Department of Human Services:

A law enforcement agency or the Department of Human Services (DHS) must investigate upon receipt of a report of abuse that involves a child and a person who is a school employee, contractor, agent, or volunteer. The bill includes new definition of meaning of "investigation." Either the law enforcement agency or the department will notify the other if one receives a report of abuse. The department is also required to notify, upon receipt of a report, the TSPC (if the individual is licensed) or the DOE, if the report involves a school employee, contractor, agent, or volunteer, the suspected abuse occurred in a school, or was related to a school-sponsored activity.

The bill outlines investigative and reporting requirements for the TSPC and the DOE, requiring both (the TSPC must only investigate if the subject is licensed) to conduct their own investigations upon receipt of a report of suspected sexual conduct by a school employee, contractor, agent, or volunteer.

SB 155 took effect July 23, 2019.

3. [SB 475](#) (Ch. 295) **Abbreviated school day programs for foster youth**

SB 475 amends [ORS 343.161](#) to provide that a school district may not unilaterally place a foster youth on an abbreviated school day program without the consent of the student’s foster parent or surrogate as defined in [ORS 419A.004](#).

Unless otherwise ordered by a court, a school district may provide an abbreviated school day program to a foster youth only if:

- The student’s foster parent has been provided the opportunity to meaningfully participate in a meeting to discuss the placement; and
- The foster parent has received written notification informing the foster parent (1) of the student’s presumptive right to receive the same number of hours of instruction or educational services as other students; (2) of the foster parent’s right to request, at any time, a meeting to determine whether the student should no longer be placed on an abbreviated school day program; and (3) that a school district may not unilaterally place a student on an abbreviated school day program.

SB 475 goes into effect on January 1, 2020 and applies to students on an abbreviated school day program on or after the effective date.

**4. [SB 905](#) (Ch. 561) Establishing resident school district for children voluntarily placed in foster care**

SB 905 amends [ORS 339.133\(1\)](#) to exclude from the definition of “foster care”, care for children whose parent or guardian voluntarily placed the child outside the child’s home with a public or private agency and for whom the child’s parent or guardian retains legal guardianship.

Therefore, under [ORS 339.134](#), a child who has been voluntarily placed outside the home and who is living in a licensed, certified, or approved substitute care program shall be considered a resident for school purposes in the school district in which the child resides because of the voluntary placement. This remains true if the child’s parent or guardian retains legal guardianship, there is a plan to return the child home, the voluntary placement is within 20 miles of the school the child attended prior to the voluntary placement, the child’s preferences in school attendance are taken into consideration, and the parent or guardian and school staff from the school the child attended prior to the placement agree that it is in the best interest of the child to continue to attend the school the child attended prior to the placement. The bill clarifies that transportation for the child to school shall be the responsibility of the child’s resident school district.

SB 905 went into effect on July 15, 2019.

### III. PROTECTIVE CUSTODY

#### 1. [HB 2849](#) (Ch. 594) Protective custody of children

HB 2849 amends [ORS 419B.150](#). Section 2 of the bill provides that if a child is taken into protective custody as a runaway, the person taking the child into protective custody shall:

- Release the child without unnecessary delay to the custody of the child’s parent or guardian or to a shelter facility; or
- Follow the procedures described in [ORS 419B.160](#), [419B.165](#), [419B.168](#) and [419B.171](#).

The person taking the child into protective custody shall determine the preferences of the child and the child’s parent or guardian as to whether the child’s best interests are served by placement in a shelter facility or release to a parent or guardian. The person taking the child into protective custody shall release the child to a shelter facility if it reasonably appears that the child would not willingly remain at home if released to the child’s parent or guardian.

Section 3 of the bill provides that a child may be taken into protective custody without a court order only when there is reasonable cause to believe that:

- There is an imminent threat of severe harm to the child;
- The child poses an imminent threat of severe harm to self or others;
- There is an imminent threat that the child’s parent or guardian will cause the child to be beyond the reach of the juvenile court before the department can complete assessment of an abuse allegation involving the child; or
- There is an imminent threat that the child’s parent or guardian will cause the child to be beyond reach of the court before a court can order the child to be taken under protective custody.

If there is reason to know that the child is an Indian child, the child may be taken into protective custody without a court order only when it is necessary to prevent imminent physical damage or harm to the child.

The bill defines “reasonable cause” to mean “a subjectively and objectively reasonable belief, given all of the circumstances and based on specific and articulable facts.” “Severe harm” is defined as “life-threatening damage” or “significant and acute injury to a person’s physical, sexual or psychological functioning.”

Section 3 of the bill also sets out the procedures for obtaining a protective custody order from the court. The application for an order must be made by declaration, or, at the applicant’s request, an oral statement under oath.

The court may order that a child be taken into protective custody if the court determines:

- That protective custody is necessary and the least restrictive means to: protect the child from abuse; prevent the child from inflicting harm on self or others; ensure that the child remains within the reach of the juvenile court; ensure the safety of a child who has run away from home; or, if the department knows or has reason to know that the child is an Indian child, prevent imminent physical damage or harm to the child.
- That protective custody is in the best interests of the child.

HB 2849 also amends [ORS 419B.023](#) (Karly’s Law) to provide that a person may take a child into protective custody without a court order for purposes of a medical assessment only for a period of time necessary to comply with the requirements of the Law.

This bill goes into effect January 1, 2020.

**2. [SB 924](#) (Ch. 382) Prohibiting placement of children taken into protective custody in detention facilities**

SB 924 amends [ORS 419B.121](#) to provide that if a child or ward is an out-of-state runaway, the court may place the child or ward in a placement it determines to be the least restrictive setting, including detention, necessary to ensure that the child or ward is not a danger to self or others pending return to the child or ward’s home state.

This bill also amends [ORS 419B.160](#) to say that a child or ward taken into protective custody may not be placed in detention except as provided in [ORS Chapter 419C](#) for a person over whom the juvenile court has jurisdiction under [ORS 419C.005](#).

SB 924 took effect on June 13, 2019.

**3. [SB 994](#) (Ch. 631) Criminal records checks prior to release of a child from custody**

SB 994 requires a person who has taken a child into protective custody, prior to the release of that child to a noncustodial parent, to ask DHS to conduct a criminal records check on the noncustodial parent and on all adults in the same home as the noncustodial parent. The department is to conduct that check under [ORS 181A.200\(3\)](#) and must adopt rules consistent with the requirements of the Department of State Police for use of the Law Enforcement Data System.

## JUVENILE LAW

SB 994 takes effect on January 1, 2020. This bill applies to any release of a child that occurs on or after that date.

### IV. DEPARTMENT OF HUMAN SERVICES AND OTHER AGENCIES

#### 1. [HB 2033](#) (Ch. 153) **Modifying minimum degree requirements for caseworkers**

HB 2033 amends [ORS 419B.021](#) to change the minimum degree requirements for a person who:

- Conducts an investigation under [ORS 419B.020](#),
- Determines that a child must be taken into protective custody under [419B.150](#), or
- Determines that a child should not be released to the parent or responsible person under [ORS 419B.165](#).

The bill allows for the individual to either have:

- A bachelor's degree in human services or a related field;
- A bachelor's degree in another field if DHS determines that the casework completed by the person is equivalent to a bachelor's degree in human services and the person has sufficient training in providing human services; or
- An associate degree with additional training or certification in human services or a related field as determined by the department by rule.

The bill goes into effect on January 1, 2020.

#### 2. [SB 181](#) (Ch. 513) **Expanding definition of "child-caring agency"**

SB 181 expands the definition of "child-caring agency" under [ORS 418.205](#) to include "county program[s]" meaning any county operated program that provides care or services to children in the custody of the Department of Human Services (DHS) or the Oregon Youth Authority (OYA). County programs do not include local juvenile detention facilities that receive state services provided by the Department of Corrections.

Section 4 specifies what OYA, a county juvenile department, or private agency must include in a report submitted under [ORS 419C.620](#), and what a court must find based on that report.

SB 181 took effect on June 27, 2019.

**3. [SB 492](#) (Ch. 514) Providing aid to parents or guardians with disabilities**

SB 492 amends [ORS 419B.090](#) to provide that it is the policy of the State of Oregon to provide to parents and guardians with disabilities opportunities to benefit from or participate in reunification services that are equal to those extended to individuals without disabilities.

When necessary, the state shall provide different aids, benefits, and services than those provided to parents and guardians without disabilities, to ensure that parents and guardians with disabilities are provided with an equal opportunity to adjust their circumstances, conduct or conditions to make it possible for their children to return home.

SB 492 took effect on June 27, 2019.

**4. [SB 493](#) (Ch. 296) Establishes Oregon Human Rights Commission**

SB 493 establishes the Oregon Human Rights Commission within the Department of Human Services. The Commission will consist of nine Governor-appointed members and is tasked with safeguarding the dignity and basic human rights of individuals who have an intellectual or developmental disability. The Commission will receive complaints of violations of rights and, with the consent of the individual or the individual’s guardian or representative, can request and receive information from DHS that is relevant to the complaint. The Commission can also meet with the Director of Human Services to resolve a complaint.

