Enrolled
House Bill 2261

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CHAPTER .....

AN ACT

Relating to correction of erroneous material in Oregon law; creating new provisions; amending ORS 8.420, 8.620, 17.075, 18.270, 19.312, 20.082, 20.160, 20.180, 21.363, 25.089, 25.091, 25.260, 25.785, 28.120, 30.265, 30.295, 30.312, 30.490, 33.015, 33.055, 33.430, 34.150, 34.200, 34.670, 36.256, 40.510, 42.125, 43.180, 52.040, 52.420, 52.430, 52.530, 55.120, 59.335, 59.969, 59.970, 63.707, 65.167, 65.224, 65.394, 65.451, 65.534, 65.714, 65.737, 65.957, 87.005, 87.045, 87.081, 87.083, 88.080, 90.100, 90.140, 90.243, 90.265, 90.400, 90.415, 90.510, 90.545, 90.630, 90.632, 90.635, 90.680, 90.771, 90.860, 92.040, 92.317, 92.325, 94.508, 100.115, 100.410, 100.485, 100.600, 101.030, 105.124, 105.139, 107.755, 107.837, 109.003, 109.035, 109.316, 109.318, 109.332, 109.381, 109.390, 109.510, 114.505, 114.525, 116.007, 116.083, 116.343, 124.020, 125.060, 128.398, 133.007, 133.633, 133.663, 133.721, 133.767, 133.835, 133.845, 135.225, 161.390, 163.175, 163.225, 163.235, 166.076, 166.095, 166.291, 166.663, 167.162, 171.553, 173.135, 173.160, 173.780, 174.105, 174.535, 176.050, 180.365, 180.400, 180.410, 182.360, 182.525, 183.635, 183.690, 190.255, 192.660, 196.620, 196.830, 197.015, 197.020, 197.314, 197.435, 197.445, 197.455, 197.485, 197.505, 197.660, 197.825, 198.335, 199.464, 200.005, 200.100, 203.740, 204.016, 205.135, 205.450, 205.525, 208.110, 209.250, 210.130, 215.213, 215.283, 221.725, 221.916, 224.232, 225.030, 225.040, 225.110, 225.370, 226.110, 226.400, 226.520, 226.540, 237.610, 238.430, 238.460, 238.462, 238.535, 238.657, 238.710, 240.015, 241.260, 242.570, 244.010, 244.180, 244.190, 250.015, 261.010, 262.005, 264.335, 268.320, 268.347, 268.351, 268.354, 271.110, 274.710, 279A.010, 279A.025, 283.327, 283.419, 285A.312, 287.032, 287.034, 287.036, 287.038, 287.045, 287.204, 288.430, 288.450, 289.110, 291.276, 291.445, 292.220, 292.286, 293.210, 293.212, 293.229, 293.475, 293.796, 294.025, 294.361, 294.366, 295.155, 305.589, 319.415, 323.800, 323.862, 326.382, 327.297, 336.095, 336.640, 339.505, 341.937, 342.513, 343.041, 344.055, 344.058, 344.550, 345.525, 348.005, 348.010, 348.105, 348.210, 348.696, 351.075, 352.004, 352.035, 352.045, 354.420, 354.635, 354.680, 358.415, 358.487, 359.120, 366.365, 366.512, 366.576, 382.310, 383.009, 390.134, 390.560, 401.802, 406.010, 408.380, 409.050, 410.050, 410.080, 410.160, 410.230, 410.240, 410.300, 410.450, 411.692, 412.025, 412.530, 412.600, 413.120, 414.019, 414.348, 414.730, 416.448, 418.017, 418.040, 418.150, 418.640, 418.965, 419C.443, 421.284, 430.630, 438.040, 441.995, 442.015, 442.505, 443.035, 443.085, 443.095, 443.315, 443.400, 443.405, 443.415, 443.435, 443.440, 443.455, 443.886, 446.003, 446.100, 446.125, 446.310, 446.321, 446.543, 446.626, 446.631, 446.671, 446.751, 453.075, 453.245, 453.370, 453.752, 455.148, 455.446, 458.540, 459.386, 459.422, 459.435, 459.437, 459A.505, 459A.520, 459A.552, 459A.620, 460.035, 465.104, 468B.075, 469.710, 471.105, 471.200, 471.311, 475.302, 475.319, 475.323, 475.999, 476.010, 476.113, 476.290, 476.310, 476.600, 477.220, 477.230, 479.010, 479.155, 479.200, 479.853, 480.585, 496.085, 496.232, 498.306, 498.321, 498.341, 516.100, 520.125, 522.005, 527.650, 527.750, 537.460, 541.455, 543.660, 561.303, 561.520, 565.260, 565.610, 568.550, 570.165, 570.345, 571.515, 576.245, 576.255, 576.265, 576.285, 576.306, 576.307, 576.311, 576.315, 576.345, 576.370, 576.385, 576.395, 576.750, 576.759, 576.766, 576.768, 576.775, 577.550, 607.007, 616.245, 618.010,

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

SECTION 1. ORS 174.535 is amended to read:

174.535. It is the policy of the Legislative Assembly to revise sections from Oregon Revised Statutes and Oregon law periodically in order to maintain accuracy. However, nothing in chapter 740, Oregon Laws 1983, chapter 565, Oregon Laws 1985, chapter 158, Oregon Laws 1987, chapter 171, Oregon Laws 1989, chapters 67 and 927, Oregon Laws 1991, chapters 18 and 469, Oregon Laws 1993, chapter 79, Oregon Laws 1995, chapter 249, Oregon Laws 1997, chapter 59, Oregon Laws 1999, chapter 104, Oregon Laws 2001, [*or*] chapter 14, Oregon Laws 2003, **or this 2005 Act** is intended to alter the legislative intent or purpose of statutory sections affected by chapter 740, Oregon Laws 1983, chapter 565, Oregon Laws 1985, chapter 158, Oregon Laws 1987, chapter 171, Oregon Laws 1989, chapters 67 and 927, Oregon Laws 1991, chapters 18 and 469, Oregon Laws 1993, chapter 79, Oregon Laws 1995, chapter 249, Oregon Laws 1997, chapter 59, Oregon Laws 1999, chapter 104, Oregon Laws 2001, [*and*] chapter 14, Oregon Laws 2003, **and this 2005 Act** except insofar as the amendments thereto, or repeals thereof, specifically require.

NOTE: Sets forth Reviser's Bill policy statement.

SECTION 2. ORS 8.420 is amended to read:

8.420. (1) The State Court Administrator shall verify the qualifications of shorthand reporters to be certified and shall issue the certificate of shorthand reporter to qualified applicants.

(2) The administrator shall adopt policies necessary to administer ORS 8.415 to 8.455 and may appoint any committees necessary to function in accordance with ORS 8.415 to 8.455.

(3) The administrator shall:

(a) Adopt policies establishing the qualifications necessary for the issuance of a certificate of certified shorthand reporter;

(b) Determine the qualifications of persons applying for certificates under ORS 8.415 to 8.455;

(c) Adopt policies for the examination of applicants and the issuing of certificates under ORS 8.415 to 8.455;

(d) Grant certificates to qualified applicants upon compliance with ORS 8.415 to 8.455 and policies of the administrator;

(e) Establish continuing education requirements for biennial renewal of certificates;

(f) Collect fees as set by the administrator;

(g) Require the biennial renewal of all certificates;

(h) Establish a code of conduct and grounds for disciplinary action; and

(i) Investigate complaints regarding court reporters.

(4) The **Certified Shorthand Reporters** Advisory Committee shall recommend:

(a) Standards establishing the qualifications necessary for the issuance of a certificate of certified shorthand reporter;

(b) Qualifications required of persons applying for certificates under ORS 8.415 to 8.455;

(c) Procedures for the examination of applicants and the issuing of certificates under ORS 8.415 to 8.455;

(d) Certificates be granted by the administrator to qualified applicants upon compliance with ORS 8.415 to 8.455 and policies of the administrator;

(e) Continuing education requirements for biennial renewal of certificates;

(f) A code of conduct and grounds for suspension or revocation of certificates or other disciplinary action to the administrator;

(g) Investigation of complaints regarding court reporters at the direction of the administrator; and

(h) Any corrective action that may be required.

NOTE: Identifies advisory committee in (4).

SECTION 3. ORS 8.620 is amended to read:

8.620. A person elected to the office of district attorney must, before entering upon such office, qualify by filing with the Secretary of State the certificate of election of the person, with an oath of office indorsed thereon, and subscribed by the person, to the effect that the person will support the Constitution of the United States and [*of this state*] **the Constitution of the State of Oregon**, and faithfully and honestly perform the duties of the office.

NOTE: Corrects reference to Oregon Constitution.

SECTION 4. ORCP 68 C is amended to read:

C Award of and entry of judgment for attorney fees and costs and disbursements.

C(1) Application of this section to award of attorney fees. Notwithstanding Rule 1 A and the procedure provided in any rule or statute permitting recovery of attorney fees in a particular case, this section governs the pleading, proof[,] and award of attorney fees in all cases, regardless of the source of the right to recovery of such fees, except [*where*] **when**:

C(1)(a) Such items are claimed as damages arising prior to the action; or

C(1)(b) Such items are granted by order, rather than entered as part of a judgment.

C(2)(a) Alleging right to attorney fees. A party seeking attorney fees shall allege the facts, statute[,] or rule [*which*] **that** provides a basis for the award of such fees in a pleading filed by that party. Attorney fees may be sought before the substantive right to recover such fees accrues. No attorney fees shall be awarded unless a right to recover such fee is alleged as provided in this subsection.

C(2)(b) If a party does not file a pleading and seeks judgment or dismissal by motion, a right to attorney fees shall be alleged in such motion, in similar form to the allegations required in a pleading.

C(2)(c) A party shall not be required to allege a right to a specific amount of attorney fees. An allegation that a party is entitled to "reasonable attorney fees" is sufficient.

C(2)(d) Any allegation of a right to attorney fees in a pleading or motion shall be deemed denied and no responsive pleading shall be necessary. The opposing party may make a motion to strike the allegation or to make the allegation more definite and certain. Any objections to the form or specificity of allegation of the facts, statute[,] or rule [*which*] **that** provides a basis for the award of fees shall be waived if not alleged prior to trial or hearing.

C(3) Proof. The items of attorney fees and costs and disbursements shall be submitted in the manner provided by subsection (4) of this section, without proof being offered during the trial.

C(4) Procedure for seeking attorney fees or costs and disbursements. The procedure for seeking attorney fees or costs and disbursements shall be as follows:

C(4)(a) Filing and serving statement of attorney fees and costs and disbursements. A party seeking attorney fees or costs and disbursements shall, not later than 14 days after entry of judgment pursuant to Rule 67:

C(4)(a)(i) File with the court a signed and detailed statement of the amount of attorney fees or costs and disbursements, together with proof of service, if any, in accordance with Rule 9 C; and

C(4)(a)(ii) Serve, in accordance with Rule 9 B, a copy of the statement on all parties who are not in default for failure to appear.

C(4)(b) Objections. A party may object to a statement seeking attorney fees or costs and disbursements or any part thereof by written objections to the statement. The objections shall be served within 14 days after service on the objecting party of a copy of the statement. The objections shall be specific and may be founded in law or in fact and shall be deemed controverted without further pleading. Statements and objections may be amended in accordance with Rule 23.

C(4)(c) Hearing on objections.

C(4)(c)(i) If objections are filed in accordance with paragraph C(4)(b) of this rule, the court, without a jury, shall hear and determine all issues of law and fact raised by the statement of attorney fees or costs and disbursements and by the objections. The parties shall be given a reasonable opportunity to present affidavits, declarations and other evidence relevant to any factual issue, including any factors that ORS 20.075 or any other statute or rule requires or permits the court to consider in awarding or denying attorney fees or costs and disbursements.

C(4)(c)(ii) The court shall deny or award in whole or in part the amounts sought as attorney fees or costs and disbursements.

C(4)(d) No timely objections. If objections are not timely filed the court may award attorney fees or costs and disbursements sought in the statement.

C(4)(e) Findings and conclusions. On the request of a party, the court shall make special findings of fact and state its conclusions of law on the record regarding the issues material to the award or denial of attorney fees. A party shall make a request pursuant to this paragraph by including a request for findings and conclusions in the title of the statement of attorney fees or costs and disbursements or objections filed pursuant to paragraph (a) or (b) of this subsection. In the absence of a request under this paragraph, the court may make either general or special findings of fact and may state its conclusions of law regarding attorney fees.

C(5) Judgment concerning attorney fees or costs and disbursements.

C(5)(a) As part of judgment. When all issues regarding attorney fees or costs and disbursements have been determined before a judgment pursuant to Rule 67 is entered, the court shall include any award or denial of attorney fees or costs and disbursements in that judgment.

C(5)(b) By supplemental judgment; notice. When any issue regarding attorney fees or costs and disbursements has not been determined before a judgment pursuant to Rule 67 is entered, any award or denial of attorney fees or costs and disbursements shall be made by a separate supplemental judgment. The supplemental judgment shall be filed and entered and notice shall be given to the parties [*in the same manner*] as provided in [*Rule 70 B(1)*] **ORS 18.078**.

C(6) Avoidance of multiple collection of attorney fees and costs and disbursements.

C(6)(a) Separate judgments for separate claims. If more than one judgment is entered in an action, the court shall take such steps as necessary to avoid the multiple taxation of the same attorney fees and costs and disbursements in those judgments.

C(6)(b) Separate judgments for the same claim. If more than one judgment is entered for the same claim ([*where*] **when** separate actions are brought for the same claim against several parties who might have been joined as parties in the same action, or [*where*] **when** pursuant to Rule 67 B separate limited judgments are entered against several parties for the same claim), attorney fees and costs and disbursements may be entered in each judgment as provided in this rule, but satisfaction of one judgment bars recovery of attorney fees or costs and disbursements included in all other judgments.

NOTE: Conforms punctuation to legislative style in (1), (2)(a) and (2)(d); corrects grammar in (1), (2)(a) and (d) and (6)(b). Replaces reference to repealed rule in (5)(b).

SECTION 4a. ORCP 79 A is amended to read:

A Availability generally.

A(1) Circumstances. Subject to the requirements of Rule 82 A(1), a temporary restraining order or preliminary injunction may be allowed under this rule:

A(1)(a) When it appears that a party is entitled to relief demanded in a pleading, and such relief, or any part thereof, consists of restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce injury to the party seeking the relief; or

A(1)(b) When it appears that the party against whom a judgment is sought is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of a party seeking judgment concerning the subject matter of the action, and tending to render the judgment ineffectual. This paragraph shall not apply when the provisions of Rule [*83 F, G(4), and I(2)*] **83 E, F(4) and H(2)** are applicable, whether or not provisional relief is ordered under those provisions.

A(2) Time. A temporary restraining order or preliminary injunction under this rule may be allowed by the court, or judge thereof, at any time after commencement of the action and before judgment.

NOTE: Corrects citations in A(1)(b) to sections relettered in amendments promulgated by the Council on Court Procedures on December 11, 2004.

SECTION 4b. ORCP 83 F, as amended by the Council on Court Procedures on December 11, 2004, is amended to read:

F Appearance; hearing; service of show cause order; content; effect of service on person in possession of property.

[*G(1)*] **F(1)** Subject to section B of this rule, the court shall issue an order directed to the defendant and each person having possession or control of the claimed property requiring the defendant and each such other person to appear for hearing at a place fixed by the court and at a fixed time after the third day after service of the order and before the seventh day after service of the order to show cause why provisional process should not issue. Upon request of the plaintiff the hearing date may be set later than the seventh day.

[*G(2)*] **F(2)** The show cause order issued under subsection (1) of this section shall be served on the defendant and on each other person to whom the order is directed.

[*G(3)*] **F(3)** The order shall:

[*G(3)(a)*] **F(3)(a)** State that the defendant may file affidavits or declarations with the court and may present testimony at the hearing; and

[*G(3)(b)*] **F(3)(b)** State that if the defendant fails to appear at the hearing the court will order issuance of the specific provisional process sought.

[*G(4)*] **F(4)** If at the time fixed for hearing the show cause order under subsection (1) of this section has not been served on the defendant but has been served on a person in possession or control of the property, and if Rule 82 A has been complied with, the court may restrain the person so served from injuring, destroying, transferring, removing, or concealing the property pending further order of the court or continue a temporary restraining order issued under section [*F*] **E** of this rule. Such order shall conform to the requirements of Rule 79 D. Any restraining order issued under this subsection does not create a lien.

NOTE: Completes relettering begun in amendments promulgated by the Council on Court Procedures on December 11, 2004; corrects citation in F(4) to section relettered in council amendments.

SECTION 5. ORS 17.075 is amended to read:

17.075. (1) An employer whose interest is or may become adverse to that of an injured employee shall not, within 15 days from the date of the occurrence causing the employee's injury:

(a) Negotiate or attempt to negotiate a settlement or compromise with the injured employee; [*or*]

(b) Obtain or attempt to obtain a general release of liability from the injured employee; or

(c) Obtain or attempt to obtain any statement, either written or oral from the injured employee.

(2) Subsection (1)(c) of this section does not apply to the extent that compliance with statutes or rules of federal or state agencies requiring reports of accidents and injuries necessitates obtaining an employee statement within the 15-day period following the date of the injury.

(3) Any settlement or compromise agreement entered into, any general release of liability or any written or oral statement made by any employee after the employee incurs a personal injury, [*which*] **that** is not obtained in accordance with ORS 17.085, requiring notice, may be disavowed by the injured employee within 12 months following the date of the injury and such statement, release, compromise or settlement shall not be admissible evidence in any court action or administrative proceeding relating to the injury.

NOTE: Deletes superfluous conjunction in (1)(a); corrects grammar in (3).

SECTION 6. Notwithstanding any other provision of law, ORS 17.095 is not considered to have been added to or made a part of ORS 30.260 to 30.460 for the purpose of statutory compilation or for the application of definitions, penalties or administrative provisions applicable to statute sections in that series.

NOTE: Excludes inappropriate section from series; ORS 30.402 was renumbered to ORS 17.095 in 2003.

SECTION 7. ORS 18.270 is amended to read:

18.270. (1) At any time after a judgment is entered, a judgment creditor may serve written interrogatories relating to the judgment debtor's property and financial affairs on a judgment debtor. The interrogatories may be personally served in the manner provided for summons or may be served by any form of mail addressed to the judgment debtor and requesting a receipt. Service by mail under this [*paragraph*] **subsection** is effective on the date of mailing. The interrogatories shall notify the judgment debtor that the judgment debtor's failure to answer the interrogatories truthfully shall subject the judgment debtor to the penalties for false swearing as provided in ORS 162.075 and for contempt of court as provided in ORS 33.015 to 33.155.

(2) Within 20 days after receipt of the interrogatories, the judgment debtor must answer all questions under oath and return the original interrogatories to the judgment creditor.

(3) Failure of the judgment debtor to comply with the provisions of this section is contempt of court, and the judgment creditor may commence proceedings under the provisions of ORS 33.015 to 33.155.

NOTE: Corrects internal reference in (1).

SECTION 8. ORS 19.312 is added to and made a part of ORS chapter 19.

NOTE: Repairs split series.

SECTION 9. ORS 19.312 is amended to read:

19.312. (1) The provisions of this section apply only to civil actions against a tobacco product manufacturer **as defined in ORS 323.800**, or against an affiliate or successor of a tobacco product manufacturer, in which:

(a) The tobacco product manufacturer is subject to the requirements of ORS 323.806; and

(b) The state is not a plaintiff.

(2) In any civil action described in subsection (1) of this section, the supersedeas undertaking required of the tobacco product manufacturer, or of an affiliate or successor of the tobacco product manufacturer, as a condition of a stay of judgment throughout all appeals or discretionary appellate review, shall be established in the manner provided by the laws and court rules of this state applicable to supersedeas undertakings, but the amount of the supersedeas undertaking may not exceed $150 million.

(3) If at any time after the posting of the supersedeas undertaking pursuant to the provisions of this section the court determines that a tobacco product manufacturer, affiliate or successor, outside of the ordinary course of its business, is purposely dissipating or diverting assets for the purpose of avoiding payment on final judgment in the action, the court may condition continuance of the stay on an order requiring that the tobacco product manufacturer, affiliate or successor post a supersedeas undertaking in an amount up to the full amount of the judgment.

(4) The provisions of this section apply to any supersedeas undertaking required for a judgment entered by a court of this state and to any security required as a condition of staying enforcement of a foreign judgment under the provisions of ORS 24.135 (2).

NOTE: Specifies definition in (1) that was legislatively applied by section 86, chapter 804, Oregon Laws 2003, in add to series that was editorially renumbered in 2003.

SECTION 10. ORS 20.082 is amended to read:

20.082. (1) As used in this section, "contract" includes**:** [*all*]

(a) Express **contracts;** [*or*]

(b) Implied contracts**;** and

(c) Instruments or documents evidencing a debt.

(2) Except as provided in this section, a court shall allow reasonable attorney fees to the prevailing party on any claim based on contract if:

(a) The amount of the principal together with interest due on the contract at the time the claim is filed is $5,500 or less; and

(b) The contract does not contain a clause that authorizes or requires the award of attorney fees.

(3) Attorney fees may not be awarded to a plaintiff under the provisions of this section unless written demand for payment of the claim was made on the defendant not less than 10 days before the commencement of the action or the filing of a formal complaint under ORS 46.465, or not more than 10 days after the transfer of the action under ORS 46.461. The failure of a plaintiff to give notice under the provisions of this subsection does not affect the ability of a defendant to claim attorney fees under the provisions of this section.

(4) Attorney fees may not be awarded to a plaintiff under the provisions of this section if the court finds that the defendant tendered to the plaintiff, prior to the commencement of the action or the filing of a formal complaint under ORS 46.465, or not more than 10 days after the transfer of the action under ORS 46.461, an amount not less than the amount awarded to the plaintiff.

(5) The provisions of this section do not apply to:

(a) Contracts for insurance;

(b) Contracts for which another statute authorizes or requires an award of attorney fees;

(c) Any action for damages for breach of an express or implied warranty in a sale of consumer goods or services that is subject to ORS 20.098; or

(d) Any action against the maker of a dishonored check that is subject to ORS 30.701.

NOTE: Conforms structure in (1) to legislative style.

SECTION 11. ORS 20.160 is amended to read:

20.160. The attorney of a plaintiff who resides out of the state or is a foreign corporation, against whom costs are adjudged in favor of a defendant, is liable to the defendant therefor**.**[*; and*] If the attorney neglects to pay the same, upon the information of the defendant **the attorney** shall be punished as for a contempt. The attorney may relieve or discharge the attorney from such liability by filing, at the commencement of the action or suit, or at any time thereafter before judgment, an undertaking executed by one or more sufficient sureties, or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, in either case providing for the payment to the defendant of the costs and disbursements that may be adjudged to the attorney.

NOTE: Conforms punctuation to legislative style.

SECTION 12. ORS 20.180 is amended to read:

20.180. When in any action or suit for the recovery of money or damages only, the defendant shall allege in answer that before the commencement thereof the defendant tendered to the plaintiff a certain amount of money in full payment or satisfaction of the cause, and now brings the same into court and deposits it with the clerk for the plaintiff, if such allegation of tender is found true, and the plaintiff does not recover a greater sum than the amount so tendered, the plaintiff shall not recover costs [*off*] **from** the defendant, but the defendant shall recover [*them off*] **costs from** the plaintiff.

NOTE: Corrects word choice.

SECTION 13. ORS 21.363 is amended to read:

21.363. There is established in the General Fund of the State Treasury the Court Forms Revolving Fund. Moneys in the revolving fund are continuously appropriated **to the Judicial De-**

partment for the purpose of paying the costs of labor and materials incurred by the courts of this state in providing forms as provided in ORS 21.361.

NOTE: Conforms appropriation to legislative style.

SECTION 14. ORS 25.089 is amended to read:

25.089. (1) As used in this section, "child support judgment" means the terms of a judgment or order of a court, or an order that has been filed under ORS 416.440, that provide for past or current monetary support or for **a** health [*insurance*] **benefit plan** under ORS [*25.255*] **25.321 to 25.343** for the benefit of a child. "Child support judgment" does not include any term of a judgment or order that deals with matters other than monetary support or **a** health [*insurance*] **benefit plan** under ORS [*25.255*] **25.321 to 25.343** for the benefit of a child.

(2)(a) A child support judgment originating under ORS 416.440 has all the force, effect and attributes of a circuit court judgment. The judgment lien created by a child support judgment originating under ORS 416.440 applies to all arrearages owed under the underlying order from the date the administrator or [*hearing officer*] **administrative law judge** entered, filed or registered the underlying order under ORS 416.400 to 416.470 or ORS chapter 110.

(b) Until the underlying order is filed under ORS 416.440, the order may not be enforced against and has no lien effect on real property.

(c) No action to enforce a child support judgment originating under ORS 416.440 may be taken while the child support judgment is stayed under ORS 416.427, except as permitted in the order granting the stay.

(3) In any judicial or administrative proceeding in which child support may be awarded under this chapter or ORS chapter 107, 108, 109, 110 or 416 or ORS 125.025, 419B.400 or 419C.590, if a child support judgment already exists with regard to the same obligor and child:

(a) A court may only enforce the existing child support judgment, modify the existing child support judgment as specifically authorized by law or set aside the existing child support judgment under subsection (6) of this section or under the provisions of ORCP 71. If the court sets aside the existing child support judgment, the court may issue a new child support judgment.

(b) The administrator or [*hearing officer*] **administrative law judge** may only enforce the existing child support judgment, modify the existing child support judgment as specifically authorized by law or, with regard to an existing child support judgment originating under ORS 416.400, move to set aside the existing child support judgment under subsection (6) of this section or for the reasons set out in ORCP 71.

(4) If the administrator or [*hearing officer*] **administrative law judge** finds that there exist two or more child support judgments involving the same obligor and child and the same period of time, the administrator or [*hearing officer*] **administrative law judge** shall apply the provisions of ORS 416.448.

(5)(a) If the court finds that there exist two or more child support judgments involving the same obligor and child and the same period of time, and each judgment was issued in this state, the court shall apply the provisions of ORS 25.091 to determine the controlling terms of the child support judgments and to issue a governing child support judgment as defined in ORS 25.091.

(b) If the court finds that there exist two or more child support judgments involving the same obligor and child and the same period of time, and one or more of the judgments was issued by a tribunal of another state, the court shall apply the provisions of ORS chapter 110 to determine which judgment is the controlling child support order.

(6) Subject to the provisions of subsection (3) of this section, a court may modify or set aside a child support judgment issued in this state when:

(a) The child support judgment was issued without prior notice to the issuing court, administrator or [*hearing officer*] **administrative law judge** that:

(A) There was pending in this state or any other jurisdiction any type of support proceeding involving the child; or

(B) There existed in this state or any other jurisdiction another child support judgment involving the child; or

(b) The child support judgment was issued after another child support judgment, and the later judgment did not enforce, modify or set aside the earlier judgment in accordance with this section.

(7) When modifying a child support judgment, the court, administrator or [*hearing officer*] **administrative law judge** shall specify in the modification judgment the effects of the modification on the child support judgment being modified.

NOTE: Updates references to repealed section in (1). Corrects terminology in (1), (2)(a), (3)(b), (4), (6)(a) and (7).

SECTION 15. ORS 25.091 is amended to read:

25.091. (1) As used in this section:

(a) "Child support judgment" has the meaning given that term in ORS 25.089.

(b) "Governing child support judgment" means a child support judgment issued in this state that addresses both monetary support and **a** health [*insurance*] **benefit plan** under ORS [*25.255*] **25.321 to 25.343** and is entitled to exclusive prospective enforcement or modification with respect to any earlier child support judgment issued in this state.

(2) Notwithstanding any other provision of this section or ORS 25.089, when there exist two or more child support judgments involving the same obligor and child and one or more of the judgments was issued by a tribunal of another state, the court shall apply the provisions of ORS chapter 110 before enforcing or modifying a judgment under this section or ORS 25.089.

(3) When there exist two or more child support judgments involving the same obligor and child and the same period of time, any party to one or more of the child support judgments or the administrator, under ORS 416.448, may file a petition with the court for a governing child support judgment under this section. When a matter involving a child is before the court and the court finds that there exist two or more child support judgments involving the same obligor and child and the same period of time, the court on its own motion, and after notice to all affected parties, may determine the controlling terms of the child support judgments and issue a governing child support judgment under this section.

(4) When there exist two or more child support judgments involving the same obligor and child and the same period of time, and each judgment was issued in this state, there is a presumption that the terms of the last-issued child support judgment are the controlling terms and supersede contrary terms of each earlier-issued child support judgment, except that:

(a) When the last-issued child support judgment is silent about monetary support for the benefit of the child, the monetary support terms of an earlier-issued child support judgment continue; and

(b) When the last-issued child support judgment is silent about **a** health [*insurance*] **benefit plan** under ORS [*25.255*] **25.321 to 25.343** for the benefit of a child, the health [*insurance*] **benefit plan** terms of an earlier-issued child support judgment continue.

(5) A party may rebut the presumption in subsection (4) of this section by showing that:

(a) The last-issued child support judgment should be set aside under the provisions of ORCP 71;

(b) The last-issued child support judgment was issued without prior notice to the issuing court, administrator or [*hearing officer*] **administrative law judge** that:

(A) There was pending in this state or any other jurisdiction any type of support proceeding involving the child; or

(B) There existed in this state or any other jurisdiction another child support judgment involving the child; or

(c) The last-issued child support judgment was issued after an earlier child support judgment and did not enforce, modify or set aside the earlier child support judgment in accordance **with** ORS 25.089.

(6) When a court finds that there exist two or more child support judgments involving the same obligor and child and the same period of time, and each child support judgment was issued in this state, the court shall set the matter for hearing to determine the controlling terms of the child support judgments. When the child support judgments were issued in different counties of this state, the court may cause the records from the original proceedings to be transmitted to the court in accordance with ORS 25.100.

(7) Following a review of each child support judgment and any other evidence admitted by the court:

(a) The court shall apply the presumption in subsection (4) of this section, unless the presumption is rebutted, and shall determine the controlling terms of the child support judgments; and

(b) Notwithstanding ORS 25.089 (3), the court shall issue a governing child support judgment addressing both monetary support and **a** health [*insurance*] **benefit plan** under ORS [*25.255*] **25.321 to 25.343** for the benefit of the child.

(8) The governing child support judgment must include:

(a) A reference to each child support judgment considered and a copy of the judgment;

(b) A determination of which terms regarding monetary support and **a** health [*insurance*] **benefit plan** under ORS [*25.255*] **25.321 to 25.343** are controlling and which child support judgment or judgments contain those terms;

(c) An affirmation, termination or modification of the terms regarding monetary support and **a** health [*insurance*] **benefit plan** under ORS [*25.255*] **25.321 to 25.343** in each of the child support judgments;

(d) Except as provided in subsection (9) of this section, a reconciliation of any monetary support arrears or credits for overpayments under all of the child support judgments; and

(e) The effective date of each controlling term and the date of the termination of each noncontrolling term in each of the child support judgments.

(9) The court may order the parties, in a separate proceeding under ORS 25.167 or in a proceeding under ORS 416.429, to reconcile any monetary support arrears or credits for overpayments under all of the child support judgments.

(10) When the court issues the governing child support judgment, the noncontrolling terms of each earlier child support judgment regarding monetary support or **a** health [*insurance*] **benefit plan** under ORS [*25.255*] **25.321 to 25.343** are terminated. However, the issuance of the governing child support judgment does not affect any support payment arrearage or any liability related to health [*insurance*] **benefit plan** coverage that has accrued under a child support judgment before the governing child support judgment is issued.

(11) Not sooner than 30 days and not later than 60 days after entry of the governing child support judgment, a party named by the court, or the petitioner if the court names no other party, shall file a certified copy of the governing child support judgment with each court or the administrator that issued an earlier child support judgment. A party who fails to file a certified copy of the governing child support judgment as required by this subsection is subject to monetary sanctions, including but not limited to attorney fees, costs and disbursements. A failure to file does not affect the validity or enforceability of the governing child support judgment.

(12) This section applies to any judicial proceeding in which child support may be awarded or modified under this chapter or ORS chapter 107, 108, 109 or 416 or ORS 125.025, 419B.400, 419B.923, 419C.590 or 419C.610.

NOTE: Updates references to repealed section in (1)(b), (4)(b), (7)(b), (8)(b) and (c) and (10). Corrects terminology in (1)(b), (4)(b), (5)(b), (7)(b), (8)(b) and (c) and (10). Supplies missing preposition in (5)(c).

SECTION 16. ORS 25.260 is amended to read:

25.260. (1) As used in this section, "Child Support Program" means**:**

(a) The program [*created under ORS 409.021. "Child Support Program" includes*] **described in ORS 180.345;**

(b) The Administrator of the Division of Child Support of the Department of Justice [*or*]**;**

(c) A district attorney[*, or*]**; and**

(d) The administrator's or district attorney's authorized representative.

(2) Unless otherwise authorized by law, child support records, including data contained in the Child Support Program's automated system, are confidential and may be disclosed or used only as necessary for the administration of the program.

(3) In administering the Child Support Program, the program may:

(a) In accordance with rules adopted under subsection (7) of this section, report abuse as defined in ORS 419B.005 if the abuse is discovered while providing program services.

(b) Extract and receive information from other databases as necessary to carry out the program's responsibilities under state and federal law.

(4) The Child Support Program may compare and share information with public and private entities as necessary to perform the program's responsibilities under state and federal law.

(5) The Child Support Program may exchange information with state agencies administering programs funded under Title XIX and Part A of Title IV of the Social Security Act as necessary for the Child Support Program and the state agencies to perform their responsibilities under state and federal law.

(6) In addition to any penalty to which an individual may be subject under ORS 25.990, an employee of the Department of Justice, of a district attorney or of the Department of Human Services who discloses or uses the contents of any records in violation of subsection (2) of this section is subject to discipline, up to and including dismissal from employment.

(7) The Department of Justice shall adopt rules consistent with federal regulations governing confidentiality of Child Support Program information.

NOTE: Updates reference to repealed section and conforms structure to legislative style in (1).

SECTION 17. ORS 25.785 is amended to read:

25.785. (1) Any state agency, board or commission that is authorized to issue an occupational, professional, recreational or driver license, [*certification*] **certificate**, permit or registration subject to suspension under ORS 25.750 to 25.783 shall require that an individual's Social Security number be recorded on an application for, or form for renewal of, a license, [*certification*] **certificate**, permit or registration and to the maximum extent feasible shall include the Social Security number in automated databases containing information about the individual.

(2) A state agency, board or commission described in subsection (1) of this section may accept a written statement from an individual who has not been issued a Social Security number by the United States Social Security Administration to fulfill the requirement in subsection (1) of this section.

(3) An individual may not submit to a state agency, board or commission a written statement described in subsection (2) of this section knowing the statement to be false.

NOTE: Corrects word choice in (1).

SECTION 18. ORS 28.120 is amended to read:

28.120. This chapter is declared to be remedial**.**[*; its purpose*] **The purpose of this chapter** is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations, and is to be liberally construed and administered.

NOTE: Conforms punctuation to legislative style.

SECTION 19. ORS 30.265 is amended to read:

30.265. (1) Subject to the limitations of ORS 30.260 to 30.300, every public body is subject to action or suit for its torts and those of its officers, employees and agents acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function or while operating a motor vehicle in a ridesharing arrangement authorized under ORS 276.598. The sole cause of action for any tort of officers, employees or agents of a public body acting within the scope of their employment or duties and eligible for representation and indemnification under ORS 30.285 or 30.287 shall be an action against the public body only. The remedy provided by ORS 30.260 to 30.300 is exclusive of any other action or suit against any such officer, employee or agent of a public body whose act or omission within the scope of [*their*] **the officer's, employee's or agent's** employment or duties gives rise to the action or suit. No other form of civil action or suit shall be permitted. If an action or suit is filed against an officer, employee or agent of a public body, on appropriate motion the public body shall be substituted as the only defendant.

(2) Every public body is immune from liability for any claim for injury to or death of any person or injury to property resulting from an act or omission of an officer, employee or agent of a public body when such officer, employee or agent is immune from liability.

(3) Every public body and its officers, employees and agents acting within the scope of their employment or duties, or while operating a motor vehicle in a ridesharing arrangement authorized under ORS 276.598, are immune from liability for:

(a) Any claim for injury to or death of any person covered by any workers' compensation law.

(b) Any claim in connection with the assessment and collection of taxes.

(c) Any claim based upon the performance of or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused.

(d) Any claim [*which*] **that** is limited or barred by the provisions of any other statute, including but not limited to any statute of ultimate repose.

(e) Any claim arising out of riot, civil commotion or mob action or out of any act or omission in connection with the prevention of any of the foregoing.

(f) Any claim arising out of an act done or omitted under apparent authority of a law, resolution, rule or regulation [*which*] **that** is unconstitutional, invalid or inapplicable except to the extent that they would have been liable had the law, resolution, rule or regulation been constitutional, valid and applicable, unless such act was done or omitted in bad faith or with malice.

[*(4) ORS 30.260 to 30.300 do not apply to any claim against any public body or its officers, employees or agents acting within the scope of their employment arising before July 1, 1968. Any such claim may be presented and enforced to the same extent and subject to the same procedure and restrictions as if ORS 30.260 to 30.300 had not been adopted.*]

[*(5) The amendments to ORS 30.270 and 30.285 enacted by chapter 609, Oregon Laws 1975, do not apply to any claim against the state or its officers, employees or agents acting within the scope of their employment or duties, arising before July 2, 1975. Any such claim may be presented and enforced to the same extent and is subject to the same restrictions as if chapter 609, Oregon Laws 1975, had not been adopted, but the procedure set forth in ORS 278.120 shall be applicable thereto.*]

[*(6) ORS 30.287 and the amendments to ORS 30.270 and 30.285 enacted by chapter 609, Oregon Laws 1975, do not apply to any claim against any local public body or its officers, employees or agents acting within the scope of their employment or duties, arising before December 31, 1975. Any such claim may be presented and enforced to the same extent and subject to the same restrictions as if chapter 609, Oregon Laws 1975, had not been adopted.*]

[*(7)*] **(4)** Subsection (1) of this section applies to any action of any officer, employee or agent of the state relating to a nuclear incident, whether or not the officer, employee or agent is acting within the scope of employment, and provided the nuclear incident is covered by an insurance or indemnity agreement under 42 U.S.C. 2210.