SB 493 takes effect on January 1, 2020.

**5. [SB 707](#) (Ch. 341) Establishing Youth Suicide Intervention and Prevention Advisory Committee**

SB 707 creates the Youth Suicide Intervention and Prevention Advisory Committee to advise the Oregon Health Authority on the development and administration of strategies to address suicide intervention and prevention for children and youth ages 10 to 24. The members of the committee will be appointed by the director of the Oregon Health Authority.

SB 707 took effect on September 29, 2019.

**6. [SB 725](#) (Ch. 423) Fitness determinations for individuals who provide care; criminal records checks**

SB 725 amends [ORS 181A.195](#) to provide that individuals who are or seek to be employed in any capacity having contact with a recipient of support services or a resident of a residential

## JUVENILE LAW

facility or adult foster home are not entitled to a fitness determination under the circumstances enumerated in the bill. The bill also provides that the Department of Human Services (DHS) and the Oregon Health Authority (OHA) may not consider certain information disclosed by a criminal records check when making a fitness determination.

The bill also amends [ORS 443.004](#) to prohibit DHS and OHA from conducting a criminal records check on a person who provides care more than once during a two-year period, unless the agency receives credible evidence of a new criminal conviction, receives credible evidence to substantiate a complaint of abuse or neglect, is required by federal law to conduct more frequent criminal records checks, or is notified that a subject has changed positions for which there are different criminal records check requirements.

SB 707 took effect on September 29, 2019.

### 7. [SB 809](#) (Ch. 517) **Criteria to be considered in making fitness determinations for individuals providing direct care services**

SB 809 creates new provisions requiring the Department of Human Services (DHS) and the Oregon Health Authority (OYA) to prescribe by rule the criteria for making “fitness determinations.” ‘Fitness determinations’ are defined as “the evaluation of whether a subject individual or other individual providing direct care services is fit to hold a position, provide direct care services or be granted a license, certification, registration or permit to provide direct care services.” “Direct care services” are services provided to clients of DHS or OHA by an adult foster home, a home care worker, or a residential facility.

The criteria must include what types of substantiated abuse for which an individual may be found unfit and conditions, if any, for an individual to be reinstated. An individual who is found to be unfit may challenge that determination in a contested case hearing in accordance with [ORS Chapter 183](#).

This bill goes into effect on January 1, 2020.

### 8. [SB 832](#) (Ch. 555) **Critical Incident Review Teams**

SB 832 clarifies the definition of a “critical incident” relating to a child fatality.

The purpose of Critical Incident Review Teams is to increase child safety by rapidly drawing lessons to improve the systems in place in DHS, increase department accountability, evaluate and learn from critical incident cases, ensure timely responses from DHS, and increase the department’s ability to address and recommend necessary changes to child welfare systems. The bill also specifies what must be contained in a final report submitted by a Critical Incident Review Team and what information is to be made available to the public on the department’s website.

SB 832 took effect on July 15, 2019.

## V. OTHER LEGISLATION

### 1. [HB 2464](#) (Ch. 141) **Modifying terminology regarding Child Abuse Multidisciplinary Intervention Program**

HB 2464 amends language relating to grant recipients of the Child Abuse Multidisciplinary Intervention Programs as follows:

- [ORS 418.782](#) is amended to define “child abuse assessment” as possibly including: a medical assessment, a forensic interview, care coordination, or family support. Further, it changes “Community assessment center” to “Children’s advocacy center” defined as a facility that meets the facility standards described in [ORS 418.788](#) and that facilitates a coordinated, comprehensive and multidisciplinary response to cases of child abuse. It adds definitions of “forensic interview,” “medical assessment,” “regional children’s advocacy center,” and “training and complex case assistance.”
- The bill adds that the grant program will support training and technical assistance efforts for child abuse multidisciplinary teams and children’s advocacy centers and provide coordination and support to regional children’s advocacy centers.
- It also sets minimum facility standards for children’s advocacy centers and regional children’s advocacy centers and minimum forensic interview training standards, both to be consistent with national standards and evidence based.
- Section 24 amends [ORS 419B.020](#) to remove a naturopathic physician as a possible resource for a physical examination of a minor child.
- Section 26 amends [ORS 419B.035](#) to remove a naturopathic physician as a person that DHS must make records available to for examination, care, or treatment.

HB 2464 took effect on September 29, 2019. The amendments to statutes in sections 1-28 go into effect on January 1, 2020.

### 2. [SB 171](#) (Ch. 619) **Congregate Care Placements**

SB 171 creates new provisions in [ORS 419B](#) governing the Department of Human Services’ (DHS) placement of a child or ward in certain residential settings providing care for more one than one child or ward. Starting on September 1, 2019, DHS may place a child in a congregate care residential setting in this state if the setting is a child-caring agency, a hospital or a rural hospital. Starting on July 1, 2020, the setting must also be a qualified residential treatment

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program, unless the setting is a child-caring agency that meets one of the exceptions in Section 3a of the Act.

Under Section 5 of SB 171, a program is a qualified residential treatment program if it:

- Provides residential care and treatment to a child who, based on an independent assessment, requires specialized services related to the effects of trauma or mental, emotional, or behavioral health needs;
- Uses a trauma-informed treatment model that is designed to address the needs, including clinical needs, of the child;
- Ensures that the staff at the facility includes licensed or registered nurses that are available 24 hours a day, seven days a week;
- Facilitates the involvement of the child's family, to the extent appropriate and in the child's best interests;
- Facilitates outreach to the child's family, documents how outreach is made and maintains contact information for any known biological relatives or fictive kin of the child;
- Documents how the program integrates family into the child's treatment process, including after discharge, and how sibling connections are maintained;
- Provides discharge planning and family-based after-care support for at least six months after the child's discharge; and
- Is licensed and accredited, consistent with federal licensure and accreditation requirements for qualified residential treatment programs.

When DHS places a child in a qualified residential treatment program:

- A qualified individual must conduct an independent assessment to assess the strengths and needs of each child the department places in a qualified residential treatment program. Specific requirements of that assessment and the qualified individual are detailed in Section 6 of SB 171.
- DHS must move for court approval of the placement no later than 30 days following the date of the placement in a qualified residential treatment program.
- The court must hold a hearing and enter an order approving or disapproving the child's placement. The court must make specific determinations regarding whether or not the child's needs can be met in a foster home and, if not, whether placement in a

qualified residential treatment program provides the least-restrictive setting to provide the most effective and appropriate level of care and is consistent with the case plan.

If the court enters an order disapproving the child’s placement in a qualified residential treatment program, DHS must move the child no later than 30 days following the entry of the court order. The bill amends [ORS 419B.443](#) to require DHS to include, in any court report filed under [ORS 419B.440\(1\)\(b\)](#) while a child remains in a qualified residential treatment program, a determination that a qualified residential treatment program continues to be appropriate, documentation of the specific treatment needs that will be met in the placement and the length of time the child is expected to need the treatment, and the efforts made by the agency to prepare the child to move to a different placement setting.

In addition, the bill authorizes DHS to make reasonable payment for services of persons to operate a child-caring agency that is a qualified residential treatment program, requires DHS to maintain a website with information about out-of-state placements of children, and requires DHS and the Oregon Health Authority to submit a report to the legislature no later than September 1, 2019, regarding DHS’ plan to develop appropriate in-state placements for Oregon children and wards.

The bill amends [ORS 418.215](#) to require a child-caring agency providing care or services to children to be duly incorporated or a county program.

SB 171 took effect on July 23, 2019. Sections 3 and 4 become operative on September 1, 2019. Sections 1, 5, 6, and 7, the amendments to section 3 by 3a, and the amendments to [ORS 418.205](#), [418.312](#), [419A.004](#), and [419B.443](#) by sections 8, 9, 11, and 13 become operative on July 1, 2020.

**3. [SB 490](#) (Ch. 679) Modifying the definition of ‘exempt prohibited individual’ in relation to the provision of child care**

SB 490 amends [ORS 329A.252](#) to expand the definition of an exempt prohibited individual who is permanently barred from providing care to a child not related by blood or marriage. An exempt prohibited individual now includes a person convicted, in any state, of a crime in which a child suffered serious physical injury or death, or a person who is required to report as a sex offender under Oregon state law or the laws of another jurisdiction.

Section 2 amends [ORS 329A.030](#) to require that any individual who has been the subject of a founded or substantiated report of child abuse shall apply to and be enrolled in the Central Background Registry prior to providing any of the types of care identified in [ORS 329A.250\(4\)\(a\)](#), (g), or (h) if the child abuse occurred on or after January 1, 2017 and involved a child who died or suffered serious physical injury, or the child abuse occurred on or after September 1, 2019 and involved any child for whom the individual was providing child care. If

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more than seven years has elapsed since the date of the child abuse determination, the individual does not have to enroll in the Central Background Registry.

SB 490 took effect on August 9, 2019.

### 4. [SB 813](#) (Ch. 266) Investigations of child care facilities

SB 813 amends [ORS 329A.390](#) to require the Office of Child Care to make reasonable attempts to identify any child care facility, or any person or place providing child care, about which the office receives a complaint if the complaint includes any of the following information:

- 1) The name of a child or parent;
- 2) The name of the child care provider, facility owner, operator or employee;
- 3) The name of the facility providing care;
- 4) The phone number of the facility; or
- 5) The physical address of the facility.

The bill also creates a definition of “serious complaint” that includes notifications or reports of alleged child abuse.

SB 813 took effect on June 6, 2019.

### 5. [SB 917](#) (Ch. 381) Employers of care providers

SB 917 prohibits:

- A long term care facility,
- A residential facility,
- An adult foster home,
- A child care facility,
- A child-caring agency,
- A foster home,
- A youth care center, or
- A youth offender foster home

from interfering with a good faith disclosure by an employee or volunteer to specific entities or individuals of information concerning:

- The abuse or mistreatment of a resident or child,
- Violations of licensing or certification requirements,
- Criminal activity,

- Violations of state or federal law, or
- Any practice that threatens the health and safety of a resident or child in the care of the facility, agency or home.

Any facility found to have violated this section can be subject to penalties or have its license revoked or suspended.

SB 917 takes effect on January 1, 2020.



# Labor and Employment

## I. LABOR AND EMPLOYMENT

- |             |           |   |
|-------------|-----------|---|
| 1. HB 2005  | (Ch. 700) | Paid Family Leave   |
| 2. HB 2016  | (Ch. 429) | Oregon Public Workers Protection Act  |
| 3. HB 2341  | (Ch. 139) | Employer Accommodation for Pregnancy Act                                      |
| 4. HB 2589  | (Ch. 71)  | Updates to the Employment Discrimination Statutes                             |
| 5. HB 2593  | (Ch. 118) | Nursing Mother Law  |
| 6. HB 2992  | (Ch. 121) | Oregon's Attempt to Rein in Restrictive Covenants                             |
| 7. HB 3009  | (Ch. 439) | Union's Ability to Charge Fees  |
| 8. SB 123   | (Ch. 617) | Pay Equity Clarification  |
| 9. SB 272   | (Ch. 242) | Expanding The Definition of Public Employees Who Are Prohibited From Striking |
| 10. SB 370  | (Ch. 260) | Immigration Notification Requirements   |
| 11. SB 726  | (Ch. 343) | Oregon Workplace Fairness Act   |
| 12. SB 1049 | (Ch. 355) | Public Employee Retirement Reallocation Contribution                          |

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**Stephen Scott:** 2013 Willamette University School of Law. Oregon State Bar member since 2013.

## I. LABOR AND EMPLOYMENT

### 1. [HB 2005](#) (Ch. 700) Paid Family Leave

HB 2005 will provide 12 weeks of paid leave to just about every employee in the state, to be funded by a new payroll tax paid by both workers and employers with 25 or more employees.

Under the bill, this paid time off is available for new parents and for those who need to care for an ill family member who has a serious health condition or for the employee's own serious health condition. It will also provide the same paid leave for victims of domestic violence, harassment, stalking, or sexual assault.

Almost all workers in the state, including part-time workers, will receive paid leave once the law goes into effect. The only requirement to be eligible for leave is that the employee has earned at least \$1,000 in wages during the previous year.

Weekly benefits will be capped at the generous rate of \$1,215, which means that many lower-income workers will see no financial impact on their livelihoods if they miss work for qualifying reasons.

The new law will provide a job guarantee for workers taking leave. It will be a violation of the law for an employer to permanently replace the worker during their absence, as they must be restored to their position upon their return. Employers will be required to restore the employee to the same former position if it exists, even if they filled it with another employee during the absence. Employers with fewer than 25 employees can provide a returning employee with a different position with similar job duties and pay. If, for large employers, the position no longer exists, the large employer will be required to restore the returning worker to any available equivalent position with equivalent levels of pay, benefits, and other terms and conditions of employment.

The bill requires that the leave must be taken concurrently with Oregon Family Leave Act (OFLA) and federal Family and Medical Leave Act (FMLA) leave, meaning that workers cannot stack their paid and unpaid leave periods one after the other.

HB 2005 took effect on September 29, 2019 for administrative purpose. However, most operative provisions of the bill do not go into effect until January 1, 2022.

### 2. [HB 2016](#) (Ch. 429) Oregon Public Workers Protection Act

The legislature passed HB 2016 to address collective bargaining for public employees.

Specifically, the new law requires public employers to provide reasonable paid time off upon request from a public employee who is a designated representative engaging in certain

union activities. The bill also permits a public employer to deduct union fees from an employee’s pay. Finally, in response to the *Janus v. AFSCME* Supreme Court decision, the law also makes it easier for employees to opt in to union membership.

HB 2016 takes effect on January 1, 2020.

**3. [HB 2341](#) (Ch. 139) Employer Accommodation for Pregnancy Act**

HB 2341 provides that Oregon employers with at least 6 employees will be required to provide reasonable accommodations to employees for pregnancy-related conditions. The bill states that longer breaks, more frequent breaks, assistance with certain physical tasks, modifications of schedules, and obtaining certain equipment are all reasonable accommodations.

The bill also prevents employers from requiring an employee to take protective leave when a reasonable accommodation is available.

HB 2341 requires employers to post notices related to the protections and provided to employees through this law. The Bureau of Labor and Industries (BOLI) will create materials for employers to use (such as posted notices) to comply with these notification requirements.

HB 2341 will take effect on January 1, 2020.

**4. [HB 2589](#) (Ch. 71) Updates to the Employment Discrimination Statutes**

This bill specifies that sexual orientation is not a physical or mental impairment for purposes of employment discrimination statutes. It also removes a provision that stated a failure to provide reasonable accommodation for individual with disability arising out of transsexualism is not an unlawful employment practice. Proponents of the bill argued that these provisions have been largely superseded by more recent statutes, and that their presence in the statute serves primarily to sow confusion.

This bill went into effect on May 6, 2019.

**5. [HB 2593](#) (Ch. 118) Nursing Mother Law**

Under this new law, all Oregon employers are required to provide employees with lactation breaks. Smaller employers with 10 or fewer employees may qualify for an exception under the new law if they can show undue hardship.

**Practice Tip:** Employers with fewer than 25 employees should likely update their employee handbook, as these breaks were not previously required. The new policies should address:

- 1) How often the employee is allowed to take a lactation break (likely as often as needed);
- 2) The timing of those lactation breaks; and

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- 3) The location provided for these private lactation breaks.

HB 2593 took effect on September 29, 2019.

### 6. [HB 2992](#) (Ch. 121) Oregon's Attempt to Rein in Restrictive Covenants

HB 2992 adds an additional hurdle for Oregon employers seeking to maintain an enforceable noncompetition agreement. The bill requires employers to provide a signed, written copy of the terms of any noncompetition agreement to the employee within 30 days after the date of the termination of the employee's employment."

Thus, employers must comply with all of the following to have an enforceable non-competition agreement under Oregon law:

- The employer tells the employee in a written job offer at least two weeks before the employee starts work that the noncompete is required, or the noncompete is entered into upon a bona fide advancement;
- The employee is exempt from Oregon minimum wage and overtime laws;
- The employer has a "protectable interest" (access to trade secrets or competitively sensitive confidential information);
- The employee makes more than the median family income for a family of four as calculated by the Census Bureau;
- The agreement is not effective for longer than 18 months from the date of the employee's termination; and
- The employer provides the former employee with a signed, written copy of the noncompetition agreement within 30 days after the date of employment termination.

The bill goes into effect on January 1, 2020.

### 7. [HB 3009](#) (Ch. 439) Union's Ability to Charge Fees

HB 3009 makes clear that a union can continue to charge police officers, sheriffs, and deputy sheriff's reasonable fees for representing them in matters unrelated to collective bargaining if the employee is not a member of the union and if the employee has not entered into a fair-share agreement with the union. This legislation was passed to address concerns following the *Janus v. AFSCME* Supreme Court decision.

This bill went into effect on June 20, 2019.

### 8. [SB 123](#) (Ch. 617) Pay Equity Clarification

This bill clarifies that an employer may not be in violation of pay equity requirements when paying a different level of compensation to an employee with a compensable workers' compensation injury who is on light duty or modified work.

This bill goes into effect on January 1, 2020.

**9. [SB 272](#) (Ch. 242) Expanding The Definition of Public Employees Who Are Prohibited From Striking**

SB 272 simply includes attorneys general in the group of employees (generally, public safety employees and transit employees) who are prohibited from striking. In those cases, the parties go to interest arbitration and the dispute is resolved by a neutral arbitrator.

This bill goes into effect on January 1, 2020.

**10. [SB 370](#) (Ch. 260) Immigration Notification Requirements**

SB 370 requires an employer to provide notice to employees of upcoming inspections by any federal agency of employer's records regarding identity and employment eligibility of employees within three business days of employer's receipt of notice of inspection from agency.

The bill also requires employers to make reasonable attempts to individually distribute required notification to employees, as well as to post notice in an accessible and conspicuous location. SB 370 directs the Bureau of Labor and Industries to create standardized notice templates for employers to be able to comply with this law.

SB 370 took effect on June 6, 2019.