[*(8)*] **(5)** Subsection (3)(c) of this section does not apply to any discretionary act that is found to be the cause or partial cause of a nuclear incident covered by an insurance or indemnity agreement under the provisions of 42 U.S.C. 2210, including but not limited to road design and route selection.

NOTE: Corrects grammar in (1), (3)(d) and (f); deletes obsolete provisions in (4), (5) and (6).

SECTION 20. ORS 30.295 is amended to read:

30.295. (1) When a judgment is entered against or a settlement is made by a public body for a claim within the scope of ORS 30.260 to 30.300, including claims against officers, employees or agents required to be indemnified under ORS 30.285, payment shall be made and the same remedies shall apply in case of nonpayment as in the case of other judgments or settlements against the public body except as otherwise provided in this section.

(2) If the public body is authorized to levy taxes [*which*] **that** could be used to satisfy a judgment or settlement within the scope of ORS 30.260 to 30.300, and it has, by resolution, declared that the following conditions exist, interest shall accrue on the judgment or settlement, but the same shall not be due and payable until after the canvass and certification of an election upon a special tax levy for purposes of satisfying the judgment or settlement:

(a) The amount of the judgment or settlement would exceed amounts budgeted for contingencies, tort claims and projected surplus in the current budget;

(b) The amount of the judgment or settlement would exceed 10 percent of the total of the next fiscal year's projected revenues [*which*] **that** are not restricted as to use, including the maximum amount of general property tax [*which*] **that** could be levied without election but excluding any levy for debt service;

(c) Payment of the judgment or settlement within less than a certain number of years would seriously impair the ability of the public body to carry out its responsibilities as a unit of government; and

(d) The public body has passed an appropriate ordinance or resolution calling a special election to submit to its electors a special levy in an amount sufficient to satisfy the judgment or settlement.

(3) A certified copy of the resolution provided for in subsection (2) of this section shall be filed with the clerk of the court in which an order permitting installment payments could be entered.

(4) If the public body is not authorized to levy taxes as provided in subsection (2) of this section, and it has, by resolution, declared that the applicable conditions specified in subsection (2)(a) to (c) of this section exist, it may petition for an order permitting installment payments as provided in subsection (6) of this section.

(5)**(a)** The provisions of subsections (2) and (4) of this section do not apply to the State of Oregon**.** [*; provided, however, that*]

(b) Notwithstanding paragraph (a) of this subsection, if the conditions specified in subsection (4) of this section exist, the Secretary of State may, under Seal of the State of Oregon, attest thereto in lieu of a resolution, and the State of Oregon may thereafter petition for an order permitting installment payments as provided in subsection (6) of this section.

(6) If the procedure specified in subsections (2) to (5) of this section has been followed, and, with respect to public bodies subject to subsection (2) of this section, the tax levy failed, the public body may petition for an order permitting installment payments. The petition shall be filed in the court in which judgment was entered or, if no judgment has been entered, it shall be filed in the circuit court of the judicial district in which the public body has its legal situs. Petitions by the State of Oregon [*where*] **when** no judgment has been entered shall be filed in Marion County Circuit Court.

(7) The court in which a petition is filed shall order that the judgment or settlement be paid in quarterly, semiannual or annual installments over a period of time not to exceed 10 years. The court shall determine the term of years based upon the ability of the public body to effectively carry out its governmental responsibilities, and shall not allow a longer term than appears reasonably necessary to meet that need. The order permitting installment payments shall provide for annual interest at the judgment rate.

NOTE: Corrects grammar in (2) lead-in, (2)(b) and (6); conforms (5) to legislative style.

SECTION 21. ORS 30.312 is amended to read:

30.312. The State of Oregon, any city, county, school district, municipal or public corporation, political subdivision of the State of Oregon or any instrumentality thereof, or any agency created by two or more political subdivisions to provide themselves governmental services may bring an action in behalf of itself and others similarly situated for damages under section 4 of the Act of October 15, 1914, ch. 323, as amended prior to January 1, 1965 (**38 Stat. 731,** 15 U.S.C. 15).

NOTE: Completes reference to federal law.

SECTION 22. ORS 30.490 is amended to read:

30.490. As used in ORS 30.490 to 30.497:

(1) "Discharge" means any leakage, seepage or any other release of hazardous material.

(2) "Hazardous material" means:

(a) Hazardous waste as defined in ORS 466.005;

(b) Hazardous substances as defined in ORS 453.005;

(c) Radioactive waste as defined in ORS 469.300;

(d) Uranium mine overburden or uranium mill tailings, mill wastes or mill by-product materials;

(e) Radioactive substance as defined in ORS 453.005;

(f) Any substance designated by the United States Department of Transportation as hazardous pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. [*1801*] **5101 et seq.**, P.L. 93-633, as amended; and

(g) Any substance [*which*] **that** the Environmental Protection Agency designates as hazardous pursuant to:

(A) The federal Toxic [*Substance*] **Substances** Control Act, 15 U.S.C. [*2601-2629*] **2601 to 2671**; or

(B) The federal Resource Conservation and Recovery Act, **42 U.S.C. 6901 to 6992,** P.L. 94-580**,** as amended.

(3) "Person" means an individual, corporation, association, firm, partnership, joint stock company or state or local government agency.

NOTE: Corrects references to federal laws in (2)(f) and (g); corrects grammar in (2)(g).

SECTION 23. ORS 33.015 is amended to read:

33.015. For the purposes of ORS 33.015 to 33.155:

(1) "Confinement" means custody or incarceration, whether actual or constructive.

(2) "Contempt of court" means the following acts, done willfully:

(a) Misconduct in the presence of the court that interferes with a court proceeding or with the administration of justice, or that impairs the respect due the court**.**[*;*]

(b) Disobedience of, resistance to or obstruction of the court's authority, process, orders or judgments**.**[*;*]

(c) Refusal as a witness to appear, be sworn or answer a question contrary to an order of the court**.**[*;*]

(d) Refusal to produce a record, document or other object contrary to an order of the court**.**[*; or*]

(e) Violation of a statutory provision that specifically subjects the person to the contempt power of the court.

(3) "Punitive sanction" means a sanction imposed to punish a past contempt of court.

(4) "Remedial sanction" means a sanction imposed to terminate a continuing contempt of court or to compensate for injury, damage or costs resulting from a past or continuing contempt of court.

NOTE: Conforms structure in (2) to legislative style.

SECTION 24. ORS 33.055 is amended to read:

33.055. (1) Except as otherwise provided in ORS 161.685, proceedings to impose remedial sanctions for contempt shall be conducted as provided in this section.

(2) The following persons may initiate the proceeding or, with leave of the court, participate in the proceeding, by filing a motion requesting that defendant be ordered to appear:

(a) A party aggrieved by an alleged contempt of court**.**[*;*]

(b) A district attorney**.**[*;*]

(c) A city attorney**.**[*;*]

(d) The Attorney General**.**[*; or*]

(e) Any other person specifically authorized by statute to seek imposition of sanctions for contempt.

(3) A motion to initiate a proceeding under this section shall be filed in the proceeding to which the contempt is related, if there is a related proceeding.

(4) The person initiating a proceeding under this section shall file supporting documentation or affidavits sufficient to give defendant notice of the specific acts alleged to constitute contempt.

(5)(a) The court may issue an order directing the defendant to appear. Except as otherwise provided in paragraph (b) of this subsection, the defendant shall be personally served with the order to appear in the manner provided in ORCP 7 and 9. The court may order service by a method other than personal service or issue an arrest warrant if, based upon motion and supporting affidavit, the court finds that the defendant cannot be personally served.

(b) The defendant shall be served by substituted service if personal service is waived under ORS 107.835. If personal service is waived under ORS 107.835, the defendant shall be served by the method specified in the waiver.

(6) The court may impose a remedial sanction only after affording the defendant opportunity for a hearing tried to the court. The defendant may waive the opportunity for a hearing by stipulated order filed with the court.

(7) A defendant has no right to a jury trial and, except as provided in this section, has only those rights accorded to a defendant in a civil action.

(8) A defendant is entitled to be represented by counsel. A court shall not impose on a defendant a remedial sanction of confinement unless, before the hearing is held, the defendant is:

(a) Informed that such sanction may be imposed; and

(b) Afforded the same right to appointed counsel required in proceedings for the imposition of an equivalent punitive sanction of confinement.

(9) If the defendant is not represented by counsel when coming before the court, the court shall inform the defendant of the right to counsel, and of the right to appointed counsel if the defendant is entitled to, and financially eligible for, appointed counsel under subsection (8) of this section.

(10) Inability to comply with an order of the court is an affirmative defense.

(11) In any proceeding for imposition of a remedial sanction other than confinement, proof of contempt shall be by clear and convincing evidence. In any proceeding for imposition of a remedial sanction of confinement, proof of contempt shall be beyond a reasonable doubt.

(12) Proceedings under this section are subject to rules adopted under ORS 33.145. Proceedings under this section are not subject to the Oregon Rules of Civil Procedure except as provided in subsection (5) of this section or as may be provided in rules adopted under ORS 33.145.

NOTE: Conforms structure in (2) to legislative style.

SECTION 25. ORS 33.430 is amended to read:

33.430. (1) In the case of a change, by court order, of the name of the parents of any minor child, if the child's birth certificate is on file in this state, the State Registrar of the Center for Health Statistics, upon receipt of a certified copy of the court order changing the name, together with the information required to locate the original birth certificate of the child, shall prepare a new birth certificate for the child in the new name of the parents of the child. The name of the parents as so changed shall be set forth in the new certificate, in place of their original name.

(2) The evidence upon which the new certificate was made, and the original certificate, shall be sealed and filed by the State Registrar of the Center for Health Statistics, and may be opened only upon demand of the person whose name was changed, if of legal age, or by an order of a court of competent jurisdiction.

(3) When a change of name by parents will affect the name of their child [*or children*] under subsection (1) of this section, the court, on its own motion or on request of a child of the parents, may take testimony from or confer with the child [*or children*] and may exclude from the conference the parents and other persons if the court finds that such action would be in the best interests of the child [*or children*]. However, the court shall permit an attorney for the parents to attend the conference, and the conference shall be reported. If the court finds that a change of name would not be in the best interests of the child, the court may provide in the order changing the name of the parents that such change of name shall not affect the child, and a new birth certificate shall not be prepared for the child.

NOTE: Conforms terms in (3) to legislative style.

SECTION 26. ORS 34.150 is amended to read:

34.150. **(1)** The writ shall be either alternative or peremptory**.**[*;*]

(2) When in the alternative, [*it*] **the writ** shall**:**

(a) State concisely the facts, according to the petition, showing**:**

(A) The obligation of the defendant to perform the act**;**[*,*] and

(B) The omission of the defendant to perform [*it, and*] **the act;**

(b) Command **that** the defendant, [*that*] immediately after the receipt of the writ, or at some other specified time[*, the defendant do*]**:**

(A) Perform the act required to be performed**;**[,] or

(B) Show cause before the court or judge thereof, by whom the writ was allowed, at a time and place therein specified, why the defendant has not done so; and [*that*]

(c) Command that the defendant then and there return the writ, with the certificate of the defendant annexed, of having done as the defendant is commanded, or the cause of omission thereof.

(3) When peremptory, the writ shall be in a [*similar*] form **similar to that described in subsection (2) of this section**, except that the words requiring the defendant to show cause why the defendant has not done as commanded, and to return the cause therefor, shall be omitted.

NOTE: Conforms structure and punctuation to legislative style.

SECTION 27. ORS 34.200 is amended to read:

34.200. **(1)** In the circuit court or Oregon Tax Court the writ may be made returnable either in term time or vacation, and if the latter, may be tried and determined before the judge in like manner and with like effect as in term time.

(2) In the Supreme Court the writ may be allowed by the court or any judge thereof, but shall only be tried and determined by the court**.**[*; and*] All issues therein shall be tried by the court.

NOTE: Conforms punctuation to legislative style.

SECTION 28. ORS 34.670 is amended to read:

34.670. The plaintiff in the proceeding, on the return of the writ, may, by replication, signed as in an action, controvert any of the material facts set forth in the return, or the plaintiff may allege therein any fact to show, either that imprisonment or restraint of the plaintiff is unlawful, or that the plaintiff is entitled to discharge**.**[*; and*] Thereupon the court or judge shall proceed in a summary way to hear such evidence as may be produced in support of or against the imprisonment or restraint, and to dispose of the party as the law and justice of the case may require.

NOTE: Conforms punctuation to legislative style.

SECTION 29. ORS 36.256 is amended to read:

36.256. (1) [*Except as provided in subsection (11) of this section,*] An agricultural producer who is in danger of foreclosure on agricultural property under ORS 86.010 to 86.990, 87.001 to 87.920 or 88.710 to 88.740 or a creditor, before or after beginning foreclosure proceedings, may request mediation of the agricultural producer's indebtedness by filing a request with the mediation service on a form provided by the service. However, an agricultural producer or creditor may not request mediation under this section unless, at the time the request is made, the agricultural producer owes more than $100,000 to one or more creditors, and the debt is either:

(a) Secured by one or more mortgages or trust deeds on the agricultural producer's agricultural property;

(b) Evidenced by a real estate contract covering the agricultural producer's agricultural property; or

(c) The subject of one or more statutory liens that have attached to the agricultural producer's agricultural property.

(2) In filing a mediation request, the agricultural producer shall provide:

(a) The name and address of each creditor;

(b) The amount claimed by each creditor;

(c) The amount of the periodic installment payments made to each creditor;

(d) Any financial statements and projected cash flow statements, including those related to any nonagricultural activities;

(e) The name of the person authorized to enter into a binding mediation agreement; and

(f) Any additional information the mediation service may require.

(3) In filing a mediation request, a creditor shall provide:

(a) Statements regarding the status of the agricultural producer's loan performance;

(b) The name and title of the representative of the creditor authorized to enter into a binding mediation agreement; and

(c) Any additional information the mediation service may require.

(4) Nothing in ORS 36.250 to 36.270 shall be construed to require an agricultural producer or creditor to engage or continue in the mediation of any dispute or controversy. Mediation under ORS 36.250 to 36.270 shall be entirely voluntary for all persons who are parties to the dispute or controversy, and if such persons agree to engage in mediation, any one of the persons may at any time withdraw from mediation.

(5) If an agricultural producer or a creditor files a mediation request with the mediation service, the service shall within 10 days after receipt of the request give written notice of the request to any other person who is identified in the request for mediation as parties to the dispute or controversy. The notice shall:

(a) Be accompanied by a copy of the request for mediation;

(b) Generally describe the mediation program created by ORS 36.250 to 36.270;

(c) Explain that participation in mediation is voluntary and that the recipient of the notice is not required to engage in mediation or to continue to mediate if mediation is initiated;

(d) Request that the recipient of the notice advise the mediation service in writing and by certified mail within 10 days as to whether the recipient wishes to engage in mediation; and

(e) Explain that if the written advice required under paragraph (d) of this subsection is not received by the mediation service within the 10-day period, the mediation request will be considered denied.

(6) If the person who receives the notice of request for mediation under subsection (5) of this section wishes to engage in mediation, the person shall advise the mediation service in writing within the 10-day period specified in subsection (5) of this section. The response shall include the appropriate information that the responding person would have been required to include in a request for mediation under subsection (2) or (3) of this section.

(7) If the person who receives notice of request for mediation under subsection (5) of this section does not wish to engage in mediation, the person may but shall not be required to so advise the mediation service.

(8) If the person who receives the notice of request for mediation under subsection (5) of this section does not advise the mediation service in writing within the 10-day period specified in the notice described in subsection (5) of this section that the person desires to mediate, the request for mediation shall be considered denied.

(9) The submission of a request for mediation by an agricultural producer or a creditor shall not operate to stay, impede or delay in any manner whatsoever the commencement, prosecution or defense of any action or proceeding by any person.

(10) If requested by the agricultural producer, the coordinator shall provide the services of a financial analyst to assist the agricultural producer in preparation of financial data for the first mediation session.

(11) ORS 36.250 to 36.270 are not applicable to obligations or foreclosure proceedings with respect to which the creditor is a financial institution, as defined in ORS 706.008.

NOTE: Eliminates narrow exception in (1) that is covered by broader exception in (11).

SECTION 30. Section 31, chapter 598, Oregon Laws 2003, is amended to read:

Sec. 31. [*Sections 1 to 30 of this 2003 Act*] **ORS 36.600 to 36.740** do not affect an action or proceeding commenced or right accrued before [*the effective date of this 2003 Act*] **January 1, 2004**. Subject to section 3**, chapter 598, Oregon Laws 2003** [*of this 2003 Act*], an arbitration agreement made before [*the effective date of this 2003 Act*] **January 1, 2004,** continues to be governed by ORS 36.300 to 36.365 as though those sections were not repealed by section [*55 of this 2003 Act*] **57, chapter 598, Oregon Laws 2003**.

NOTE: Corrects last internal reference.

SECTION 31. ORS 40.510 is amended to read:

40.510. **(1)** Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

[*(1)*] **(a)** A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

[*(2)*] **(b)** A document purporting to bear the signature, in an official capacity, of an officer or employee of any entity included in subsection [*(1)*] **(1)(a)** of this section, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

[*(3)*] **(c)** A document purporting to be**:**

(A) Executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation**;**[**,**] and

(B) Accompanied by a final certification **as provided in subsection (3) of this section** as to the genuineness of the signature and official position of**:**

[*(A)*] **(i)** The executing or attesting person**;**[**,**] or

[*(B)*] **(ii)** Any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. [*A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.*]

[*(4)*] **(d)** A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with subsection [*(1), (2) or (3)*] **(1)(a), (b) or (c)** of this section or otherwise complying with any law or rule prescribed by the Supreme Court.

[*(5)*] **(e)** Books, pamphlets or other publications purporting to be issued by public authority.

[*(6)*] **(f)** Printed materials purporting to be newspapers or periodicals.

[*(7)*] **(g)** Inscriptions, signs, tags or labels purporting to have been affixed in the course of business and indicating ownership, control or origin.

[*(8)*] **(h)** Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

[*(9)*] **(i)** Commercial paper, signatures thereon and documents relating thereto to the extent provided by the Uniform Commercial Code or ORS chapter 83.

[*(10)*] **(j)** Any signature, documents or other matter declared by law to be presumptively or prima facie genuine or authentic.

[*(11)(a)*] **(k)(A)** A document bearing a seal purporting to be that of a federally recognized Indian tribal government or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

[*(b)*] **(B)** A document purporting to bear the signature, in an official capacity, of an officer or employee of any entity included in [*paragraph (a) of this subsection*] **subparagraph (A) of this paragraph**, having no seal, if a public officer having a seal and having official duties in the district or political subdivision or the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

[*(12)(a)*] **(L)(A)** Any document containing data prepared or recorded by the Oregon State Police pursuant to ORS 813.160 (1)(b)(C) or (E), or pursuant to ORS 475.235 (4), if the document is produced by data retrieval from the Law Enforcement Data System or other computer system maintained and operated by the Oregon State Police, and the person retrieving the data attests that the information was retrieved directly from the system and that the document accurately reflects the data retrieved.

[*(b)*] **(B)** Any document containing data prepared or recorded by the Oregon State Police that is produced by data retrieval from the Law Enforcement Data System or other computer system maintained and operated by the Oregon State Police and that is electronically transmitted through public or private computer networks under a digital signature adopted by the Oregon State Police pursuant to ORS 192.825 to 192.850 if the person receiving the data attests that the document accurately reflects the data received.

[*(13)*] **(m)** A report prepared by a forensic scientist that contains the results of a presumptive test conducted by the forensic scientist as described in ORS 475.235, if the forensic scientist attests that the report accurately reflects the results of the presumptive test.

[*(14)*] **(2)** For the purposes of this section, "signature" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(3) A final certification for purposes of subsection (1)(c) of this section may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

NOTE: Resolves lead-in woes; conforms structure to legislative style.

SECTION 32. ORS 42.125 is amended to read:

42.125. (1) For the purposes of ORS 40.510 [*(1) and (4)*] **(1)(a) and (d)**, each state officer and state agency may have a seal which, unless specifically provided otherwise by law, shall consist of an impression, imprint or likeness of the state seal accompanied by the name of the state officer or state agency.

(2) As used in this section:

(a) "Seal" has the meaning given that term in ORS 42.110.

(b) "State agency" means every state officer, board, commission, department, institution, branch or agency of the state government, except:

(A) The Legislative Assembly and the courts and their officers and committees; and

(B) The Public Defense Services Commission.

(c) "State officer" includes any appointed state official who is authorized by the Oregon Department of Administrative Services to have a seal and any elected state official, except members of the Legislative Assembly.

NOTE: Updates internal reference in (1) pursuant to renumbering in section 31 (amending 40.510).

SECTION 33. ORS 43.180 is amended to read:

43.180. The effect of a judicial record of a sister state, the District of Columbia or a territory of the United States is the same in this state as in the place where it was made, except:

(1) It can be enforced in this state only by an action, suit or proceeding**;**[**,**] and

(2) The authority of a guardian, conservator, committee, executor or administrator does not extend beyond the jurisdiction of the government under which the guardian, conservator, committee, executor or administrator is invested with authority.

NOTE: Conforms punctuation in (1) to legislative style.

SECTION 34. ORS 52.040 is amended to read:

52.040. ORS 33.015 to 33.155, defining [*contempts*] **acts that constitute contempt** and the proceedings for imposing sanctions for contempt, apply to justice courts.

NOTE: Corrects syntax.

SECTION 35. ORS 52.420 is amended to read:

52.420. (1) The trial fee in a justice court shall be paid to the justice upon the demand for a jury, and unless so paid the demand shall be disregarded and the trial proceed as if no demand had been made.

(2) If the party paying the fee prevails in the action or proceeding so as to be entitled to recover costs therein, the fee shall be allowed and taxed as a disbursement and collected [*off*] **from** the adverse party.

NOTE: Corrects word choice in (2).

SECTION 36. ORS 52.430 is amended to read:

52.430. When the state or any county is a party to a judicial proceeding in a justice court, [*it*] **the state or county** need not pay the trial fee upon demanding a jury, and if [*it*] **the state or county** is entitled to recover costs therein, the trial fee shall be allowed and taxed in [*its*] **the state's or county's** favor as a disbursement, and collected [*off*] **from** the adverse party as in ordinary cases.

NOTE: Corrects word choice; conforms to legislative style.

SECTION 37. ORS 52.530 is amended to read:

52.530. (1) The justice shall change the place of trial, on motion of either party to the action, when it appears from a supporting affidavit of the party that:

(a) The justice is a party to or directly interested in the event of the action, or connected by consanguinity or affinity within the third degree with the adverse party or those for whom the justice prosecutes or defends; or

(b) The justice is so prejudiced against the party making the motion that the party cannot expect an impartial trial before the justice.

(2) The justice may change the place of trial, on motion of either party to the action, when it appears from a supporting affidavit of the party that the convenience of parties and witnesses would be promoted by the change, and that the motion is not made for the purpose of delay.

(3) The motion for change of place of trial cannot be made or allowed in any action until after the cause is at issue on a question of fact. The change shall be made to the nearest justice court in the county. If there [*be*] **is** only one justice court in the county the change shall be made to the circuit court for the county in which the justice court is located. Neither party shall be entitled to more than one change in the place of trial, except for causes not in existence when the first change was allowed. When the place of trial has been changed, the justice shall forthwith transmit to the justice court or circuit court to whom the case is transferred a transcript of the proceedings had in the case with all the original papers filed thereon. All costs incurred in the transfer of such case, including the fee for filing the same in the court to which the case is transferred shall be borne by the party requesting the change and must be tendered by the party to the justice at the time of filing the motion for the change. Such costs may be recovered by such party in the event the party prevails in the trial of the action. On the failure of the party to tender or pay the required fee at the time the motion is filed the justice shall disregard the motion and proceed to try the action as though no motion had been filed.

NOTE: Corrects word choice in (3).

SECTION 38. ORS 55.120 is amended to read:

55.120. (1) The appeal from the small claims department may be in the following form:

[*In the _____ Court for _____ District, _____ County, Oregon. _____, Plaintiff, vs. _____, Defendant.*]

In the Circuit Court for _____ County, Oregon.

_____

Plaintiff,

vs.

_____

Defendant.

Comes now _____, a resident of _____ County, Oregon, and appeals from the decision of the small claims department of the justice court for _____ District, _____ County, Oregon,

wherein a judgment for _____ dollars was awarded against the appellant on the _____ day of _____, 2___.

_____, Appellant.

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(2) All appeals shall be filed with the justice of the peace and accompanied by a bond, with satisfactory surety, to secure the payment of the judgment, costs and attorney's fees, as provided in ORS 55.110. The appeal shall be tried in the [*appellate*] **circuit** court without any other pleadings than those required in the justice court originally trying the cause. All papers in the cause shall be certified to the [*appellate*] **circuit** court as is provided by law in other cases of appeals in civil actions in justice courts. The [*appellate*] **circuit** court may require any other or further statements or information it may deem necessary for a proper consideration of the controversy. The appeal shall be tried in the [*appellate*] **circuit** court without a jury. There shall be no appeal from any judgment of the [*appellate*] **circuit** court rendered upon the appeal, but such judgment shall be final and conclusive.

NOTE: Substitutes proper heading in form in (1); substitutes proper name in (2).

SECTION 39. ORS 59.335 is amended to read:

59.335. (1) ORS 59.055, 59.115, 59.125**,** [*and*] 59.145 and 59.165 (1) apply to persons who sell or offer to sell when:

(a) An offer to sell is made in this state; or

(b) An offer to buy is made and accepted in this state.

(2) ORS 59.145 and 59.165 (1) apply to persons who buy or offer to buy when:

(a) An offer to buy is made in this state; or

(b) An offer to sell is made and accepted in this state.

(3) ORS 59.135, 59.145 and 59.165, insofar as federal covered investment advisers or state investment advisers are concerned, apply when an act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

NOTE: Deletes superfluous conjunction in (1).

SECTION 40. ORS 59.969 is amended to read:

59.969. (1) A mortgage banker or mortgage broker must provide to the Director of the Department of Consumer and Business Services, and keep current, a list of loan originators employed by the banker or broker. The banker or broker shall notify the director within 30 days of the employment or termination of employment of a loan originator.

(2) An applicant for issuance of a mortgage banker or mortgage broker license under ORS 59.850 shall include with the application evidence acceptable to the director that each individual the applicant has hired or intends to hire as a loan originator has:

(a)(A) Successfully completed an entry-level training course approved or provided by an organization certified by the director as described in ORS 59.977; and

(B) Passed an examination, approved or provided by an organization described in ORS 59.977, on laws and rules relating to mortgage lending in this state; or

(b) If the individual has been employed as a loan originator for two or more years in this state, completed continuing education as required by the director pursuant to ORS 59.975.

(3) A mortgage banker or mortgage broker that applies for renewal of a license pursuant to ORS 59.855 shall include with the application evidence acceptable to the director that each individual employed by the banker or broker as a loan originator has:

(a)(A) Successfully completed an entry-level training course approved or provided by an organization certified by the director as described in ORS 59.977; and

(B) Passed an examination, approved or provided by an organization described in ORS 59.977, on laws and rules relating to mortgage lending in this state; or

(b) If the individual has been employed as a loan originator for two or more years in this state, completed continuing education as required by the director pursuant to ORS 59.975.

(4) An applicant for issuance of a mortgage banker or mortgage broker license under ORS 59.850 shall include with the application evidence acceptable to the director that each individual the applicant has hired or intends to hire who is an insurance [*agent*] **producer** or insurance consultant licensed under ORS 744.002 and who is a full-time loan originator as defined in ORS 59.970 has:

(a)(A) Successfully completed an entry-level training course approved or provided by an organization certified by the director as described in ORS 59.977; and

(B) Passed an examination, approved or provided by an organization described in ORS 59.977, on laws and rules relating to mortgage lending in this state; or

(b) If the individual has been employed as a full-time loan originator for two or more years in this state, completed continuing education as required by the director pursuant to ORS 59.975.

(5) A mortgage banker or mortgage broker that applies for renewal of a license pursuant to ORS 59.855 shall include with the application evidence acceptable to the director that each individual employed by the mortgage banker or mortgage broker as a loan originator who is an insurance [*agent*] **producer** or insurance consultant licensed under ORS 744.002 and who is a full-time loan originator as defined in ORS 59.970 has:

(a)(A) Successfully completed an entry-level training course approved or provided by an organization certified by the director as described in ORS 59.977; and

(B) Passed an examination, approved or provided by an organization described in ORS 59.977, on laws and rules relating to mortgage lending in this state; or

(b) If the individual has been employed as a full-time loan originator for two or more years in this state, completed continuing education as required by the director pursuant to ORS 59.975.

(6) An applicant under subsection (2), (3), (4) or (5) of this section shall, at the time of application, certify that the applicant has conducted criminal records checks required under ORS 59.970 and 59.972 and:

(a) Certify that, to the best of the applicant's belief, no individual the applicant employs or intends to employ as a loan originator has engaged in conduct that would constitute a violation of ORS 59.967 (2) or 59.971; or

(b) Note any exceptions to the certification made in paragraph (a) of this subsection. An applicant is not subject to an action at law for making a notation under this paragraph in good faith.

(7) Except as provided in subsections (4) and (5) of this section, a mortgage banker or mortgage broker may voluntarily report to the director regarding employees who would qualify as loan originators if not exempted under ORS 59.840 (4). Voluntary reporting by a banker or broker under this subsection does not make the reported employees subject to training, examination or continuing education requirements or other laws governing loan originators.

(8) The director shall keep records that include notifications filed under subsection (1) of this section and exceptions to certifications under subsection (6) of this section. The director shall retain the records for a period of not less than three years. The director shall keep for 10 years a record of any complaint against a loan originator that has been determined to be justified pursuant to ORS 59.973.

(9) Notwithstanding subsections (1) to (5) of this section and ORS 59.865 (17), 59.970, 59.971 (1)(d) and 59.975, the director, by rule, may waive any training, examination or continuing education requirement for a loan originator for a period not to exceed six months after the individual begins or resumes employment as a loan originator.

NOTE: Conforms terminology in (4) and (5) to changes made in chapter 364, Oregon Laws 2003.

SECTION 41. ORS 59.970 is amended to read:

59.970. (1) As used in this section, "loan originator" means an individual who:

(a) Is an insurance [*agent*] **producer** or insurance consultant licensed under ORS 744.002;

(b) Has not transacted insurance as defined in ORS 731.146 for a period of 60 consecutive days; and

(c) Would qualify as a full-time loan originator if not exempted under ORS 59.840 (4).

(2) An individual who is an insurance [*agent*] **producer** or insurance consultant licensed under ORS 744.002 and who is employed full-time as a loan originator shall:

(a) Complete an entry-level training course approved or provided by an organization certified as described in ORS 59.977;

(b) Pass an examination, approved or provided by an organization described in ORS 59.977, on laws and rules relating to mortgage lending in this state;

(c) If the individual has been employed as a loan originator for two or more years in this state, complete the continuing education requirements under ORS 59.975; and

(d) Undergo a criminal records check as required in ORS 59.972.

NOTE: Conforms terminology in (1)(a) and (2) to changes made in chapter 364, Oregon Laws 2003.

SECTION 42. Section 7, chapter 526, Oregon Laws 2003, is amended to read:

Sec. 7. (1) The training and examination requirements described in ORS 59.969 and [*section 2 of this 2003 Act*] **59.970** do not apply to an individual who, on [*the effective date of this 2003 Act*] **January 1, 2004**:

(a) Is an insurance [*agent*] **producer** or insurance consultant licensed under ORS 744.002;

(b) Would qualify as a loan originator if not exempted under ORS 59.840 (4); and

(c) Has worked full-time performing the functions of a loan originator since January 1, 2002.

(2) The continuing education requirements described in ORS 59.969 and [*section 2 of this 2003 Act*] **59.970** apply to an individual who is an insurance [*agent*] **producer** or insurance consultant licensed under ORS 744.002 and who is a loan originator as defined in [*section 2 of this 2003 Act*] **ORS 59.970**. The two-year period allowed for the individual to complete the continuing education requirements begins on the filing date of the first application under ORS 59.969 that lists the individual.

NOTE: Conforms terminology in (1)(a) and (2) to changes in chapter 364, Oregon Laws 2003.

SECTION 43. ORS 63.707 is amended to read:

63.707. (1) A foreign limited liability company may apply for authority to transact business in this state by delivering an application to the office for filing. The application shall set forth:

(a) The name of the foreign limited liability company or, if its name is unavailable for filing in this state, another name that satisfies the requirements of ORS 63.717;

(b) The name of the state or country under whose law it is organized;

(c) Its date of organization and either the date on which the period of its duration expires or a statement that its duration is perpetual;

(d) The address, including street and number, and mailing address, if different, of its principal office;

(e) The address, including street and number, of its registered office in this state and the name of its registered agent at that office;

(f) A statement that the foreign limited liability company satisfies the requirements of ORS 63.714 (3); and

(g) A statement whether the foreign limited liability company is member-managed or manager-managed, or [*shall specify*] whether the foreign limited liability company is managed by a manager or managers.

(2) The foreign limited liability company shall deliver with the completed application a certificate of existence, or a document of similar import, current within 60 days of delivery and authenticated by the official having custody of limited liability company records in the state or country under whose law it is organized.

NOTE: Simplifies syntax in (1)(g).

SECTION 44. ORS 65.167 is amended to read:

65.167. (1) No member of a public benefit or mutual benefit corporation may be expelled or suspended, and no membership or memberships in such corporations may be terminated or suspended**,** except pursuant to a procedure [*which*] **that** is fair and reasonable and is carried out in good faith.

(2) A procedure is fair and reasonable when either:

(a) The articles or bylaws set forth a procedure [*which*] **that** provides:

(A) Not less than 15 days′ prior written notice of the expulsion, suspension or termination and the reasons therefor; and

(B) An opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension or termination by a person or persons authorized to decide that the proposed expulsion, termination or suspension not take place; or

(b) It is fair and reasonable taking into consideration all of the relevant facts and circumstances.

(3) Any written notice given by mail must be given by first class or certified mail sent to the last address of the member shown on the corporation′s records.

(4) Any proceeding challenging an expulsion, suspension or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension or termination.

(5) A member who has been expelled or suspended, or whose membership has been suspended or terminated, may be liable to the corporation for dues, assessments or fees as a result of obligations incurred by the member prior to expulsion, suspension or termination.

NOTE: Corrects punctuation in (1) and grammar in (1) and (2)(a).

SECTION 45. ORS 65.224 is amended to read:

65.224. (1) A corporation shall prepare an alphabetical list of the names, addresses and membership dates of all its members. If there are classes of members, the list must show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but are not part of the main list of members.

(2) The list of members must be available for inspection by any member for the purpose of communication with other members concerning the meeting, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation′s principal office or at a reasonable place identified in the meeting notice in the city or other location where the meeting will be held. A member, the member′s agent or **the member′s** attorney is entitled, on written demand setting forth a proper purpose, to inspect and, subject to the requirements of ORS 65.774 and 65.782, to copy the list at a reasonable time and at the member′s expense, during the period it is available for inspection.

(3) The corporation shall make the list of members available at the meeting, and any member, the member′s agent or **the member′s** attorney is entitled to inspect the list for any proper purpose at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a member, the member′s agent or **the member′s** attorney to inspect the list of members before or at the meeting or copy the list as permitted by subsection (2) of this section, on application of the member, the circuit court of the county where the corporation′s principal office, or if the principal office is not in this state, where its registered office is or was last located, may enter a temporary restraining order or preliminary injunction pursuant to ORCP 79 ordering the inspection or copying at the corporation′s expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete. The court may award reasonable attorney fees to the prevailing party in an action under this subsection. The party initiating such a proceeding shall not be required to post an undertaking pursuant to ORCP 82 A.

(5) Refusal or failure to prepare or make available the membership list does not affect the validity of action taken at the meeting.

(6) The articles or bylaws of a religious corporation may limit or abolish the rights of a member under this section to inspect and copy any corporate record.

(7) The articles of a public benefit corporation organized primarily for political or social action, including but not limited to political or social advocacy, education, litigation or a combination thereof, may limit or abolish the right of a member or the [*members′*] **member′s** agent or attorney to inspect or copy the membership list if the corporation provides a reasonable means to mail communications to the other members through the corporation at the expense of the member making the request.

NOTE: Clarifies applicability of antecedent in (2), (3) and (4); corrects grammar in (7).

SECTION 46. ORS 65.394 is amended to read:

65.394. Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because of being a director of the corporation**,** against reasonable expenses actually incurred by the director in connection with the proceeding.

NOTE: Corrects punctuation.

SECTION 47. ORS 65.451 is amended to read:

65.451. (1) A corporation's board of directors may restate its articles of incorporation at any time with or without approval by **the** members **entitled to vote on articles** or any other person.

(2) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring approval by the members entitled to vote on articles or any other person, it must be adopted as provided in ORS 65.437.

(3) If the board seeks to have the restatement approved by [*such*] **the** members **entitled to vote on articles** at a membership meeting, the corporation shall give written notice to [*such members*] **the members entitled to vote on articles** of the proposed membership meeting in accordance with ORS 65.214. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other change it would make in the articles.

(4) If the board seeks to have the restatement approved by [*such members*] **the members entitled to vote on articles** by written ballot or written consent, the material soliciting the approval shall contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other change it would make in the articles.

(5) A restatement requiring approval by [*such*] **the** members **entitled to vote on articles** must be approved by the same vote as an amendment to articles under ORS 65.437.

(6) A corporation restating its articles of incorporation shall deliver to the Office of the Secretary of State for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(a) Whether the restatement contains an amendment to the articles requiring approval by the members entitled to vote on articles or any other person other than the board of directors and, if it does not, that the board of directors adopted the restatement, or if the restatement contains an amendment to the articles requiring approval by the members **entitled to vote on articles**, the information required by ORS 65.447; and

(b) If the restatement contains an amendment to the articles requiring approval by a person whose approval is required pursuant to ORS 65.467, a statement that such approval was obtained.

(7) Restated articles of incorporation shall include all statements required to be included in original articles of incorporation except that no statement is required to be made with respect to:

(a) The names and addresses of the incorporators or the initial or present registered office or agent; or

(b) The mailing address of the corporation if an annual report has been filed with the Office of the Secretary of State.

(8) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(9) The Secretary of State may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection (6) of this section.

NOTE: Makes terminology consistent in (1), (3), (4), (5) and (6)(a).