**11. [SB 726](#) (Ch. 343) Oregon Workplace Fairness Act**

SB 726 – The Oregon Workplace Fairness Act (OWFA) – requires employers to implement and distribute a written antidiscrimination and harassment policy. The OWFA outlines the following specific requirements that must be included in the policy. It also prohibits employers from requiring an employee – as part of a settlement of a discrimination or harassment claim – to agree to neither disclose the alleged unlawful conduct (including but not limited to sexual assault) nor disparage the employer or the alleged bad actor. These provisions are only allowed if the employee requests the provision and the employee is provided seven days to revoke the agreement after signing it.

**Practice Tip** – Of particular importance to employers is the fact that, under the OWFA, employees will now have five years to file a complaint with BOLI or a court for claims of discrimination, harassment, or retaliation under Oregon laws. Although this does not affect the statute of limitations for federal claims, it is a significant expansion from the prior one-year statute of limitations on violations under Oregon laws.

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The restrictions on nondisclosure agreements and written policy requirements go into effect October 1, 2020. The statute of limitations change applies to events that occur on or after the bill takes effect on September 29, 2019.

### 12. [SB 1049](#) (Ch. 355) Public Employee Retirement Reallocation Contribution

SB 1049 requires a reallocation of a public employees' 6% PERS contribution. Under the current system, this 6% is deposited into an employee's Individual Account Program (IAP) account. Under the requirements of SB 1049, a percentage is now directed to a newly-created Employee Pension Stability Account (EPSA). (Note: This change occurs regardless of whether the employer "picks up" the employee's 6% PERS contribution.) The EPSA is intended to partially fund employees' pension benefits at retirement, to decrease PERS' unfunded liabilities and reduce overall PERS costs. Unions assert that, by the reallocation of funds to the EPSA, employees will see a reduction in their incomes at retirement.

Although the bill took effect immediately upon passage, the EPSA provisions go into effect on July 1, 2020. Other provisions have additional effective dates. Attorneys working with the new law should carefully check operative dates regarding the provisions with which they are working.

# 16

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## Land Use

### I. HOUSING

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| 2. HB 2003 | (Ch. 640) | Housing Needs Analysis                        |
| 3. HB 2916 | (Ch. 411) | Yurt, Cabin, and Tent-Type Housing            |
| 4. SB 534  | (Ch. 623) | Dwelling on Urban Residential Lot             |
| 5. SB 608  | (Ch. 1)   | Statewide Rent Control and Tenant Protections |

### II. FARM AND FOREST LANDS

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| 2. HB 2225 | (Ch. 433) | Forest Template Dwelling                                  |
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| 4. HB 2469 | (Ch. 271) | Second House on Forest Land                               |
| 5. HB 2573 | (Ch. 307) | Cranberry Farm Dwellings                                  |
| 6. HB 2844 | (Ch. 410) | Farm Product Processing Facilities                        |
| 7. HB 3024 | (Ch. 440) | Rebuilding EFU Dwellings                                  |
| 8. HB 3384 | (Ch. 416) | School Expansions   |
| 9. SB 408  | (Ch. 262) | EFU Land Division for Utility Facilities                  |

### III. OTHER LEGISLATION

- |             |           |  |
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| 1. HB 2329  | (Ch. 469) | Energy Facilities                      |
| 2. HB 2425  | (Ch. 402) | Electronic Recording                   |
| 3. HB 2574  | (Ch. 654) | Shellfish                              |
| 4. HB 2577  | (Ch. 197) | Annexation Waiting Period              |
| 5. HB 2790  | (Ch. 408) | Outdoor Mass Gatherings                |
| 6. HB 2835  | (Ch. 409) | Recreational Waterway Use              |
| 7. HB 2914  | (Ch. 199) | Washington County Employment Land      |
| 8. HB 2949  | (Ch. 533) | Manufactured Structures Taxation       |
| 9. HB 2977  | (Ch. 412) | Senior Housing                         |
| 10. HB 3272 | (Ch. 447) | LUBA Attorney Fees and Deadline        |
| 11. SB 2    | (Ch. 170) | Rural Employment Land                  |
| 12. SB 8    | (Ch. 221) | Land Use Appeals of Affordable Housing |
| 13. SB 365  | (Ch. 292) | System Development Charges Related to  |

**LAND USE**

14. SB 431	(Ch. 621)	Marijuana Production
15. SB 1012	(Ch. 254)	Multnomah County Flood Safety District Marijuana Production

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## I. HOUSING

### 1. [HB 2001](#) (Ch. 639) Middle Housing/Density

HB 2001 requires cities and counties to allow certain middle housing types (duplexes, triplexes, quadplexes, cottage clusters, and townhouses) on land zoned for urban residential use which allows detached single-family dwellings. The bill allows cities and counties to regulate the siting and design of middle housing, so long as the regulations individually and cumulatively do not discourage this housing through unreasonable cost or delay. The bill requires The Land Conservation and Development Commission (LCDC) to develop a model ordinance before 2021.

HB 2001 requires all types of middle housing for cities with a population greater than 25,000, and just duplexes for cities with population greater than 10,000.

HB 2001 also provides greater direction on what information local governments should consider in estimating their housing needs, including such factors as household size, demographics, vacancy rates, and housing costs. The bill includes several measures to prevent local jurisdictions, homeowners, and developers from undermining the intent to allow middle housing:

- The bill specifies that “A provision in a governing document that is adopted or amended on or after the effective date of this 2019 Act, is void and unenforceable to the extent that the provision would prohibit or have the effect of unreasonably restricting the development of housing that is otherwise allowable under the maximum density of the zoning for the land.”
- A provision in a real estate document recorded after HB 2001’s effective date is unenforceable if it would allow development of a single-family dwelling, but would prohibit middle housing or an accessory dwelling unit.

HB 2001 took effect on August 8, 2019. Cities with population greater than 25,000 are required to adopt regulations allowing middle housing types by June 30, 2021, while cities with population between 10,000 and 25,000 must enact regulations allowing duplexes by June 30, 2022.

### 2. [HB 2003](#) (Ch. 640) Housing Needs Analysis

HB 2003 requires the Department of Land Conservation and Development (DLCD) and the Oregon Department of Administrative Services (DAS) to develop methodology to conduct a regional housing needs analysis and, for certain cities and Metro, to estimate existing housing stock, to establish a housing stock shortage analysis, and to estimate needed housing for the

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next 20 years. It requires DLCD to complete the inventory and analysis by September 1, 2020, and report its results and evaluation to the legislature by March 1, 2021.

Cities outside Metro with a population of greater than 10,000 must estimate their housing need and capacity no less than every eight years. Cities within Metro must estimate their housing need and capacity no less than every six years.

Further, HB 2003 allows development of affordable housing on public property located within an urban growth boundary and requires local governments to amend their land use laws to comply with 2017 ADU laws.

HB 2003 took effect on August 8, 2019.

### 3. [HB 2916](#) (Ch. 411) Yurt, Cabin, and Tent-Type Housing

HB 2916 expands housing accommodations that may be allowed inside the UGB to include structures such as yurts, cabins, and tents used on a limited basis for seasonal, emergency, or transitional housing purposes. Use of transitional housing is limited to persons who lack permanent or safe shelter and cannot be placed in other low-income housing. These accommodations continue to not be subject to [ORS Chapter 90](#) (Residential Landlord Tenant).

HB 2916 took effect on June 17, 2019.

### 4. [SB 534](#) (Ch. 623) Dwelling on Urban Residential Lot

SB 534 requires local governments to allow single-family dwellings on residentially zoned lots within the UGB of cities with a population of greater than 25,000. The development may be subject to reasonable local regulations relating to siting and design. This bill is of particular significance in Portland, which has a significant number of so-called “skinny lots” which are narrower than most lots in their neighborhoods and many of which remain undeveloped.

SB 534 takes effect on January 1, 2020.

### 5. [SB 608](#) (Ch. 1) Statewide Rent Control and Tenant Protections

SB 608 establishes a statewide rent-control program that limits rent increases to 7 percent plus CPI during a 12-month period for existing tenants in units that have been certified for residential occupancy for at least 15 years. The bill prohibits landlords from terminating or declining to renew a lease after the first year of occupancy without cause and establishes new landlord causes such as significant renovations to the unit or sale of the unit as a primary residence. The bill provides some additional flexibility for landlords to document lease violations and decline to renew a lease. The bill creates a private right of action for a tenant against a landlord for violations of the Act.

For additional information about this bill, please see the Housing and Real Property Chapter.

SB 608 took effect on February 28, 2019.

## II. FARM AND FOREST LANDS

### 1. [HB 2106](#) (Ch. 432) Dog Training in Farm Buildings; Rural Dwelling Extensions

HB 2106 allows dog-training classes to be conducted in farm buildings existing on January 1, 2019, within counties that adopted marginal lands provisions. The bill also authorizes counties to grant up to five one-year extensions to certain rural dwelling approvals, such as farm use, forest template, and large tract dwellings.

HB 2106 took effect on June 20, 2019.

### 2. [HB 2225](#) (Ch. 433) Forest Template Dwelling

HB 2225 defines “center of the tract” as “the mathematical centroid of the tract” for purposes of forest template dwellings. The bill also:

- Requires the proposed dwelling to be sited on a lawfully created lot or parcel;
- Disallows property line adjustments after 2018 to qualify a tract for a dwelling; and
- Disallows a new dwelling on the tract if the tract currently has a dwelling or dwelling approval on it.

HB 2225 will take effect on January 1, 2020. The Forest Template Dwelling standards of HB 2225 apply to different counties on different dates. It applies to some counties in 2019, others in 2021, and others in 2023.

### 3. [HB 2435](#) (Ch. 270) Guest Ranches

HB 2435 makes permanent the authorization to establish guest ranches in parts of Eastern Oregon. (“Eastern Oregon is defined in [ORS 321.805](#).) While previous statutes authorizing guest ranches included sunsets, HB 2435 contains no sunset and codifies a permanent right to establish guest ranches. Consistent with previous statutes authorizing guest ranches, the guest ranch must be:

- Incidental and accessory to an existing and continuing livestock operation that qualifies as a farm use;

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- Outside the boundaries of or surrounded by certain federally designated wilderness, wildlife, environmental, or other federally protected areas;
- On a legal lot greater than 160 acres size, and that is not high-valued farmland; and
- Limited in size with not less than four, or more than 10, overnight guest lodging units.

Certain accessory passive recreational activities are permitted (e.g. no golf courses) in addition to food services for guests.

The bill adds an annual reporting obligation for guest ranches authorized by a county on or after the effective date. Reports must include the following information:

- Size of the guest ranch's livestock operation;
- Income obtained by the guest ranch from livestock operations and guest ranch activities; and
- Other information the county may require to ensure ongoing compliance with law or other condition of approval required by the county.

HB 2435 takes effect on January 1, 2020.

### 4. [HB 2469](#) (Ch. 271) **Second House on Forest Land**

HB 2469 allows counties (but does not require them) to approve a second single-family dwelling unit on forestlands within a rural fire protection district, if existing and new dwelling units are occupied by the owner of the land or a relative of the owner in order to allow the relative to assist in the use of the land for forest purposes.

The existing dwelling unit must have been created before 1993, or otherwise validly approved under [ORS Chapter 215](#), and the lot must not be smaller than the minimum allowed lot size. The new and old dwelling units cannot be more than 200 feet apart. Owner must record a deed restriction that requires the management of the land as a working forest and prohibits partitioning the property to separate the dwelling units. Finally, the new single-family dwelling unit may not be used for vacation occupancy (such as Airbnb).

HB 2469 takes effect on January 1, 2020.

### 5. [HB 2573](#) (Ch. 307) **Cranberry Farm Dwellings**

HB 2573 creates a carve-out for cranberry farms from the definition of high-value farmlands. The bill seeks to address the depressed market for cranberries and the unique

characteristics on land where cranberries are grown. The bill requires counties to approve primary dwellings customarily provided in conjunction with farm use if the following elements are present:

- The tract on which the dwelling will be established currently involves the raising and harvesting of cranberries;
- The tract is considered high-value farmland because the tract is growing a specified perennial under [ORS 215.710\(2\)](#) but otherwise would not be high-value farmland on the basis of soil composition;
- The lands owned by the farm operator or on the farm operation have no other dwelling on EFU-zoned land (except seasonal farmworker housing);
- The operator earned at least \$40,000 in gross annual income from the sale of cranberries or cranberry products, excluding lease income or income used to qualify another lot or parcel for construction or siting of a primary dwelling customarily provided in conjunction with farm use; and
- The owner agrees to record a deed restriction that prohibits the owner from using the dwelling as a rental.

HB 2573 takes effect on January 1, 2020 and sunsets on January 2, 2022.

#### 6. [HB 2844](#) (Ch. 410) Farm Product Processing Facilities

HB 2844 authorizes counties to allow farm-product processing facilities with less than 2,500 square feet of processing area as a permitted use on EFU-zoned lands without regard to siting standards. Qualifying facilities with greater than 2,500 square feet of processing area must still remain smaller than 10,000 square feet of processing area as previously required and must meet applicable siting standards

Processing facilities are those used for processing farm crops or for the production of biofuel, if at least one-quarter of the farm crops come from the farm operation containing the facility; or the slaughtering, processing, or selling of poultry or poultry products from the farm operation containing the facility.

HB 2844 takes effect on January 1, 2020.

#### 7. [HB 3024](#) (Ch. 440) Rebuilding EFU Dwellings

HB 3024 is intended to address confusion created by previous legislation – specifically [HB 2746 in 2013](#) – regarding the standards applicable for the rebuilding of lawfully established dwellings in EFU zones, particularly those not assessed for property taxes in the previous five

## LAND USE

years. HB 3024 divides such legally established farm dwellings into three categories based on the status of the dwelling with differing requirements for each category as follows:

- Removed, Destroyed or Demolished. Lawfully established dwellings which have been removed, destroyed, or demolished may be restored or replaced if the county determines the tax lot does not have a lien for delinquent ad valorem taxes, and the removal, destruction, or demolition occurred on or after January 1, 1973.
- Dwellings in State of Disrepair Constituting an Attractive Nuisance. Restoration or replacement of such dwellings are allowable if the county determines that the tax lot does not have a lien for delinquent ad valorem taxes.
- All other Dwellings. Restoration, alteration, or replacement is allowable if the county determines that the dwelling was assessed as a dwelling for purposes of ad valorem taxation for the previous five years or from the time the dwelling was erected or affixed and became subject to assessment.

In all instances, the County remains obligated to also determine that the dwelling sought to be altered, restored, or replaced had intact walls and roof structures, indoor plumbing, interior wiring for lights, and a heating system, in addition to the property tax determinations discussed above.

HB 3024 takes effect on January 1, 2020.

### 8. [HB 3384](#) (Ch. 416) School Expansions

HB 3384 limits a county's ability to deny an expansion of a private or public K-12 school provided that:

- The expansion complies with [ORS 215.296](#) (standards for uses in exclusive farm use zones),
- The school was established on or before January 1, 2009, and
- The expansion occurs on a tax lot that the school was established on, or on a contiguous lot under the same ownership as the established school lot.

HB 3384 took effect on June 17, 2019.

### 9. [SB 408](#) (Ch. 262) EFU Land Division for Utility Facilities

SB 408 allows counties to approve certain divisions of land zoned for exclusive farm use for purposes of siting utility facilities necessary for public service. Land divided under this provision

may not be later rezoned by the county for retain, commercial, industrial or other non-resources uses.

SB 408 takes effect on January 1, 2020.

### III. OTHER LEGISLATION

#### 1. [HB 2329](#) (Ch. 469) Energy Facilities

HB 2329 modifies the definition of "energy facility" for purposes of determining what facilities must obtain a site certificate from the Energy Facilities Siting Council (EFSC). Specifically, the bill exempts certain solar power generation facilities (160 acres or less of high-value farmland, less than 1,280 acres of arable land, or less than 1,920 acres of any other land). The bill allows a developer of a project that is not subject to EFSC approval to elect to obtain a site certificate. Finally, the Act establishes criteria for siting certain renewable energy facilities outside the EFSC process, including criteria addressing habitat mitigation conditions.

HB 2329 takes effect on January 1, 2020.

#### 2. [HB 2425](#) (Ch. 402) Electronic Recording

HB 2425 allows a county clerk to record electronic records or a record bearing an electronic signature. The definition of "Instrument" now includes an electronic record, and the definitions of "original certification" and "original signature" include electronic signatures. This bill also explicitly provides that the county clerk may charge for the electronic delivery of copies or records or files (\$3.75 for locating the record and 25 cents per page).

HB 2425 takes effect on January 1, 2020.

#### 3. [HB 2574](#) (Ch. 654) Shellfish

HB 2574 requires the Department of Land Conservation and Development to organize federal, state, and local public record information concerning shellfish mariculture in Oregon in a (mostly) publicly available electronic system. This information includes estuary management plans, ownership information regarding tidelands, and commercial plats.

The bill requires the State Department of Agriculture to hold a pre-application conference with a prospective applicant for cultivation of oysters, clams, or mussels, and also requires the State Department of Fish and Wildlife to establish a program for community outreach regarding recreational harvesting of shellfish for schools and members of the public.

HB 2574 took effect on August 9, 2019.

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### 4. [HB 2577](#) (Ch. 197) **Annexation Waiting Period**

HB 2577 requires a three-year waiting period before an annexation may take effect for property that is zoned and used for residential use at the time annexation is initiated. The owner of an effected property is allowed to waive this waiting period. HB 2577 was passed to clarify the effect of HB 2760, which passed in 2007.

HB 2577 took effect on May 30, 2019.

### 5. [HB 2790](#) (Ch. 408) **Outdoor Mass Gatherings**

HB 2790 expands the definition of “outdoor mass gathering” to include certain rural gatherings and provides greater discretion to counties in determining the appropriate process for considering an outdoor mass gathering application.

HB 2790 takes effect on January 1, 2020.