SECTION 48. ORS 65.534 is amended to read:

65.534. (1) A corporation may sell, lease, exchange or otherwise dispose of all or substantially all of its property, with or without the goodwill, other than in the usual and regular course of its activities, on the terms and conditions and for the consideration determined by the corporation's board of directors if the proposed transaction is authorized by subsection (2) of this section.

(2) Unless this chapter, the articles, bylaws or the board of directors or members, acting pursuant to subsection (4) of this section, require a greater vote or voting by class, the proposed transaction to be authorized must be approved:

(a) By the board;

(b) By the members entitled to vote on the transaction by at least two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(c) In writing by any person or persons whose approval is required for an amendment to the articles or bylaws by a provision of the articles as authorized by ORS 65.467.

(3) If the corporation does not have members entitled to vote on the transaction, [*it*] **the transaction** must be approved by a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors′ meeting at which such approval is to be obtained in accordance with ORS 65.344 (2). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange or other disposition of all or substantially all of the property of the corporation and contain or be accompanied by a description of the transaction.

(4) The board of directors may condition its submission of the proposed transaction to a vote of members, and the members entitled to vote on the transaction may condition their approval of the transaction, on receipt of a higher percentage of affirmative votes or on any other basis.

(5) If the board seeks to have the transaction approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with ORS 65.214. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange or other disposition of all or substantially all of the property of the corporation and contain or be accompanied by a description of the transaction.

(6) If the board seeks to have the transaction approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a description of the transaction.

(7) A public benefit or religious corporation must give written notice to the Attorney General 20 days before it sells, leases, exchanges or otherwise disposes of all or substantially all of its property unless the transaction is in the usual and regular course of its activities or the Attorney General has given the corporation a written waiver of this notice requirement.

(8) After a sale, lease, exchange or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further action by the members or any other person who approved the transaction, in accordance with the procedure set forth in the resolution proposing the transaction or, if none is set forth, in the manner determined by the board of directors.

NOTE: Specifies referent in (3).

SECTION 49. ORS 65.714 is amended to read:

65.714. (1) A foreign corporation authorized to transact business in this state has the same but no greater rights and enjoys the same but no greater privileges as, and except as otherwise provided by this chapter is subject to the same duties, restrictions, penalties and liabilities now or later imposed on**,** a domestic corporation of like character.

(2) The filing by the Secretary of State of an application or amendment to the application for authority to transact business shall constitute authorization to transact business in this state, subject to the right of the Secretary of State to revoke the authorization.

(3) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

NOTE: Corrects punctuation in (1).

SECTION 50. ORS 65.737 is amended to read:

65.737. The Secretary of State may commence a proceeding under ORS 65.741 to revoke the authority of a foreign corporation to transact business in this state if:

(1) The foreign corporation does not deliver its annual report to the Secretary of State within the time prescribed by this chapter;

(2) The foreign corporation does not pay within the time prescribed by this chapter any fees imposed by this chapter;

(3) The foreign corporation has failed to appoint or maintain a registered agent or registered office in this state as prescribed by this chapter;

(4) The foreign corporation does not inform the Secretary of State under ORS 65.724 or 65.727 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued; or

(5) The Secretary of State receives a duly authenticated certificate from the official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that [*it*] **the foreign corporation** has been dissolved or disappeared as the result of a merger.

NOTE: Specifies referent in (5).

SECTION 51. ORS 65.957 is amended to read:

65.957. (1) This chapter applies to all domestic corporations in existence on October 3, 1989, that were incorporated under any general statute of this state providing for incorporation of nonprofit corporations if power to amend or repeal the statute under which the corporation was incorporated was reserved.

(2) Without limitation as to any other corporations [*which*] **that** may be outside the scope of subsection (1) of this section, this chapter does not apply to the following:

(a) The Oregon State Bar and the Oregon State Bar Professional Liability Fund created under ORS 9.005 to 9.755;

(b) The State Accident Insurance Fund Corporation created under ORS chapter 656;

(c) The Oregon Insurance Guaranty Association and the Oregon Life and Health Insurance Guaranty Association created under ORS chapter 734; and

(d) The Oregon FAIR Plan Association and the Oregon Medical Insurance Pool created under ORS chapter 735.

[*(3) A public benefit corporation that has less than three directors on October 3, 1989, shall comply with ORS 65.307 (1) by October 3, 1990.*]

NOTE: Corrects grammar in (2); deletes obsolete provision in (3).

SECTION 52. ORS 87.005 is amended to read:

87.005. As used in ORS 87.001 to 87.060 and 87.075 to 87.093:

(1) "Commencement of the improvement" means the first actual preparation or construction upon the site or the first delivery to the site of materials of such substantial character as to notify interested persons that preparation or construction upon the site has begun or is about to begin.

(2) "Construction" includes creation or making of an improvement, and alteration, partial construction and repairs done in and upon an improvement.

(3) "Construction agent" includes a contractor, architect, builder or other person having charge of construction or preparation.

(4) "Contractor" means a person who contracts on predetermined terms to be responsible for the performance of all or part of a job of preparation or construction in accordance with established specifications or plans, retaining control of means, method and manner of accomplishing the desired result, and who provides:

(a) Labor at the site; or

(b) Materials, supplies and labor at the site.

(5) "Improvement" includes any building, wharf, bridge, ditch, flume, reservoir, well, tunnel, fence, street, sidewalk, machinery, aqueduct and all other structures and superstructures, whenever it can be made applicable thereto.

(6) "Mortgagee" means a person who has a valid subsisting mortgage of record or trust deed of record securing a loan upon land or an improvement.

(7) "Original contractor" means a contractor who has a contractual relationship with the owner.

(8) "Owner" means:

(a) A person who is or claims to be the owner in fee or a lesser estate of the land on which preparation or construction is performed; [*or*]

(b) A person who has entered into a contract for the purchase of an interest in the land or improvement thereon sought to be charged with a lien created under ORS 87.010; or

(c) A person to whom a valid subsisting lease on land or an improvement is made, and who possesses an interest in the land or improvement by reason of that lease.

(9) "Preparation" includes excavating, surveying, landscaping, demolition and detachment of existing structures, leveling, filling in, and other preparation of land for construction.

(10) "Site" means the land on which construction or preparation is performed.

(11) "Subcontractor" means a contractor who has no direct contractual relationship with the owner.

NOTE: Conforms structure in (8)(a) to legislative style.

SECTION 53. ORS 87.045 is amended to read:

87.045. (1) The completion of construction of an improvement shall occur when:

(a) The improvement is substantially complete; [*or*]

(b) A completion notice is posted and recorded as provided by subsections (2) and (3) of this section; or

(c) The improvement is abandoned as provided by subsection (5) of this section.

(2) When all original contractors employed on the construction of an improvement have substantially performed their contracts, any original contractor, the owner or mortgagee, or an agent of any of them may post and record a completion notice. The completion notice shall state in substance the following:

Notice hereby is given that the building, structure or other improvement on the following described premises, (insert the legal description of the property including the street address, if known) has been completed.

All persons claiming a lien upon the same under the Construction Lien Law hereby are notified to file a claim of lien as required by ORS 87.035.

Dated _____, 2__

_____

Original Contractor, Owner or Mortgagee

P. O. Address: _____

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(3) Any notice provided for in this section shall be posted on the date it bears in some conspicuous place upon the land or upon the improvement situated thereon. Within five days from the date of posting the notice, the party posting it or the agent of the party shall record with the recording officer of the county in which the property, or some part thereof, is situated, a copy of the notice, together with an affidavit indorsed thereon or attached thereto, made by the person posting the notice, stating the date, place and manner of posting the notice. The recording officer shall indorse upon the notice the date of the filing thereof and record and index the notice in the statutory lien record as required by ORS 87.050.

(4) Anyone claiming a lien created under ORS 87.010 on the premises described in a completion or abandonment notice for labor or services performed and materials or equipment used prior to the date of the notice shall perfect the lien pursuant to ORS 87.035.

(5) Except as provided in subsection (6) of this section, an improvement is abandoned:

(a) On the 75th day after work on the construction of the improvement ceases; or

(b) When the owner or mortgagee of the improvement or an agent of either posts and records an abandonment notice in writing signed by either the owner or the mortgagee.

(6) When work on the construction of an improvement ceases, if the owner or mortgagee of the improvement intends to resume construction and does not want abandonment to occur, the owner or mortgagee or an agent of either shall post and record a nonabandonment notice in writing signed by either the owner or mortgagee. The notice of nonabandonment shall be posted and recorded not later than the 74th day after work on the construction ceases. The notice of nonabandonment may be renewed at intervals of 150 days by rerecording the notice.

(7) The notices of abandonment or nonabandonment described in subsections (5) and (6) of this section shall state in substance:

(a) That the improvement is either abandoned or not abandoned.

(b) The legal description of the property, including the street address if known, on which the improvement is located.

(c) In the case of an abandonment notice, that all persons claiming a lien on the improvement should file a claim of lien pursuant to ORS 87.035.

(d) In the case of a nonabandonment notice, the reasons for the delay in construction.

(e) The date of the notice.

(f) The address of the person who signs the notice.

NOTE: Conforms structure in (1)(a) to legislative style.

SECTION 54. ORS 87.081 is amended to read:

87.081. (1) When a person files a bond with the recording officer of the county under ORS 87.076 and serves notice of the filing upon the lien claimant, the person shall file with the same recording officer an affidavit stating that such notice was served.

(2) When a person deposits money with the treasurer of a county under ORS 87.076 and serves notice of the deposit upon the lien claimant, the person shall file with the recording officer of the same county an affidavit stating that the deposit was made and notice **was** served.

NOTE: Completes verb phrase in (2).

SECTION 55. ORS 87.083 is amended to read:

87.083. (1) Any suit to foreclose a lien pursuant to ORS 87.060 [*which*] **that** is commenced or pending after the filing of a bond or deposit of money under ORS 87.076 shall proceed as if no filing or deposit had been made except that the lien shall attach to the bond or money upon the filing or deposit and the service of notice thereof upon the lien claimant. The property described in the claim of lien shall thereafter be entirely free of the lien and shall in no way be involved in subsequent proceedings.

(2) When a bond is filed or money is deposited, if, in a suit to enforce the lien for which the filing or deposit is made, the court [*shall allow*] **allows** the lien, the lien shall be satisfied out of the bond or money. The court shall include as part of its judgment an order for the return to the person who deposited the money of any amount remaining after the lien is satisfied.

(3) When a bond is filed or money is deposited, if, in a suit to enforce the lien for which the filing or deposit is made, the court [*shall disallow*] **disallows** the lien, the court shall include as part of its judgment an order for the return of the bond or money to the person who filed the bond or **deposited the** money.

NOTE: Corrects grammar in (1), (2) and (3) and verb phrase in (3).

SECTION 56. ORS 88.080 is amended to read:

88.080. A judgment of foreclosure shall order the mortgaged property sold. Property sold on execution issued upon a judgment may be redeemed in like manner and with like effect as property sold on an execution pursuant to ORS [*18.478, 18.486, 18.532, 18.536, 18.538, 18.542, 18.545, 18.548, 18.552, 18.555, 18.562, 18.565, 18.568, 18.572, 18.578, 18.582, 18.585, 18.588, 18.594 and 18.598*] **18.252 to 18.850**, and not otherwise. A sheriff's deed for property sold on execution issued upon a judgment shall have the same force and effect as a sheriff's deed issued for property sold on an execution pursuant to ORS [*18.478, 18.486, 18.532, 18.536, 18.538, 18.542, 18.545, 18.548, 18.552, 18.555, 18.562, 18.565, 18.568, 18.572, 18.578, 18.582, 18.585, 18.588, 18.594 and 18.598*] **18.252 to 18.850**.

NOTE: Substitutes pertinent series.

SECTION 57. ORS 90.100 is amended to read:

90.100. [*Subject to additional definitions contained*] **As used** in this chapter**,** [*that apply to specific sections or parts thereof, and*] unless the context otherwise requires[*, in this chapter*]:

(1) "Accessory building or structure" means any portable, demountable or permanent structure, including but not limited to cabanas, ramadas, storage sheds, garages, awnings, carports, decks, steps, ramps, piers and pilings, that is:

(a) Owned and used solely by a tenant of a manufactured dwelling or floating home; or

(b) Provided pursuant to a written rental agreement for the sole use of and maintenance by a tenant of a manufactured dwelling or floating home.

(2) "Action" includes recoupment, counterclaim, setoff, suit in equity and any other proceeding in which rights are determined, including an action for possession.

(3) "Applicant screening charge" means any payment of money required by a landlord of an applicant prior to entering into a rental agreement with that applicant for a residential dwelling unit, the purpose of which is to pay the cost of processing an application for a rental agreement for a residential dwelling unit.

(4) "Building and housing codes" [*include*] **includes** any law, ordinance or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use or appearance of any premises or dwelling unit.

(5) "Conduct" means the commission of an act or the failure to act.

(6) "Dealer" means any person in the business of selling, leasing or distributing new or used manufactured dwellings or floating homes to persons who purchase or lease a manufactured dwelling or floating home for use as a residence.

(7) "Domestic violence" has the meaning given that term in ORS 135.230.

(8) "Drug and alcohol free housing" means a dwelling unit described in ORS 90.243.

(9) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household. "Dwelling unit" regarding a person who rents a space for a manufactured dwelling or recreational vehicle or regarding a person who rents moorage space for a floating home as defined in ORS 830.700, but does not rent the home, means the space rented and not the manufactured dwelling, recreational vehicle or floating home itself.

(10) "Essential service" means:

(a) For a tenancy not consisting of rental space for a manufactured dwelling, floating home or recreational vehicle owned by the tenant and not otherwise subject to ORS 90.505 to 90.840:

(A) Heat, plumbing, hot and cold running water, gas, electricity, light fixtures, locks for exterior doors, latches for windows and any cooking appliance or refrigerator supplied or required to be supplied by the landlord; and

(B) Any other service or habitability obligation imposed by the rental agreement or ORS 90.320, the lack or violation of which creates a serious threat to the tenant's health, safety or property or makes the dwelling unit unfit for occupancy.

(b) For a tenancy consisting of rental space for a manufactured dwelling, floating home or recreational vehicle owned by the tenant or that is otherwise subject to ORS 90.505 to 90.840:

(A) Sewage disposal, water supply, electrical supply and, if required by applicable law, any drainage system; and

(B) Any other service or habitability obligation imposed by the rental agreement or ORS 90.730, the lack or violation of which creates a serious threat to the tenant's health, safety or property or makes the rented space unfit for occupancy.

(11) "Facility" means:

(a) A place where four or more manufactured dwellings are located, the primary purpose of which is to rent space or keep space for rent to any person for a fee; or

(b) A moorage of contiguous dwelling units that may be legally transferred as a single unit and are owned by one person where four or more floating homes are secured, the primary purpose of which is to rent space or keep space for rent to any person for a fee.

(12) "Facility purchase association" means a group of three or more tenants who reside in a facility and have organized for the purpose of eventual purchase of the facility.

(13) "Fee" means a nonrefundable payment of money.

(14) "First class mail" does not include certified or registered mail, or any other form of mail that may delay or hinder actual delivery of mail to the recipient.

(15) "Fixed term tenancy" means a tenancy that has a fixed term of existence, continuing to a specific ending date and terminating on that date without requiring further notice to effect the termination.

(16) "Floating home" has the meaning given that term in ORS 830.700. [*As used in this chapter,*] "Floating home" includes an accessory building or structure.

(17) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(18) "Hotel or motel" means "hotel" as that term is defined in ORS 699.005.

(19) "Informal dispute resolution" means, but is not limited to, consultation between the landlord or landlord's agent and one or more tenants, or mediation utilizing the services of a third party.

(20) "Landlord" means the owner, lessor or sublessor of the dwelling unit or the building or premises of which it is a part. "Landlord" includes a person who is authorized by the owner, lessor or sublessor to manage the premises or to enter into a rental agreement.

(21) "Landlord's agent" means a person who has oral or written authority, either express or implied, to act for or on behalf of a landlord.

(22) "Last month's rent deposit" means a type of security deposit, however designated, the primary function of which is to secure the payment of rent for the last month of the tenancy.

(23) "Manufactured dwelling" means a residential trailer, a mobile home or a manufactured home as those terms are defined in ORS 446.003 [*(26)*]. "Manufactured dwelling" includes an accessory building or structure. "Manufactured dwelling" does not include a recreational vehicle.

(24) "Manufactured dwelling park" has the meaning given that term in ORS 446.003.

(25) "Month-to-month tenancy" means a tenancy that automatically renews and continues for successive monthly periods on the same terms and conditions originally agreed to, or as revised by the parties, until terminated by one or both of the parties.

(26) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(27) "Owner" includes a mortgagee in possession and means one or more persons, jointly or severally, in whom is vested:

(a) All or part of the legal title to property; or

(b) All or part of the beneficial ownership and a right to present use and enjoyment of the premises.

(28) "Person" includes an individual or organization.

(29) "Premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of tenants generally or [*whose*] **the** use **of which** is promised to the tenant.

(30) "Prepaid rent" means any payment of money to the landlord for a rent obligation not yet due. In addition, "prepaid rent" means rent paid for a period extending beyond a termination date.

(31) "Recreational vehicle" has the meaning given that term in ORS 446.003.

(32) "Rent" means any payment to be made to the landlord under the rental agreement, periodic or otherwise, in exchange for the right of a tenant and any permitted pet to occupy a dwelling unit to the exclusion of others. "Rent" does not include security deposits, fees or utility or service charges as described in ORS 90.315 (4) and 90.510 (8).

(33) "Rental agreement" means all agreements, written or oral, and valid rules and regulations adopted under ORS 90.262 or 90.510 (6) embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises. "Rental agreement" includes a lease. A rental agreement shall be either a week-to-week tenancy, month-to-month tenancy or fixed term tenancy.

(34) "Roomer" means a person occupying a dwelling unit that does not include a toilet and either a bathtub or a shower and a refrigerator, stove and kitchen, all provided by the landlord, and where one or more of these facilities are used in common by occupants in the structure.

(35) "Screening or admission criteria" means a written statement of any factors a landlord considers in deciding whether to accept or reject an applicant and any qualifications required for acceptance. "Screening or admission criteria" includes, but is not limited to, the rental history, character references, public records, criminal records, credit reports, credit references and incomes or resources of the applicant.

(36) "Security deposit" means [*any*] **a** refundable payment or deposit of money, however designated, the primary function of which is to secure the performance of a rental agreement or any part of a rental agreement[*, but does not mean*]**. "Security deposit" does not include** a fee.

(37) "Sexual assault" has the meaning given that term in ORS 147.450.

(38) "Squatter" means a person occupying a dwelling unit who is not so entitled under a rental agreement or who is not authorized by the tenant to occupy that dwelling unit. "Squatter" does not include a tenant who holds over as described in ORS 90.427 (4).

(39) "Stalking" means the behavior described in ORS 163.732.

(40) "Statement of policy" means the summary explanation of information and facility policies to be provided to prospective and existing tenants under ORS 90.510.

(41) "Surrender" means an agreement, express or implied, as described in ORS 90.148 between a landlord and tenant to terminate a rental agreement that gave the tenant the right to occupy a dwelling unit.

(42) "Tenant" means a person, including a roomer, entitled under a rental agreement to occupy a dwelling unit to the exclusion of others, including a dwelling unit owned, operated or controlled by a public housing authority. "Tenant" also includes a minor, as defined and provided for in ORS 109.697. As used in ORS 90.505 to 90.840, "tenant" includes only a person who owns and occupies as a residence a manufactured dwelling or a floating home in a facility and persons residing with that tenant under the terms of the rental agreement.

(43) "Transient lodging" means a room or a suite of rooms.

(44) "Transient occupancy" means occupancy in transient lodging that has all of the following characteristics:

(a) Occupancy is charged on a daily basis and is not collected more than six days in advance;

(b) The lodging operator provides maid and linen service daily or every two days as part of the regularly charged cost of occupancy; and

(c) The period of occupancy does not exceed 30 days.

(45) "Vacation occupancy" means occupancy in a dwelling unit, not including transient occupancy in a hotel or motel, that has all of the following characteristics:

(a) The occupant rents the unit for vacation purposes only, not as a principal residence;

(b) The occupant has a principal residence other than at the unit; and

(c) The period of authorized occupancy does not exceed 45 days.

(46) "Victim" means a person who is the subject of domestic violence, sexual assault or stalking. "Victim" includes a parent or guardian of a minor who is the subject of domestic violence, sexual assault or stalking.

(47) "Week-to-week tenancy" means a tenancy that has all of the following characteristics:

(a) Occupancy is charged on a weekly basis and is payable no less frequently than every seven days;

(b) There is a written rental agreement that defines the landlord's and the tenant's rights and responsibilities under this chapter; and

(c) There are no fees or security deposits, although the landlord may require the payment of an applicant screening charge, as provided in ORS 90.295.

NOTE: Conforms terminology to legislative style in lead-in, (4), (16) and (36). Deletes subsection reference in (23) to conform to renumbering; see section 313 (amending 446.003). Corrects grammar in (29).

SECTION 58. ORS 90.140 is amended to read:

90.140. (1) A landlord may require or accept the following types of payments:

(a) Applicant screening charges, pursuant to ORS 90.295;

(b) Deposits to secure the execution of a rental agreement, pursuant to ORS 90.297;

(c) Security deposits, pursuant to ORS 90.300;

(d) Fees, pursuant to ORS 90.302;

(e) Rent, as defined in ORS 90.100;

(f) Prepaid rent, as defined in ORS 90.100;

(g) Utility or service charges, pursuant to ORS 90.315 (4) or 90.510 (8);

(h) Late charges or fees, pursuant to ORS 90.260; and

(i) Damages, for noncompliance with a rental agreement or ORS 90.325, pursuant to ORS 90.400 [*(11)*] **(13)** or as provided elsewhere in this chapter.

(2) A tenant who requests a writing that evidences the tenant's payment is entitled to receive that writing from the landlord as a condition for making the payment. The writing may be a receipt, statement of the tenant's account or other acknowledgment of the tenant's payment. The writing must include the amount paid, the date of payment and information identifying the landlord or the rental property. If the tenant makes the payment by mail, deposit or a method other than in person and requests the writing, the landlord shall within a reasonable time provide the tenant with the writing in a manner consistent with ORS 90.150.

NOTE: Adjusts for renumbering in (1)(i); see section 61 (amending 90.400).

SECTION 59. ORS 90.243 is amended to read:

90.243. (1) A dwelling unit qualifies as drug and alcohol free housing if:

(a)(A) For premises consisting of more than eight dwelling units, the dwelling unit is one of at least eight contiguous dwelling units on the premises that are designated by the landlord as drug and alcohol free housing dwelling units and that are each occupied or held for occupancy by at least one tenant who is a recovering alcoholic or drug addict and is participating in a program of recovery; or

(B) For premises consisting of eight or fewer dwelling units, the dwelling unit is one of at least four contiguous dwelling units on the premises that are designated by the landlord as drug and alcohol free housing dwelling units and that are each occupied or held for occupancy by at least one tenant who is a recovering alcoholic or drug addict and is participating in a program of recovery;

(b) The landlord is a nonprofit corporation incorporated pursuant to ORS chapter 65 or a housing authority created pursuant to ORS 456.055 to 456.235;

(c) The landlord provides for the designated drug and alcohol free housing dwelling units:

(A) A drug and alcohol free environment, covering all tenants, employees, staff, agents of the landlord and guests;

(B) Monitoring of the tenants for compliance with the requirements described in paragraph (d) of this subsection;

(C) Individual and group support for recovery; and

(D) Access to a specified program of recovery; and

(d) The rental agreement for the designated drug and alcohol free housing dwelling unit is in writing and includes the following provisions:

(A) That the dwelling unit is designated by the landlord as a drug and alcohol free housing dwelling unit;

(B) That the tenant may not use, possess or share alcohol, illegal drugs, controlled substances or prescription drugs without a medical prescription, either on or off the premises;

(C) That the tenant may not allow the tenant's guests to use, possess or share alcohol, illegal drugs, controlled substances or prescription drugs without a medical prescription, on the premises;

(D) That the tenant shall participate in a program of recovery, which specific program is described in the rental agreement;

(E) That on at least a quarterly basis the tenant shall provide written verification from the tenant's program of recovery that the tenant is participating in the program of recovery and that the tenant has not used alcohol or illegal drugs;

(F) That the landlord has the right to require the tenant to take a test for drug or alcohol usage promptly and at the landlord's discretion and expense; and

(G) That the landlord has the right to terminate the tenant's tenancy in the drug and alcohol free housing for noncompliance with the requirements described in this paragraph, pursuant to ORS 90.400 (1) and [*(9)*] **(11)** or 90.630.

(2) A dwelling unit qualifies as drug and alcohol free housing despite the premises not having the minimum number of qualified dwelling units required by subsection (1)(a) of this section if:

(a) The premises are occupied but have not previously qualified as drug and alcohol free housing;

(b) The landlord designates certain dwelling units on the premises as drug and alcohol free dwelling units;

(c) The number of designated drug and alcohol free housing dwelling units meets the requirement of subsection (1)(a) of this section;

(d) When each designated dwelling unit becomes vacant, the landlord rents that dwelling unit to, or holds that dwelling unit for occupancy by, at least one tenant who is a recovering alcoholic or drug addict and is participating in a program of recovery and the landlord meets the other requirements of subsection (1) of this section; and

(e) The dwelling unit is one of the designated drug and alcohol free housing dwelling units.

(3) The failure by a tenant to take a test for drug or alcohol usage as requested by the landlord pursuant to subsection (1)(d)(F) of this section may be considered evidence of drug or alcohol use.

(4) As used in this section, "program of recovery" means a verifiable program of counseling and rehabilitation treatment services, including a written plan, to assist recovering alcoholics or drug addicts to recover from their addiction to alcohol or illegal drugs while living in drug and alcohol free housing. A "program of recovery" includes Alcoholics Anonymous, Narcotics Anonymous and similar programs.

NOTE: Adjusts for renumbering in (1)(d)(G); see section 61 (amending 90.400).

SECTION 60. ORS 90.265 is amended to read:

90.265. (1) An alternative energy device installed in a dwelling unit by a tenant with the landlord's written permission is not a fixture in which the landlord has a legal interest, except as otherwise expressly provided in a written agreement between the landlord and tenant.

(2) As a condition to a grant of written permission referred to in subsection (1) of this section, a landlord may require a tenant to do one or more of the following:

(a) Provide a waiver of the landlord's liability for any injury to the tenant or other installer resulting from the tenant's or installer's negligence in the installation of the alternative energy device;

(b) Secure a waiver of the right to a lien against the property of the landlord from each contractor, subcontractor, laborer and material supplier who would obtain the right to a lien when the tenant installs or causes the installation of the alternative energy device; or

(c) Post a bond or pay a deposit in an amount not to exceed the cost of restoring the premises to its condition at the time of installation of the alternative energy device.

(3) Nothing in this section:

(a) Authorizes the installation of an alternative energy device in a dwelling unit without the landlord's written permission; or

(b) Limits a landlord's right to recover damages and obtain injunctive relief as provided in ORS 90.400 [*(11)*] **(13)**.

(4) As used in this section, "alternative energy device" has the meaning given that term in ORS 469.160.

NOTE: Adjusts for renumbering in (3)(b); see section 61 (amending 90.400).

SECTION 61. ORS 90.400 is amended to read:

90.400. (1)(a) Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement, a noncompliance with ORS 90.325 materially affecting health and safety, a material noncompliance with a rental agreement regarding a program of recovery in drug and alcohol free housing or a failure to pay a late charge pursuant to ORS 90.260 or a utility or service charge pursuant to ORS 90.315 (4), the landlord may deliver a written notice to the tenant terminating the tenancy for cause as provided in this subsection. The notice [*shall*] **must** specify the acts and omissions constituting the breach and [*shall*] state that the rental agreement will terminate upon a date not less than 30 days after delivery of the notice. If the breach is remediable by repairs, payment of damages, payment of a late charge or utility or service charge, change in conduct or otherwise, the notice [*shall*] **must** also state that the tenant can avoid termination by remedying the breach within 14 days.

(b) If the breach is not remedied in 14 days, the rental agreement [*shall terminate*] **terminates** as provided in the notice subject to paragraphs (c) and (d) of this subsection.

(c) If the tenant adequately remedies the breach before the date for remedying the breach as specified in the notice, the rental agreement does not terminate.

(d) If substantially the same act or omission that constituted a prior noncompliance of which notice was given pursuant to paragraph (a) of this subsection reoccurs within six months after the date specified in that notice as the date for remedying the prior noncompliance, the landlord may terminate the rental agreement upon at least 10 days′ written notice specifying the breach and the date of termination of the rental agreement. The tenant does not have a right to cure this subsequent breach. The date of termination specified in the 10-day notice given pursuant to this paragraph may not be sooner than the date of termination specified in the 30-day notice of the prior noncompliance given pursuant to paragraph (a) of this subsection. A landlord may not terminate a rental agreement pursuant to this paragraph if the only breach is a failure to pay the current month′s rent.

(e) In the case of a week-to-week tenancy, the notice periods in:

(A) Paragraph (a) of this subsection [*shall be changed*] **change** from 30 days to seven days and from 14 days to four days;

(B) Paragraph (b) of this subsection [*shall be changed*] **change** from 14 days to four days; and

(C) Paragraph (d) of this subsection [*shall be changed*] **change** from 10 days to four days.

(f) This subsection does not apply to a tenancy governed by ORS 90.505 to 90.840.

(2) The landlord may immediately terminate the rental agreement for nonpayment of rent and take possession of the dwelling unit in the manner provided in ORS 105.105 to 105.168 after written notice, as follows:

(a) In the case of a week-to-week tenancy, by delivering to the tenant at least 72 hours′ written notice of nonpayment and the landlord′s intention to terminate the rental agreement if the rent is not paid within that period. The landlord shall give this notice no sooner than on the fifth day of the rental period, including the first day the rent is due.

(b) In the case of all other tenancies, by delivering to the tenant:

(A) At least 72 hours′ written notice of nonpayment and the landlord′s intention to terminate the rental agreement if the rent is not paid within that period. The landlord shall give this notice no sooner than on the eighth day of the rental period, including the first day the rent is due; or

(B) At least 144 hours′ written notice of nonpayment and the landlord′s intention to terminate the rental agreement if the rent is not paid within that period. The landlord shall give this notice no sooner than on the fifth day of the rental period, including the first day the rent is due.

[*(c)*] **(3)** The notices described in [*this*] subsection **(2) of this section** shall also specify the date and time by which the tenant must pay the rent to cure the nonpayment of rent.

[*(d)*] **(4)** Payment by a tenant who has received a nonpayment of rent notice under [*this*] subsection **(2) of this section** is timely if mailed to the landlord within the period of the notice unless:

[*(A)*] **(a)** The nonpayment of rent notice is served on the tenant:

[*(i)*] **(A)** By personal delivery as provided in ORS 90.155 (1)(a); or

[*(ii)*] **(B)** By first class mail and attachment as provided in ORS 90.155 (1)(c);

[*(B)*] **(b)** A written rental agreement and the nonpayment of rent notice expressly state that payment is to be made at a specified location that is either on the premises or at a place where the tenant has made all previous rent payments in person; and

[*(C)*] **(c)** The place so specified is available to the tenant for payment throughout the period of the notice.

[*(3)*] **(5)** Except as provided in subsection [*(4)*] **(6)** of this section, the landlord, after at least 24 hours' written notice specifying the acts and omissions constituting the cause and specifying the date and time of the termination, may immediately terminate the rental agreement and take possession in the manner provided in ORS 105.105 to 105.168, if:

(a) The tenant, someone in the tenant's control or the tenant's pet seriously threatens to inflict substantial personal injury, or inflicts any substantial personal injury, upon a person on the premises other than the tenant;

(b) The tenant or someone in the tenant's control recklessly endangers a person on the premises other than the tenant by creating a serious risk of substantial personal injury;

(c) The tenant, someone in the tenant's control or the tenant's pet inflicts any substantial personal injury upon a neighbor living in the immediate vicinity of the premises;

(d) The tenant or someone in the tenant's control intentionally inflicts any substantial damage to the premises or the tenant's pet inflicts substantial damage to the premises on more than one occasion;

(e)(A) The tenant intentionally provided substantial false information on the application for the tenancy within the past year;

(B) The false information was with regard to a criminal conviction of the tenant that would have been material to the landlord's acceptance of the application; and

(C) The landlord terminates the rental agreement within 30 days after discovering the falsity of the information;

(f) The tenant has vacated the premises, the person in possession is holding contrary to a written rental agreement that prohibits subleasing the premises to another or allowing another person to occupy the premises without the written permission of the landlord, and the landlord has not knowingly accepted rent from the person in possession; or

(g) The tenant, someone in the tenant's control or the tenant's pet commits any act that is outrageous in the extreme, on the premises or in the immediate vicinity of the premises. An act [*that*] is ["]outrageous in the extreme[*" is an act*] **if the act is** not described in paragraphs (a) to (e) of this subsection, but is similar in degree and is one that a reasonable person in that community would consider to be so offensive as to warrant termination of the tenancy within 24 hours, considering the seriousness of the act or the risk to others. Such an act is more extreme or serious than an act that warrants a 30-day termination under subsection (1) of this section. [*An act that is "outrageous in the extreme" includes*] **Acts that are outrageous in the extreme include**, but [*is*] **are** not limited to[*, the following acts by a person*]:

(A) Prostitution or promotion of prostitution, as described in ORS 167.007 and 167.012;

(B) Manufacture, delivery or possession of a controlled substance, as described in ORS 475.005, but not including:

(i) The medical use of marijuana in compliance with ORS 475.300 to 475.346;

(ii) Possession of, or delivery for no consideration of, less than one avoirdupois ounce of marijuana as described in ORS 475.992 (2)(b) or (4)(f); [*or*] **and**

(iii) Possession of prescription drugs;

(C) Intimidation, as described in ORS 166.155 and 166.165; or

(D) Burglary as described in ORS 164.215 and 164.225.

[*(4)*] **(6)** If the cause for a termination notice given pursuant to subsection [*(3)(a)*] **(5)(a)**, (c), (d) or (g) of this section is based upon the acts of the tenant's pet, the tenant may cure the cause and avoid termination of the tenancy by removing the pet from the premises prior to the end of the notice period. The notice [*shall*] **must** describe the right of the tenant to cure the cause. If the tenant returns the pet to the premises at any time after having cured the violation, the landlord, after at

least 24 hours′ written notice specifying the subsequent presence of the offending pet, may terminate the rental agreement and take possession in the manner provided in ORS 105.105 to 105.168. The tenant does not have a right to cure this subsequent violation.

[*(5)*] **(7)** [*Someone is in the tenant's control, as that phrase is*] **As** used in subsection [*(3)*] **(5)** of this section, **someone is in the tenant′s control** when that person enters or remains on the premises with the tenant′s permission or consent after the tenant reasonably knows or should know of that person′s act or likelihood to commit any act of the type described in subsection [*(3)(a)*] **(5)(a)** to (d) and (g) of this section.

[*(6)*] **(8)** The landlord′s 24 hours′ written notice given under subsection [*(3)(f)*] **(5)(f)** of this section is not an admission by the landlord that the individual occupying the premises is a lessee or sublessee of the landlord.

[*(7)*] **(9)** [*With regard to "acts outrageous in the extreme" as described in subsection (3)(g) of this section,*] An act can be proven to be **an act that is** outrageous in the extreme even if [*it*] **the act** is one that does not violate a criminal statute. In addition, notwithstanding the reference in subsection [*(3)*] **(5)** of this section to existing criminal statutes, the landlord′s standard of proof in an action for possession under subsection [*(3)*] **(5)** of this section remains the civil standard, proof by a preponderance of the evidence.

[*(8)*] **(10)** If a good faith effort by a landlord to terminate a tenancy pursuant to subsection [*(3)(g)*] **(5)(g)** of this section and to recover possession of the rental unit pursuant to ORS 105.105 to 105.168 fails by decision of the court, the landlord may not be found in violation of any state statute or local ordinance requiring the landlord to remove that tenant upon threat of fine, abatement or forfeiture as long as the landlord continues to make a good faith effort to terminate the tenancy.

[*(9)*] **(11)** If a tenant living for less than two years in drug and alcohol free housing uses, possesses or shares alcohol, illegal drugs, controlled substances or prescription drugs without a medical prescription, the landlord may deliver a written notice to the tenant terminating the tenancy for cause as provided in this subsection. The notice [*shall*] **must** specify the acts constituting the drug or alcohol violation and [*shall*] state that the rental agreement will terminate in not less than 48 hours after delivery of the notice, at a specified date and time. The notice [*shall*] **must** also state that the tenant can cure the drug or alcohol violation by a change in conduct or otherwise within 24 hours after delivery of the notice. If the tenant cures the violation within the 24-hour period, the rental agreement does not terminate. If the tenant does not cure the violation within the 24-hour period, the rental agreement [*shall terminate*] **terminates** as provided in the notice. If substantially the same act that constituted a prior drug or alcohol violation of which notice was given reoccurs within six months, the landlord may terminate the rental agreement upon at least 24 hours′ written notice specifying the violation and the date and time of termination of the rental agreement. The tenant does not have a right to cure this subsequent violation.

[*(10)*] **(12)** Except as provided in this chapter, a landlord may pursue any one or more of the remedies listed in this section, simultaneously or sequentially.

[*(11)*] **(13)** Except as provided in this chapter, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or ORS 90.325 or 90.740.

NOTE: Restructures section to correct read-in woes in (2); tinkers with syntax and word choice.

SECTION 62. ORS 90.415 is amended to read:

90.415. (1) Except as otherwise provided in this section, a landlord waives the right to terminate a rental agreement for a particular breach if the landlord:

(a) During two or more separate rental periods, accepts rent with knowledge of the default by the tenant; or

(b) Accepts performance by a tenant that varies from the terms of the rental agreement.

(2) For purposes of subsection (1)(a) of this section, a landlord has not accepted rent if within six days after receipt of the rent payment, the landlord refunds the rent.

(3) A landlord does not waive the right to terminate as described in subsection (1)(a) of this section if the termination is pursuant to ORS 90.400 [*(3)*] **(5)**.

(4) A landlord does not waive the right to terminate as described in subsection (1) of this section if the landlord and tenant agree otherwise after the breach has occurred.

(5) If a tenancy consists of rented space for a manufactured dwelling or floating home as described in ORS 90.505, a landlord does not waive the right to terminate as described in subsection (1) of this section if:

(a) The breach or default at issue concerns:

(A) Disrepair or deterioration of the manufactured dwelling or floating home pursuant to ORS 90.632; or

(B) A failure to maintain the space, as provided by ORS 90.740 (2), (4)(b) and (4)(h); or

(b) The breach or default at issue concerns the tenant's conduct and, following the breach or default, but prior to acceptance of rent or performance as described in subsection (1) of this section, the landlord gives written notice to the tenant regarding the breach or default that:

(A) Describes specifically the conduct that constitutes the breach or default, either as a separate and distinct breach or default, a series or group of breaches or defaults or a continuous or ongoing breach or default;

(B) States that the tenant is required to discontinue the conduct or correct the breach or default; and

(C) States that a reoccurrence of the conduct that constitutes a breach or default may result in a termination of the tenancy pursuant to ORS 90.630. For a continuous or ongoing breach or default, the landlord's notice remains effective for 12 months.

(6) Prior to giving a nonpayment of rent termination notice pursuant to ORS 90.400 (2), a landlord who accepts partial rent for a rental period does not waive the right to terminate for nonpayment if:

(a) The landlord accepted the partial rent before the landlord gave any notice of intent to terminate under ORS 90.400 (2) based on the tenant's agreement to pay the balance by a time certain; and

(b) The tenant does not pay the balance of the rent as agreed.

(7) A landlord who accepts partial rent under subsection (6) of this section may proceed to serve a notice under ORS 90.400 (2) to terminate the tenancy if the balance of the rent is not paid, provided:

(a) The notice is served no earlier than it would have been permitted under ORS 90.400 (2) had no rent been accepted; and

(b) The notice permits the tenant to avoid termination of the tenancy for nonpayment of rent by paying the balance within 72 hours or 144 hours, as the case may be, or by any date to which the parties agreed, whichever is later.

(8) After giving a nonpayment of rent termination notice pursuant to ORS 90.400 (2), a landlord who accepts partial rent for a rental period does not waive the right to terminate for nonpayment if the landlord and tenant agree in writing that the acceptance does not constitute waiver.

(9) A written agreement under subsection (8) of this section may provide that the landlord may proceed to terminate the rental agreement and take possession in the manner provided by ORS 105.105 to 105.168 without serving a new notice under ORS 90.400 (2) in the event the tenant fails to pay the balance of the rent by a time certain.

(10) A landlord's acceptance of partial rent for a rental period does not waive the right to terminate the rental agreement if the entire amount of the partial payment was from funds paid under the United States Housing Act of 1937 (42 U.S.C. 1437f) or any state low income rental housing fund administered by the Housing and Community Services Department.

(11) A landlord who accepts rent after the giving of a notice of termination by the landlord or the tenant, other than a nonpayment of rent notice, does not waive the right to terminate on that notice if:

(a) The landlord accepts rent prorated to the termination date specified in the notice; or

(b) Within six days after receipt of the rent payment, the landlord refunds at least the unused balance of the rent prorated for the period beyond the termination date.

(12) A landlord who has served a notice of termination for cause under ORS 90.400 (1), 90.630 or 90.632 does not waive the right to terminate on that notice by accepting rent for the rental period and beyond the period covered by the notice if within six days after the end of the remedy or correction period described in the applicable statute, the landlord refunds the rent for the period beyond the termination date.

(13) A landlord who has served a notice of termination for cause under ORS 90.400 (1), 90.630 or 90.632 and who has commenced proceedings under ORS 105.105 to 105.168 to recover possession of the premises does not waive the right to terminate on that notice:

(a) By accepting rent for any period beyond the expiration of the notice during which the tenant remains in possession provided:

(A) The landlord notifies the tenant in writing, in or after the service of the notice of termination for cause, that acceptance of rent while a termination action is pending will not waive the right to terminate on that notice; and

(B) The rent does not cover a period extending beyond the date of its acceptance.

(b) By serving a notice of nonpayment of rent under ORS 90.400 (2).

(14) A landlord and tenant may by written agreement provide that monthly rent shall be paid in regular installments of less than a month pursuant to a schedule specified in the agreement. Those installment rent payments are not partial rent, as that term is used in this section.

(15) Unless otherwise agreed, a landlord does not waive the right to terminate as described in subsection (1) of this section by accepting:

(a) A last month's rent deposit collected at the beginning of the tenancy, even if the deposit covers a period beyond a termination date; or

(b) Rent distributed pursuant to a court order releasing money paid into court as provided by ORS 90.370 (1).

(16) Notwithstanding subsections (2), (11) and (12) of this section, if a tenancy consists of rented space for a manufactured dwelling or floating home as described in ORS 90.505, the period for the landlord to refund rent under subsection (2), (11) or (12) of this section is seven days.

(17) When a landlord must refund rent under this section, the refund shall be made to the tenant or other payer by personal delivery or first class mail and may be in the form of the tenant's or other payer's check or any other form of check or money.

NOTE: Adjusts for renumbering in (3); see section 61 (amending 90.400).

SECTION 63. ORS 90.510 is amended to read:

90.510. (1) Every landlord who rents a space for a manufactured dwelling or floating home shall provide a written statement of policy to prospective and existing tenants. The purpose of the statement of policy is to provide disclosure of the landlord's policies to prospective tenants and to existing tenants who have not previously received a statement of policy. The statement of policy is not a part of the rental agreement. The statement of policy shall provide all of the following information in summary form:

(a) The location and approximate size of the space to be rented.

(b) The federal fair-housing age classification and present zoning that affect the use of the rented space.

(c) The facility policy regarding rent adjustment and a rent history for the space to be rented. The rent history must, at a minimum, show the rent amounts on January 1 of each of the five preceding calendar years or during the length of the landlord's ownership, leasing or subleasing of the facility, whichever period is shorter.

(d) [*All*] **The** personal property, services and facilities [*to be*] **that are** provided by the landlord.

(e) [*All*] **The** installation charges **that are** imposed by the landlord and **the** installation fees **that are** imposed by government agencies.

(f) The facility policy regarding rental agreement termination including, but not limited to, closure of the facility.

(g) The facility policy regarding facility sale.

(h) The facility policy regarding informal dispute resolution.

(i) **The** utilities and services **that are** available, the **name of the** person furnishing them and the **name of the** person responsible for payment.

(j) If a tenants' association exists for the facility, a one-page summary about the tenants' association [*that shall be provided*]**. The tenants' association shall provide the summary** to the landlord [*by the tenants' association*].

(k) Any facility policy regarding the removal of a manufactured dwelling, including a statement that removal requirements may impact the market value of a dwelling.

(2) The rental agreement and the facility rules and regulations shall be attached as an exhibit to the statement of policy. If the recipient of the statement of policy is a tenant, the rental agreement attached to the statement of policy [*shall*] **must** be a copy of the agreement entered by the landlord and tenant.

(3) **The landlord shall give:**

(a) Prospective tenants [*shall receive*] a copy of the statement of policy before [*signing a rental agreement*] **the prospective tenants sign rental agreements**;

(b) Existing tenants who have not previously received a copy of the statement of policy and who are on month-to-month rental agreements [*shall receive*] a copy of the statement of policy at the time a 90-day notice of a rent increase is issued; and

(c) All other existing tenants who have not previously received a copy of the statement of policy [*shall receive*] a copy of the statement of policy upon the expiration of their rental [*agreement*] **agreements** and before [*signing a*] **the tenants sign** new [*agreement*] **agreements**.

(4) Every landlord who rents a space for a manufactured dwelling or floating home shall provide a written rental agreement, except as provided by ORS 90.710 (2)(d)**.**[*, that shall*] **The agreement must** be signed by the landlord and tenant and [*that cannot*] **may not** be unilaterally amended by one of the parties to the contract except by:

(a) Mutual agreement of the parties;

(b) Actions pursuant to ORS 90.530 or 90.600; or

(c) Those provisions required by changes in statute or ordinance.

(5) The agreement required by subsection (4) of this section [*shall*] **must** specify:

(a) The location and approximate size of the rented space;

(b) The federal fair-housing age classification;

(c) The rent per month;

(d) All personal property, services and facilities to be provided by the landlord;

(e) All security deposits, fees and installation charges imposed by the landlord;

(f) Improvements that the tenant may or must make to the rental space, including plant materials and landscaping;

(g) Provisions for dealing with improvements to the rental space at the termination of the tenancy;

(h) Any conditions the landlord applies in approving a purchaser of a manufactured dwelling or floating home as a tenant in the event the tenant elects to sell the home. Those conditions [*shall*] **must** be in conformance with state and federal law and may include, but are not limited to, conditions as to pets, number of occupants and screening or admission criteria;

(i) That the tenant may not sell the tenant's manufactured dwelling or floating home to a person who intends to leave the manufactured dwelling or floating home on the rental space until the landlord has accepted the person as a tenant;

(j) The term of the tenancy;

(k) The process by which the rental agreement or rules and regulations may be changed, which shall identify that the rules and regulations may be changed with 60 days' notice unless tenants of at least 51 percent of the eligible spaces file an objection within 30 days; and

(L) The process by which [*notices shall be given by either*] **the** landlord or tenant **shall give notices**.

(6) Every landlord who rents a space for a manufactured dwelling or floating home shall provide rules and regulations concerning the tenant's use and occupancy of the premises. A violation of the rules and regulations may be cause for termination of a rental agreement. However, this subsection does not create a presumption that all rules and regulations are identical for all tenants at all times. A rule or regulation shall be enforceable against the tenant only if:

(a) The rule or regulation:

(A) Promotes the convenience, safety or welfare of the tenants;

(B) Preserves the landlord's property from abusive use; or

(C) Makes a fair distribution of services and facilities held out for the general use of the tenants.

(b) The rule or regulation:

(A) Is reasonably related to the purpose for which it is adopted and is reasonably applied;

(B) Is sufficiently explicit in its prohibition, direction or limitation of the tenant's conduct to fairly inform the tenant of what the tenant shall **do** or [*shall*] **may** not do to comply; and

(C) Is not for the purpose of evading the obligations of the landlord.

(7)(a) A landlord who rents a space for a manufactured dwelling or floating home may adopt a rule or regulation regarding occupancy guidelines. If adopted, an occupancy guideline in a facility [*shall*] **must** be based on reasonable factors and [*shall*] not be more restrictive than limiting occupancy to two people per bedroom.

(b) As used in this subsection:

(A) [*"*]Reasonable factors[*"*] may include but are not limited to:

(i) The size of the dwelling.

(ii) The size of the rented space.

(iii) Any discriminatory impact for reasons identified in ORS 659A.421.

(iv) Limitations placed on utility services governed by a permit for water or sewage disposal.

(B) "Bedroom" means a room that is intended to be used primarily for sleeping purposes and does not include bathrooms, toilet compartments, closets, halls, storage or utility space and similar areas.

(8)(a) If a written rental agreement so provides, a landlord may require a tenant to pay to the landlord a utility or service charge that has been billed by a utility or service provider to the landlord for utility or service provided directly to the tenant's dwelling unit or to a common area available to the tenant as part of the tenancy. A utility or service charge that [*shall be*] **is** assessed to a tenant for a common area must be described in the written rental agreement separately and distinctly from such a charge for the tenant's dwelling unit. A landlord may not increase the utility or service charge to the tenant by adding any costs of the landlord, such as a handling or administrative charge, other than those costs billed to the landlord by the provider for utilities or services as provided by this subsection.

(b) A utility or service charge is not rent or a fee. Nonpayment of a utility or service charge [*shall not constitute*] **is not** grounds for termination of a rental agreement for nonpayment of rent pursuant to ORS 90.400 (2), but [*shall constitute*] **is** grounds for termination of a rental agreement for cause pursuant to ORS 90.630.

(c) As used in this [*section*] **subsection**, "utility or service" has the meaning given that term in ORS 90.315 (1).

(9) Intentional and deliberate failure of the landlord to comply with subsections (1) to (3) of this section is cause for suit or action to remedy the violation or to recover actual damages. The prevailing party is entitled to reasonable attorney fees and court costs.

(10) A receipt signed by the potential tenant or tenants for documents required to be delivered by the landlord pursuant to subsections (1) to (3) of this section is a defense for the landlord in an action against the landlord for nondelivery of the documents.

(11) A suit or action arising under subsection (9) of this section must be commenced within one year after the discovery or identification of the alleged violation.

(12) Every landlord who publishes a directory of tenants and tenant services must include a one-page summary regarding any tenants′ association. The tenants′ association shall provide the summary to the landlord.

NOTE: Tinkers with language; corrects internal reference in (8)(c).

SECTION 64. ORS 90.545 is amended to read:

90.545. (1) Except if renewed or extended as provided by this section, a fixed term tenancy for space for a manufactured dwelling or floating home shall, upon reaching its ending date, automatically renew as a month-to-month tenancy having the same terms and conditions, other than duration and rent increases pursuant to ORS 90.600, unless the tenancy is terminated pursuant to ORS 90.380 (5)(b), 90.400 (2), [*(3) or (9)*] **(5) or (11)**, 90.630 or 90.632.

(2) To renew or extend a fixed term tenancy for another term, of any duration that is consistent with ORS 90.540, the landlord shall submit the proposed new rental agreement to the tenant at least 60 days prior to the ending date of the term. The landlord shall include with the proposed agreement a written statement that summarizes any new or revised terms, conditions, rules or regulations.

(3) Notwithstanding ORS 90.610 (3), a landlord′s proposed new rental agreement may include new or revised terms, conditions, rules or regulations, if the new or revised terms, conditions, rules or regulations:

(a)(A) Fairly implement a statute or ordinance adopted after the creation of the existing agreement; or

(B) Are the same as those offered to new or prospective tenants in the facility at the time the proposed agreement is submitted to the tenant and for the six-month period preceding the submission of the proposed agreement or, if there have been no new or prospective tenants during the six-month period, are the same as are customary for the rental market;

(b) Are consistent with the rights and remedies provided to tenants under this chapter, including the right to keep a pet pursuant to ORS 90.530;

(c) Do not relate to the age, size, style, construction material or year of construction of the manufactured dwelling or floating home contrary to ORS 90.632 (2); and

(d) Do not require an alteration of the manufactured dwelling or floating home or alteration or new construction of an accessory building or structure.

(4) A tenant shall accept or reject a landlord′s proposed new rental agreement at least 30 days prior to the ending of the term by giving written notice to the landlord.

(5) If a landlord fails to submit a proposed new rental agreement as provided by subsection (2) of this section, the tenancy renews as a month-to-month tenancy as provided by subsection (1) of this section.

(6) If a tenant fails to accept or unreasonably rejects a landlord′s proposed new rental agreement as provided by subsection (4) of this section, the fixed term tenancy terminates on the ending date without further notice and the landlord may take possession by complying with ORS 105.105 to 105.168.

(7) If a tenancy terminates under conditions described in subsection (6) of this section, and the tenant surrenders or delivers possession of the premises to the landlord prior to the filing of an action pursuant to ORS 105.110, the tenant has the right to enter into a written storage agreement with the landlord, with the tenant having the same rights and responsibilities as a lienholder under ORS 90.675 (19), except that the landlord may limit the term of the storage agreement to not exceed six months. Unless the parties agree otherwise, the storage agreement must commence upon the date of the termination of the tenancy. The rights under ORS 90.675 of any lienholder are delayed until the end of the tenant storage agreement.

NOTE: Adjusts for renumbering in (1); see section 61 (amending 90.400).

SECTION 65. ORS 90.630 is amended to read:

90.630. (1) Except as provided in subsection (4) of this section, the landlord may terminate a rental agreement that is a month-to-month or fixed term tenancy for space for a manufactured dwelling or floating home by giving to the tenant not less than 30 days′ notice in writing before the date designated in the notice for termination if the tenant:

(a) Violates a law or ordinance related to the tenant's conduct as a tenant, including but not limited to a material noncompliance with ORS 90.740;

(b) Violates a rule or rental agreement provision related to the tenant's conduct as a tenant and imposed as a condition of occupancy, including but not limited to a material noncompliance with a rental agreement regarding a program of recovery in drug and alcohol free housing; or

(c) Fails to pay a:

(A) Late charge pursuant to ORS 90.260;

(B) Fee pursuant to ORS 90.302; or

(C) Utility or service charge pursuant to ORS 90.510 (8).

(2) A violation making a tenant subject to termination under subsection (1) of this section includes a tenant's failure to maintain the space as required by law, ordinance, rental agreement or rule, but does not include the physical condition of the dwelling or home. Termination of a rental agreement based upon the physical condition of a dwelling or home shall only be as provided in ORS 90.632.

(3) The notice required by subsection (1) of this section shall state facts sufficient to notify the tenant of the reasons for termination of the tenancy.

(4) The tenant may avoid termination of the tenancy by correcting the violation within the 30-day period specified in subsection (1) of this section. However, if substantially the same act or omission which constituted a prior violation of which notice was given recurs within six months after the date of the notice, the landlord may terminate the tenancy upon at least 20 days' written notice specifying the violation and the date of termination of the tenancy.

(5) The landlord of a facility may terminate a rental agreement that is a month-to-month or fixed term tenancy for a facility space if the facility or a portion of it that includes the space is to be closed and the land or leasehold converted to a different use, which is not required by the exercise of eminent domain or by order of state or local agencies, by:

(a) Not less than 365 days' notice in writing before the date designated in the notice for termination; or

(b) Not less than 180 days' notice in writing before the date designated in the notice for termination, if the landlord finds space acceptable to the tenant to which the tenant can move the manufactured dwelling or floating home and the landlord pays the cost of moving and set-up expenses or $3,500, whichever is less.

(6) The landlord may:

(a) Provide greater financial incentive to encourage the tenant to accept an earlier termination date than that provided in subsection (5) of this section; or

(b) Contract with the tenant for a mutually acceptable arrangement to assist the tenant's move.

(7) The Housing and Community Services Department shall adopt rules to implement the provisions of subsection (5) of this section.

(8)(a) A landlord may not increase the rent for the purpose of offsetting the payments required under this section.

(b) There shall be no increase in the rent after a notice of termination is given pursuant to this section.

(9) This section does not limit a landlord's right to terminate a tenancy for nonpayment of rent pursuant to ORS 90.400 (2) or for other cause pursuant to ORS 90.380 (5)(b), 90.400 [*(3) or (9)*] **(5) or (11)** or 90.632 by complying with ORS 105.105 to 105.168.

(10) A tenancy shall terminate on the date designated in the notice and without regard to the expiration of the period for which, by the terms of the rental agreement, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day.

(11) Nothing in subsection (5) of this section shall prevent a landlord from relocating a floating home to another comparable space in the same facility or another facility owned by the same owner in the same city if the landlord desires or is required to make repairs, to remodel or to modify the tenant's original space.

(12)(a) Notwithstanding any other provision of this section or ORS 90.400, the landlord may terminate the rental agreement for space for a manufactured dwelling or floating home because of repeated late payment of rent by giving the tenant not less than 30 days′ notice in writing before the date designated in that notice for termination and may take possession in the manner provided in ORS 105.105 to 105.168 if:

(A) The tenant has not paid the monthly rent prior to the eighth day of the rental period as described in ORS 90.400 (2)(b)(A) or the fifth day of the rental period as described in ORS 90.400 (2)(b)(B) in at least three of the preceding 12 months and the landlord has given the tenant a notice for nonpayment of rent pursuant to ORS 90.400 (2)(b) during each of those three instances of nonpayment;

(B) The landlord warns the tenant of the risk of a 30-day notice for termination with no right to correct the cause, upon the occurrence of a third notice for nonpayment of rent within a 12-month period. The warning must be contained in at least two notices for nonpayment of rent that precede the third notice within a 12-month period or in separate written notices that are given concurrent with, or a reasonable time after, each of the two notices for nonpayment of rent; and

(C) The 30-day notice of termination states facts sufficient to notify the tenant of the cause for termination of the tenancy and is given to the tenant concurrent with or after the third or a subsequent notice for nonpayment of rent.

(b) Notwithstanding subsection (2) of this section, a tenant who receives a 30-day notice of termination pursuant to this subsection shall have no right to correct the cause for the notice.

(c) The landlord may give a copy of the notice required by paragraph (a) of this subsection to any lienholder of the manufactured dwelling or floating home by first class mail with certificate of mailing or by any other method allowed by ORS 90.150 (2) and (3). A landlord is not liable to a tenant for any damages incurred by the tenant as a result of the landlord giving a copy of the notice in good faith to a lienholder. A lienholder′s rights and obligations regarding an abandoned manufactured dwelling or floating home shall be as provided under ORS 90.675.

NOTE: Adjusts for renumbering in (9); see section 61 (amending 90.400).

SECTION 66. ORS 90.632 is amended to read:

90.632. (1) A landlord may terminate a month-to-month or fixed term rental agreement and require the tenant to remove a manufactured dwelling or floating home from a facility, due to the physical condition of the manufactured dwelling or floating home, only by complying with this section and ORS 105.105 to 105.168. A termination shall include removal of the dwelling or home.

(2) A landlord [*shall*] **may** not require removal of a manufactured dwelling or floating home, or consider a dwelling or home to be in disrepair or deteriorated, because of the age, size, style or original construction material of the dwelling or home or because the dwelling or home was built prior to adoption of the National Manufactured [*Home*] **Housing** Construction and Safety Standards Act of 1974 (42 U.S.C. 5403), in compliance with the standards of that Act in effect at that time or in compliance with the state building code as defined in ORS 455.010.

(3) Except as provided in subsection (5) of this section, if the tenant′s dwelling or home is in disrepair or is deteriorated, a landlord may terminate a rental agreement and require the removal of a dwelling or home by giving to the tenant not less than 30 days′ written notice before the date designated in the notice for termination.

(4) The notice required by subsection (3) of this section [*shall*] **must**:

(a) State facts sufficient to notify the tenant of the causes or reasons for termination of the tenancy and removal of the dwelling or home;

(b) State that the tenant can avoid termination and removal by correcting the cause for termination and removal within the notice period;

(c) Describe what is required to correct the cause for termination;

(d) Describe the tenant′s right to give the landlord a written notice of correction, where to give the notice and the deadline for giving the notice in order to ensure a response by the landlord, all as provided by subsection (6) of this section; and

(e) Describe the tenant's right to have the termination and correction period extended as provided by subsection (7) of this section.

(5) The tenant may avoid termination of the tenancy by correcting the cause within the period specified. However, if substantially the same condition that constituted a prior cause for termination of which notice was given recurs within 12 months after the date of the notice, the landlord may terminate the tenancy and require the removal of the dwelling or home upon at least 30 days' written notice specifying the violation and the date of termination of the tenancy.

(6) During the termination notice or extension period, the tenant may give the landlord written notice that the tenant has corrected the cause for termination. Within a reasonable time after the tenant's notice of correction, the landlord shall respond to the tenant in writing, stating whether the landlord agrees that the cause has been corrected. If the tenant's notice of correction is given at least 14 days prior to the end of the termination notice or extension period, failure by the landlord to respond as required by this subsection [*shall be*] **is** a defense to a termination based upon the landlord's notice for termination.

(7) Except when the disrepair or deterioration creates a risk of imminent and serious harm to other dwellings, homes or persons within the facility, the 30-day period provided for the tenant to correct the cause for termination and removal shall be extended by at least:

(a) An additional 60 days if:

(A) The necessary correction involves exterior painting, roof repair, concrete pouring or similar work and the weather prevents that work during a substantial portion of the 30-day period; or

(B) The nature or extent of the correction work is such that it cannot reasonably be completed within 30 days because of factors such as the amount of work necessary, the type and complexity of the work and the availability of necessary repair persons; or

(b) An additional six months if the disrepair or deterioration has existed for more than the preceding 12 months with the landlord's knowledge or acceptance as described in ORS 90.415 (1).

(8) In order to have the period for correction extended as provided in subsection (7) of this section, a tenant must give the landlord written notice describing the necessity for an extension in order to complete the correction work. The notice must be given a reasonable amount of time prior to the end of the notice for termination period.

(9) A tenancy [*shall terminate*] **terminates** on the date designated in the notice and without regard to the expiration of the period for which, by the terms of the rental agreement, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day.

(10) This section does not limit a landlord's right to terminate a tenancy for nonpayment of rent pursuant to ORS 90.400 (2) or for other cause pursuant to ORS 90.380 (5)(b), 90.400 [*(3) or (9)*] **(5) or (11)** or 90.630 by complying with ORS 105.105 to 105.168.

(11) A landlord may give a copy of the notice for termination required by this section to any lienholder of the dwelling or home, by first class mail with certificate of mailing or by any other method allowed by ORS 90.150 (2) and (3). A landlord is not liable to a tenant for any damages incurred by the tenant as a result of the landlord giving a copy of the notice in good faith to a lienholder.

(12) When a tenant has been given a notice for termination pursuant to this section and has subsequently abandoned the dwelling or home as described in ORS 90.675, any lienholder shall have the same rights as provided by ORS 90.675, including the right to correct the cause of the notice, within the 90-day period provided by ORS 90.675 (19) notwithstanding the expiration of the notice period provided by this section for the tenant to correct the cause.

NOTE: Corrects reference to renamed federal Act in (2). Tinkers with language in (2), (4), (6) and (9). Adjusts for renumbering in (10); see section 61 (amending 90.400).

SECTION 67. ORS 90.635 is amended to read:

90.635. (1) If a facility is closed or a portion of a facility is closed, resulting in the termination of the rental agreement between the landlord of the facility and a tenant renting space for a manufactured dwelling, whether because of the exercise of eminent domain, by order of the state or local agencies, or as provided under ORS 90.630 (5), the landlord shall provide notice to the tenant of the

tax credit provided under ORS 316.153. The notice shall state the eligibility requirements for the credit, information on how to apply for the credit and any other information required by the Office of [*the*] Manufactured Dwelling Park Community Relations by rule.

(2) The landlord shall send the notice described under subsection (1) of this section to a tenant affected by a facility closure on or before:

(a) The date notice of rental termination must be given to the tenant under ORS 90.630 (5), if applicable; or

(b) In the event of facility closure by exercise of eminent domain or by order of a state or local agency, within 15 days of the date the landlord received notice of the closure.

(3) The landlord shall forward to the office a list of the names and addresses of tenants to whom notice under this section has been sent.

(4) The office may adopt rules to implement this section, including rules specifying the form and content of the notice described under this section.

NOTE: Conforms title in (1) to changes in section 318 (amending 446.543).

SECTION 68. ORS 90.680 is amended to read:

90.680. (1) A landlord may not deny any manufactured dwelling or floating home space tenant the right to sell a manufactured dwelling or floating home on a rented space or require the tenant to remove the dwelling or home from the space solely on the basis of the sale.

(2) The landlord may not exact a commission or fee for the sale of a manufactured dwelling or floating home on a rented space unless the landlord has acted as agent for the seller pursuant to written contract.

(3) The landlord may not deny the tenant the right to place a "for sale" sign on or in a manufactured dwelling or floating home owned by the tenant. The size, placement and character of such signs shall be subject to reasonable rules of the landlord.

(4) If the prospective purchaser of a manufactured dwelling or floating home desires to leave the dwelling or home on the rented space and become a tenant, the landlord may require in the rental agreement:

(a) Except when a termination or abandonment occurs, that a tenant give not more than 10 days' notice in writing prior to the sale of the dwelling or home on a rented space;

(b) That prior to the sale, the prospective purchaser submit to the landlord a complete and accurate written application for occupancy of the dwelling or home as a tenant after the sale is finalized and that a prospective purchaser may not occupy the dwelling or home until after the prospective purchaser is accepted by the landlord as a tenant;

(c) That a tenant give notice to any lienholder, prospective purchaser or person licensed to sell dwellings or homes of the requirements of paragraphs (b) and (d) of this subsection, the location of all properly functioning smoke alarms and any other rules and regulations of the facility such as those described in ORS 90.510 (5)(b), (f), (h) and (i); and

(d) If the sale is not by a lienholder, that the prospective purchaser pay in full all rents, fees, deposits or charges owed by the tenant as authorized under ORS 90.140 and the rental agreement, prior to the landlord's acceptance of the prospective purchaser as a tenant.

(5) If a landlord requires a prospective purchaser to submit an application for occupancy as a tenant under subsection (4) of this section, at the time that the landlord gives the prospective purchaser an application the landlord shall also give the prospective purchaser copies of the statement of policy, the rental agreement and the facility rules and regulations, including any conditions imposed on a subsequent sale, all as provided by ORS 90.510. The terms of the statement, rental agreement and rules and regulations need not be the same as those in the selling tenant's statement, rental agreement and rules and regulations.

(6) The following apply if a landlord receives an application for tenancy from a prospective purchaser under subsection (4) of this section:

(a) The landlord shall accept or reject the prospective purchaser's application within seven days following the day the landlord receives a complete and accurate written application. An application is not complete until the prospective purchaser pays any required applicant screening charge and

provides the landlord with all information and documentation, including any financial data and references, required by the landlord pursuant to ORS 90.510 (5)(h). The landlord and the prospective purchaser may agree to a longer time period for the landlord to evaluate the prospective purchaser's application or to allow the prospective purchaser to address any failure to meet the landlord's screening or admission criteria. If a tenant has not previously given the landlord the 10 days' notice required under subsection (4)(a) of this section, the period provided for the landlord to accept or reject a complete and accurate written application is extended to 10 days.

(b) The landlord may not unreasonably reject a prospective purchaser as a tenant. Reasonable cause for rejection includes, but is not limited to, failure of the prospective purchaser to meet the landlord's conditions for approval as provided in ORS 90.510 (5)(h) or failure of the prospective purchaser's references to respond to the landlord's timely request for verification within the time allowed for acceptance or rejection under paragraph (a) of this subsection. Except as provided in paragraph (c) of this subsection, the landlord shall furnish to the seller and purchaser a written statement of the reasons for the rejection.

(c) If a rejection under paragraph (b) of this subsection is based upon a consumer report, as defined in 15 U.S.C. 1681a for purposes of the federal Fair Credit Reporting Act, the landlord [*shall*] **may** not disclose the contents of the report to anyone other than the purchaser. The landlord shall disclose to the seller in writing that the rejection is based upon information contained within a consumer report and that the landlord [*cannot*] **may not** disclose the information within the report.

(7) The following apply if a landlord does not require a prospective purchaser to submit an application for occupancy as a tenant under subsection (4) of this section or if the landlord does not accept or reject the prospective purchaser as a tenant within the time required under subsection (6) of this section:

(a) The landlord waives any right to bring an action against the tenant under the rental agreement for breach of the landlord's right to establish conditions upon and approve a prospective purchaser of the tenant's dwelling or home;

(b) The prospective purchaser, upon completion of the sale, may occupy the dwelling or home as a tenant under the same conditions and terms as the tenant who sold the dwelling or home; and

(c) If the prospective purchaser becomes a new tenant, the landlord may [*only*] impose conditions or terms on the tenancy that are inconsistent with the terms and conditions of the seller's rental agreement **only** if the new tenant agrees in writing.

(8) A landlord may not, because of the age, size, style or original construction material of the dwelling or home or because the dwelling or home was built prior to adoption of the National Manufactured [*Home*] **Housing** Construction and Safety Standards Act of 1974 (42 U.S.C. 5403), in compliance with the standards of that Act in effect at that time or in compliance with the state building code as defined in ORS 455.010:

(a) Reject an application for tenancy from a prospective purchaser of an existing dwelling or home on a rented space within a facility; or

(b) Require a prospective purchaser of an existing dwelling or home on a rented space within a facility to remove the dwelling or home from the rented space.

(9) A tenant who has received a notice pursuant to ORS 90.632 [*has the right to*] **may** sell the tenant's dwelling or home in compliance with this section during the notice period. The tenant shall provide a prospective purchaser with a copy of any outstanding notice given pursuant to ORS 90.632 prior to a sale. The landlord may also give any prospective purchaser a copy of any such notice. The landlord may require as a condition of tenancy that a prospective purchaser who desires to leave the dwelling or home on the rented space and become a tenant must comply with the notice within the notice period consistent with ORS 90.632. If the tenancy has been terminated pursuant to ORS 90.632, or the notice period provided in ORS 90.632 has expired without a correction of cause or extension of time to correct, a prospective purchaser does not have a right to leave the dwelling or home on the rented space and become a tenant.

(10) Except as provided by subsection (9) of this section, after a tenancy has ended and during the period provided by ORS 90.675 (6) and (8), a former tenant retains the right to sell the tenant's dwelling or home to a purchaser who wishes to leave the dwelling or home on the rented space and become a tenant as provided by this section, if the former tenant makes timely periodic payment of all storage charges as provided by ORS 90.675 (7)(b), maintains the dwelling or home and the rented space on which it is stored and enters the premises only with the written permission of the landlord. Payment of the storage charges or maintenance of the dwelling or home and the space does not create or reinstate a tenancy or create a waiver pursuant to ORS 90.415. A former tenant [*has no right to*] **may not** enter the premises without the written permission of the landlord, including entry to maintain the dwelling or home or the space or to facilitate a sale.

NOTE: Conforms word choice to legislative style in (6)(c), (9) and (10); corrects grammar in (7)(c) and reference to renamed federal act in (8).

SECTION 69. ORS 90.771 is amended to read:

90.771. (1) In order to foster the role of the Office of [*the*] Manufactured Dwelling Park Community Relations in mediating and resolving disputes between landlords and tenants of manufactured dwelling and floating home facilities, the Housing and Community Services Department shall establish procedures to maintain the confidentiality of information received by the office pertaining to individual landlords and tenants of facilities and to landlord-tenant disputes. The procedures must comply with the provisions of this section.

(2) Except as provided in subsection (3) of this section, the department shall treat as confidential and not disclose:

(a) The identity of a landlord, tenant or complainant involved in a dispute or of a person who provides information to the department in response to a department investigation of a dispute;

(b) Information provided to the department by a landlord, tenant, complainant or other person relating to a dispute; or

(c) Information discovered by the department in investigating a dispute.

(3) The department may disclose:

(a) Information described in subsection (2) of this section to a state agency; and

(b) Information described in subsection (2) of this section if the landlord, tenant, complainant or other person who provided the information being disclosed, or the legal representative thereof, consents orally or in writing to the disclosure and specifies to whom the disclosure may be made. Only the landlord, tenant, complainant or other person who provided the information to the department may authorize or deny the disclosure of the information.

(4) This section does not prohibit the department from compiling and disclosing examples and statistics that demonstrate information such as the type of dispute, frequency of occurrence and geographical area where the dispute occurred if the identity of the landlord, tenant, complainant and other persons are protected.

NOTE: Conforms title in (1) to changes in section 318 (amending 446.543).

SECTION 70. ORS 90.860 is amended to read:

90.860. As used in ORS 90.865 to 90.875:

(1) "Buyer" has the meaning given that term in ORS 72.1030;

(2) "Facility" has the meaning given that term in ORS 90.100;

(3) "Landlord" has the meaning given that term in ORS 90.100;

(4) "Manufactured dwelling" has the meaning given that term in ORS 90.100;

[*(5) "Manufactured dwelling park" has the meaning given that term in ORS 446.003;*]

[*(6)*] **(5)** "Purchase money security interest" has the meaning given that term in ORS 79.1070;

[*(7)*] **(6)** "Secured party" has the meaning given that term in ORS 79.1050; and

[*(8)*] **(7)** "Seller" has the meaning given that term in ORS 72.1030.

NOTE: Deletes definition of term that is not used in series.

SECTION 71. ORS 92.040 is amended to read:

92.040. (1) Before a plat of any subdivision or partition subject to review under ORS 92.044 may be made and recorded, the person proposing the subdivision or partition or authorized agent or

representative of the person shall make an application in writing to the county or city having jurisdiction under ORS 92.042 for approval of the proposed subdivision or partition in accordance with procedures established by the applicable ordinance or regulation adopted under ORS 92.044. Each such application shall be accompanied by a tentative plan showing the general design of the proposed subdivision or partition. No plat for any proposed subdivision or partition may be considered for approval by a city or county until the tentative plan for the proposed subdivision or partition has been approved by the city or county. Approval of the tentative plan shall not constitute final acceptance of the plat of the proposed subdivision or partition for recording**.**[*;*] However, approval by a city or county of such tentative plan shall be binding upon the city or county for the purposes of the preparation of the subdivision or partition plat, and the city or county may require only such changes in the subdivision or partition plat as are necessary for compliance with the terms of its approval of the tentative plan for the proposed subdivision or partition.

(2) After September 9, 1995, when a local government makes a decision on a land use application for a subdivision inside an urban growth boundary, only those local government laws implemented under an acknowledged comprehensive plan that are in effect at the time of application shall govern subsequent construction on the property unless the applicant elects otherwise.

(3) A local government may establish a time period during which decisions on land use applications under subsection (2) of this section apply. However, in no event shall the time period exceed 10 years, whether or not a time period is established by the local government.

NOTE: Conforms punctuation in (1) to legislative style.

SECTION 72. ORS 92.317 is amended to read:

92.317. The Legislative Assembly finds that the repeal of ORS 92.500 to 92.810 and 92.990 (2) and (3) (1973 Replacement Part), by section 23, chapter 1, Oregon Laws 1974 (special session), may cause irreparable damage to the interests of consumers involved in real estate transactions**.**[*; and*] It is therefore declared to be the policy of the State of Oregon that the Attorney General protect the rights of such real estate purchasers to the greatest extent practicable through the application of the provisions of ORS 646.605 to 646.652.

NOTE: Conforms punctuation to legislative style.

SECTION 73. ORS 92.325 is amended to read:

92.325. (1) Except as provided in subsection (2) of this section, no person shall sell or lease any subdivided lands or series partitioned lands without having complied with all the applicable provisions of ORS 92.305 to 92.495.

(2) With respect to a developer, chapter 643, Oregon Laws 1975, applies only to a developer who acquires a lot, parcel or interest in a subdivision or series partition for which a public report has been issued after September 13, 1975, and a developer who acquires a lot or parcel in a subdivision for which a revised public report has been issued under ORS 92.410.

(3) Except as otherwise provided in paragraph (g) of this subsection, ORS 92.305 to 92.495 do not apply to the sale or leasing of:

(a) Apartments or similar space within an apartment building; [*or*]

(b) Cemetery lots, parcels or units in Oregon; [*or*]

(c) Subdivided lands and series partitioned lands in Oregon [*which*] **that** are not in unit ownership or being developed as unit ownerships created under ORS chapter 100, to be used for residential purposes and [*which*] **that** qualify under ORS 92.337; [*or*]

(d) Property submitted to the provisions of ORS chapter 100; [*or*]

(e) Subdivided lands and series partitioned lands in Oregon expressly zoned for and limited in use to nonresidential industrial or nonresidential commercial purposes; [*or*]

(f) Lands in this state sold by lots or parcels of not less than 160 acres each; [*or*]

(g) Timeshares regulated or otherwise exempt under ORS 94.803 and 94.807 to 94.945; [*or*]

(h) Subdivided and series partitioned lands in a city or county which, at the time tentative approval of a subdivision plat and each partition map for those lands is given under ORS 92.040 or an ordinance adopted under ORS 92.046, has a comprehensive plan and implementing ordinances that have been acknowledged under ORS 197.251. The subdivider or series partitioner of such lands

shall comply with ORS 92.425, 92.427, 92.430, 92.433, 92.460 and 92.485 in the sale or leasing of such lands; or

(i) Mobile home or manufactured dwelling parks, as defined in ORS 446.003, located in Oregon.