### 6. [HB 2835](#) (Ch. 409) **Recreational Waterway Use**

HB 2835 authorizes use of public bridges, county roads, and certain state highways to gain access to surface waters for recreational use. The bill directs the Department of State Lands to coordinate with local governments to provide increased public access to public-use waterways and requires public notification of closures of public-lands access for recreational use of certain waterways.

HB 2835 took effect on September 29, 2019.

### 7. [HB 2914](#) (Ch. 199) **Washington County Employment Land**

In 2014, the legislature passed House Bill 4078 validating Metro's 2011 expansion of its UGB to fill a projected unmet need to maintain a 20-year supply of buildable land, and confirmed Washington County’s urban and rural reserve designations, with some exceptions. HB 4078 included a provision that required that certain real property in Washington County be included within the UGB, designated as "employment land of state significance," and planned and zoned for employment use. The law also specified that in its first UGB review in 2014, Metro could not count the employment capacity of those properties in its determination of the employment capacity of land within Metro.

In response concerns of residential property owners in that area, HB 2914 removes some of the previously identified land from the lands that [HB 4078 \(2014\)](#) required to be designated "employment land of state significance" and planned and zoned for employment use.

HB 2914 took effect on May 30, 2019.

**8. [HB 2949](#) (Ch. 533) Manufactured Structures Taxation**

HB 2949 authorizes a county with a population of more than 570,000 to set a maximum dollar amount for total assessed value of a taxpayer's manufactured structures to be taxed as personal property, resulting in such structures not being subject to ad valorem property taxation.

HB 2949 took effect on September 29, 2019.

**9. [HB 2977](#) (Ch. 412) Senior Housing**

HB 2977 exempts one type of senior housing—Continuing Care Retirement Communities—from inclusionary zoning requirements. In order to qualify the CCRC must record a covenant agreeing not to convert to a multifamily development.

HB 2977 takes effect on January 1, 2020.

**10. [HB 3272](#) (Ch. 447) LUBA Attorney Fees and Deadline**

HB 3272 limits the extension that the Land Use Board of Appeals may provide a petitioner whose record objection is denied for purposes of filing the petition for review to 14 days from later of original deadline or date of denial. The bill authorizes LUBA to award attorney fees for motions filed without merit.

HB 3272 takes effect on January 1, 2020.

**11. [SB 2](#) (Ch. 170) Rural Employment Land**

SB 2 authorizes certain Eastern Oregon counties (Baker, Gilliam, Grant, Harney, Lake, Malheur, Sherman, Union, Wallowa, and Wheeler) that have adopted an economic opportunity analysis as part of the county's comprehensive plan, to designate not more than 10 sites outside of a UGB for industrial or other employment uses, without requiring an exception to a statewide planning goal related to agriculture, forest use, or urbanization.

The bill limits the cumulative acreage to not more than 50 acres per county. It also excludes such a designation for high-value farmlands, imposes conditions on such designation for lands designated for forest use, and prohibits a county from using the authorization set forth in the bill to allow a use that violates laws protecting the Oregon Sage-Grouse.

SB 2 takes effect on January 1, 2020.

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### 12. [SB 8](#) (Ch. 221) Land Use Appeals of Affordable Housing

SB 8 requires Land Use Board of Appeals to award expenses and attorney fees to local governments and applicants when affirming a local government's quasi-judicial approval of publicly supported housing. The bill only applies to developments that are exclusively for publicly supported housing.

SB 8 takes effect on January 1, 2020.

### 13. [SB 365](#) (Ch. 292) System Development Charges Related to Marijuana Production

SB 365 prohibits local governments from imposing system development charges for increased use of a transportation facility resulting from marijuana production in an exclusive farm use zone. The bill also allows licensed marijuana production facilities to continue in a local jurisdiction that prohibits marijuana production as a nonconforming use. SB 365 further authorizes alterations to marijuana production facilities that either:

- Are necessary to comply with a lawful requirement for alteration in production; or
- Have no greater adverse impact to the surrounding area as determined by the local jurisdiction.

SB 365 took effect on June 7, 2019.

### 14. [SB 431](#) (Ch. 621) Multnomah County Flood Safety District

SB 431 creates an urban flood safety and water quality district in a portion of the Multnomah County urban growth boundary related to the Columbia River Levee system. The district is for the purposes of acquiring, purchasing, constructing, improving, operating and maintaining infrastructure in order to provide for flood safety and contribute to water quality, floodplain restoration, and habitat and landscape resilience. The bill creates a representative board of directors and grants powers of eminent domain, public contracting, assessment on benefitted lands, and taxation. The new district may dissolve drainage districts within its boundaries.

SB 431 took effect on September 29, 2019.

15. [SB 1012](#) (Ch. 254) **Marijuana Production**

SB 1012 clarifies that an applicant for a marijuana production license is not required to demonstrate continuous registration of the marijuana-grow site prior to application to qualify for exemption from a lands use compatibility statement.

SB 1012 took effect on June 4, 2019.

## LAND USE

# Taxation

## I. CORPORATE (or Commercial) ACTIVITIES TAX

- |            |           |                          |
|------------|-----------|--------------------------|
| 1. HB 3427 | (Ch. 122) | Corporate Activities Tax |
| 2. HB 2164 | (Ch. 579) | Corporate Activities Tax |

## II. PERSONAL INCOME TAX

- |            |           |   |
|------------|-----------|---|
| 1. HB 2164 | (Ch. 579) | ABLE Accounts and Tax Credit Extensions |
| 2. HB 2235 | (Ch. 33)  | Refunds of Personal Income Taxes        |
| 3. SB 162  | (Ch. 316) | Oregon 529 Accounts                     |
| 4. SB 459  | (Ch. 370) | Tax Credit Auctions                     |

## III. CORPORATE INCOME TAX

- |            |           |   |
|------------|-----------|---|
| 1. HB 2053 | (Ch. 575) | Oregon Business Retention and Expansion Program |
| 2. HB 2127 | (Ch. 203) | Emergency Service Providers                     |
| 3. HB 2141 | (Ch. 483) | Transfers of Tax Credits                        |
| 4. HB 2164 | (Ch. 597) | Tax Credit Extensions                           |
| 5. HB 3137 | (Ch. 498) | Transient Lodging Taxes                         |
| 6. HB 3138 | (Ch. 499) | Transient Lodging Taxes                         |

## IV. PROPERTY TAX

- |            |           |  |
|------------|-----------|--|
| 1. HB 2164 | (Ch. 579) | Extensions of Property Tax Exemptions      |
| 2. HB 2174 | (Ch. 580) | Urban Renewal Plans                        |
| 3. HB 2458 | (Ch. 159) | Tax Exemption for Biomass Steam Production |
| 4. HB 2460 | (Ch. 488) | Homestead Property Tax Deferral Program    |
| 5. HB 2587 | (Ch. 591) | Homestead Property Tax Deferral Program    |
| 6. HB 2684 | (Ch. 164) | Repeal of Gigabit Service Tax Exemption    |
| 7. HB 2699 | (Ch. 492) | Brownfields                                |
| 8. HB 2949 | (Ch. 533) | Manufactured Structures                    |
| 9. SB 769  | (Ch. 628) | Payment in Lieu of Property Tax            |

## V. PRACTICE AND PROCEDURE

- |            |           |                                      |
|------------|-----------|--------------------------------------|
| 1. HB 2101 | (Ch. 132) | Partnership Audit Procedures         |
| 2. HB 2118 | (Ch. 57)  | Consumer Price Index                 |
| 3. HB 2119 | (Ch. 134) | Withholding Tables                   |
| 4. SB 79   | (Ch. 359) | Department of Revenue Collections    |
| 5. SB 80   | (Ch. 360) | Electronic Delivery of Tax Documents |

## TAXATION

- |           |           |                                |
|-----------|-----------|--------------------------------|
| 6. SB 165 | (Ch. 317) | Oregon Retirement Savings Plan |
| 7. SB 523 | (Ch. 336) | Delinquent Tax Debtors         |

### VI. OTHER LEGISLATION

- |            |           |                                    |
|------------|-----------|------------------------------------|
| 1. HB 2073 | (Ch. 647) | Forest Products Privilege Tax      |
| 2. HB 3136 | (Ch. 600) | Transient Lodging Taxes            |
| 3. SB 185  | (Ch. 240) | Master Settlement Agreement Update |

**Dan Eller:** 2004 Northwestern School of Law. Oregon State Bar member since 2004.  
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## I. CORPORATE (or Commercial) ACTIVITIES TAX

### 1. [HB 3427](#) (Ch. 122) Corporate Activities Tax

HB 3427 is modified by HB 2164 (below) and, potentially, by SB 212. This bill implements the Corporate Activities Tax or “CAT”, Oregon’s new gross-receipts tax. In the description below, section numbers refer to the sections within HB 3427.

In operative part, the bill states that “A corporate activity tax is imposed on each person with taxable commercial activity for the privilege of doing business in this state. The tax is imposed upon persons with substantial nexus with this state.” *Section 63(1)*. “Person” is broadly defined. *Section 58(14)*. “Excluded Person” is described in Section 58(4) and includes any person with < \$750k of commercial activity for the calendar year, unless part of a unitary group. *Section 58(6)(j)* The definition of “Unitary Business” is found in Section 58(18).