NOTE: Corrects grammar and conforms structure to legislative style in (3).

SECTION 74. ORS 94.508 is amended to read:

94.508. (1) A development agreement shall not be approved by the governing body of a city or county unless the governing body finds that the agreement is consistent with local regulations then in place for the city or county.

(2) The governing body of a city or county shall approve a development agreement or amend a development agreement by adoption of an ordinance declaring approval or setting forth the amendments to the agreement. Notwithstanding ORS 197.015 [*(10)(b)*] **(11)(b)**, the approval or amendment of a development agreement is a land use decision under ORS chapter 197.

NOTE: Updates reference to renumbered subsection in (2); see section 137 (amending 197.015).

SECTION 75. ORS 100.115 is amended to read:

100.115. (1) When a declaration or a supplemental declaration under ORS 100.125 is made and approved as required, it shall, upon the payment of the fees provided by law, be recorded by the recording officer. The fact of recording and the date thereof shall be entered thereon. At the time of recording the declaration or supplemental declaration, the person offering it for record shall also file an exact copy, certified by the recording officer to be a true copy thereof, with the county assessor.

(2) A plat of the land described in the declaration or a supplemental plat described in a supplemental declaration, complying with ORS 92.050, 92.060 (1) and (2), 92.080 and 92.120, shall be recorded simultaneously with the declaration or supplemental declaration. Upon request, the person offering the plat or supplemental plat for recording shall also file an exact copy, certified by the surveyor who made the plat to be an exact copy of the plat, with the county assessor and the county surveyor. The exact copy shall be made on suitable drafting material having the characteristics of strength, stability and transparency required by the county surveyor. The plat or supplemental plat, titled in accordance with subsection (4) of this section, shall:

(a) Show the location of:

(A) All buildings and public roads. The location shall be referenced to a point on the boundary of the property; and

(B) For a condominium containing units described in ORS 100.020 (3)(b)(C) or (D), the moorage space or floating structure. The location shall be referenced to a point on the boundary of the upland property regardless of a change in the location resulting from a fluctuation in the water level or flow.

(b) Show the designation, location, dimensions and area in square feet of each unit including:

(A) For units in a building described in ORS 100.020 (3)(b)(A), the horizontal and vertical boundaries of each unit and the common elements to which each unit has access. The vertical boundaries shall be referenced to a known benchmark elevation or other reference point as approved by the city or county surveyor;

(B) For a space described in ORS 100.020 (3)(b)(B), the horizontal boundaries of each unit and the common elements to which each unit has access. If the space is located within a structure, the vertical boundaries also shall be shown and referenced to a known benchmark elevation or other reference point as approved by the city or county surveyor;

(C) For a moorage space described in ORS 100.020 (3)(b)(C), the horizontal boundaries of each unit and the common elements to which each unit has access; and

(D) For a floating structure described in ORS 100.020 (3)(b)(D), the horizontal and vertical boundaries of each unit and the common elements to which each unit has access. The vertical boundaries shall be referenced to an assumed elevation of an identified point on the floating structure even though the assumed elevation may change with the fluctuation of the water level where the floating structure is moored.

(c) Identify and show, to the extent feasible, the location and dimensions of all limited common elements described in the declaration. The plat may not include any statement indicating to which unit the use of any noncontiguous limited common element is reserved.

(d) Include a statement, including signature and official seal, of a registered architect, registered professional land surveyor or registered professional engineer certifying that the plat fully and accurately depicts the boundaries of the units of the building and that construction of the units and buildings as depicted on the plat has been completed, except that the professional land surveyor who prepared the plat need not affix a seal to the statement.

(e) Include a surveyor's certificate, complying with ORS 92.070, that includes information in the declaration in accordance with ORS 100.105 (1)(a) and a metes and bounds description or other description approved by the city or county surveyor.

(f) Include a statement by the declarant that the property and improvements described and depicted on the plat are subject to the provisions of ORS 100.005 to 100.625.

(g) Include such signatures of approval as may be required by local ordinance or regulation.

(h) Include any other information or data not inconsistent with the declaration that the declarant desires to include.

(i) If the condominium is a flexible condominium, show the location and dimensions of all variable property identified in the declaration and label the variable property as "WITHDRAWABLE VARIABLE PROPERTY" or "NONWITHDRAWABLE VARIABLE PROPERTY," with a letter different from those designating a unit, building or other tract of variable property. If there is more than one tract, each tract shall be labeled in the same manner.

(3) The supplemental plat required under ORS 100.150 (1) shall be recorded simultaneously with the supplemental declaration. Upon request, the person offering the supplemental plat for recording shall also file an exact copy, certified by the surveyor who made the plat to be an exact copy of the plat, with the county assessor and the county surveyor. The exact copy shall be made on suitable drafting material having the characteristics of strength, stability and transparency required by the county surveyor. The supplemental plat, titled in accordance with subsection (4) of this section, shall:

(a) Comply with ORS 92.050, 92.060 (1), (2) and (4), 92.080, 92.120 and subsections (4) and (5) of this section.

(b) If any property is withdrawn:

(A) Show the resulting perimeter boundaries of the condominium after the withdrawal; and

(B) Show the information required under subsection (2)(i) of this section as it relates to any remaining variable property.

(c) If any property is reclassified, show the information required under subsection (2)(a) to (d) of this section.

(d) Include a "Declarant's Statement" that the property described on the supplemental plat is reclassified or withdrawn from the condominium and that the condominium exists as described and depicted on the plat.

(e) Include a surveyor's affidavit complying with ORS 92.070.

(4) The title of each supplemental plat described in ORS 100.120 shall include the complete name of the condominium, followed by the additional language specified in this subsection and the appropriate reference to the stage being annexed or tract of variable property being reclassified. Each supplemental plat for a condominium recorded on or after January 1, 2002, shall be numbered sequentially and shall:

(a) If property is annexed under ORS 100.125, include the words "Supplemental Plat No. _____: Annexation of Stage _____; or

(b) If property is reclassified under ORS 100.150, include the words "Supplemental Plat No. _____: Reclassification of Variable Property, Tract _____.

(5) Before a plat or a supplemental plat may be recorded, it must be approved by the city or county surveyor as provided in ORS 92.100. Before approving the plat as required by this section, the city or county surveyor shall:

(a) Check the boundaries of the plat and units and take measurements and make computations necessary to determine that the plat complies with this section.

(b) Determine that the name complies with ORS 100.105 (5) and (6).

(c) Determine that the following are consistent:

(A) The designation and area in square feet of each unit shown on the plat and the unit designations and areas contained in the declaration in accordance with ORS 100.105 (1)(d);

(B) Limited common elements identified on the plat and the information contained in the declaration in accordance with ORS 100.105 (1)(g);

(C) The description of the property in the surveyor's certificate included on the plat and the description contained in the declaration in accordance with ORS 100.105 (1)(a); and

(D) For a flexible condominium, the variable property depicted on the plat and the identification of the property contained in the declaration in accordance with ORS 100.105 (7)(c).

(6) The person offering the plat for approval shall:

(a) Submit a copy of the proposed declaration and bylaws or applicable supplemental declaration at the time the plat is submitted; and

(b) Submit the original or a copy of the executed declaration and bylaws or the applicable supplemental declaration approved by the commissioner if required by law prior to approval.

(7) For performing the services described in subsection (5)(a) to (c) of this section, the city surveyor or county surveyor shall collect from the person offering the plat for approval a fee of $150 plus $25 per building. The governing body of a city or county may establish a higher fee by resolution or order.

(8)(a) Whenever variable property is reclassified or withdrawn as provided in ORS 100.155 (1) or (2) or property is removed as provided in ORS 100.600 (2), the county surveyor shall, upon the surveyor's copy of all previously recorded plats relating to the variable property or property being removed and upon any copy thereof certified by the county clerk, trace, shade or make other appropriate marks or notations, including the date and the surveyor's name or initials, with archival quality black ink in such manner as to denote the reclassification, withdrawal or removal. The recording index numbers and date of recording of the supplemental declaration and plat or amendment and amended plat shall also be referenced on the copy of each plat. The original plat may not be changed or corrected after the plat is recorded.

(b) For performing the activities described in this subsection, the county clerk shall collect a fee set by the county governing body. The county clerk shall also collect a fee set by the county governing body to be paid to the county surveyor for services provided under this subsection.

(9) In addition to the provisions of subsection [*(10)*] **(12)** of this section, a plat, including any floor plans that are a part of the plat, may be amended as [*provided in this subsection.*] **follows:**

(a)(A) Except as otherwise provided in ORS 100.600, a change to the boundary of the property, a unit or a limited common element or a change to the configuration of other information required to be graphically depicted on the plat shall be made by a plat entitled "Plat Amendment" that shall reference in the title of the amendment the recording information of the original plat and any previous plat amendments.

(B) The plat amendment shall comply with ORS 92.050, 92.060 (1), (2) and (4), 92.080 and 92.120 and shall include:

(i) A graphic depiction of the change.

(ii) For a change to the boundary of the property, a surveyor's certificate, complying with ORS 92.070.

(iii) For a change to a boundary of a unit or a limited common element or a change to other information required to be graphically depicted, the statement of a registered architect, registered professional land surveyor or registered professional engineer described in subsection (2)(d) of this section.

(iv) A declaration by the chairperson and secretary on behalf of the association of unit owners that the plat is being amended pursuant to this subsection. Such declaration shall be executed and acknowledged in the manner provided for acknowledgment of deeds.

(C) The plat amendment shall be accompanied by an amendment to the declaration authorizing such plat amendment. The declaration amendment shall be executed, approved and recorded in accordance with ORS 100.110 and 100.135.

(D) Before a plat amendment may be recorded, it must be approved by the city or county surveyor as provided in ORS 92.100. The surveyor shall approve the plat amendment if it complies with the requirements of this subsection. The person offering the plat amendment shall:

(i) Submit a copy of the proposed amendment to the declaration required under this paragraph when the plat amendment is submitted; and

(ii) Submit the original or a copy of the executed amendment to the declaration approved by the commissioner if required by law prior to approval of the plat amendment.

(E) Upon request, the person offering the plat amendment for recording shall also file an exact copy, certified by the surveyor who made the plat to be an exact copy of the plat amendment, with the county assessor and the county surveyor. The exact copy shall be made on suitable drafting material having the strength, stability and transparency required by the county surveyor.

(b)(A) A change to a restriction or other information not required to be graphically depicted on the plat may be made by amendment of the declaration without a plat amendment described in paragraph (a) of this subsection. An amendment under this paragraph shall include:

(i) A reference to recording index numbers and date of recording of the declaration, plat and any applicable supplemental declarations, amendments, supplemental plats or plat amendments.

(ii) A description of the change to the plat.

(iii) A statement that the amendment was approved in accordance with the declaration and ORS 110.135.

(B) The amendment shall be executed, approved and recorded in accordance with ORS 100.110 and 100.135.

(C) Before the amendment may be recorded, it must be approved by the city or county surveyor as provided in ORS 92.100. The surveyor shall approve the amendment if it complies with this subsection. Such approval shall be evidenced by execution of the amendment or by written approval attached thereto.

(c)(A) Floor plans of a condominium for which a plat was not required at the time of creation may be amended by an amendment to the declaration. An amendment under this paragraph shall include:

(i) A reference to recording index numbers and date of recording of the declaration and any applicable supplemental declarations or amendments.

(ii) A description of the change to the floor plans.

(iii) A graphic depiction of any change to the boundaries of a unit or common element and a statement by a registered architect, registered professional land surveyor or registered professional engineer certifying that such graphic depiction fully and accurately depicts the boundaries of the unit or common element as it currently exists.

(B) The amendment shall be approved and recorded in accordance with ORS 100.110 and 100.135 except that any change to the floor plans need only comply with the requirements of the unit ownership laws in effect at the time the floor plans were initially recorded.

[*(d)*] **(10)** After recording of any declaration amendment or plat amendment pursuant to [*this*] subsection **(9) of this section**, the county surveyor shall, upon the surveyor's copy of all previously recorded plats relating to the condominium and any copies filed under ORS 92.120 (3), make such appropriate marks or notations, including the date and the surveyor's name or initials, with archival quality black ink in such manner as to denote the changes. The recording index numbers and date of recording of the declaration amendment and any plat amendment shall also be referenced on the copy of each plat. The original plat may not be changed or corrected after the plat is recorded.

(11) For performing the services described in [*this subsection*] **subsections (9) and (10) of this section**, the county surveyor shall collect from the person offering the plat amendment or declaration amendment for approval a fee established by the county governing body.

[*(10)*] **(12)** The following may be amended by an affidavit of correction in accordance with ORS 92.170:

(a) A plat, whenever recorded.

(b) Floor plans recorded prior to October 15, 1983.

NOTE: Restructures (9), (10) and (11) to correct read-in problems and to conform to legislative style.

SECTION 76. ORS 100.410 is amended to read:

100.410. (1) The declarant shall adopt on behalf of the association of unit owners the initial bylaws that govern the administration of the condominium. The bylaws shall be recorded simultaneously with the declaration as an exhibit or as a separate instrument.

(2) Unless otherwise provided in the declaration or bylaws, amendments to the bylaws may be proposed by a majority of the board of directors or by at least 30 percent of the owners.

(3) Subject to subsections (4) and (5) of this section and ORS 100.415 (20), an amendment of the bylaws is not effective unless the amendment is:

(a) Approved by at least a majority of the unit owners; and

(b) Certified by the chairperson and secretary of the association of unit owners as being adopted in accordance with the bylaws and the provisions of this section, acknowledged in the manner provided for acknowledgment of instruments and recorded.

(4) In condominiums that are exclusively residential:

(a) The bylaws may not provide that greater than a majority of the unit owners is required to amend the bylaws except for amendments relating to age restrictions, pet restrictions, limitations on the number of persons who may occupy units and limitations on the rental or leasing of units.

(b) An amendment relating to a matter specified in paragraph (a) of this subsection is not effective unless approved by at least 75 percent of the owners or a greater percentage specified in the bylaws.

(5) The bylaws may not be amended to limit or diminish any special declarant right without the consent of the declarant. However, the declarant may waive the declarant's right of consent.

(6)(a) For five years after the recording of the initial bylaws, before any amended bylaw may be recorded, the amended bylaw must be approved by the Real Estate Commissioner. The commissioner shall approve such amendment if the requirements of ORS 100.415 and this section have been satisfied.

(b) The approval by the commissioner under paragraph (a) of this subsection is not required for bylaws restated under subsection (10) of this section unless the bylaws are restated during the five-year period after the recording of the initial bylaws.

(7) Before the commissioner approves amended bylaws or restated bylaws under this section, the person submitting the amended bylaws or restated bylaws shall pay to the commissioner the fee provided by ORS 100.670.

(8) Notwithstanding a provision in the bylaws, including bylaws adopted prior to July 14, 2003, that requires an amendment to be executed, or executed and acknowledged, by all owners approving the amendment, amendments to the bylaws under this section become effective after approval by the owners if executed and certified on behalf of the association by the chairperson and secretary in accordance with subsection (3)(b) of this section.

(9) An amendment to the bylaws must be conclusively presumed to have been regularly adopted in compliance with all applicable procedures relating to the amendment unless an action is brought within one year after the effective date of the amendment or the face of the amendment indicates that the amendment received the approval of fewer votes than required for the approval. Nothing in this subsection prevents the further amendment of an amended bylaw.

(10)(a) The board of directors, by resolution and without the further approval of unit owners, may cause restated bylaws to be prepared and recorded to codify individual amendments that have been adopted in accordance with this section.

(b) Bylaws restated under this subsection must:

(A) Include all previously adopted amendments that are in effect, state that the amendments were approved by the commissioner as required under this section and state that no other changes were made except, if applicable, to correct scriveners' errors or to conform format and style;

(B) Include a statement that the board of directors has adopted a resolution in accordance with paragraph (a) of this subsection and is causing the bylaws to be restated and recorded under this subsection;

(C) Include a reference to the recording index numbers and date of recording of the initial bylaws and all previously recorded amendments that are in effect and are being codified;

(D) Include a certification by the chairperson and secretary of the association that the restated bylaws include all previously adopted amendments that are in effect, that amendments were approved by the commissioner if required under this section and that no other changes **were made** except, if applicable, to correct scriveners' errors or to conform format and style;

(E) Be executed and acknowledged by the chairperson and secretary of the association and recorded in the deed records of each county in which the condominium is located; and

(F) If required under subsection (6) of this section, be approved by the commissioner.

(c) The board of directors shall cause a copy of the recorded restated bylaws, including the recording information, to be filed with the commissioner.

NOTE: Supplies missing verb in (10)(b)(D).

SECTION 77. ORS 100.485 is amended to read:

100.485. (1) If entered into prior to the turnover meeting of the condominium, no management agreement, service contract or employment contract [*which*] **that** is directly made by or on behalf of the association, the board of directors or the unit owners as a group shall be in excess of three years.

(2) Any contract or agreement [*which*] **that** is subject to subsection (1) of this section entered into after January 1, 1982, may be terminated without penalty by the association or the board of directors upon not less than 30 days' written notice to the other party given not later than 60 days after the turnover meeting.

(3) The provisions of the ["]Condominium and Cooperative Abuse Relief Act of 1980["] (15 U.S.C. 3601 **to 3616**), except for 15 U.S.C. 3609 and 3610, shall not apply in the State of Oregon.

NOTE: Corrects word choice in (1) and (2); completes reference to federal Act in (3).

SECTION 78. ORS 100.600 is amended to read:

100.600. (1)(a) Subject to ORS 100.605, the condominium may be terminated if all of the unit owners remove the property from the provisions of this chapter by executing and recording an instrument to that effect and the holders of all liens affecting the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the undivided interest of the unit owner in the property after the termination. The instrument shall state the interest of each unit owner and lienholder as determined under ORS 100.610.

(b) The recording of an instrument of termination shall vacate the plat but shall not vacate or terminate any recorded covenants, restrictions, easements or other interests not imposed under the declaration or bylaws or any easement granted by the plat unless the instrument of termination otherwise provides.

(c) Before the instrument of termination may be recorded, it must be signed by the county assessor for the purpose of acknowledging that the county assessor has been notified of the proposed termination.

(d) The person offering the instrument of termination for recording shall cause a copy of the recorded instrument, including the recording information, to be filed with the commissioner. The county clerk shall promptly provide a certified copy of the recorded instrument of termination to the county assessor and the county surveyor. Upon receipt of the instrument of termination, the county surveyor shall make appropriate annotations, including the date and surveyor's name or initials, with archival quality black ink on the surveyor's copy of the plat and any copies filed under ORS 92.120. Corrections or changes shall not be allowed on the original plat once it is recorded with the county clerk.

(e) Failure to file the copies as required under paragraph (d) of this subsection shall not invalidate the termination.

(2) A portion of the property may be removed from the provisions of this chapter by recording simultaneously with the recording officer an amendment to the declaration and an amended plat approved as required under ORS 100.110, 100.115 and 100.135. The amendment to the declaration shall:

(a) Include a metes and bounds legal description of the property being removed;

(b) Include a metes and bounds legal description of the resulting boundaries of the condominium after the removal;

(c) State the interest of each owner and lienholder in the property being removed;

(d) State the interest of each unit owner and lienholder in the condominium after the removal;

(e) Be approved and executed by all owners and lienholders and acknowledged in the manner provided for acknowledgment of deeds; and

(f) **Include** a statement by the local governing body or appropriate department thereof that the removal will not violate any applicable planning or zoning regulation or ordinance. The statement may be attached as an exhibit to the amendment.

(3) The amended plat required under subsection (2) of this section shall:

(a) Comply with ORS 100.115 (9) **and (10)**;

(b) Include a "Statement of Removal" that the property described on the amended plat is removed from the condominium and that the condominium exists as described and depicted on the amended plat. Such statement shall be made by the chairperson and secretary of the association and acknowledged in the manner provided for acknowledgment of deeds; and

(c) Include such signatures of approval as may be required by local ordinance or regulation.

(4) The tax collector for any taxing unit having a lien for taxes or assessments shall have authority to consent to such a transfer of any tax or assessment lien under subsection (1) of this section or the removal of a portion of the property under subsection (2) of this section.

NOTE: Corrects read-in problem in (2)(f). Adjusts for renumbering in (3)(a); see section 75 (amending 100.115).

SECTION 79. ORS 101.030 is amended to read:

101.030. (1) [*All providers*] **A provider** shall register with the Department of Human Services before the provider:

(a) Enters into a residency agreement with a nonresident;

(b) Extends the terms of a resident's existing residency agreement; or

(c) Solicits either a resident or nonresident to pay an application fee or execute a residency agreement.

(2) The provider shall apply for registration with the department on forms prescribed by the department. The application shall include a disclosure statement as described in ORS 101.050.

(3) Within 10 business days after receipt of the application for registration from a new continuing care retirement community, the department shall issue a notice of filing to the provider applicant. Within 60 days of the notice of filing, the department shall enter an order registering the provider or rejecting the registration. If no order of rejection is entered within 60 days from the date of notice of filing, the provider shall be considered registered unless the provider has consented in writing to an extension of time. If no order of rejection is entered within the time period as so extended, the provider shall be considered registered.

(4) If the department determines that the requirements of ORS 101.050, 101.090 and 101.130 have been met, it shall enter an order registering the provider. If the department determines that any of the requirements of ORS 101.050 and 101.130 have not been met, the department shall notify the applicant that the application for registration must be corrected within 30 days in such particulars as are designated by the department. If the requirements are not met within the time allowed, the department may enter an order rejecting the registration. The order shall include the findings of fact upon which the order is based and which shall not become effective until 20 days after the end of the foregoing 30-day period. During the 20-day period, the applicant may petition for reconsider-

ation and shall be entitled to a hearing. An order of rejection shall not take effect, in any event, until such time as the hearing, once requested, has been given to the applicant and a decision is rendered by the administrative law judge [*which*] **that** sustains the department's decision to reject the registration.

NOTE: Corrects solecism in (1); corrects grammar in (4).

SECTION 80. ORS 105.124 is amended to read:

105.124. For a complaint described in ORS 105.123, if ORS chapter 90 applies to the dwelling unit:

(1) The complaint must be in substantially the following form and be available from the clerk of the court:

IN THE CIRCUIT COURT
FOR THE COUNTY OF

_____

No. _____

RESIDENTIAL EVICTION COMPLAINT

PLAINTIFF (Landlord or agent):

_____

_____

Address: _____

City: _____

State: _____ Zip: _____

Telephone: _____

vs.

DEFENDANT (Tenants/Occupants):

_____

_____

MAILING ADDRESS: _____

City: _____

State: _____ Zip: _____

Telephone: _____

Defendant's Social Security number _____ (Optional information for purposes of identification.)

1.

Tenants are in possession of the dwelling unit, premises or rental property described above or located at:

_____

2.

Landlord is entitled to possession of the property because of:

_____ 24-hour notice for personal injury, substantial damage, extremely outrageous act or unlawful occupant. ORS 90.400 [*(3)*] **(5)**.
_____ 24-hour or 48-hour notice for violation of a drug or alcohol program. ORS 90.400 [*(9)*] **(11)**.
_____ 72-hour or 144-hour notice for nonpayment of rent. ORS 90.400 (2).
_____ 7-day notice with stated cause in a week-to-week tenancy. ORS 90.400 (1)(a) and (e)(A).
_____ 10-day notice for a pet violation, a repeat violation in a month-to-month tenancy or without stated cause in a week-to-week tenancy. ORS 90.405, 90.400 (1)(d) or 90.427 (1).
_____ 20-day notice for a repeat violation. ORS 90.630 (4).
_____ 30-day or 180-day notice without stated cause in a month-to-month tenancy. ORS 90.427 (2) or 90.429.
_____ 30-day notice with stated cause. ORS 90.400 (1), 90.630 or 90.632.
_____ Other notice _____
_____ No notice (explain) _____

A COPY OF THE NOTICE RELIED UPON, IF ANY, IS ATTACHED

3.

If the landlord uses an attorney, the case goes to trial and the landlord wins in court, the landlord can collect attorney fees from the defendant pursuant to ORS 90.255 and 105.137 (3).

Landlord requests judgment for possession of the premises, court costs, disbursements and attorney fees.

I certify that the allegations and factual assertions in this complaint are true to the best of my knowledge.

_____

Signature of landlord or agent.

_____

(2) The complaint must be signed by the plaintiff or an attorney representing the plaintiff as provided by ORCP 17, or verified by an agent or employee of the plaintiff or an agent or employee of an agent of the plaintiff.

(3) A copy of the notice relied upon, if any, must be attached to the complaint.

NOTE: Adjusts for renumbering in section 2 of form; see section 61 (amending 90.400).

SECTION 81. ORS 105.139 is amended to read:

105.139. If a landlord brings an action for possession under ORS 90.400 [*(3)(f)*] **(5)(f)** and the person in possession contends that the tenant has not vacated the premises, the burden of proof is on the defendant as to that issue.

NOTE: Adjusts for renumbering; see section 61 (amending 90.400).

SECTION 82. ORS 107.755 is amended to read:

107.755. (1) [*No later than January 1, 1999,*] Each judicial district shall:

(a) Provide a mediation orientation session for all parties in cases in which child custody, parenting time or visitation is in dispute, and in any other domestic relations case in which mediation has been ordered. The orientation session may be structured in any way the circuit court determines best meets the needs of the parties. The orientation session should be designed to make the parties aware of:

(A) What mediation is;

(B) Mediation options available to them; and

(C) The advantages and disadvantages of each method of dispute resolution.

(b) Except in matters tried under ORS 107.097 and 107.138 or upon a finding of good cause, require parties in all cases described in paragraph (a) of this subsection to attend a mediation orientation session prior to any judicial determination of the issues.

(c) Provide mediation under ORS 107.755 to 107.795 in any case in which child custody, parenting time and visitation are in dispute.

(d) Have developed a plan that addresses domestic violence issues and other power imbalance issues in the context of mediation orientation sessions and mediation of any issue in accordance with the following guidelines:

(A) All mediation programs and mediators must recognize that mediation is not an appropriate process for all cases and that agreement is not necessarily the appropriate outcome of all mediation;

(B) Neither the existence of nor the provisions of a restraining order issued under ORS 107.718 may be mediated;

(C) All mediation programs and mediators must develop and implement:

(i) A screening and ongoing evaluation process of domestic violence issues for all mediation cases;

(ii) A provision for opting out of mediation that allows a party to decline mediation after the party has been informed of the advantages and disadvantages of mediation or at any time during the mediation; and

(iii) A set of safety procedures intended to minimize the likelihood of intimidation or violence in the orientation session, during mediation or on the way in or out of the building in which the orientation or mediation occurs;

(D) When a mediator explains the process to the parties, the mediator shall include in the explanation the disadvantages of mediation and the alternatives to mediation;

(E) All mediators shall obtain continuing education regarding domestic violence and related issues; and

(F) Mediation programs shall collect appropriate data. Mediation programs shall be sensitive to domestic violence issues when determining what data to collect.

(e) In developing the plan required by paragraph (d) of this subsection, consult with one or more of the following:

(A) A statewide or local multidisciplinary domestic violence coordinating council.

(B) A nonprofit private organization funded under ORS 108.620.

(2) Notwithstanding any other provision of law, mediation under ORS 107.755 to 107.795, including the mediation orientation session described in subsection (1)(a) of this section, may not be encouraged or provided in proceedings under ORS 30.866, 107.700 to 107.732, 124.005 to 124.040 or 163.738.

(3) The court, as provided in ORS 3.220, may make rules consistent with ORS 107.755 to 107.795 to govern the operation and procedure of mediation provided under this section.

(4) If a court provides mediation of financial issues, it shall develop a list of mediators who meet the minimum education and experience qualifications established by rules adopted under ORS 1.002. The rules must require demonstrated proficiency in mediation of financial issues. Once the list is developed, the judicial district shall maintain the list. Mediation of financial issues is subject to the plan developed under subsection (1)(d) of this section and to the limitations imposed by subsection (2) of this section.

(5) A circuit court may provide mediation in connection with its exercise of conciliation jurisdiction under ORS 107.510 to 107.610, but a circuit court need not provide conciliation services in order to provide mediation under ORS 107.755 to 107.795.

NOTE: Deletes obsolete language in (1) lead-in.

SECTION 83. ORS 107.837 is amended to read:

107.837. In any proceeding brought under this chapter [*on or after October 4, 1997*], an authorization of attorney fees to a party also authorizes an award of attorney fees to or against any person who has appeared or intervened in the proceeding.

NOTE: Deletes obsolete language.

SECTION 84. ORS 109.003 is amended to read:

109.003. In any proceeding brought under this chapter [*on or after October 4, 1997*], an authorization of attorney fees to a party also authorizes an award of attorney fees to or against any person who has appeared or intervened in the proceeding.

NOTE: Deletes obsolete language.

SECTION 85. ORS 109.035 is amended to read:

109.035. (1) As used in this section:

(a) "Custody order" includes any order[,] **or** judgment [*or decree*] establishing or modifying custody of, or parenting time or visitation with, a minor child as described in ORS 107.095, 107.105 (1), 107.135 or 109.103.

(b) "Foreign country" means any country that:

(A) Is not a signatory to the Hague Convention on the Civil Aspects of International Child Abduction;

(B) Does not provide for the extradition to the United States of a parental abductor and minor child;

(C) Has local laws or practices that would restrict the other parent of the minor child from freely traveling to or exiting from the country because of the gender, race or religion of the other parent;

(D) Has local laws or practices that would restrict the ability of the minor child from legally leaving the country after the child reaches the age of majority because of the gender, race or religion of the child; or

(E) Poses a significant risk that the physical health or safety of the minor child would be endangered in the country because of war, human rights violations or specific circumstances related to the needs of the child.

(2) A court that finds by clear and convincing evidence a risk of international abduction of a minor child may issue a court order requiring a parent who is subject to a custody order and who plans to travel with a minor child to a foreign country to provide security, bond or other guarantee as described in subsection (4) of this section.

(3) In determining whether a risk of international abduction of a minor child exists, a court shall consider the following factors involving a parent who is subject to a custody order:

(a) The parent has taken or retained, attempted to take or retain or threatened to take or retain a minor child in violation of state law or a valid custody order and the parent is unable to present clear and convincing evidence that the parent believed in good faith that the conduct was necessary to avoid imminent harm to the parent or the child;

(b) The parent has recently engaged in a pattern of activities that indicates the parent is planning to abduct the minor child from this country;

(c) The parent has strong familial, emotional or cultural connections to this country or another country, regardless of citizenship or residency status; and

(d) Any other relevant factors.

(4) A security, bond or other guarantee required by a court under this section may include, but is not limited to, any of the following:

(a) A bond or security deposit in an amount that is sufficient to offset the cost of recovering the minor child if the child is abducted;

(b) Supervised parenting time; or

(c) Passport and travel controls, including but not limited to controls that:

(A) Prohibit the parent from removing the minor child from this state or this country;

(B) Require the parent to surrender a passport or an international travel visa that is issued in the name of the minor child or jointly in the names of the parent and the child;

(C) Prohibit the parent from applying for a new or replacement passport or international travel visa on behalf of the minor child; and

(D) Require the parent to provide to a relevant embassy or consulate and to the Office of Children's Issues in the United States Department of State the following documents:

(i) Written notice of passport and travel controls required under this paragraph; and

(ii) A certified copy of a court order issued under this section.

(5) After considering the factors under subsection (3) of this section and requiring a security, bond or other guarantee under this section, the court shall issue a written determination supported by findings of fact and conclusions of law.

(6) Nothing in this section is intended to limit the inherent power of a court in matters relating to children.

NOTE: Conforms terminology in (1)(a) to chapter 576, Oregon Laws 2003.

SECTION 86. ORS 109.316 is amended to read:

109.316. (1) The Department of Human Services or an approved child-caring agency of this state, acting in loco parentis, may consent to the adoption of a child who has been:

(a) Surrendered to it for the purpose of adoption under ORS 418.270 if compliance is had with the provisions of that section; [*or*]

(b) Permanently committed to it by order of a court of competent jurisdiction; or

(c) Surrendered to it for the purpose of adoption under ORS 418.270 by one parent if compliance is had with the provisions of that section and permanently committed to it by a court of competent jurisdiction having jurisdiction of the other parent.

(2) The department may consent to the adoption of a child over whom the department has been made guardian under ORS chapter 125.

(3) [*Where*] **When** consent is given under this section, no other consent is required.

(4) [*Where*] **When** consent is given under this section, there shall be filed in the adoption proceeding:

(a) A certified copy of an order of a court of competent jurisdiction formally and permanently assigning the guardianship of the child to the department or the child-caring agency, or a copy of the surrender of the child from its parent or parents or guardian, or both, as the case may be; and

(b) Written formal consent by the department or the child-caring agency, as the case may be, to the proposed adoption, showing that sufficient and satisfactory investigation of the adopting parties has been made and recommending that the adoption be granted. The consent of the department or the child-caring agency to the proposed adoption may be given by one of its officers, executives or employees who has been authorized or designated by it for that purpose.

NOTE: Conforms structure to legislative style in (1)(a) and corrects word choice in (3) and (4).

SECTION 87. ORS 109.318 is amended to read:

109.318. (1) An agency or other organization, public or private, located entirely outside of this state, or an authorized officer or executive thereof, acting in loco parentis, may consent to the adoption of a child under the custody, control or guardianship of such agency or organization or officer or executive thereof, if such agency or organization or officer or executive thereof is licensed or otherwise has authority in the jurisdiction in which such agency or other organization is located to consent to adoptions in loco parentis. When consent is given under this section, no other consent is required. The license or other authority to consent to adoption in loco parentis shall be conclusively presumed upon the filing with the court of a duly certified statement from an appropriate governmental agency of such other state that such agency or organization or officer or executive is licensed or otherwise has authority in such state to consent to adoptions in loco parentis.

(2) [*Where*] **When** consent is given under this section, there shall be filed in the adoption proceeding:

(a) A certified copy of the court order, or the written authorization from the parent, parents or other person, or both a court order and such written authorization, as the case may be, that enables consent to be given in loco parentis under the law of such other jurisdiction; and

(b) Written formal consent by the agency or other organization, or the officer or executive thereof, to the proposed adoption, showing that sufficient and satisfactory investigation of the adopting parties has been made and recommending that the adoption be granted.

NOTE: Corrects word choice in (2).

SECTION 88. ORS 109.332 is amended to read:

109.332. (1) When a petition has been filed under ORS 109.309 concerning the adoption by a stepparent of a child, a grandparent served with a copy of the petition under ORS 109.309 (7) may file a motion with the court asking the court to award a grandparent the right to regular visitation with the child after the adoption. A motion under this subsection must be filed no later than 30 days after service of the petition.

(2) The court shall award a grandparent visitation rights only if the court finds by clear and convincing evidence that:

(a) Establishing visitation rights is in the best interests of the child;

(b) A substantial relationship existed prior to the adoption between the child and the grandparent seeking visitation rights; and

(c) Establishing visitation rights does not substantially interfere with the relationship between the child and the adoptive family.

[*(3) In a stepparent adoption, a grandparent whose visitation rights were terminated as a result of the adoption prior to August 23, 1993, may petition to have the visitation rights restored. The petition must be filed within one year after August 23, 1993. The court shall restore the visitation rights, unless the court finds that restoration of visitation rights is not in the best interests of the child.*]

[*(4)*] **(3)** As used in this section, "grandparent" includes a grandparent who has established custody, visitation or other rights under ORS 109.119.

NOTE: Deletes obsolete subsection.

SECTION 89. ORS 109.381 is amended to read:

109.381. (1) A judgment of a court of this state granting an adoption, and the proceedings in such adoption matter, shall in all respects be entitled to the same presumptions and be as conclusive as if rendered by a court of record acting in all respects as a court of general jurisdiction and not by a court of special or inferior jurisdiction, and jurisdiction over the persons and the cause shall be presumed to exist.

(2) Except for such right of appeal as may be provided by law, judgments of adoption shall be binding and conclusive upon all parties to the proceeding. No party nor anyone claiming by, through or under a party to an adoption proceeding, may for any reason, either by collateral or direct proceedings, question the validity of a judgment of adoption entered by a court of competent jurisdiction of this or any other state.

(3) After the expiration of one year from the entry of a judgment of adoption in this state the validity of the adoption shall be binding on all persons, and it shall be conclusively presumed that the child's natural parents and all other persons who might claim to have any right to, or over the child, have abandoned the child and consented to the entry of such judgment of adoption, and that the child became the lawful child of the adoptive parents or parent at the time when the judgment of adoption was rendered, all irrespective of jurisdictional or other defects in the adoption proceeding**.**[*;*] After the expiration of [*such*] **the** one-year period no one may question the validity of the adoption for any reason, either through collateral or direct proceedings, and all persons shall be bound thereby**.**[*; provided,*] However, the provisions of this subsection shall not affect [*such*] **the** right of appeal from a judgment of adoption as may be provided by law.

[*(4) The provisions of this section shall apply to all adoption proceedings instituted in this state after August 5, 1959. This section shall also apply, after the expiration of one year from August 5, 1959, to all adoption proceedings instituted in this state before August 5, 1959.*]

NOTE: Conforms punctuation in (3) to legislative style; deletes obsolete subsection (4).

SECTION 90. ORS 109.390 is amended to read:

109.390. [*Where*] **When** the Department of Human Services or an approved child-caring agency has the right to consent to the adoption of a child, the department or agency may:

(1) [*Where*] **If** it deems the action necessary or proper, become a party to any proceeding for the adoption of the child.

(2) Appear in court where a proceeding for the adoption of the child is pending.

(3) Give or withhold consent in loco parentis to the adoption of the child only in accordance with ORS 109.316.

NOTE: Corrects word choice in lead-in and (1).

SECTION 91. ORS 109.510 is amended to read:

109.510. Except as provided in ORS 109.520, in this state any person shall be deemed to have arrived at majority at the age of 18 years, and thereafter shall**:**

(1) Have control of the **person's** own actions and business [*of the person,*]**; and**

(2) Have all the rights and be subject to all the liabilities of a citizen of full age.

NOTE: Corrects syntax.

SECTION 92. ORS 114.505 is amended to read:

114.505. As used in ORS 114.505 to 114.560:

(1) "Affiant" means the person or persons signing an affidavit filed under ORS 114.515.

[*(1)*] **(2)** "Claiming successors" means:

(a) If the decedent died intestate, the heir or heirs of the decedent, or if there is no heir, an estate administrator of the Department of State Lands appointed under ORS 113.235;

(b) If the decedent died testate, the devisee or devisees of the decedent; and

(c) Any creditor of the estate entitled to payment or reimbursement from the estate under ORS 114.545 (1)(c) who has not been paid or reimbursed the full amount owed such creditor within 60 days after the date of the decedent's death.

[*(2)*] **(3)** "Estate" means decedent's property subject to administration in Oregon.

[*(3) "Affiant" means the person or persons signing an affidavit filed under ORS 114.515.*]

NOTE: Alphabetizes definitions.

SECTION 93. ORS 114.525 is amended to read:

114.525. An affidavit filed under ORS 114.515 shall:

(1) State the name, age, domicile, post-office address and Social Security number of the decedent;

(2) State the date and place of the decedent's death. A certified copy of the death certificate shall be attached to the affidavit;

(3) Describe and state the fair market value of all property in the estate, including a legal description of any real property;

(4) State that no application or petition for the appointment of a personal representative has been granted in Oregon;

(5) State whether the decedent died testate or intestate, and if the decedent died testate, the will shall be attached to the affidavit;

(6) List the heirs of the decedent and the last address of each heir as known to the affiant, and state that a copy of the affidavit showing the date of filing and a copy of the will, if the decedent died testate, will be delivered to each heir or mailed to the heir at the last-known address;

(7) If the decedent died testate, list the devisees of the decedent and the last address of each devisee as known to the affiant and state that a copy of the will and a copy of the affidavit showing the date of filing will be delivered to each devisee or mailed to the devisee at the last-known address;

(8) State the interest in the property described in the affidavit to which each heir or devisee is entitled and the interest, if any, that will escheat;

(9) State that reasonable efforts have been made to ascertain creditors of the estate. List the expenses of and claims against the estate remaining unpaid or on account of which the affiant or any other person is entitled to reimbursement from the estate, including the known or estimated amounts thereof and the names and addresses of the creditors as known to the affiant, and state that a copy of the affidavit showing the date of filing will be delivered to each creditor who has not been paid in full or mailed to the creditor at the last-known address;

(10) Separately list the name and address of each person known to the affiant to assert a claim against the estate that the affiant disputes and the known or estimated amount thereof and state that a copy of the affidavit showing the date of filing will be delivered to each such person or mailed to the person at the last-known address;

(11) State that a copy of the affidavit showing the date of filing will be mailed or delivered to the [*Estate Administration Unit of the*] Department of Human Services;

(12) State that claims against the estate not listed in the affidavit or in amounts larger than those listed in the affidavit may be barred unless:

(a) A claim is presented to the affiant within four months of the filing of the affidavit at the address stated in the affidavit for presentment of claims; or

(b) A personal representative of the estate is appointed within the time allowed under ORS 114.555; and

(13) If the affidavit lists one or more claims that the affiant disputes, state that any such claim may be barred unless:

(a) A petition for summary determination is filed within four months of the filing of the affidavit; or

(b) A personal representative of the estate is appointed within the time allowed under ORS 114.555.

NOTE: Reflects statutory naming scheme in (11).

SECTION 94. ORS 116.007 is amended to read:

116.007. (1) Unless the will otherwise provides and subject to subsection (2) of this section, all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, interest and penalties concerning taxes, family allowances, fees of attorneys and personal representatives, and court costs shall be charged against the principal of the estate.

(2) Unless the will otherwise provides, income from the assets of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trustee under ORS chapter 129 and this section and distributed as follows:

(a) To specific legatees and devisees, the income from the property bequeathed or devised to them respectively, less taxes, ordinary repairs, and other expenses of management and operation of the property, and an appropriate portion of interest accrued since the death of the testator and of taxes imposed on income, excluding taxes on capital gains, [*which*] **that** accrue during the period of administration.

(b) To all other legatees and devisees, except legatees of pecuniary bequests that are not in trust and that do not qualify for the marital deduction provided for in section 2056 of the Internal

Revenue Code [*of 1954*] (26 U.S.C. 2056), the balance of the income, less the balance of taxes, ordinary repairs, and other expenses of management and operation of all property from which the estate is entitled to income, interest accrued since the death of the testator, and taxes imposed on income, excluding taxes on capital gains, [*which*] **that** accrue during the period of administration, in proportion to their respective interests in the undistributed assets of the estate computed at times of distribution on the basis of inventory value.

(3) Income received by a trustee under subsection (2) of this section shall be treated as income of the trust.

NOTE: Corrects grammar and reference in (2).

SECTION 95. ORS 116.083 is amended to read:

116.083. (1) A personal representative shall make and file in the estate proceeding a verified account of the personal representative's administration:

(a) Unless the court orders otherwise, annually within 30 days after the anniversary date of the personal representative's appointment.

(b) Within 30 days after the date of the personal representative's removal or resignation or the revocation of the personal representative's letters.

(c) When the estate is ready for final settlement and distribution.

(d) At such other times as the court may order.

(2) Each account shall include the following information:

(a) The period of time covered by the account.

(b) The total value of the property with which the personal representative is chargeable according to the inventory, or, if there was a prior account, the amount of the balance of the prior account.

(c) All money and property received during the period covered by the account.

(d) All disbursements made during the period covered by the account. Vouchers for disbursements shall accompany the account, unless otherwise provided by order or rule of the court, or unless the personal representative is a trust company that has complied with ORS 709.030, but that personal representative shall:

(A) Maintain the vouchers for a period of not less than one year following the date on which the order approving the final account is entered;

(B) Permit interested persons to inspect the vouchers and receive copies thereof at their own expense at the place of business of the personal representative during the personal representative's normal business hours at any time prior to the end of the one-year period following the date on which the order approving the final account is entered; and

(C) Include in each annual account and in the final account a statement that the vouchers are not filed with the account but are maintained by the personal representative and may be inspected and copied as provided in subparagraph (B) of this paragraph.

(e) The money and property of the estate on hand.

(f) Such other information as the personal representative considers necessary to show the condition of the affairs of the estate or as the court may require.

(3) When the estate is ready for final settlement and distribution, the account shall also include:

(a) A statement that all Oregon income, inheritance and personal property taxes, if any, have been paid, or if not so paid, that payment of those taxes has been secured by bond, deposit or otherwise, and that all required tax returns have been filed.

(b) A petition for a judgment authorizing the personal representative to distribute the estate to the persons and in the portions specified therein.

(4) If the distributees consent thereto in writing and all creditors of the estate have been paid in full, the personal representative, in lieu of the final account otherwise required by this section, may file a verified statement that includes the following:

(a) The period of time covered by the statement.

(b) A statement that all creditors have been paid in full.

(c) The statement and petition referred to in subsection (3) of this section.

(5) Notice of time for filing objections to the verified statement **described in subsection (4) of this section** is not required.

[*(5)*] **(6)** The Chief Justice of the Supreme Court may by rule specify the form and contents of accounts that must be filed by a personal representative.

NOTE: Eliminates blank slug flush in (4).

SECTION 96. ORS 116.343 is amended to read:

116.343. (1) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate and any deductions and credits allowed by the law imposing the tax.

(2) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purpose of the gift inures to the benefit of the person bearing that relationship or receiving the gift**,**[*;*] except that when an interest is subject to a prior present interest [*which*] **that** is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(3) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or the estate of the decedent inures to the proportionate benefit of all persons liable to apportionment.

(4) Any credit for inheritance, succession or estate taxes or taxes in the nature thereof in respect to property or interests includable in the estate inures to the benefit of the persons or interests chargeable with the payment thereof to the extent that, or in proportion as, the credit reduces the tax.

(5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public or similar gift or bequest does not constitute an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property shall not be included in the computation provided for in ORS 116.313, and to that extent no apportionment shall be made against the property. This subsection does not apply to any case [*where*] **in which** the result will be to deprive the estate of a deduction otherwise allowable under section 2053 (d) of the Internal Revenue Code [*of 1954*] (26 U.S.C. 2053 (d))[*, as amended and in effect on January 1, 1969,*] relating to deduction for state death taxes on transfers for public, charitable or religious uses.

NOTE: Corrects punctuation and grammar in (2); corrects word choice and reference in (5).

SECTION 97. ORS 124.020 is amended to read:

124.020. (1) When a petitioner or guardian petitioner files a petition under ORS 124.010, the circuit court shall hold an ex parte hearing in person or by telephone on the day the petition is filed or on the following judicial day. Upon a showing that the elderly person or person with disabilities named in the petition has been the victim of abuse committed by the respondent within 180 days preceding the filing of the petition and that there is an immediate and present danger of further abuse to the elderly person or person with disabilities, the court shall, if requested by the petitioner or guardian petitioner, order, for a period of one year or until the order is withdrawn or amended, whichever is sooner:

(a) That the respondent be required to move from the residence of the elderly person or person with disabilities, if in the sole name of the elderly person or person with disabilities or if jointly owned or rented by the elderly person or person with disabilities and the respondent, or if the parties are married to each other;

(b) That a peace officer accompany the party who is leaving or has left the parties′ residence to remove essential personal effects of the party;

(c) That the respondent be restrained from abusing, intimidating, molesting, interfering with or menacing the elderly person or person with disabilities, or attempting to abuse, intimidate, molest, interfere with or menace the elderly person or person with disabilities;

(d) That the respondent be restrained from entering, or attempting to enter, on any premises when it appears to the court that such restraint is necessary to prevent the respondent from abus-

ing, intimidating, molesting, interfering with or menacing the elderly person or person with disabilities;

(e) That the respondent be:

(A) Restrained, effective on a date not less than 150 days from the date of the order, from mailing the elderly person or person with disabilities any sweepstakes promotion;

(B) Required to remove the elderly person or person with disabilities from the respondent's sweepstakes promotion mailing list or place the elderly person or person with disabilities on a list of persons to whom sweepstakes promotions may not be mailed; and

(C) Required to promptly refund any payment received in any form from the elderly person or person with disabilities after the date the order is entered by the court; or

(f) Other relief that the court considers necessary to provide for the safety and welfare of the elderly person or person with disabilities.

(2) The showing required under subsection (1) of this section may be made by testimony of:

(a) The elderly person or person with disabilities;

(b) The guardian or guardian ad litem of the elderly person or person with disabilities;

(c) Witnesses to the abuse; or

(d) Adult protective services workers who have conducted an investigation.

(3) Immediate and present danger under this section includes but is not limited to situations in which the respondent has recently threatened the elderly person or person with disabilities with additional abuse.

(4) When a guardian petitioner files a petition on behalf of an elderly person or a person with disabilities, the guardian petitioner shall provide information about the elderly person or person with disabilities and not **about** the guardian petitioner where the petition, order or related forms described in subsection (5) of this section require information about the petitioner.

(5) An instruction brochure shall be available from the clerk of the court explaining the rights set forth under ORS 124.005 to 124.040. The petition, order and related forms shall be available from the clerk of the court and shall be in substantially the following form:

IN THE CIRCUIT COURT OF
THE STATE OF OREGON FOR
THE COUNTY OF _____

_____,	) PETITION FOR
Petitioner	) RESTRAINING ORDER
(your name)	) TO PREVENT ABUSE
	) OF ELDERLY
	) PERSONS OR
	) PERSONS WITH
vs.	) DISABILITIES
	)
	) NO. _____
_____,	)
Respondent	)
(person to be	)
restrained)	)

YOU MUST PROVIDE COMPLETE AND TRUTHFUL INFORMATION. IF YOU DO NOT, THE COURT MAY DISMISS ANY RESTRAINING ORDER AND MAY ALSO HOLD YOU IN CONTEMPT OF COURT.

If you wish to have your residential address or telephone number withheld from respondent, use a contact address and telephone number so the Court and the Sheriff can reach you if necessary.

ATTACH ADDITIONAL PAGES
IF NECESSARY.

I am the Petitioner and I state that the following information is true:

I am a resident of _____ County, Oregon.

Respondent is a resident of _____ County, Oregon.

I am either 65 years of age or older (I am _____ years of age) or I am a person with disabilities (CIRCLE THE ONE THAT DESCRIBES YOU).

1. CHECK AND FILL OUT ANY SECTION(S) that apply to you and respondent:

___ A. Respondent and I have been living together since _____, _____(year).

___ B. Respondent and I lived together from _____, _____(year), to _____, _____(year).

___ C. I have been under the care of respondent since _____, _____(year).

___ D. I was under the care of respondent from _____, _____(year), to _____, _____(year).

___ E. Respondent has sent me sweepstakes promotions.

___ F. None of the above.

2. To qualify for a restraining order, respondent must have done one or more of the following: Within the last 180 days, respondent has:

___ A. Caused me physical injury by other than accidental means.

___ B. Attempted to cause me physical injury by other than accidental means.

___ C. Placed me in fear of immediate serious physical injury.

___ D. Caused me physical harm by withholding services necessary to maintain my health and well-being.

___ E. Abandoned or deserted me by withdrawing or neglecting to perform duties and obligations.

___ F. Used derogatory or inappropriate names, phrases or profanity, ridicule, harassment, coercion, threats, cursing, intimidation or inappropriate sexual comments or conduct of such a nature as to place me in fear of significant physical or emotional harm.

___ G. Sent me sweepstakes promotions, and I feel the need for the court's assistance to protect me from further expense. I am an elderly person or a person with disabilities. In the past year, I spent more than $500 on sweepstakes promotions that I received in the United States mail.

NOTICE TO PETITIONER: Sweepstakes companies are allowed up to 150 days to stop sending you sweepstakes entry materials. For a time after the court issues a restraining order, you may receive additional solicitations from respondent. However, beginning on the date the restraining order is issued, the respondent must immediately reject any further orders from you and must return any money you send to the company after the date the restraining order is issued.

3. Any period of time after the abuse occurred during which respondent was incarcerated (in jail or prison) or lived more than 100 miles from your home is not counted as part of the 180-day period, and you may still be eligible for a restraining order.

Respondent was incarcerated from _____, _____(year), to _____, _____(year).

Respondent lived more than 100 miles from my home from _____, _____(year), to _____, _____(year).

4. Did the abuse happen within the last 180 days not including the times respondent was incarcerated (in jail or prison) or lived more than 100 miles from your home? Yes No

Date and location of abuse:
_____
_____
How did respondent injure or threaten to injure you?
_____
_____
_____

5. Are there incidents other than those described in question 4 above, in which respondent injured or threatened to injure you? If yes, explain:
_____
_____
_____

6. The abuse I am complaining about was witnessed by _____ (affidavit attached). Other persons with knowledge of the abuse are _____ (affidavit attached).

7. I am in immediate and present danger of further abuse by respondent because:
_____
_____
_____

8. In any of the above incidents:

Were drugs, alcohol or weapons involved? Yes No
Did you need medical help? Yes No
Were the police or the courts involved? Yes No

If you have circled yes to any of the above questions, explain:
_____
_____

9. A. There (is) (is not) another Elderly Persons and Persons With Disabilities Abuse Prevention Act or Abuse Prevention Act proceeding pending between respondent and me. It is filed in _____ (County), _____ (State), and I am (Petitioner) or (Respondent) in that case.
The case number of the case is: _____
B. There (is) (is not) another lawsuit pending between respondent and me for divorce, annulment or legal separation.
If yes, type of lawsuit: _____
It is filed in _____ (County), _____ (State).

10. Respondent may be required to move from your residence if it is in your sole name, or if it is jointly owned or rented by you and respondent, or if you and respondent are married.
I (do) (do not) want respondent to move from my residence.
My residence is:
Owned Leased Rented
By: _____

PETITIONER ASKS THE COURT TO GRANT THE RELIEF INDICATED IN THE "PETITIONER'S REQUEST" COLUMN OF THE PROPOSED RESTRAINING ORDER, WHICH IS ATTACHED.

PETITIONER MUST NOTIFY THE COURT
OF ANY CHANGE OF ADDRESS.

ALL NOTICES OF HEARING WILL
BE SENT TO THIS ADDRESS
AND DISMISSALS MAY BE
ENTERED IF YOU DO NOT APPEAR
AT A SCHEDULED HEARING.

If you wish to have your residential address or telephone number withheld from respondent, use a contact address and telephone number so the Court and the Sheriff can reach you if necessary.

_____
PETITIONER

STATE OF OREGON)
) ss.
County of _____)

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2____.

_____
NOTARY PUBLIC FOR OREGON
My commission expires: _____

RELEVANT DATA

RESPONDENT _____
Sex _____ Telephone # _____
Residence Address _____
City/State/Zip _____
County _____
Birthdate _____ Age _____
Race _____
Height _____ Weight _____
Eye Color _____
Hair Color _____

PETITIONER (you) _____
Sex _____ *Telephone # _____
*Residence Address _____
City/State/Zip _____
County _____
Birthdate _____ Age _____
Race _____
Height _____ Weight _____
Eye Color _____

GUARDIAN PETITIONER
Name _____
Address _____
_____
Telephone # _____

Hair Color _____

*If you wish to have your residential address or telephone number withheld from respondent, use a contact address and telephone number so the Court and the Sheriff can reach you if necessary.

PLEASE FILL OUT THIS INFORMATION
TO AID IN SERVICE OF
THE RESTRAINING ORDER

Where is respondent most likely to be located?

Residence Hours _____
Employment Hours _____
Address: _____
_____
Employment Hours _____
Address: _____
_____

Description of vehicle _____
_____

Does respondent have any weapons or access to weapons? Explain:

_____

_____

Has respondent ever been arrested for or convicted of a violent crime? Explain:

_____

_____

Is there anything about respondent's character, past behavior or the present situation that indicates that respondent may be a danger to self or other? Explain:

_____

_____

_____

IN THE CIRCUIT COURT OF
THE STATE OF OREGON
FOR THE COUNTY OF _____

_____,	)
Petitioner	)
(your name)	) RESTRAINING ORDER
	) TO PREVENT ABUSE
	) OF ELDERLY PERSONS
vs.	) OR PERSONS WITH
	) DISABILITIES

)
) NO. _____
_____,)
Respondent)
(person to be restrained))
)

TO THE RESPONDENT:
VIOLATION OF THIS RESTRAINING ORDER
MAY RESULT IN YOUR ARREST AND IN
CIVIL AND/OR CRIMINAL PENALTIES.
REVIEW THIS ORDER CAREFULLY.
EACH PROVISION MUST BE OBEYED.
SEE YOUR RIGHTS TO A HEARING.

The Court, having reviewed the petition, makes the following findings:

Judge's Initials

___ Petitioner been abused by respondent as defined by ORS 124.005;

___ The abuse of petitioner by respondent occurred within the last 180 days as provided in ORS 124.010;

___ There is an immediate and present danger of further abuse to petitioner.

IT IS HEREBY ORDERED that:

Petitioner's Request			Judge's Initials
[ ]	1.	Respondent is restrained (prohibited) from intimidating, molesting, interfering with or menacing petitioner, or attempting to intimidate, molest, interfere with or menace petitioner.	_____
[ ]	2.	Respondent is restrained (prohibited) from entering, or attempting to enter:	_____
		(Include names and address unless withheld for safety reasons.)	
		[ ] Petitioner's residence.	_____
		[ ] Petitioner's business or place of employment.	_____
		[ ] Petitioner's school.	_____
		[ ] Other locations.	_____
[ ]	3.	Respondent is restrained (prohibited) from:	
		[ ] Contacting, or attempting to contact, petitioner by telephone.	_____
		[ ] Contacting, or attempting to contact, petitioner by mail.	_____
[ ]	4.	Respondent shall move from and not return to the residence located at _____ except with a peace officer in order to remove essential personal effects of the respondent, including, but not limited to: clothing, toiletries, medications, Social Security cards, birth certificates, identification and tools of the trade.	_____
[ ]	5.	A peace officer shall accompany the petitioner to the parties' residence in order to remove essential personal effects of petitioner, including, but not limited to: clothing, toiletries, medications, Social Security cards, birth certificates, identification and tools of the trade.	_____
[ ]	6.	Beginning on a date not less than 150 days from the date of this order, the respondent shall not mail the petitioner any further sweepstakes promotions.	_____
[ ]	7.	Respondent shall remove the petitioner from	_____

the respondent's sweepstakes promotion mailing list or shall place the petitioner on the respondent's list of persons to whom sweepstakes promotions may not be mailed.

[ ] 8. Respondent shall refund any payment received in any form from the petitioner after the date this order is entered by the court. _____

[ ] 9. Other relief: _____ _____

_____ _____

[ ] 10. No further service is necessary because respondent appeared in person before the Court. _____

IT IS FURTHER ORDERED that:

SECURITY AMOUNT FOR VIOLATION OF ANY PROVISION OF THIS ORDER IS $5,000 unless otherwise specified.

Other Amount ($)

THE ABOVE PROVISIONS OF THIS RESTRAINING ORDER ARE IN EFFECT FOR A PERIOD OF ONE YEAR OR UNTIL THE ORDER IS VACATED, MODIFIED OR SUPERSEDED, WHICHEVER OCCURS FIRST.

DATED this _____ day of _____, 2____.

_____

CIRCUIT COURT JUDGE (signature)

_____

CIRCUIT COURT JUDGE (printed)

IN THE CIRCUIT COURT OF
THE STATE OF OREGON
FOR THE COUNTY OF _____

	)
_____,	) NO. _____
Petitioner,	)
vs.	) AFFIDAVIT OF PROOF
_____,	) OF SERVICE
Respondent.	)
	)
	)
STATE OF	)
OREGON	)
	) ss.
County of _____	)

I am a resident of the State of Oregon. I am a competent person 18 years of age or older. I am not an attorney for or a party to this case, or an officer, director or employee of any party to this case.

On the _____ day of _____, 2____, I served the Restraining Order to Prevent Abuse of Elderly Persons or Persons With Disabilities and the Petition for Restraining Order to Prevent Abuse of Elderly Persons or Persons With Disabilities in this case personally upon the above-named

respondent in _____ County by delivering to the respondent a copy of those papers, each of which was certified to be a true copy of each original.

_____

Signature of _____

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2____.

_____

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

IN THE CIRCUIT COURT OF
THE STATE OF OREGON
FOR THE COUNTY OF _____

	)
_____,	) NO. _____
Petitioner,	)
vs.	) MOTION AND ORDER
_____,	) OF DISMISSAL
Respondent.	)
	)

Comes now petitioner, _____, and moves this Court for an order allowing the voluntary withdrawal and dismissal of the Restraining Order on file herein.

_____

Petitioner

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2____.

_____

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

IT IS SO ORDERED this _____ day of _____, 2____.

_____

JUDGE

IN THE CIRCUIT COURT OF
THE STATE OF OREGON
FOR THE COUNTY OF _____

_____,	)
(D.O.B. _____)	) NOTICE TO RESPONDENT
Petitioner,	) (Elderly Persons and
	) Persons With Disabilities
	) Abuse Prevention Act)
	)
and	) NO. _____
	)
_____,	)
(D.O.B. _____)	)
Respondent.	)

THIS FORM MUST BE

ATTACHED TO SERVICE COPY
OF RESTRAINING ORDER

TO RESPONDENT: A TEMPORARY RESTRAINING ORDER HAS BEEN ISSUED BY THE COURT WHICH AFFECTS YOUR RIGHTS AND IS NOW IN EFFECT. THIS ORDER BECOMES EFFECTIVE IMMEDIATELY. IF YOU WISH TO CONTEST THE CONTINUATION OF THIS ORDER, YOU MUST COMPLETE THIS FORM AND MAIL OR DELIVER IT TO:

REQUESTS FOR HEARING MUST BE MADE WITHIN 30 DAYS AFTER YOU RECEIVE THE ORDER. YOU MUST INCLUDE YOUR ADDRESS AND TELEPHONE NUMBER WITH YOUR REQUEST FOR A HEARING. THE HEARING WILL BE HELD WITHIN 21 DAYS. AT THE HEARING, A JUDGE WILL DECIDE WHETHER THE ORDER SHOULD BE CANCELED OR CHANGED. THE ONLY PURPOSE OF THIS HEARING WILL BE TO DETERMINE IF THE TERMS OF THE COURT'S TEMPORARY ORDER SHOULD BE CANCELED, CHANGED OR EXTENDED.

Keep in mind that this order remains in effect until the court that issued the order modifies or dismisses it. If you are arrested for violating this order, the security amount (bail) is $5,000, unless a different amount is ordered by the court. Violation of this order constitutes contempt of court and is punishable by a fine of up to $500 or one percent of your annual gross income, whichever is greater, a jail term of up to six months, or both. Other sanctions may be imposed.

REQUEST FOR HEARING

I am the Respondent in the above-referenced action and I request a hearing to contest all or part of the order as follows (mark one or more):

___ The order restraining me from contacting, or attempting to contact, the petitioner.

___ Other _____

I (will) (will not) be represented by an attorney at the hearing.

Notice of the time and place of the hearing can be mailed to me at the address below my signature.

Date: _____

_____

SIGNATURE OF RESPONDENT

_____

_____

ADDRESS

_____

TELEPHONE NUMBER

---

(6) If the court orders relief:

(a) The clerk of the court shall provide without charge the number of certified true copies of the petition and order necessary to effect service and shall have a true copy of the petition and

order delivered to the county sheriff for service upon the respondent, unless the court finds that further service is unnecessary because the respondent appeared in person before the court.

(b) The county sheriff shall serve the respondent personally unless the petitioner or guardian petitioner elects to have the respondent served personally by a private party or by a peace officer who is called to the scene of a domestic disturbance at which the respondent is present, and who is able to obtain a copy of the order within a reasonable amount of time. Proof of service shall be made in accordance with ORS 124.030.

(c) A respondent accused of committing abuse by means of a sweepstakes promotion may be served:

(A) Personally;

(B) By mailing certified true copies of the petition and order by certified mail to the address to which the elderly person or person with disabilities would have sent the payment for goods or services promoted in the sweepstakes promotion had the elderly person or person with disabilities been ordering the goods or services; or

(C) In the manner directed by the court.

(d) No filing fee, service fee or hearing fee shall be charged for proceedings seeking only the relief provided under ORS 124.005 to 124.040.

(7) If the county sheriff:

(a) Determines that the order and petition are incomplete, the order and petition shall be returned to the clerk of the court. The clerk of the court shall notify the petitioner or guardian petitioner, at the address provided by the petitioner or guardian petitioner, of the error or omission.

(b) After accepting the order and petition, cannot complete service within 10 days, the sheriff shall notify the petitioner or guardian petitioner, at the address provided by the petitioner or guardian petitioner, that the documents have not been served. If the petitioner or guardian petitioner does not respond within 10 days, the county sheriff shall hold the order and petition for future service and file a return to the clerk of the court showing that service was not completed.

(8)(a) Within 30 days after a restraining order is served on the respondent under this section or within 30 days after notice is served on the elderly person or person with disabilities under ORS 124.024, the respondent, elderly person or person with disabilities may request a court hearing upon any relief granted. The hearing request form shall be available from the clerk of the court and shall be in substantially the form provided in subsection (5) of this section.

(b) If the respondent, elderly person or person with disabilities requests a hearing under paragraph (a) of this subsection, the clerk of the court shall notify the petitioner or guardian petitioner of the date and time of such hearing, and shall supply the petitioner or guardian petitioner with a copy of the request for a hearing. The petitioner or guardian petitioner shall give to the clerk of the court information sufficient to allow such notification.

(c) The hearing is not limited to the issues raised in the request for hearing form and may include testimony from witnesses to the abuse and adult protective services workers. The hearing may be held in person or by telephone. If the respondent, elderly person or person with disabilities seeks to raise an issue at the hearing not previously raised in the request for hearing form, the petitioner or guardian petitioner is entitled to a reasonable continuance for the purpose of preparing a response to the issue.

(d) The court shall exercise its discretion in a manner that protects the elderly person or person with disabilities from traumatic confrontation with the respondent.

NOTE: Supplies preposition in (4).

SECTION 98. ORS 125.060 is amended to read:

125.060. (1) The notices required by this section must be given to all persons whose identities and addresses can be ascertained in the exercise of reasonable diligence by the person required to give the notice.

(2) Notice of the filing of a petition for the appointment of a fiduciary or entry of other protective order must be given by the petitioner to the following persons:

(a) The respondent, if the respondent has attained 14 years of age.

(b) The spouse, parents and adult children of the respondent.

(c) If the respondent does not have a spouse, parent or adult child, the person or persons most closely related to the respondent.

(d) Any person who is cohabiting with the respondent and who is interested in the affairs or welfare of the respondent.

(e) Any person who has been nominated as fiduciary or appointed to act as fiduciary for the respondent by a court of any state, any trustee for a trust established by or for the respondent, any person appointed as a health care representative under the provisions of ORS 127.505 to 127.660 and any person acting as attorney-in-fact for the respondent under a power of attorney.

(f) If the respondent is a minor, the person who has exercised principal responsibility for the care and custody of the respondent during the 60-day period before the filing of the petition.

(g) If the respondent is a minor and has no living parents, any person nominated to act as fiduciary for the minor in a will or other written instrument prepared by a parent of the minor.

(h) If the respondent is receiving moneys paid or payable by the United States through the Department of Veterans Affairs, a representative of the United States Department of Veterans Affairs regional office that has responsibility for the payments to the protected person.

(i) If the respondent is receiving moneys paid or payable for public assistance provided under ORS chapter 411, 412, 413 or 414 by the State of Oregon through the Department of Human Services, a representative of the department.

(j) If the respondent is committed to the legal and physical custody of the Department of Corrections, the Attorney General and the superintendent or other officer in charge of the facility in which the respondent is confined.

(k) If the respondent is a foreign national, [*to*] the consulate for the respondent's country.

(L) Any other person that the court requires.

(3) Notice of a motion for the termination of the protective proceedings, for removal of a fiduciary, for modification of the powers or authority of a fiduciary, for approval of a fiduciary's actions or for protective orders in addition to those sought in the petition must be given by the person making the motion to the following persons:

(a) The protected person, if the protected person has attained 14 years of age.

(b) Any person who has filed a request for notice in the proceedings.

(c) Except for a fiduciary who is making a motion, [*to*] any fiduciary who has been appointed for the protected person.

(d) If the protected person is receiving moneys paid or payable by the United States through the Department of Veterans Affairs, a representative of the United States Department of Veterans Affairs regional office that has responsibility for the payments to the protected person.

(e) If the protected person is committed to the legal and physical custody of the Department of Corrections, the Attorney General and the superintendent or other officer in charge of the facility in which the protected person is confined.

(f) Any other person that the court requires.

(4) A request for notice under subsection (3)(b) of this section must be in writing and include the name, address and phone number of the person requesting notice. A copy of the request must be mailed by the person making the request to the petitioner or to the fiduciary if a fiduciary has been appointed. The original request must be filed with the court. The person filing the request must pay the fee specified by ORS 21.310 (5).

(5) A person who files a request for notice in the proceedings in the manner provided by subsection (4) of this section is entitled to receive notice from the fiduciary of any motion specified in subsection (3) of this section and of any other matter to which a person listed in subsection (2) of this section is entitled to receive notice under a specific provision of this chapter.

(6) If the Department of Human Services is nominated as guardian for the purpose of consenting to the adoption of a minor, the notice provided for in this section must also be given to the minor's brothers, sisters, aunts, uncles and grandparents.

(7) In addition to the requirements of subsection (2) of this section, notice of the filing of a petition for the appointment of a guardian for a person who is alleged to be incapacitated must be given by the petitioner to the following persons:

(a) Any attorney who is representing the respondent in any capacity.

(b) If the respondent is a resident of a nursing home or residential facility, or if the person nominated to act as fiduciary intends to place the respondent in a nursing home or residential facility, the office of the Long Term Care Ombudsman.

(c) If the respondent is a resident of a mental health treatment facility or a residential facility for individuals with developmental disabilities, or if the person nominated to act as fiduciary intends to place the respondent in such a facility, the system designated to protect and advocate the rights of individuals with developmental disabilities as described in ORS 192.517 (1).

(8) In addition to the requirements of subsection (3) of this section, in a protective proceeding in which a guardian has been appointed, notice of the motions specified in subsection (3) of this section must be given by the person making the motion to the following persons:

(a) Any attorney who represented the protected person at any time during the protective proceeding.

(b) If the protected person is a resident of a nursing home or residential facility, or if the motion seeks authority to place the protected person in a nursing home or residential facility, the office of the Long Term Care Ombudsman.

(c) If the protected person is a resident of a mental health treatment facility or a residential facility for individuals with developmental disabilities, or if the motion seeks authority to place the protected person in such a facility, the system designated to protect and advocate the rights of individuals with developmental disabilities as described in ORS 192.517 (1).

(9) A respondent or protected person may not waive the notice required under this section.

(10) The requirement that notice be served on an attorney for a respondent or protected person under subsection (7)(a) or (8)(a) of this section does not impose any responsibility on the attorney receiving the notice to represent the respondent or protected person in the protective proceeding.

NOTE: Deletes redundant preposition in (2)(k) and (3)(c).

SECTION 99. ORS 128.398 is amended to read:

128.398. (1) As used in this section:

(a) "Marital deduction" means the federal estate tax deduction allowed for transfers under section 2056 of the Internal Revenue Code, as in effect on May 24, 2003, or the federal gift tax deduction allowed for transfers under section 2523 of the Internal Revenue Code, as in effect on May 24, 2003.

(b) "Marital deduction gift" means a transfer of property that the grantor intended to qualify for the marital deduction.

(c) "Trust" means a trust as defined ORS 128.005.

(2) If a trust contains a marital deduction gift:

(a) The provisions of the trust, including any power, duty or discretionary authority given to a fiduciary, must be construed as necessary to comply with the marital deduction provisions of the Internal Revenue Code.

(b) The fiduciary may not take any action or have any power that impairs the tax deduction for the marital deduction gift.

(c) The marital deduction gift may be satisfied only with property that qualifies for the tax deduction.

(3) If a trust executed before September 12, 1981, indicates the grantor intended that a gift provide the maximum allowable marital deduction, the trust gives the recipient an amount equal to the maximum amount of the marital deduction that would have been allowed as of the date of the gift under federal law as it existed before September 12, 1981, with adjustments for:

(a) The provisions of section 2056(c)(1)(B) and (C) of the Internal Revenue Code in effect immediately before September 12, 1981.

(b) Reduction of the amount passing under the gift by the final federal estate tax values of any other property that passes under the trust, or by other means, that qualifies for the marital deduction. This paragraph does not apply to qualified terminable interest property under section 2056(b)(7) of the Internal Revenue Code, as in effect on May 24, 2003.

(4) If a marital deduction gift is made in trust:

(a) The grantor's spouse is the only beneficiary of income or principal of the marital deduction property as long as the spouse lives. Nothing in this paragraph prevents exercise by the grantor's spouse of a power of appointment included in a trust that qualifies as a general power of appointment marital deduction trust.

(b) Subject to paragraph (d) of this subsection, the grantor's spouse is entitled to all of the income of the marital deduction property at least once a year, as long as the spouse is alive.

(c) The grantor's spouse has the right to require that the trustee of the trust make unproductive marital deduction property productive or convert it into productive property within a reasonable time.

(d) Notwithstanding any provision of ORS [*129.005 to 129.125*] **chapter 129**, upon the death of the grantor's spouse all remaining accrued or undistributed income from qualified terminable interest property under sections 2056(b)(7) or 2523(f) of the Internal Revenue Code, as in effect on May 24, 2003, passes to the estate of the grantor's spouse, unless the trust provides a different disposition that qualifies for the marital deduction.

(5)(a) Except as provided in paragraph (b) of this subsection, if a trust that makes a marital deduction gift includes a requirement that the grantor's spouse survive the grantor by a period of more than six months, or contains provisions that could result in a loss of the spouse's interest in the trust if the spouse fails to survive the grantor by at least six months, the spouse need only survive the grantor by six months to receive the marital deduction gift.

(b) If a trust that makes a marital deduction gift includes a requirement that the grantor's spouse survive a common disaster that results in the death of the grantor, the spouse need only survive until the final audit of the federal estate tax return for the grantor's estate, if any, to receive the marital deduction gift.

(6) A trustee is not liable for a good faith decision whether to make any election referred to in sections 2056(b)(7) or 2523(f) of the Internal Revenue Code, as in effect on May 24, 2003.

(7) Subsections (4) and (6) of this section do not apply to a trust that qualifies for the marital deduction under section 20.2056(e)-2(b) of the Code of Federal Regulations, as in effect on May 24, 2003.

NOTE: Updates citation to repealed statutes in (4)(d).

SECTION 100. Section 19, chapter 666, Oregon Laws 2001, as amended by section 5, chapter 696, Oregon Laws 2001, section 52, chapter 14, Oregon Laws 2003, section 4, chapter 383, Oregon Laws 2003, section 11, chapter 577, Oregon Laws 2003, and section 16, chapter 801, Oregon Laws 2003, is amended to read:

Sec. 19. The crimes to which section 1 (11)(b), chapter 666, Oregon Laws 2001, applies are:

(1) Bribe giving, as defined in ORS 162.015.

(2) Bribe receiving, as defined in ORS 162.025.

(3) Public investment fraud, as defined in ORS 162.117.

(4) Bribing a witness, as defined in ORS 162.265.

(5) Bribe receiving by a witness, as defined in ORS 162.275.

(6) Simulating legal process, as defined in ORS 162.355.

(7) Official misconduct in the first degree, as defined in ORS 162.415.

(8) Custodial interference in the second degree, as defined in ORS 163.245.

(9) Custodial interference in the first degree, as defined in ORS 163.257.

(10) Buying or selling a person under 18 years of age, as defined in ORS 163.537.

(11) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.

(12) Encouraging child sexual abuse in the first degree, as defined in ORS 163.684.

(13) Encouraging child sexual abuse in the second degree, as defined in ORS 163.686.

(14) Encouraging child sexual abuse in the third degree, as defined in ORS 163.687.

(15) Possession of materials depicting sexually explicit conduct of a child in the first degree, as defined in ORS 163.688.

(16) Possession of materials depicting sexually explicit conduct of a child in the second degree, as defined in ORS 163.689.