A person has substantial nexus if they:

- 1) own or use a part or all of their capital in this state;
- 2) hold a certificate of existence or authorization to do business in this state;
- 3) have “bright-line” presence in this state; or
- 4) otherwise have nexus with this state to the extent that the person can be required to remit the corporate activity tax. *Section 63(2)*.

A person has bright-line presence if, during the calendar year, the person:

- 1) owns property with an aggregate value exceeding \$50k (valued at original cost; rented property valued at eight times net annual rental charge);
- 2) has payroll exceeding \$50k;
- 3) has commercial activity sourced to this state (under Section 66) of at least \$750k;
- 4) has at least 25% of the person’s property, payroll, or total commercial activity in this state; or,
- 5) is a resident of this state or are domiciled in this state for corporate, commercial or other business purposes. *Section 63(3)*.

Under the bill, Commercial Activity is defined as “the total amount realized by a person, arising from transactions and activity in the regular course of the person’s trade or business, without deduction for expenses incurred by the trade or business.” *Section 58(1)(a)(A)*. “Doing business” means engaging in any activity that is conducted for, or results in, the receipt of commercial activity at any time during the calendar year. *Section 58(3)*. Numerous exceptions to commercial activity are listed in Section 58(1)(b). “Taxable commercial activity” means commercial activity sourced to this state under Section 66. *Section 58(16)*.

Commercial activity is sourced to the state if:

- 1) in the case of the sale, rental, lease or license of real property, if the property is located in this state;

## TAXATION

- 2) in the case of the sale, rental, lease or license of tangible personal property, if and to the extent the property is located in this state;
- 3) in the case of the sale of tangible personal property, if and to the extent the property is delivered to a purchaser in this state;
- 4) in the case of the sale of a service, if and to the extent the service is delivered to a location in this state;
- 5) in the case of the sale, rental, lease or license of intangible property, if and to the extent the property is used in this state (with special rules for receipts not based on the amount of use of the property, but rather on the right to use the property); or
- 6) in the case of a financial institution or insurer, commercial activity not otherwise described in this section is sourced to this state if it is from business conducted in this state. *Section 66(1).*

If the above sourcing provisions do not “fairly represent the extent of a person’s commercial activity attributable to this state, the person may request, or the Department of Revenue (the “DOR”) may require or permit, an alternative method.” *Section 66(2).* Taxpayers are required to include as taxable commercial activity the value of property the person transfers into this state for the person’s own use in the course of a trade or business within one year after the person receives the property outside this state. In the case of a unitary group, the taxpayer must include as taxable commercial activity the value of property that any of the taxpayer’s members transferred into this state for the use in the course of a trade or business by any of the taxpayer’s members within one year after the taxpayer receives the property outside this state. Exceptions to the preceding two sentences apply if the person or unitary group can show, or if the DOR ascertains, that the property’s receipt outside this state followed by its transfer into this state was not intended, in whole or in part, to avoid the Corporate Activity Tax. *Section 61.*

Taxable commercial activity sourced to this state is reduced by 35% of the greater of: (1) “cost inputs” (see Section 58(2) for definition; essentially cost of goods sold) or (2) labor costs. (Labor costs for any individual may not exceed \$500k (Section 58(12).) In each case, the reductions are apportioned to this state in the manner required for apportionment of income under ORS 314.605 to 314.675. The subtraction may not exceed 95% of the commercial activity attributed to this state. *Section 64.*

The rate of tax is \$250 plus the product of the taxpayer’s taxable commercial activity in excess of \$1 million for the calendar year multiplied by 0.57 percent. No tax is owed if the person’s taxable commercial activity does not exceed \$1 million. *Section 65.* The taxpayer’s method of accounting for commercial activity, cost inputs and labor costs should be the same as taxpayer’s method of accounting for federal income tax purposes. *Section 59.*

Under the bill, annual returns must be filed not later than April 15 of each year. Estimated tax payments are due before the last day of January, April, July and October of each year, for the previous calendar quarter. The DOR may, by rule, extend the time for making any return for good cause, with interest. *Section 70.*

The DOR may not impose any interest or penalty that would otherwise apply to taxes due if the interest or penalty is based on underpayment or underreporting that results solely from the operation of Sections 58-76 of the Act. Taxpayers must pay at least 80% of the balance due for any quarter or the DOR may impose a penalty as provided in ORS 314.400(3) (this and the above apply only to the 2020 tax year and to returns filed on or before April 15<sup>th</sup>, 2021). Section 77.

Any person or unitary group with commercial activity in excess of \$750k shall register with the DOR. The DOR, by rule, may establish the information pertaining to the person or unitary group that must be submitted and the time and manner for issuance of registrations under this section. The DOR may impose a penalty for failing to register, not to exceed \$100 per month, or a total of \$1,000 in a calendar year. The penalty may be imposed not earlier than 30 days after the date on which the commercial activity of the person or unitary group exceeds \$750k for the year. Section 68.

HB 3427 took effect on September 29, 2019.

**2. [HB 2164](#) (Ch. 579) Corporate Activities Tax**

HB 2164 made several modifications to HB 3427. These changes include updating the definition of “commercial activity” related to financial institutions. Additionally, the list of items that do not constitute “commercial activity” is expanded to include certain insurer income, certain hedging transactions, certain employee-related amounts if received by an employer, local taxes collected by a restaurant on sales of meals, tips collected by restaurants, as well as other technical fixes. The bill also decreases the commercial activity threshold to \$750,000.

HB 2164 took effect on September 29, 2019.

## II. PERSONAL INCOME TAX

**5. [HB 2164](#) (Ch. 579) ABLE Accounts and Tax Credit Extensions**

HB 2164 provides a tax credit for higher education savings or ABLE account contributions. That tax credit is effective for tax years beginning on or after January 1, 2020, and before January 1, 2026. The bill also includes an extension of the Cultural Trust provisions under ORS Ch. 315, tax provisions related to manufactured dwellings, the tax credit for certain retirement income, the credit for volunteer providers of rural emergency medical services (ORS 315.662), the Earned Income Tax Credit (ORS ch. 315), the political contribution tax credit. The bill modifies the tax credit for individual development account contributions under ORS 315.271. Other provisions of the bill are described under “Corporate” and Property headings.

HB 2164 took effect on September 29, 2019.

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### 6. [HB 2235](#) (Ch. 33) Refunds of Personal Income Taxes

HB 2235 amends ORS 305.762 to allow refunds of personal income to be made by direct deposit into an account designated by taxpayer. The bill eliminates language that restricted such accounts to those at a bank or other financial institution.

HB 2235 took effect on September 29, 2019.

### 7. [SB 162](#) (Ch. 316) Oregon 529 Accounts

SB 162 provides that a personal income taxpayer may establish an account in the Oregon 529 Savings Network through an election on a tax return form. The bill directs the Department of Revenue to provide a means for election on the form, and authorizes the Oregon 529 Savings Board to work in coordination with the DOR to provide a means for establishment of these accounts.

SB 162 applies to tax returns filed on or after January 1, 2021.

### 8. [SB 459](#) (Ch. 370) Tax Credit Auctions

SB 459 decreases the reserve amounts in auctions for tax credits for certified Oregon Opportunity Grant contributions and as well as for certified film production development contributions.

SB 459 applies to tax years beginning on or after January 1, 2020, and before January 1, 2024.

## III. CORPORATE INCOME TAX

### 1. [HB 2053](#) (Ch. 575) Oregon Business Retention and Expansion Program

HB 2053 modifies provisions related to employment and employee compensation for the Oregon Business Retention and Expansion Program, enterprise zones, long term incentives for rural enterprise zones and business development income tax exemptions. The bill also limits the amount of a business firm's income eligible for the small city business development income tax exemption.

HB 2053 took effect on September 29, 2019.

### 2. [HB 2127](#) (Ch. 203) Emergency Service Providers

HB 2127 eliminates the sunset date on the exemption for personal and corporate income taxes for many out of state emergency service providers operating in Oregon. The bill applies to all tax years beginning on or after January 1, 2016.

**3. [HB 2141](#) (Ch. 483) Transfers of Tax Credits**

HB 2141 provides that the transfer of a tax credit follow uniform transfer procedures. The bill authorizes the Department of Revenue to prescribe additional procedural requirements for the transfer of credits, and requires certifying agencies to provide information about certification of tax credits to the DOR. The bill further authorizes the director of a certifying agency to suspend or revoke a tax credit certification in certain circumstances. The bill allows the DOR to collect unpaid taxes in the case of suspension or revocation of a transferable credit, and repeals certain duplicative provisions of Oregon law.

Section 2 of the bill applies to tax credits that are transferred on or after January 1, 2020; otherwise, the bill took effect on September 29, 2019.

**4. [HB 2164](#) (Ch. 597) Tax Credit Extensions**

In addition to the personal income tax provisions mentioned above, HB 2164 provides a tax credit for short-line railroad rehabilitation which is effective for tax years beginning on or after January 1, 2020, and before January 1, 2026.

The bill also extends several tax credits, including the credit for employer provided scholarships, the credit for agricultural workforce housing projects, and the credit for crop donations (ORS ch. 315).