(17) Theft in the second degree, as defined in ORS 164.045.

(18) Theft in the first degree, as defined in ORS 164.055.

(19) Aggravated theft in the first degree, as defined in ORS 164.057.

(20) Theft by extortion, as defined in ORS 164.075.

(21) Theft by deception, as defined in ORS 164.085, if it is a felony or a Class A misdemeanor.

(22) Theft by receiving, as defined in ORS 164.095, if it is a felony or a Class A misdemeanor.

(23) Theft of services, as defined in ORS 164.125, if it is a felony or a Class A misdemeanor.

(24) Unauthorized use of a vehicle, as defined in ORS 164.135.

(25) Mail theft or receipt of stolen mail, as defined in ORS 164.162.

(26) Laundering a monetary instrument, as defined in ORS 164.170.

(27) Engaging in a financial transaction in property derived from unlawful activity, as defined in ORS 164.172.

(28) Burglary in the second degree, as defined in ORS 164.215.

(29) Burglary in the first degree, as defined in ORS 164.225.

(30) Possession of a burglary tool or theft device, as defined in ORS 164.235.

(31) Unlawful entry into a motor vehicle, as defined in ORS 164.272.

(32) Arson in the second degree, as defined in ORS 164.315.

(33) Arson in the first degree, as defined in ORS 164.325.

(34) Computer crime, as defined in ORS 164.377.

(35) Robbery in the third degree, as defined in ORS 164.395.

(36) Robbery in the second degree, as defined in ORS 164.405.

(37) Robbery in the first degree, as defined in ORS 164.415.

(38) Unlawful labeling of a sound recording, as defined in ORS 164.868.

(39) Unlawful recording of a live performance, as defined in ORS 164.869.

(40) Unlawful labeling of a videotape recording, as defined in ORS 164.872.

(41) A violation of ORS 164.877.

(42) Endangering aircraft, as defined in ORS 164.885.

(43) Interference with agricultural operations, as defined in ORS 164.887.

(44) Forgery in the second degree, as defined in ORS 165.007.

(45) Forgery in the first degree, as defined in ORS 165.013.

(46) Criminal possession of a forged instrument in the second degree, as defined in ORS 165.017.

(47) Criminal possession of a forged instrument in the first degree, as defined in ORS 165.022.

(48) Criminal possession of a forgery device, as defined in ORS 165.032.

(49) Criminal simulation, as defined in ORS 165.037.

(50) Fraudulently obtaining a signature, as defined in ORS 165.042.

(51) Fraudulent use of a credit card, as defined in ORS 165.055.

(52) Negotiating a bad check, as defined in ORS 165.065.

(53) Possessing a fraudulent communications device, as defined in ORS 165.070.

(54) Unlawful factoring of a payment card transaction, as defined in ORS 165.074.

(55) Falsifying business records, as defined in ORS 165.080.

(56) Sports bribery, as defined in ORS 165.085.

(57) Sports bribe receiving, as defined in ORS 165.090.

(58) Misapplication of entrusted property, as defined in ORS 165.095.

(59) Issuing a false financial statement, as defined in ORS 165.100.

(60) Obtaining execution of documents by deception, as defined in ORS 165.102.

(61) A violation of ORS 165.543.

(62) Cellular counterfeiting in the third degree, as defined in ORS 165.577.

(63) Cellular counterfeiting in the second degree, as defined in ORS 165.579.

(64) Cellular counterfeiting in the first degree, as defined in ORS 165.581.

(65) Identity theft, as defined in ORS 165.800.

(66) A violation of ORS 166.190.

(67) Unlawful use of a weapon, as defined in ORS 166.220.

(68) A violation of ORS 166.240.

(69) Unlawful possession of a firearm, as defined in ORS 166.250.

(70) A violation of ORS 166.270.

(71) Unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer, as defined in ORS 166.272.

(72) A violation of ORS 166.275.

(73) Unlawful possession of armor piercing ammunition, as defined in ORS 166.350.

(74) A violation of ORS 166.370.

(75) Unlawful possession of a destructive device, as defined in ORS 166.382.

(76) Unlawful manufacture of a destructive device, as defined in ORS 166.384.

(77) Possession of a hoax destructive device, as defined in ORS 166.385.

(78) A violation of ORS 166.410.

(79) Providing false information in connection with a transfer of a firearm, as defined in ORS 166.416.

(80) Improperly transferring a firearm, as defined in ORS 166.418.

(81) Unlawfully purchasing a firearm, as defined in ORS 166.425.

(82) A violation of ORS 166.429.

(83) A violation of ORS 166.470.

(84) A violation of ORS 166.480.

(85) A violation of ORS 166.635.

(86) A violation of ORS 166.638.

(87) Unlawful paramilitary activity, as defined in ORS 166.660.

(88) A violation of ORS 166.720.

(89) Prostitution, as defined in ORS 167.007.

(90) Promoting prostitution, as defined in ORS 167.012.

(91) Compelling prostitution, as defined in ORS 167.017.

(92) Exhibiting an obscene performance to a minor, as defined in ORS 167.075.

(93) Unlawful gambling in the second degree, as defined in ORS 167.122.

(94) Unlawful gambling in the first degree, as defined in ORS 167.127.

(95) Possession of gambling records in the second degree, as defined in ORS 167.132.

(96) Possession of gambling records in the first degree, as defined in ORS 167.137.

(97) Possession of a gambling device, as defined in ORS 167.147.

(98) Possession of a gray machine, as defined in ORS 167.164.

(99) Cheating, as defined in ORS 167.167.

(100) Tampering with drug records, as defined in ORS 167.212.

(101) A violation of ORS 167.262.

(102) Research and animal interference, as defined in ORS 167.312.

(103) Animal abuse in the first degree, as defined in ORS 167.320.

(104) Aggravated animal abuse in the first degree, as defined in ORS 167.322.

(105) Animal neglect in the first degree, as defined in ORS 167.330.

(106) Interfering with an assistance, a search and rescue or a therapy animal, as defined in ORS 167.352.

(107) Involvement in animal fighting, as defined in ORS 167.355.

(108) Dogfighting, as defined in ORS 167.365.

(109) Participation in dogfighting, as defined in ORS 167.370.

(110) Unauthorized use of a livestock animal, as defined in ORS 167.385.

(111) Interference with livestock production, as defined in ORS 167.388.

(112) A violation of ORS 167.390.

(113) A violation of ORS 471.410.

(114) Failure to report missing precursor substances, as defined in ORS 475.955.

(115) Illegally selling drug equipment, as defined in ORS 475.960.

(116) Providing false information on a precursor substances report, as defined in ORS 475.965.

(117) Unlawful delivery of an imitation controlled substance, as defined in ORS 475.991.

(118) A violation of ORS 475.992, if it is a felony or a Class A misdemeanor.

(119) A violation of ORS 475.993, if it is a felony or a Class A misdemeanor.

(120) A violation of ORS 475.994.

(121) A violation of ORS 475.995, if it is a felony or a Class A misdemeanor.

(122) A violation of ORS 475.999 [*(1)(a)*] **(1), if the violation is a felony**.

(123) Misuse of an identification card, as defined in ORS 807.430.

(124) Unlawful production of identification cards, licenses, permits, forms or camera cards, as defined in ORS 807.500.

(125) Transfer of documents for the purposes of misrepresentation, as defined in ORS 807.510.

(126) Using an invalid license, as defined in ORS 807.580.

(127) Permitting misuse of a license, as defined in ORS 807.590.

(128) Using another's license, as defined in ORS 807.600.

(129) Criminal driving while suspended or revoked, as defined in ORS 811.182, when it is a felony.

(130) Driving while under the influence of intoxicants, as defined in ORS 813.010, when it is a felony.

(131) Unlawful distribution of cigarettes, as defined in ORS 323.482.

(132) A violation of ORS 180.440 (2).

(133) An attempt, conspiracy or solicitation to commit a crime in subsections (1) to (132) of this section if the attempt, conspiracy or solicitation is a felony or a Class A misdemeanor.

NOTE: Clarifies reference in (122); see section 349 (amending 475.999).

SECTION 101. ORS 133.007 is amended to read:

133.007. (1) An information or complaint is sufficient if it can be understood therefrom that:

(a) The defendant is named, or if the name of the defendant cannot be discovered, [*that*] the defendant is described by a fictitious name, with the statement that the real name of the defendant is unknown to the complainant.

(b) The offense was committed within the jurisdiction of the court, except [*where*] **when**, as provided by law, the act, though done without the county in which the court is held, is triable within.

(c) The offense was committed at some time prior to the filing of the information or complaint and within the time limited by law for the commencement of an action therefor.

(2) The information or complaint shall not contain allegations that the defendant has previously been convicted of any offense [*which*] **that** might subject the defendant to enhanced penalties.

(3) Words used in a statute to define an offense need not be strictly followed in the information or complaint, but other words conveying the same meaning may be used.

NOTE: Corrects syntax in (1)(a); corrects word choice in (1)(b) and (2).

SECTION 102. ORS 133.633 is amended to read:

133.633. (1) Within 90 days after actual notice of any seizure, or at such later date as the court in its discretion may allow:

(a) An individual from whose person, property or premises things have been seized may move the appropriate court to return things seized to the person or premises from which they were seized.

(b) Any other person asserting a claim to rightful possession of the things seized may move the appropriate court to restore the things seized to the movant.

(2) The appropriate court to consider such motion is:

(a) The court having ultimate trial jurisdiction over any crime charged in connection with the seizure; [*or*]

(b) If no crime is charged in connection with the seizure, the court to which the warrant was returned; or

(c) If the seizure was not made under a warrant and no crime is charged in connection with the seizure, any court having authority to issue search warrants in the county in which the seizure was made.

(3) The movant shall serve a copy of the motion upon the district attorney or the city attorney, whichever is appropriate, of the jurisdiction in which the property is in custody.

(4) No filing, appearance or hearing fees may be charged for filing or hearing a motion under this section.

NOTE: Conforms structure to legislative style in (2)(a).

SECTION 103. ORS 133.663 is amended to read:

133.663. (1) If, upon consideration of a motion for return or restoration of things seized, it appears to the court that the things should be returned or restored, but there is a substantial question whether they should be returned to the person from whose possession they were seized or to some other person, or a substantial question among several claimants to rightful possession, the court may:

(a) Return the things to the person from whose possession they were seized; or

[*(b)*] **(b)(A)** Impound the things seized and set a further hearing, [*assuring*] **ensuring** that all persons with a possible possessory interest in the things in question receive due notice and an opportunity to be heard; and

[*(c)*] **(B)** Upon completion of the hearing provided for in [*paragraph (b) of this subsection*] **subparagraph (A) of this paragraph**, enter an order for the return or restoration of the things seized.

(2) If there is no substantial question whether the things should be returned to the person from whose possession they were seized, they must be returned to the person upon the release of the defendant from custody.

(3) Instead of conducting the hearing provided for in subsection [*(1)(b)*] **(1)(b)(A)** of this section and returning or restoring the property, the court**,** in its discretion, may leave the several claimants to appropriate civil process for the determination of the claims.

NOTE: Conforms structure in (1) to legislative style; corrects word choice in (1)(b) and punctuation in (3).

SECTION 104. ORS 133.721 is amended to read:

133.721. As used in ORS 41.910 and 133.721 to 133.739 [*and this section*], unless the context requires otherwise:

(1) "Aggrieved person" means a person who was a party to any wire, electronic or oral communication intercepted under ORS 133.724 or 133.726 or a person against whom the interception was directed and who alleges that the interception was unlawful.

(2) "Contents," when used with respect to any wire, electronic or oral communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport or meaning of that communication.

(3) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a radio, electromagnetic, photoelectronic or photo-optical system, or transmitted in part by wire, but does not include:

(a) Any oral communication or any communication [*which*] **that** is completely by wire; or

(b) Any communication made through a tone-only paging device.

(4) "Electronic, mechanical or other device" means any device or apparatus [*which*] **that** can be used to intercept a wire, electronic or oral communication other than:

(a) Any telephone or telegraph instrument, equipment or facility, or any component thereof [*which*] **that** is furnished to the subscriber or user by a telecommunications carrier in the ordinary course of its business and [*which*] **that** is being used by the subscriber or user in the ordinary course of its business or being used by a telecommunications carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of official duties; or

(b) A hearing aid or similar device being used to correct subnormal hearing to not better than normal.

(5) "Intercept" means the acquisition, by listening or recording, of the contents of any wire, electronic or oral communication through the use of any electronic, mechanical or other device.

(6) "Investigative or law enforcement officer" means an officer or other person employed by a county sheriff or municipal police department, the Oregon State Police, Attorney General, a district attorney or the Department of Corrections, and officers or other persons employed by law enforcement agencies of other states or the federal government, to investigate or enforce the law.

(7) "Oral communication" means:

(a) Any oral communication, other than a wire or electronic communication, uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation; or

(b) An utterance by a person who is participating in a wire or electronic communication, if the utterance is audible to another person who, at the time the wire or electronic communication occurs, is in the immediate presence of the person participating in the communication.

(8) "Telecommunications carrier" means:

(a) A telecommunications utility as defined in ORS 759.005; or

(b) A cooperative corporation organized under ORS chapter 62 that provides telecommunications services.

(9) "Telecommunications service" has the meaning given that term in ORS 759.005.

(10) "Wire communication" means any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of reception, whether furnished or operated by a public utility or privately owned or leased.

NOTE: Eliminates redundant reference in lead-in; corrects grammar in (3)(a) and (4).

SECTION 105. ORS 133.767 is amended to read:

133.767. The Governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in ORS 133.763 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand**.**[*; and*] The provisions of [*this chapter*] **ORS 133.743 to 133.857** not otherwise inconsistent shall apply to such cases, notwithstanding that the accused was not in that state at the time of the commission of the crime and has not fled therefrom.

NOTE: Corrects punctuation and series reference.

SECTION 106. ORS 133.835 is amended to read:

133.835. (1) When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against the person in another state, the Governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or the term of sentence of the person in such other state, upon condition that the person be returned to the other state at the expense of this state as soon as the prosecution in this state is terminated.

(2) The Governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in [*this chapter*] **ORS 133.743 to 133.857** with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

NOTE: Corrects series reference.

SECTION 107. ORS 133.845 is amended to read:

133.845. Nothing contained in [*this chapter*] **ORS 133.743 to 133.857** shall be deemed to constitute a waiver by this state of its right, power or privilege to try a person demanded under ORS 133.843 for **any** crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this state, nor shall any proceedings [*had*] under [*this*

chapter which] **ORS 133.743 to 133.857 that** result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever.

NOTE: Corrects series references and syntax.

SECTION 108. ORS 135.225 is amended to read:

135.225. When the magistrate has held the defendant to answer, the magistrate shall at once forward to the court in which the defendant would be triable**:**

(1) The warrant, if any;

(2) The information;

(3) The statement of the defendant, if the defendant made one;

(4) The memoranda mentioned in ORS 135.115 and 135.145;

(5) The release agreement or security release of the defendant; and[,]

(6) If applicable, any security taken for the appearance of witnesses.

NOTE: Conforms structure to legislative style.

SECTION 109. ORS 161.390 is amended to read:

161.390. (1) The Department of Human Services shall promulgate rules for the assignment of persons to state mental hospitals under ORS 161.341, 161.365 and 161.370 and for establishing standards for evaluation and treatment of persons committed to a state hospital designated by the department or ordered to a community mental health and developmental disabilities program under ORS 161.315 to 161.351[*, 192.690*] and 428.210.

(2) Whenever the Psychiatric Security Review Board requires the preparation of a predischarge or preconditional release plan before a hearing or as a condition of granting discharge or conditional release for a person committed under ORS 161.327 or 161.341 to a state hospital for custody, care and treatment, the Department of Human Services is responsible for and shall prepare the plan.

(3) In carrying out a conditional release plan prepared under subsection (2) of this section, the Department of Human Services may contract with a community mental health and developmental disabilities program, other public agency or private corporation or an individual to provide supervision and treatment for the conditionally released person.

NOTE: Deletes inappropriate reference in (1).

SECTION 110. ORS 163.175 is amended to read:

163.175. (1) A person commits the crime of assault in the second degree if the person:

(a) Intentionally or knowingly causes serious physical injury to another; [*or*]

(b) Intentionally or knowingly causes physical injury to another by means of a deadly or dangerous weapon; or

(c) Recklessly causes serious physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life.

(2) Assault in the second degree is a Class B felony.

NOTE: Conforms structure in (1)(a) to legislative style.

SECTION 111. ORS 163.225 is amended to read:

163.225. (1) A person commits the crime of kidnapping in the second degree if, with intent to interfere substantially with another's personal liberty, and without consent or legal authority, the person:

(a) Takes the person from one place to another; or

(b) Secretly confines the person in a place where the person is not likely to be found.

(2) It is a defense to a prosecution under subsection (1) of this section if:

(a) The person taken or confined is under 16 years of age; [*and*]

(b) The defendant is a relative of that person; and

(c) The sole purpose of the person is to assume control of that person.

(3) Kidnapping in the second degree is a Class B felony.

NOTE: Conforms structure in (2)(a) to legislative style.

SECTION 112. ORS 163.235 is amended to read:

163.235. (1) A person commits the crime of kidnapping in the first degree if the person violates ORS 163.225 with any of the following purposes:

(a) To compel any person to pay or deliver money or property as ransom; [*or*]

(b) To hold the victim as a shield or hostage; [*or*]

(c) To cause physical injury to the victim; or

(d) To terrorize the victim or another person.

(2) Kidnapping in the first degree is a Class A felony.

NOTE: Conforms structure in (1) to legislative style.

SECTION 113. ORS 166.076 is amended to read:

166.076. (1) A person commits the crime of abuse of a memorial to the dead if the person:

(a) Intentionally destroys, mutilates, defaces, injures or removes any:

(A) Tomb, monument, gravestone or other structure or thing placed as or designed for a memorial to the dead; or

(B) Fence, railing, curb or other thing intended for the protection or for the ornamentation of any structure or thing listed in subparagraph (A) of this paragraph;

(b) Intentionally destroys, mutilates, removes, cuts, breaks or injures any tree, shrub or plant within any structure listed in paragraph (a) of this subsection; or

(c) Buys, sells or transports any object listed in paragraph (a) of this subsection that was stolen from a [*pioneer*] **historic** cemetery knowing that the object is stolen.

(2) Abuse of a memorial to the dead is a Class A misdemeanor.

(3)(a) Notwithstanding ORS 161.635, the maximum fine that a court may impose for abuse of a memorial to the dead is $50,000 if:

(A) The person violates subsection (1)(a) of this section and the object destroyed, mutilated, defaced, injured or removed is or was located in a [*pioneer*] **historic** cemetery; or

(B) The person violates subsection (1)(c) of this section.

(b) In addition to any other sentence a court may impose, if a defendant is convicted of violating this section under the circumstances described in paragraph (a)(A) of this subsection, the court shall consider ordering the defendant to pay restitution. The court shall base the amount of restitution on the historical value of the object destroyed, mutilated, defaced, injured or removed.

(4) This section does not apply to a person who is the burial right owner or that person's representative, an heir at law of the deceased, or a person having care, custody or control of a cemetery by virtue of law, contract or other legal right, if the person is acting within the scope of the person's legal capacity and the person's actions have the effect of maintaining, protecting or improving the tomb, monument, gravestone or other structure or thing placed as or designed for a memorial to the dead.

(5) As used in this section, "[*pioneer*] **historic** cemetery" means a cemetery that is listed with the Oregon Commission on Historic Cemeteries under ORS 97.782.

NOTE: Conforms terminology in (1)(c), (3)(a)(A) and (5) to terminology of chapter 173, Oregon Laws 2003.

SECTION 114. ORS 166.095 is amended to read:

166.095. (1) A person commits the crime of misconduct with emergency telephone calls if the person:

(a) Intentionally refuses to relinquish immediately a party line or public pay telephone after being informed that it is needed for an emergency call; or

(b) Requests another to relinquish a party line or public pay telephone to place an emergency call with knowledge that no such emergency exists.

(2) As used in this section:

[*(a) "Party line" means a subscriber's line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.*]

[*(b)*] **(a)** "Emergency call" means a telephone call to a police or fire department, or for medical aid or ambulance service, necessitated by a situation in which human life or property is in jeopardy and prompt summoning of aid is essential.

(b) "Party line" means a subscriber's line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.

(3) Every telephone directory [*published after January 1, 1972, which*] **that** is distributed to members of the general public in this state shall contain in a prominent place a notice of the offense punishable by this section.

(4) Misconduct with emergency telephone calls is a Class B misdemeanor.

NOTE: Alphabetizes definitions in (2); deletes obsolete provision in (3).

SECTION 115. ORS 166.291 is amended to read:

166.291. (1) The sheriff of a county, upon a person's application for an Oregon concealed handgun license, upon receipt of the appropriate fees and after compliance with the procedures set out in this section, shall issue the person a concealed handgun license if the person:

(a)(A) Is a citizen of the United States; or

(B) Is a legal resident alien who can document continuous residency in the county for at least six months and has declared in writing to the [*Immigration and Naturalization Service*] **United States Citizenship and Immigration Services** the intent to acquire citizenship status and can present proof of the written declaration to the sheriff at the time of application for the license;

(b) Is at least 21 years of age;

(c) Has a principal residence in the county in which the application is made;

(d) Has no outstanding warrants for arrest;

(e) Is not free on any form of pretrial release;

(f) Demonstrates competence with a handgun by any one of the following:

(A) Completion of any hunter education or hunter safety course approved by the State Department of Fish and Wildlife or a similar agency of another state if handgun safety was a component of the course;

(B) Completion of any National Rifle Association firearms safety or training course if handgun safety was a component of the course;

(C) Completion of any firearms safety or training course or class available to the general public offered by law enforcement, community college, or private or public institution or organization or firearms training school utilizing instructors certified by the National Rifle Association or a law enforcement agency if handgun safety was a component of the course;

(D) Completion of any law enforcement firearms safety or training course or class offered for security guards, investigators, reserve law enforcement officers or any other law enforcement officers if handgun safety was a component of the course;

(E) Presents evidence of equivalent experience with a handgun through participation in organized shooting competition or military service;

(F) Is licensed or has been licensed to carry a firearm in this state, unless the license has been revoked; or

(G) Completion of any firearms training or safety course or class conducted by a firearms instructor certified by a law enforcement agency or the National Rifle Association if handgun safety was a component of the course;

(g) Has never been convicted of a felony or found guilty, except for insanity under ORS 161.295, of a felony;

(h) Has not been convicted of a misdemeanor or found guilty, except for insanity under ORS 161.295, of a misdemeanor within the four years prior to the application;

(i) Has not been committed to the Department of Human Services under ORS 426.130;

(j) Has not been found to be mentally ill and is not subject to an order under ORS 426.130 that the person be prohibited from purchasing or possessing a firearm as a result of that mental illness;

(k) Has been discharged from the jurisdiction of the juvenile court for more than four years if, while a minor, the person was found to be within the jurisdiction of the juvenile court for having committed an act that, if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined in ORS 166.470; and

(L) Is not subject to a citation issued under ORS 163.735 or an order issued under ORS 30.866, 107.700 to 107.732 or 163.738.

(2) A person who has been granted relief under ORS 166.274 or 166.293 or 18 U.S.C. 925(c) or has had the person's record expunged under the laws of this state or equivalent laws of other jurisdictions is not subject to the disabilities in subsection (1)(g) to (k) of this section.

(3) Before the sheriff may issue a license:

(a) The application must state the applicant's legal name, current address and telephone number, date and place of birth, hair and eye color and height and weight. The application must also list the applicant's residence address or addresses for the previous three years. The application must contain a statement by the applicant that the applicant meets the requirements of subsection (1) of this section. The application may include the Social Security number of the applicant if the applicant voluntarily provides this number. The application must be signed by the applicant.

(b) The applicant must submit to fingerprinting and photographing by the sheriff. The sheriff shall fingerprint and photograph the applicant and shall conduct any investigation necessary to corroborate the requirements listed under subsection (1) of this section. If a nationwide criminal records check is necessary, the sheriff shall request the Department of State Police to conduct the check, including fingerprint identification, through the Federal Bureau of Investigation. The Federal Bureau of Investigation shall return the fingerprint cards used to conduct the criminal records check and may not keep any record of the fingerprints. The Department of State Police shall report the results of the fingerprint-based criminal records check to the sheriff. The Department of State Police shall also furnish the sheriff with any information about the applicant that the Department of State Police may have in its possession from its central bureau of criminal identification including, but not limited to, manual or computerized criminal offender information.

(4) Application forms for concealed handgun licenses shall be supplied by the sheriff upon request. The forms shall be uniform throughout the state in substantially the following form:

APPLICATION FOR LICENSE TO CARRY CONCEALED HANDGUN

Date_____

I hereby declare as follows:

I am a citizen of the United States or a legal resident alien who can document continuous residency in the county for at least six months and have declared in writing to the [*Immigration and Naturalization Service*] **United States Citizenship and Immigration Services** my intention to become a citizen and can present proof of the written declaration to the sheriff at the time of this application. I am at least 21 years of age. I have been discharged from the jurisdiction of the juvenile court for more than four years if, while a minor, I was found to be within the jurisdiction of the juvenile court for having committed an act that, if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined in ORS 166.470. I have never been convicted of a felony or found guilty, except for insanity under ORS 161.295, of a felony in the State of Oregon or elsewhere. I have not, within the last four years, been convicted of a misdemeanor or found guilty, except for insanity under ORS 161.295, of a misdemeanor. There are no outstanding warrants for my arrest and I am not free on any form of pretrial release. I have not been committed to the Department of Human Services under ORS 426.130, nor have I been found mentally ill and presently subject to an order prohibiting me from purchasing or possessing a firearm because of mental illness. If any of the previous conditions do apply to me, I have been granted relief or wish to petition for relief from the disability under ORS 166.274 or 166.293 or 18 U.S.C. 925(c) or have had the records expunged. I am not subject to a citation issued under ORS 163.735 or an order issued under ORS 30.866, 107.700 to 107.732 or 163.738. I understand I will be fingerprinted and photographed.

Legal name _____

Age _____ Date of birth _____

Place of birth _____

Social Security number _____
(Disclosure of your Social Security account number is voluntary. Solicitation of the number is authorized under ORS 166.291. It will be used only as a means of identification.)

Proof of identification (Two pieces of current identification are required, one of which must bear a photograph of the applicant. The type of identification and the number on the identification are to be filled in by the sheriff.):

1._____
2._____

Height _____ Weight _____
Hair color _____ Eye color _____

Current address _____

(List residence addresses for the past three years on the back.)

City _____ County _____ Zip _____
Phone _____

I have read the entire text of this application, and the statements therein are correct and true. (Making false statements on this application is a misdemeanor.)

_____
(Signature of Applicant)

Character references.

_____
Name Address

_____
Name Address

Approved ____ Disapproved ____ by ____

Competence with handgun demonstrated by _____ (to be filled in by sheriff) Date _____ Fee Paid _____
License No. _____

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(5)(a) Fees for concealed handgun licenses are:

(A) $15 to the Department of State Police for conducting the fingerprint check of the applicant.

(B) $50 to the sheriff for the issuance or renewal of a concealed handgun license.

(C) $15 to the sheriff for the duplication of a license because of loss or change of address.

(b) The sheriff may enter into an agreement with the Department of Transportation to produce the concealed handgun license.

(6) No civil or criminal liability shall attach to the sheriff or any authorized representative engaged in the receipt and review of, or an investigation connected with, any application for, or in the issuance, denial or revocation of, any license under ORS 166.291 to 166.295 as a result of the lawful performance of duties under those sections.

(7) Immediately upon acceptance of an application for a concealed handgun license, the sheriff shall enter the applicant's name into the Law Enforcement Data System indicating that the person is an applicant for a concealed handgun license or is a license holder.

(8) The county sheriff may waive the residency requirement in subsection (1)(c) of this section for a resident of a contiguous state who has a compelling business interest or other legitimate demonstrated need.

NOTE: Updates name of federal agency in (1)(a)(B) and (4).

SECTION 116. ORS 166.663 is amended to read:

166.663. (1) No person shall cast from a motor vehicle an artificial light while there is in the possession or in the immediate physical presence of the person a bow and arrow or a rifle, gun, revolver or other firearm.

(2) Subsection (1) of this section does not apply to a person casting an artificial light:

(a) From the headlights of a motor vehicle that is being operated on a road in the usual manner.

(b) When the bow and arrow, rifle, gun, revolver or other firearm that the person has in the possession or immediate physical presence of the person is disassembled or stored, or in the trunk or storage compartment of the motor vehicle.

(c) When the ammunition or arrows are stored separate from the weapon.

(d) On land owned or lawfully occupied by that person.

(e) On publicly owned land when that person has an agreement with the public body to use that property.

(f) When the person is a peace officer or government employee engaged in the performance of official duties.

(g) When the person has been issued a license under ORS [*166.290*] **166.291 and 166.292** to carry a concealed weapon.

(3) Violation of subsection (1) of this section is punishable as a Class B violation.

NOTE: Updates reference to repealed section in (2)(g).

SECTION 117. ORS 167.162 is amended to read:

167.162. (1) A gambling device is a public nuisance. Any peace officer shall summarily seize any such device that the peace officer finds and deliver it to the custody of the sheriff, who shall hold it subject to the order of the court having jurisdiction.

(2) Whenever it appears to the court that the gambling device has been possessed in violation of ORS 167.147, the court shall adjudge forfeiture thereof and shall order the sheriff to destroy the device and to deliver any coins taken therefrom to the county treasurer, who shall deposit them to the general fund of the county. However, when the defense provided by ORS 167.147 (3) is raised by the defendant, the gambling device or slot machine shall not be forfeited or destroyed until after a final judicial determination that the defense is not applicable. If the defense is applicable, the gambling device or slot machine shall be returned to its owner.

(3) The seizure of the gambling device or operating part thereof constitutes sufficient notice to the owner or person in possession thereof. The sheriff shall make return to the court showing that the sheriff has complied with the order.

(4) Whenever, in any proceeding in court for the forfeiture of any gambling device except a slot machine seized for a violation of ORS 167.147, [*and*] a judgment for forfeiture is entered, the court shall have exclusive jurisdiction to remit or mitigate the forfeiture.

(5) In any such proceeding the court shall not allow the claim of any claimant for remission or mitigation unless and until the claimant proves that the claimant:

(a) Has an interest in the gambling device, as owner or otherwise, [*which*] **that** the claimant acquired in good faith.

(b) At no time had any knowledge or reason to believe that it was being or would be used in violation of law relating to gambling.

(6) In any proceeding in court for the forfeiture of any gambling device except a slot machine seized for a violation of law relating to gambling, the court may in its discretion order delivery thereof to any claimant who shall establish the right to the immediate possession thereof, and shall execute, with one or more sureties, or by a surety company, approved by the court, and deliver to the court, a bond in such sum as the court shall determine, running to the State of Oregon, and conditioned to return such gambling device at the time of trial, and conditioned further that, if the

gambling device be not returned at the time of trial, the bond may in the discretion of the court stand in lieu of and be forfeited in the same manner as such gambling device.

NOTE: Deletes superfluous conjunction in (4); corrects grammar in (5)(a).

SECTION 118. ORS 171.553 is amended to read:

171.553. The joint legislative committee created pursuant to ORS 171.551:

(1) Shall be responsible for oversight and coordination of Oregon Plan activities and other stream restoration and species recovery activities;

(2) Shall be responsible for any additional coordination, oversight or advisory duties related to the management of natural resources in Oregon, as the President of the Senate and the Speaker of the House of Representatives may assign; and

(3) May:

(a) Receive informational reports from the Healthy Streams Partnership established under ORS 541.407, from the Independent Multidisciplinary Science Team created under ORS 541.409[*, from the Coastal Salmon Restoration and Production Task Force established under section 2, chapter 544, Oregon Laws 1995,*] and from other sources and, on the basis of [*such*] **the** informational reports, recommend changes to the statewide stream and fish and wildlife species enhancement efforts undertaken to prevent a species listing as threatened or endangered, or to restore a species that is listed.

(b) Review the activities of the individuals and state and federal agencies implementing the Oregon Plan and other programs related to species enhancement, protection and restoration of wildlife habitat, and improvement of the health of Oregon's streams.

(c) Review requests for and make recommendations to the Joint Legislative Committee on Ways and Means or, during the interim between legislative sessions, to the Emergency Board, regarding grant proposals and other requests for funds submitted by the Oregon Watershed Enhancement Board or other state agencies responsible for implementing the Oregon Plan or other species enhancement, protection and restoration of wildlife habitat, or stream enhancement projects.

(d) Review any memorandum of understanding or intergovernmental agreement between a state agency and any other local, state or federal agency to implement all or any portion of a program described in ORS 541.405.

(e) Review rules proposed for adoption by an agency to implement the programs described in ORS 541.405.

(f) Review the effectiveness of existing projects and programs.

(g) Review research projects related to all factors that influence the health of Oregon's streams.

(h) Recommend implementation principles, priorities and guidance for the programs described in ORS 541.405.

NOTE: Deletes reference to sunsetted task force and updates word choice in (3)(a).

SECTION 119. ORS 173.135 is amended to read:

173.135. When deemed necessary or advisable to protect the official interests of the Legislative Assembly, one or more legislative committees, or one or more members of the Legislative Assembly, the **Legislative Counsel** Committee may direct the Legislative Counsel and the staff of the Legislative Counsel, or may retain any member of the Oregon State Bar, to appear in, commence, prosecute or defend any action, suit, matter, cause or proceeding in any court or agency of this state or of the United States. Expenses and costs incurred pursuant to this section may be paid by the committee from any funds available to the committee.

NOTE: Conforms title to legislative style.

SECTION 120. ORS 173.160 is amended to read:

173.160. In preparing editions of the statutes for publication and distribution, the Legislative Counsel shall not alter the sense, meaning, effect or substance of any Act, but, within such limitations, may**:**

(1) Renumber sections and parts of sections of the Acts**;**[,]

(2) Rearrange sections**;**[,]

(3) Change reference numbers to agree with renumbered chapters, sections or other parts**;**[,]

(4) Delete references to repealed sections**;**[,]

(5) Substitute the proper subsection, section or chapter or other division numbers**;**[,]

(6) Change capitalization and spelling for the purpose of uniformity**; and** [*, and*]

(7) Correct manifest clerical, grammatical or typographical errors.

NOTE: Restructures one-sentence section that had 15 commas to conform to legislative style.

SECTION 121. ORS 173.780 is amended to read:

173.780. Subject to the approval of the Legislative Administration Committee, the Legislative Administrator may cause to [*have*] **be** sold, leased or otherwise made available data processing programs, information or materials developed by committee staff to any agency or legislative body of any state or the federal government under such terms and conditions as may be agreed to by the committee and the agencies. Moneys collected under this section shall be credited to the General Fund and are available for general governmental purposes.

NOTE: Corrects word choice.

SECTION 122. ORS 174.105 is amended to read:

174.105. **(1)** As used in the statute laws of this state, unless the context or a specially applicable definition requires otherwise, "war veteran" includes any citizen of the United States who has been a member of and discharged or released under honorable conditions from the Armed Forces of the United States of America, and:

[*(1)*] **(a)** [*Such*] **The** service was for not less than 90 consecutive days, during any of the following periods:

[*(a)*] **(A)** The period between April 6, 1917, and November 11, 1918;

[*(b)*] **(B)** The period between November 12, 1918, and April 1, 1920, if the veteran served with the United States military forces in Russia;

[*(c)*] **(C)** The period between November 12, 1918, and July 2, 1921, if the veteran served in active service at least one day between April 6, 1917, and November 11, 1918;

[*(d)*] **(D)** The period between September 15, 1940, and December 31, 1946; **or**

[*(e)*] **(E)** The period between June 25, 1950, and midnight of January 31, 1955; or

[*(2)*] **(b)** [*Such*] **The** service was for not less than 210 consecutive days any part of which was subsequent to January 31, 1955.

[*(3)*] **(2)** Any [*such*] citizen otherwise eligible under this section who was discharged or released, under honorable conditions, on account of service-connected injury or illness prior to the completion of the minimum period of service prescribed in [*subsections (1) or (2)*] **subsection (1)** of this section, shall nevertheless be [*deemed*] **considered** to be a ["]war veteran.["] Attendance at a school under military orders, except schooling incident to an active enlistment or regular tour of duty, or normal military training as a reserve officer or member of an organized reserve or national guard unit [*shall*] **is** not [*be*] considered active service within the meaning of this section.

NOTE: Conforms structure to legislative style and updates word choice; supplies missing disjunctive in (1)(a).

SECTION 123. ORS 176.050 is amended to read:

176.050. (1) Whenever a Governor who is unable to discharge the duties of the office believes [*disability of the Governor to be removed*] **that the Governor's disability has been removed**, the Governor may call a conference consisting of the three persons referred to as members of such a conference in ORS 176.040 (1). The three members of the conference shall examine the disabled Governor. After the examination they shall conduct a secret ballot and by unanimous vote may find the disability removed.

(2) The finding of or failure to find the disability removed shall be made public.

NOTE: Recasts phrase for readability.

SECTION 124. ORS 180.365 is amended to read:

180.365. (1) The Child Support Suspense Fund is established in the State Treasury separate and distinct from the General Fund. Interest earned by the Child Support Suspense Fund shall be credited to the Child Support Deposit Fund established under ORS 25.725. All moneys in the Child Support Suspense Fund are appropriated continuously for purposes of ORS 25.020, 25.610, 25.620[,

25.777 and] **and 25.777 and for** all other requirements of the Department of Justice as the state disbursement unit.

(2) The department shall maintain all records required under federal law for the distribution of moneys from the Child Support Suspense Fund.

(3) The Child Support Suspense Fund is not subject to the provisions of ORS 291.234 to 291.260.

NOTE: Conforms citation to legislative style.

SECTION 125. ORS 180.400 is amended to read:

180.400. The Legislative Assembly finds that violations of ORS [*19.312 and*] 323.800 to 323.806 threaten the integrity of the tobacco Master Settlement Agreement, the fiscal soundness of the state and the public health. The Legislative Assembly finds that enacting procedural enhancements will aid the enforcement of ORS [*19.312 and*] 323.800 to 323.806 and thereby safeguard the integrity of the Master Settlement Agreement, the fiscal soundness of the state and the public health. The provisions of ORS 180.400 to 180.455 and 323.106 are not intended to and may not be interpreted to amend ORS [*19.312 and*] 323.800 to 323.806.

NOTE: Corrects references to split series repaired in section 8.