HB 2164 took effect on September 29, 2019.

**5. [HB 3137](#) (Ch. 498) Transient Lodging Taxes**

HB 3137 provides that a transient lodging tax becomes due when the occupancy of transient lodging with respect to which the tax is imposed ends. The bill provides that the transient lodging tax to be remitted with a tax return is amount of tax due with respect to all occupancy of transient lodging that ended during reporting period to which return relates.

HB 3137 takes effect on January 1, 2020.

**6. [HB 3138](#) (Ch. 499) Transient Lodging Taxes**

HB 3138 provides that the exemption from the transient lodging tax for a dwelling unit that is rented out for fewer than 30 days per year does not apply to a dwelling unit rented out as transient lodging using a platform provided by a transient lodging intermediary.

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HB 3138 takes effect on January 1, 2020.

### IV. PROPERTY TAX

#### 1. [HB 2164](#) (Ch. 579) Extensions of Property Tax Exemptions

In addition to other provisions of this bill described above, HB 2164 extends the low income rental property tax exemption under ORS 307.517; the historic property special assessment under ORS 358.499; and qualified machinery and equipment property tax exemptions under ORS 307.455.

HB 2164 took effect on September 29, 2019.

#### 2. [HB 2174](#) (Ch. 580) Urban Renewal Plans

HB 2174 makes a number of changes regarding the adoption of Urban Renewal Plans. These changes include requiring that for urban renewal plans proposed on or after July 1, 2019, and that include public building projects, that at least three of the four taxing districts estimated to forgo the most property tax revenue under the proposed plan must concur in the proposed plan. The bill also requires a notice of hearing on the proposed urban renewal plan, or on a substantial amendment or change to the plan, to contain a statement that adoption may affect property tax rates.

HB 2174 took effect on September 29, 2019.

#### 3. [HB 2458](#) (Ch. 159) Tax Exemption for Biomass Steam Production

HB 2458 exempts from ad valorem property taxation any property that is owned or used by a cooperative for the purpose of providing steam or hot water heat by combustion of biomass. The bill only applies to cooperatives whose property is subject to central assessment, if more than 50 percent of interest in cooperative is owned by public entities whose property is exempt from ad valorem property taxation by virtue of such public ownership.

HB 2458 took effect on September 29, 2019.

#### 4. [HB 2460](#) (Ch. 488) Homestead Property Tax Deferral Program

HB 2460 amends ORS 311.695 to provide that a transferee of a homestead is not liable for amounts of outstanding deferred property taxes due on the homestead if transferee receives no interest in real or personal property from estate.

HB 2460 took effect on September 29, 2019. For more information about this bill, please see the Elder Law Chapter.

**5. [HB 2587](#) (Ch. 591) Homestead Property Tax Deferral Program**

HB 2587 amends ORS 311.700 to make an exception for certain homesteads from the prohibition on reverse mortgages for participation in homestead property deferral program for seniors and persons with disabilities.

HB 2587 takes effect on September 29, 2019. For more information about this bill, please see the Housing and Real Property Chapter.

**6. [HB 2684](#) (Ch. 164) Repeal of Gigabit Service Tax Exemption**

HB 2684 repeals ORS 308.673, 308.677, and 308.681. This bill is a functional repeal of SB 611, which was passed in 2015 to create an incentive to develop gigabit infrastructure in Oregon.

HB 2684 applies to tax years beginning on or after July 1, 2019.

**7. [HB 2699](#) (Ch. 492) Brownfields**

In 2016, the Legislature passed HB 4084, which allowed local governments to provide property tax incentives to certain brownfields. HB 2699 provides that such properties may also be eligible for special assessment, exemption or partial exemption granted under other law for which such property is eligible.

HB 2699 took effect on September 29, 2019.

**8. [HB 2949](#) (Ch. 533) Manufactured Structures**

HB 2949 amends ORS 308.250 and 446.525 to authorize a governing body of county with population of more than 570,000 to set maximum dollar amount of \$34,000 or more for total assessed value of all of taxpayer's manufactured structures taxable as personal property below which such manufactured structures are not subject to ad valorem property taxation for assessment year.

HB 2949 took effect on September 29, 2019.

**9. [SB 769](#) (Ch. 628) Payment in Lieu of Property Tax**

SB 769 makes several changes to the statute in order to align "payment in lieu of property tax" (PILT) notifications and collections procedures with those of the standard property tax system. This bill is an update to HB 3492 which passed in 2015 and which allows a city or county to enter into an agreement with a solar electricity generation facility to pay a \$7,000 per megawatt fee in lieu of property taxes.

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SB 769 applies to tax years beginning on or after July 1, 2020.

### V. PRACTICE AND PROCEDURE

#### 1. [HB 2101](#) (Ch. 132) Partnership Audit Procedures

HB 2101 establishes audit procedures for the Department of Revenue (DOR) in conformity with federal centralized partnership audit regime. The bill allows the DOR to issue assessments and collect taxes at the partnership level based on adjustments arising from a federal partnership-level audit or an administrative adjustment request.

Certain provisions apply to partnership adjustments for partnership tax years beginning on or after January 1, 2018; and others apply to tax years beginning on or after January 1, 2019. Please consult the text of the bill for detailed information on operative dates.

#### 2. [HB 2118](#) (Ch. 57) Consumer Price Index

HB 2118 updates references to the Consumer Price Index in various statutes to reference the West Region CPI for All Items rather than the Portland-Salem CPI. The Bureau of Labor Statistics discontinued the Portland-Salem CPI in 2018.

HB 2118 takes effect on January 1, 2020.

#### 3. [HB 2119](#) (Ch. 134) Withholding Tables

HB 2119 disconnects Oregon from the federal process of creating withholding tax tables. The bill amends ORS Chapter 316 and related statutes to require the Department of Revenue to disseminate information on withholding of personal income tax by employer on behalf of employees, in lieu of preparation of withholding table. The DOR is allowed to determine the amount, form and manner of withholding of tax.

The amendments to ORS Chapter 316 apply to wages or other income paid on or after January 1, 2020. HB 2119 generally takes effect on September 29, 2019.

#### 4. [SB 79](#) (Ch. 359) Department of Revenue Collections

HB 79 provides the Department of Revenue may assist public bodies, public universities and Oregon Health and Science University in collecting delinquent accounts. For additional information about this bill, please see the Debtor Creditor Chapter.

#### 5. [SB 80](#) (Ch. 360) Electronic Delivery of Tax Documents

SB 80 permits property tax statements and some other documents to be delivered or made available by methods other than regular mail, such as by email. The bill also allows the Department of Revenue to give oil and gas production taxpayers notice of tax and delinquency charges by regular mail or by forms of delivery other than registered mail or certified mail with return receipt.

SB 80 took effect on September 29, 2019.

**6. [SB 165](#) (Ch. 317) Oregon Retirement Savings Plans**

SB 165 requires employers, on the annual tax withholding return submitted to the Department of Revenue, to indicate whether the employer offers a qualified retirement savings plan that would allow exemption from participation in Oregon Retirement Savings Plan. The bill permits the DOR to share this information with State Treasurer.

SB 165 applies to returns submitted to the DOR on or after January 1, 2020.

**7. [SB 523](#) (Ch. 336) Delinquent Tax Debtors**

SB 523 authorizes the Department of Revenue to post information online about delinquent tax debtors. The bill applies to all liquidated and delinquent tax debt owed to state on or after effective date of Act and to all tax periods for which tax debt is delinquent.

SB 523 took effect on September 29, 2019.

## VI. OTHER LEGISLATION

**1. [HB 2073](#) (Ch. 647) Forest Products Privilege Tax**

HB 2073 simply extends and updates the privilege taxes in place on forest products harvested on forestlands in Oregon.

The bill took effect on September 29, 2019.

**2. [HB 3136](#) (Ch. 600) Transient Lodging Taxes**

HB 3136 requires the Oregon Tourism Commission to transfer moneys to the Department of Revenue for the DOR's use in collecting local transient lodging taxes on a local, rather than regional, level on behalf of units of local government. The Department is required to reimburse the Commission, without interest, from reimbursement charges that would be withheld from state transient lodging tax revenues by transient lodging intermediaries but for disallowance of such charges under the statute. The bill provides that the reimbursement of the Commission is

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pursuant to a repayment schedule agreed to by the DOR and the Commission before the transfer of moneys to the DOR.

HB 3136 took effect on September 29, 2019.

### 3. [SB 185](#) (Ch. 240) Master Settlement Agreement Update

SB 185 makes a number of changes to ORS Chapter 323 related to the Master Settlement Agreement (MSA), which settled claims against tobacco manufacturers in 1998.

Among the updates to the statute, the bill prohibits a person licensed to distribute cigarettes or tobacco products from affixing Oregon tax stamps or purchasing untaxed roll-your-own tobacco unless the person certifies to Attorney General that cigarettes or tobacco was purchased directly from manufacturer or importer. For those manufacturers who are not parties to the MSA, the bill provides that a manufacturer making payments to a qualified escrow fund may assign interest on the fund to the State.

SB 185 took effect on June 4, 2019.

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