SECTION 126. ORS 180.410 is amended to read:

180.410. (1) Every tobacco product manufacturer whose cigarettes are sold in this state whether directly or through a distributor, retailer or similar intermediary shall execute and deliver a certification to the Attorney General certifying that as of the date of the certification, the tobacco product manufacturer is either:

(a) A participating manufacturer; or

(b) In full compliance with ORS 323.806 and with rules adopted under ORS 180.445 and 180.450.

(2) The certification required by subsection (1) of this section shall be on a form prescribed by the Attorney General and shall be submitted no later than April 30 each year. The form shall permit the tobacco product manufacturer to indicate the electronic mail address to which the Attorney General may send notice of changes in the directory developed under ORS 180.425 if the tobacco product manufacturer elects to receive electronic mail notice.

(3) A participating manufacturer shall include in the certification required by subsection (1) of this section a list of its brand families. The participating manufacturer shall update the list at least 30 days prior to any addition or modification to its brand families by executing and delivering a supplemental certification to the Attorney General.

(4) A participating manufacturer may not include a brand family in the list required by subsection (3) of this section unless the participating manufacturer affirms that the cigarettes in the brand family are to be considered the participating manufacturer's cigarettes for purposes of calculating the participating manufacturer's payments under the Master Settlement Agreement for the relevant year, in the volume and shares determined under the Master Settlement Agreement. This subsection does not limit or otherwise affect the right of the state to maintain that cigarettes in a brand family are those of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of ORS [*19.312 and*] 323.800 to 323.806.

(5) A nonparticipating manufacturer shall include in the certification required by subsection (1) of this section a complete list of:

(a) All of its brand families and the number of units of each brand family that were sold in the state during the preceding calendar year;

(b) All of its brand families that have been sold in the state at any time during the current calendar year;

(c) Any brand family of the manufacturer sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of the certification, which may be indicated on the list described in paragraph (a) of this subsection by an asterisk; and

(d) The name and address of every other tobacco product manufacturer that manufactured a brand family described in paragraph (a) or (b) of this subsection in the preceding or current calendar year.

(6) A nonparticipating manufacturer shall update the list required by subsection (5) of this section at least 30 days prior to any addition or modification to its brand families by executing and delivering a supplemental certification to the Attorney General.

(7) A nonparticipating manufacturer may not include a brand family in the list required by subsection (5) of this section unless the nonparticipating manufacturer affirms that the cigarettes in the brand family are to be considered the nonparticipating manufacturer's cigarettes for purposes of ORS [*19.312 and*] 323.800 to 323.806. This subsection does not limit or otherwise affect the right of the state to maintain that cigarettes in a brand family are those of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of ORS [*19.312 and*] 323.800 to 323.806.

NOTE: Corrects references in (4) and (7) to split series repaired in section 8.

SECTION 127. ORS 182.360 is amended to read:

182.360. (1) The costs arising out of the employee suggestion awards under ORS 182.310 to 182.360 shall be paid in the following manner:

(a) For awards to employees not eligible for cash awards, the cost shall be added to and collected with the expenses and costs of operating the Personnel Division **of the Oregon Department of Administrative Services** collected under ORS 240.165.

(b) For any cash award for a suggestion having multiagency effect, as determined by the Employee Suggestion Awards Commission, and for which the commission cannot identify the cost savings realized or to be realized by the agencies as a result of implementation of the suggestion, the cost shall be added to and collected with the expenses and costs of operating the Personnel Division collected under ORS 240.165.

(c) If the commission is able to identify the agency or agencies [*which*] **that** have realized or will realize cash savings as a result of implementation of a suggestion, the cost of any cash award shall be paid by the affected agency or agencies from savings realized or to be realized by implementation of the suggestion. For suggestions with multiagency effect, the commission shall determine the portion of the award total to be contributed by each agency.

(d) For administrative expenses of the Personnel Division incurred in administering ORS 182.310 to 182.400, the expenses shall be added to and collected with the expenses and costs of operating the Personnel Division collected under ORS 240.165.

(2) Vouchers for awards described in subsection (1)(a) and (b) of this section and administrative expenses described in subsection (1)(d) of this section shall be prepared by the Administrator of the Personnel Division payable from the Oregon Department of Administrative Services Operating Fund. Vouchers for awards described in subsection (1)(c) of this section shall be drawn by the appropriate agency. All vouchers shall be drawn upon certification of the chairperson or secretary of the commission of the amount or cost of the award and the person to whom the award has been made or the amount of the administrative expenses.

NOTE: Conforms title in (1)(a) to legislative style; corrects grammar in (1)(c).

SECTION 128. ORS 182.525 is amended to read:

182.525. (1) [*The Department of Corrections, the Oregon Youth Authority, the State Commission on Children and Families, that part of the Department of Human Services that deals with mental health and addiction issues and the Oregon Criminal Justice Commission*] **An agency as defined in ORS 182.515** shall spend at least 75 percent of state moneys that [*each*] **the** agency receives for programs on evidence-based programs.

(2) [*Each*] **The** agency shall submit a biennial report containing:

(a) An assessment of each program on which the agency expends funds, including but not limited to whether the program is an evidence-based program;

(b) The percentage of state moneys the agency receives for programs that is being expended on evidence-based programs;

(c) The percentage of federal and other moneys the agency receives for programs that is being expended on evidence-based programs; and

(d) A description of the efforts the agency is making to meet the requirement of subsection (1) of this section.

(3) The [*agencies*] **agency** shall submit the [*reports*] **report** required by subsection (2) of this section no later than September 30 of each even-numbered year to the interim legislative committee dealing with judicial matters.

(4) If an agency, in any biennium, spends more than 25 percent of the state moneys that the agency receives for programs on programs that are not evidence based, the Legislative Assembly shall consider the agency's failure to meet the requirement of subsection (1) of this section in making appropriations to the agency for the following biennium.

(5) [*Each*] **The** agency may adopt rules necessary to carry out the provisions of this section, including but not limited to rules defining a reasonable period of time for purposes of determining cost effectiveness.

NOTE: Supplies defined term in (1) that was legislatively enacted for this statute; tinkers with word choice.

SECTION 129. Section 5, chapter 669, Oregon Laws 2003, is amended to read:

Sec. 5. (1) For the biennium beginning July 1, 2005, [*the Department of Corrections, the Oregon Youth Authority, the State Commission on Children and Families, that part of the Department of Human Services that deals with mental health and addiction issues and the Oregon Criminal Justice Commission*] **an agency as defined in ORS 182.515** shall spend at least 25 percent of state moneys that [*each*] **the** agency receives for programs on evidence-based programs.

(2) [*Each*] **The** agency shall submit a report containing:

(a) An assessment of each program on which the agency expends funds, including but not limited to whether the program is an evidence-based program;

(b) The percentage of state moneys the agency receives for programs that is being expended on evidence-based programs;

(c) The percentage of federal and other moneys the agency receives for programs that is being expended on evidence-based programs; and

(d) A description of the efforts the agency is making to meet the requirements of subsection (1) of this section and [*sections 6 (1) and 7 (1) of this 2003 Act*] **section 6 (1), chapter 669, Oregon Laws 2003, and ORS 182.525 (1)**.

(3) The [*agencies*] **agency** shall submit the [*reports*] **report** required by subsection (2) of this section no later than September 30, 2006, to the interim legislative committee dealing with judicial matters.

(4) If an agency, during the biennium beginning July 1, 2005, spends more than 75 percent of the state moneys that the agency receives for programs on programs that are not evidence based, the Legislative Assembly shall consider the agency's failure to meet the requirement of subsection (1) of this section in making appropriations to the agency for the following biennium.

(5) [*Each*] **The** agency may adopt rules necessary to carry out the provisions of this section, including but not limited to rules defining a reasonable period of time for purposes of determining cost effectiveness.

NOTE: Supplies defined term in (1) that was legislatively enacted for this statute; makes conforming changes in (1), (2), (3) and (5).

SECTION 130. Section 6, chapter 669, Oregon Laws 2003, is amended to read:

Sec. 6. (1) For the biennium beginning July 1, 2007, [*the Department of Corrections, the Oregon Youth Authority, the State Commission on Children and Families, that part of the Department of Human Services that deals with mental health and addiction issues and the Oregon Criminal Justice Commission*] **an agency as defined in ORS 182.515** shall spend at least 50 percent of state moneys that [*each*] **the** agency receives for programs on evidence-based programs.

(2) [*Each*] **The** agency shall submit a report containing:

(a) An assessment of each program on which the agency expends funds, including but not limited to whether the program is an evidence-based program;

(b) The percentage of state moneys the agency receives for programs that is being expended on evidence-based programs;

(c) The percentage of federal and other moneys the agency receives for programs that is being expended on evidence-based programs; and

(d) A description of the efforts the agency is making to meet the requirements of subsection (1) of this section and [*section 7 (1) of this 2003 Act*] **ORS 182.525 (1)**.

(3) The [*agencies*] **agency** shall submit the [*reports*] **report** required by subsection (2) of this section no later than September 30, 2008, to the interim legislative committee dealing with judicial matters.

(4) If an agency, during the biennium beginning July 1, 2007, spends more than 50 percent of the state moneys that the agency receives for programs on programs that are not evidence based, the Legislative Assembly shall consider the agency's failure to meet the requirement of subsection (1) of this section in making appropriations to the agency for the following biennium.

(5) [*Each*] **The** agency may adopt rules necessary to carry out the provisions of this section, including but not limited to rules defining a reasonable period of time for purposes of determining cost effectiveness.

NOTE: Supplies defined term in (1) that was legislatively enacted for this statute; makes conforming changes in (1), (2), (3) and (5).

SECTION 131. ORS 183.635 is amended to read:

183.635. (1) Except as provided in this section, all agencies must use administrative law judges assigned from the Office of Administrative Hearings established under ORS 183.605 to conduct contested case hearings, without regard to whether those hearings are subject to the procedural requirements for contested case hearings.

(2) The following agencies need not use administrative law judges assigned from the office:

[*(a) The Department of Education, the State Board of Education and the Superintendent of Public Instruction.*]

[*(b) Employment Appeals Board.*]

[*(c) Employment Relations Board.*]

[*(d) Public Utility Commission.*]

[*(e) Bureau of Labor and Industries and the Commissioner of the Bureau of Labor and Industries.*]

[*(f) Land Conservation and Development Commission.*]

[*(g) Land Use Board of Appeals.*]

[*(h) Department of Revenue.*]

[*(i) Local government boundary commissions created pursuant to ORS 199.425 or 199.430.*]

[*(j) State Accident Insurance Fund Corporation.*]

[*(k) Psychiatric Security Review Board.*]

[*(L) State Board of Parole and Post-Prison Supervision.*]

[*(m) Department of Corrections.*]

[*(n) Energy Facility Siting Council.*]

[*(o) Department of Human Services for vocational rehabilitation services cases under 29 U.S.C. 722(c) and disability determination cases under 42 U.S.C. 405.*]

[*(p) Secretary of State.*]

[*(q) State Treasurer.*]

[*(r) Attorney General.*]

[*(s) Fair Dismissal Appeals Board.*]

[*(t) Department of State Police.*]

[*(u) Oregon Youth Authority.*]

[*(v) Boards of stewards appointed by the Oregon Racing Commission.*]

[*(w) The Department of Higher Education and the institutions of higher education listed in ORS 352.002.*]

[*(x) The Governor.*]

[*(y) State Land Board.*]

[*(z) Wage and Hour Commission.*]

[*(aa) State Apprenticeship and Training Council.*]

(a) Attorney General.

(b) Boards of stewards appointed by the Oregon Racing Commission.

(c) Bureau of Labor and Industries and the Commissioner of the Bureau of Labor and Industries.

(d) Department of Corrections.

(e) Department of Education, State Board of Education and Superintendent of Public Instruction.

(f) Department of Higher Education and institutions of higher education listed in ORS 352.002.

(g) Department of Human Services for vocational rehabilitation services cases under 29 U.S.C. 722(c) and disability determination cases under 42 U.S.C. 405.

(h) Department of Revenue.

(i) Department of State Police.

(j) Employment Appeals Board.

(k) Employment Relations Board.

(L) Energy Facility Siting Council.

(m) Fair Dismissal Appeals Board.

(n) Governor.

(o) Land Conservation and Development Commission.

(p) Land Use Board of Appeals.

(q) Local government boundary commissions created pursuant to ORS 199.425 or 199.430.

(r) Oregon Youth Authority.

(s) Psychiatric Security Review Board.

(t) Public Utility Commission.

(u) Secretary of State.

(v) State Accident Insurance Fund Corporation.

(w) State Apprenticeship and Training Council.

(x) State Board of Parole and Post-Prison Supervision.

(y) State Land Board.

(z) State Treasurer.

(aa) Wage and Hour Commission.

(3) The Workers' Compensation Board is exempt from using administrative law judges assigned from the office for any hearing conducted by the board under ORS chapters 147, 654 and 656. The Director of the Department of Consumer and Business Services must use administrative law judges assigned from the office for all contested case hearings regarding matters other than those concerning a claim under ORS chapter 656, as provided in ORS 656.704 (2). Except as specifically provided in this subsection, the Department of Consumer and Business Services must use administrative law judges assigned from the office only for contested cases arising out of the department's powers and duties under:

(a) ORS chapter 59;

(b) ORS 200.005 to 200.075;

(c) ORS chapter 455;

(d) ORS chapter 674;

(e) ORS chapters 706 to 716;

(f) ORS chapter 717;

(g) ORS chapters 722, 723, 725 and 726; and

(h) ORS chapters 731, 732, 733, 734, 735, 737, 742, 743, 744, 746, 748 and 750.

(4) Notwithstanding any other provision of law, in any proceeding in which an agency is required to use an administrative law judge assigned from the office, an officer or employee of the agency may not conduct the hearing on behalf of the agency.

(5) Notwithstanding any other provision of ORS 183.600 to 183.690, an agency is not required to use an administrative law judge assigned from the office if:

(a) Federal law requires that a different administrative law judge or hearing officer be used; or

(b) Use of an administrative law judge from the office could result in a loss of federal funds.

(6) Notwithstanding any other provision of this section, the Department of Environmental Quality must use administrative law judges assigned from the office only for contested case hearings conducted under the provisions of ORS 183.413 to 183.470.

NOTE: Alphabetizes list of agencies in (2).

SECTION 132. ORS 183.690 is amended to read:

183.690. (1) The Office of Administrative Hearings Oversight Committee is created. The committee consists of nine members, as follows:

(a) The President of the Senate and the Speaker of the House of Representatives shall appoint four legislators to the committee. Two shall be Senators appointed by the President. Two shall be Representatives appointed by the Speaker.

(b) The Governor shall appoint two members to the committee. At least one of the members appointed by the Governor shall be an active member of the Oregon State Bar with experience in representing parties who are not agencies in contested case hearings.

(c) The Attorney General shall appoint two members to the committee.

(d) The chief administrative law judge for the Office of Administrative Hearings employed under ORS 183.610 shall serve as an ex officio member of the committee. The chief administrative law judge may cast a vote on a matter before the committee if the votes of the other members are equally divided on the matter.

(2) The term of a legislative member of the committee shall be two years. If a person appointed by the President of the Senate or by the Speaker of the House ceases to be a Senator or Representative during the person's term on the committee, the person may continue to serve as a member of the committee for the balance of the member's term on the committee. The term of all other appointed members shall be four years. Appointed members of the committee may be reappointed. If a vacancy occurs in one of the appointed positions for any reason during the term of membership, the official who appointed the member to the vacated position shall appoint a new member to serve the remainder of the term. An appointed member of the committee may be removed from the committee at any time by the official who appointed the member.

(3)(a) The members of the committee shall select from among themselves a chairperson and a vice chairperson.

(b) The committee shall meet at such times and places as determined by the chairperson.

(4) Legislative members shall be entitled to payment of per diem and expense reimbursement under ORS 171.072, payable from funds appropriated to the Legislative Assembly.

(5) The committee shall:

(a) Study [*operation*] **the operations** of the Office of Administrative Hearings;

(b) Make any recommendations to the Governor and the Legislative Assembly that the committee deems necessary to increase the effectiveness, fairness and efficiency of the operations of the Office of Administrative Hearings;

(c) Make any recommendations for additional legislation governing the operations of the Office of Administrative Hearings; and

(d) Conduct such other studies as necessary to accomplish the purposes of this subsection.

(6) The Employment Department shall provide the committee with staff, subject to availability of funding for that purpose.

NOTE: Conforms phrase in (5)(a) to format used in (5)(b) and (c).

SECTION 133. ORS 190.255 is amended to read:

190.255. (1) Notwithstanding any provision of law governing the confidentiality or disclosure of information, a state agency may enter into an [*intergovernmental*] **interagency** agreement with another state agency to disclose to the other state agency a business name, address, telephone number or state-generated common identification number or the nature of a business or type of entity conducting the business, for the purposes of registering businesses or updating business registration records.

(2) Notwithstanding any provision of law governing the confidentiality or disclosure of information, a state agency receiving information described in subsection (1) of this section from another state agency pursuant to an interagency agreement with the other state agency may use the information to maintain and update its records, including posting the information on databases that are accessible by the public, provided the original source of the information is not publicly disclosed.

(3) As used in this section, "state agency" means the Employment Department, the Department of Consumer and Business Services, the Department of Justice, the Economic and Community Development Department, the Department of Revenue and the Corporation Division of the Office of the Secretary of State.

NOTE: Corrects word choice in (1).

SECTION 134. ORS 192.660 is amended to read:

192.660. (1) ORS 192.610 to 192.690 do not prevent the governing body of a public body from holding executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization under ORS 192.610 to 192.690 for holding the executive session.

(2) The governing body of a public body may hold an executive session:

(a) To consider the employment of a public officer, employee, staff member or individual agent.

(b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent who does not request an open hearing.

(c) To consider matters pertaining to the function of the medical staff of a public hospital licensed pursuant to ORS 441.015 to 441.063, 441.085, 441.087 and 441.990 (3) including, but not limited to, all clinical committees, executive, credentials, utilization review, peer review committees and all other matters relating to medical competency in the hospital.

(d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.

(e) To conduct deliberations with persons designated by the governing body to negotiate real property transactions.

(f) To consider information or records that are exempt by law from public inspection.

(g) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.

(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

(i) To review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing.

(j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.

(k) [*By*] **If the governing body is** a health professional regulatory board**,** to consider information obtained as part of an investigation of licensee or applicant conduct.

(L) [*By*] **If the governing body is** the State Landscape Architect Board, or an advisory committee to the board, to consider information obtained as part of an investigation of registrant or applicant conduct.

(m) To discuss information about review or approval of programs relating to the security of any of the following:

(A) A nuclear-powered thermal power plant or nuclear installation.

(B) Transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation.

(C) Generation, storage or conveyance of:

(i) Electricity;

(ii) Gas in liquefied or gaseous form;

(iii) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

(iv) Petroleum products;

(v) Sewage; or

(vi) Water.

(D) Telecommunication systems, including cellular, wireless or radio systems.

(E) Data transmissions by whatever means provided.

(3) Labor negotiations shall be conducted in open meetings unless **negotiators for** both sides [*of the negotiators*] request that negotiations be conducted in executive session. Labor negotiations conducted in executive session are not subject to the notification requirements of ORS 192.640.

(4) Representatives of the news media shall be allowed to attend executive sessions other than those held under subsection (2)(d) of this section relating to labor negotiations or executive session held pursuant to ORS 332.061 (2) but the governing body may require that specified information [*subject of the executive session*] be undisclosed.

(5) When a governing body convenes an executive session under subsection (2)(h) of this section relating to conferring with counsel on current litigation or litigation likely to be filed, the governing body shall bar any member of the news media from attending the executive session if the member of the news media is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party to the litigation.

(6) No executive session may be held for the purpose of taking any final action or making any final decision.

(7) The exception granted by subsection (2)(a) of this section does not apply to:

(a) The filling of a vacancy in an elective office.

(b) The filling of a vacancy on any public committee, commission or other advisory group.

(c) The consideration of general employment policies.

(d) The employment of the chief executive officer, other public officers, employees and staff members of a public body unless:

(A) The public body has advertised the vacancy;

(B) The public body has adopted regular hiring procedures;

(C) In the case of an officer, the public has had the opportunity to comment on the employment of the officer; and

(D) In the case of a chief executive officer, the governing body has adopted hiring standards, criteria and policy directives in meetings open to the public in which the public has had the opportunity to comment on the standards, criteria and policy directives.

(8) A governing body may not use an executive session for purposes of evaluating a chief executive officer or other officer, employee or staff member to conduct a general evaluation of an agency goal, objective or operation or any directive to personnel concerning agency goals, objectives, operations or programs.

(9) Notwithstanding subsections (2) and (6) of this section and ORS 192.650:

(a) ORS 676.175 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of licensee or applicant conduct investigated by a health professional regulatory board.

(b) ORS 671.338 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of registrant or applicant conduct investigated by the State Landscape Architect Board or an advisory committee to the board.

NOTE: Corrects syntax in (2)(k) and (L), (3) and (4).

SECTION 135. ORS 196.620 is amended to read:

196.620. (1) For each mitigation bank, the Department of State Lands shall establish a system of resource values and credits.

(2) A credit from a mitigation bank may be withdrawn for a condition imposed on a permit in accordance with ORS 196.825 (5), for any other authorization issued in accordance with ORS 196.800 to 196.905 or to resolve a violation of ORS 196.800 to 196.905.

(3) Credits from a freshwater mitigation bank may be used only as described in subsection (2) of this section for permits, authorizations or resolutions of violations approved within the service area of the mitigation bank, consistent with the mitigation bank instrument, unless the Director of the Department of State Lands determines, in exceptional circumstances, that it is environmentally preferable to exceed this limitation.

(4) Credits from an estuarine mitigation bank may be used only as described in subsection (2) of this section for permits, authorizations or resolutions of violations approved within the same estuarine ecological system.

(5) The director may not withdraw any credits from any mitigation bank until the director **has**:

(a) [*Has*] Taken actions sufficient to establish hydrological function of the mitigation bank site;

(b) [*Has*] Conducted other creation, restoration and enhancement actions to establish other wetland functions and values at the mitigation bank site; and

(c) Evaluated the results of the actions and determined that a high probability exists that the wetland functions and values of the mitigation bank site are equal to or greater than the functions and the values of the wetland area to be damaged or destroyed.

(6) The price for any mitigation credit shall be set at an amount that will compensate the state for all of the costs and expenses the state has incurred, and is expected to incur in establishing and maintaining that portion of the mitigation bank.

(7) The director shall not consider the availability or nonavailability of mitigation bank credits in deciding whether to grant or deny any removal or fill permit under ORS 196.600 to 196.905.

(8) The director annually shall:

(a) Evaluate the wetlands functions and values created within each wetland mitigation bank site; and

(b) Compare the current functions and values with those that the director anticipated that the mitigation bank would provide. If the director finds any significant disparity between the actual and anticipated functions and values, the director shall:

(A) Suspend the withdrawal of credits to that mitigation site; or

(B) Take prompt action to ensure that the anticipated functions and values are established.

(9) The director may not withdraw credits from the mitigation bank for a specific permit, authorization or resolution of a violation if the director determines that:

(a) The credits for that specific permit, authorization or resolution of a violation would not adequately maintain habitat or species diversity; or

(b) The mitigation bank site for which credits are proposed to be withdrawn is not sufficiently similar in wetland functions and values to the wetland area to be damaged or destroyed.

NOTE: Establishes parallel structure for paragraphs in (5).

SECTION 136. ORS 196.830 is amended to read:

196.830. (1) As used in this section, "estuarine resource replacement" means the creation, restoration or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats and species diversity, unique features and water quality.

(2) Except as provided in subsection (4) of this section, the Director of the Department of State Lands shall require estuarine resource replacement as a condition of any permit for filling or removal of material from an intertidal or tidal marsh area of an estuary.

(3) If the director requires estuarine resource replacement, the director shall consider:

(a) The identified adverse impacts of the proposed activity;

(b) The availability of areas in which replacement activities could be performed;

(c) The provisions of land use plans for the area adjacent to or surrounding the area of the proposed activity;

(d) The recommendations of any interested or affected state or local agencies; and

(e) The extent of compensating activity inherent in the proposed activity.

(4) Notwithstanding any provisions of this chapter and ORS [*chapter 195,*] **chapters 195 and** 197 or the statewide planning goals adopted thereunder to the contrary, the director may:

(a) Waive estuarine resource replacement in part for an activity for which replacement would otherwise be required if, after consultation with appropriate state and local agencies the director determines that:

(A) There is no alternative manner in which to accomplish the purpose of the project;

(B) There is no feasible manner in which estuarine resource replacement could be accomplished;

(C) The economic and public need for the project and the economic and public benefits resulting from the project clearly outweigh the potential degradation of the estuary;

(D) The project is for a public use; and

(E) The project is water dependent or the project is publicly owned and water related; or

(b) Waive estuarine resource replacement wholly or in part for an activity for which replacement would otherwise be required if the activity is:

(A) Filling for repair and maintenance of existing functional dikes and negligible physical or biological damage to the tidal marsh or intertidal areas of the estuary will result;

(B) Riprap to allow protection of an existing bankline with clean, durable erosion resistant material when a need for riprap protection is demonstrated that cannot be met with natural vegetation and no appreciable increase in existing upland will occur;

(C) Filling for repair and maintenance of existing roads and negligible physical or biological damage to the tidal marsh or intertidal areas of the estuary will result;

(D) Dredging for authorized navigation channels, jetty or navigational aid installation, repair or maintenance conducted by or under contract with the Army Corps of Engineers;

(E) Dredging or filling required as part of an estuarine resource restoration or enhancement project agreed to by local, state and federal agencies; or

(F) A proposed alteration that would have negligible adverse physical or biological impact on estuarine resources.

(5) Nothing in this section is intended to limit the authority of the director to impose conditions on a permit under ORS 196.825 [*(4)*].

NOTE: Standardizes citation style in (4) lead-in. Deletes erroneous subsection reference in (5); see 196.825 (5).

SECTION 137. ORS 197.015 is amended to read:

197.015. As used in ORS chapters 195, 196 and 197, unless the context requires otherwise:

(1) "Acknowledgment" means a commission order that certifies that a comprehensive plan and land use regulations, land use regulation or plan or regulation amendment complies with the goals or certifies that Metro land use planning goals and objectives, Metro regional framework plan, amendments to Metro planning goals and objectives or amendments to the Metro regional framework plan comply with the statewide planning goals.

(2) "Board" means the Land Use Board of Appeals.

(3) "Carport" means a stationary structure consisting of a roof with its supports and not more than one wall, or storage cabinet substituting for a wall, and used for sheltering a motor vehicle.

[*(3)*] **(4)** "Commission" means the Land Conservation and Development Commission.

[*(4)*] **(5)** "Committee" means the Joint Legislative Committee on Land Use.

[*(5)*] **(6)** "Comprehensive plan" means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs. "Comprehensive" means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. "General nature" means a summary of policies and proposals in

broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air.

[*(6)*] **(7)** "Department" means the Department of Land Conservation and Development.

[*(7)*] **(8)** "Director" means the Director of the Department of Land Conservation and Development.

[*(8)*] **(9)** "Goals" means the mandatory statewide planning standards adopted by the commission pursuant to ORS chapters 195, 196 and 197.

[*(9)*] **(10)** "Guidelines" means suggested approaches designed to aid cities and counties in preparation, adoption and implementation of comprehensive plans in compliance with goals and to aid state agencies and special districts in the preparation, adoption and implementation of plans, programs and regulations in compliance with goals. Guidelines shall be advisory and shall not limit state agencies, cities, counties and special districts to a single approach.

[*(10)*] **(11)** "Land use decision":

(a) Includes:

(A) A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:

(i) The goals;

(ii) A comprehensive plan provision;

(iii) A land use regulation; or

(iv) A new land use regulation;

(B) A final decision or determination of a state agency other than the commission with respect to which the agency is required to apply the goals; or

(C) A decision of a county planning commission made under ORS 433.763;

(b) Does not include a decision of a local government:

(A) [*Which*] **That** is made under land use standards [*which*] **that** do not require interpretation or the exercise of policy or legal judgment;

(B) [*Which*] **That** approves or denies a building permit issued under clear and objective land use standards;

(C) [*Which*] **That** is a limited land use decision;

(D) [*Which*] **That** determines final engineering design, construction, operation, maintenance, repair or preservation of a transportation facility [*which*] **that** is otherwise authorized by and consistent with the comprehensive plan and land use regulations; or

(E) [*Which*] **That** is an expedited land division as described in ORS 197.360;

(c) Does not include a decision by a school district to close a school;

(d) Does not include authorization of an outdoor mass gathering as defined in ORS 433.735, or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three-month period; and

(e) Does not include:

(A) A writ of mandamus issued by a circuit court in accordance with ORS 215.429 or 227.179; or

(B) Any local decision or action taken on an application subject to ORS 215.427 or 227.178 after a petition for a writ of mandamus has been filed under ORS 215.429 or 227.179.

[*(11)*] **(12)** "Land use regulation" means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan.

[*(12)*] **(13)** "Limited land use decision" is a final decision or determination made by a local government pertaining to a site within an urban growth boundary [*which*] **that** concerns:

(a) The approval or denial of a subdivision or partition, as described in ORS chapter 92.

(b) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site review and design review.

[*(13)*] **(14)** "Local government" means any city, county or metropolitan service district formed under ORS chapter 268 or an association of local governments performing land use planning functions under ORS 195.025.

[*(14)*] **(15)** "Metro" means a metropolitan service district organized under ORS chapter 268.

[*(15)*] **(16)** "Metro planning goals and objectives" means the land use goals and objectives that a metropolitan service district may adopt under ORS 268.380 (1)(a). The goals and objectives do not constitute a comprehensive plan.

[*(16)*] **(17)** "Metro regional framework plan" means the regional framework plan required by the 1992 Metro Charter or its separate components. Neither the regional framework plan nor its individual components constitute a comprehensive plan.

[*(17)*] **(18)** "New land use regulation" means a land use regulation other than an amendment to an acknowledged land use regulation adopted by a local government that already has a comprehensive plan and land regulations acknowledged under ORS 197.251.

[*(18)*] **(19)** "Person" means any individual, partnership, corporation, association, governmental subdivision or agency or public or private organization of any kind. The Land Conservation and Development Commission or its designee is considered a person for purposes of appeal under ORS chapters 195 and 197.

[*(19)*] **(20)** "Special district" means any unit of local government, other than a city, county, metropolitan service district formed under ORS chapter 268 or an association of local governments performing land use planning functions under ORS 195.025**,** authorized and regulated by statute and includes but is not limited to[*:*] water control districts, domestic water associations and water cooperatives, irrigation districts, port districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit districts and sanitary districts.

[*(20)*] **(21)** "Voluntary association of local governments" means a regional planning agency in this state officially designated by the Governor pursuant to the federal Office of Management and Budget Circular A-95 as a regional clearinghouse.

[*(21)*] **(22)** "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration that are sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

NOTE: Moves definition of carport to appropriate chapter in (3); see section 313 (amending 446.003). Improves grammar in (11)(b) and (13). Corrects punctuation in (20).

SECTION 138. ORS 197.020 is amended to read:

197.020. Age, gender or physical disability shall not be an adverse consideration in making a land use decision as defined in ORS 197.015 [*(10)*].

NOTE: Deletes reference to renumbered subsection; see section 137 (amending 197.015).

SECTION 139. ORS 197.314 is amended to read:

197.314. (1) Notwithstanding ORS 197.296, 197.298, 197.299, 197.301, 197.302, 197.303, 197.307, 197.312 and 197.313, within urban growth boundaries each city and county shall amend its comprehensive plan and land use regulations for all land zoned for single-family residential uses to allow for siting of manufactured homes as defined in ORS 446.003 [*(26)(a)(C)*]. A local government may only subject the siting of a manufactured home allowed under this section to regulation as set forth in ORS 197.307 (5).

(2) Cities and counties shall adopt and amend comprehensive plans and land use regulations under subsection (1) of this section according to the provisions of ORS 197.610 to 197.650.

(3) Subsection (1) of this section does not apply to any area designated in an acknowledged comprehensive plan or land use regulation as a historic district or residential land immediately adjacent to a historic landmark.

(4) Manufactured homes on individual lots zoned for single-family residential use in subsection (1) of this section shall be in addition to manufactured homes on lots within designated manufactured dwelling subdivisions.

(5) Within any residential zone inside an urban growth boundary where a manufactured dwelling park is otherwise allowed, a city or county shall not adopt, by charter or ordinance, a minimum lot size for a manufactured dwelling park that is larger than one acre.

(6) A city or county may adopt the following standards for the approval of manufactured homes located in manufactured dwelling parks that are smaller than three acres:

(a) The manufactured home shall have a pitched roof, except that no standard shall require a slope of greater than a nominal three feet in height for each 12 feet in width.

(b) The manufactured home shall have exterior siding and roofing that, in color, material and appearance, is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or that is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority.

(7) This section shall not be construed as abrogating a recorded restrictive covenant.

NOTE: Deletes subsection reference in (1) to conform to renumbering; see section 313 (amending 446.003).

SECTION 140. ORS 197.435 is amended to read:

197.435. As used in ORS 197.435 to 197.467:

(1) "Developed recreational facilities" means improvements constructed for the purpose of recreation and may include but are not limited to golf courses, tennis courts, swimming pools, marinas, ski runs and bicycle paths.

(2) "High value crop area" means an area in which there is a concentration of commercial farms capable of producing crops or products with a minimum gross value of $1,000 per acre per year. These crops and products include field crops, small fruits, berries, tree fruits, nuts or vegetables, dairying, livestock feedlots or Christmas trees as these terms are used in the 1983 County and State Agricultural Estimates prepared by the Oregon State University Extension Service. The "high value crop area" designation is used for the purpose of minimizing conflicting uses in resort siting and does not revise the requirements of an agricultural land goal or administrative rules interpreting the goal.

(3) "Map of eligible lands" means a map of the county adopted pursuant to ORS 197.455.

(4) "Open space" means any land that is retained in a substantially natural condition or is improved for recreational uses such as golf courses, hiking or nature trails or equestrian or bicycle paths or is specifically required to be protected by a conservation easement. Open spaces may include ponds, lands protected as important natural features, lands preserved for farm or forest use and lands used as buffers. Open space does not include residential lots or yards, streets or parking areas.

(5) "Overnight lodgings" means:

(a) With respect to lands not identified in paragraph (b) of this subsection, permanent, separately rentable accommodations that are not available for residential use, including hotel or motel rooms, cabins and time-share units. Individually owned units may be considered overnight lodgings if they are available for overnight rental use by the general public for at least 45 weeks per calendar year through a central reservation and check-in service. Tent sites, recreational vehicle parks, manufactured dwellings, dormitory rooms and similar accommodations do not qualify as overnight lodgings for the purpose of this definition.

(b) With respect to lands in eastern Oregon, as defined in ORS [*321.405*] **321.805**, permanent, separately rentable accommodations that are not available for residential use, including hotel or motel rooms, cabins and time-share units. Individually owned units may be considered overnight lodgings if they are available for overnight rental use by the general public for at least 38 weeks per calendar year through a central reservation system operated by the destination resort or by a real estate property manager, as defined in ORS 696.010. Tent sites, recreational vehicle parks,

manufactured dwellings, dormitory rooms and similar accommodations do not qualify as overnight lodgings for the purpose of this definition.

(6) "Self-contained development" means a development for which community sewer and water facilities are provided on-site and are limited to meet the needs of the development or are provided by existing public sewer or water service as long as all costs related to service extension and any capacity increases are borne by the development. A "self-contained development" must have developed recreational facilities provided on-site.

(7) "Tract" means a lot or parcel or more than one contiguous lot or parcel in a single ownership. A tract may include property that is not included in the proposed site for a destination resort if the property to be excluded is on the boundary of the tract and constitutes less than 30 percent of the total tract.

(8) "Visitor-oriented accommodations" means overnight lodging, restaurants and meeting facilities [*which*] **that** are designed to and provide for the needs of visitors rather than year-round residents.

NOTE: Replaces reference to repealed section in (5)(b); corrects word choice in (8).

SECTION 141. ORS 197.445 is amended to read:

197.445. A destination resort is a self-contained development that provides for visitor-oriented accommodations and developed recreational facilities in a setting with high natural amenities. To qualify as a destination resort under ORS 30.947, 197.435 to 197.467, 215.213, 215.283 and 215.284, a proposed development must meet the following standards:

(1) The resort must be located on a site of 160 acres or more except within two miles of the ocean shoreline where the site shall be 40 acres or more.

(2) At least 50 percent of the site must be dedicated to permanent open space, excluding streets and parking areas.

(3) At least $7 million must be spent on improvements for on-site developed recreational facilities and visitor-oriented accommodations exclusive of costs for land, sewer and water facilities and roads. Not less than one-third of this amount must be spent on developed recreational facilities.

(4) Visitor-oriented accommodations including meeting rooms, restaurants with seating for 100 persons and 150 separate rentable units for overnight lodging shall be provided. However, the rentable overnight lodging units may be phased in as follows:

(a) On lands not described in paragraph (b) of this subsection:

(A) A total of 150 units of overnight lodging must be provided.

(B) At least 75 units of overnight lodging, not including any individually owned homes, lots or units, must be constructed or guaranteed through surety bonding or equivalent financial assurance prior to the closure of sale of individual lots or units.

(C) The remaining overnight lodging units must be provided as individually owned lots or units subject to deed restrictions that limit their use to use as overnight lodging units. The deed restrictions may be rescinded when the resort has constructed 150 units of permanent overnight lodging as required by this subsection.

(D) The number of units approved for residential sale may not be more than two units for each unit of permanent overnight lodging provided under subparagraph (B) of this paragraph.

(E) The development approval must provide for the construction of other required overnight lodging units within five years of the initial lot sales.

(b) On lands in eastern Oregon, as defined in ORS [*321.405*] **321.805**:

(A) A total of 150 units of overnight lodging must be provided.

(B) At least 50 units of overnight lodging must be constructed prior to the closure of sale of individual lots or units.

(C) At least 50 of the remaining 100 required overnight lodging units must be constructed or guaranteed through surety bonding or equivalent financial assurance within five years of the initial lot sales.

(D) The remaining required overnight lodging units must be constructed or guaranteed through surety bonding or equivalent financial assurances within 10 years of the initial lot sales.

(E) The number of units approved for residential sale may not be more than 2-1/2 units for each unit of permanent overnight lodging provided under subparagraph (B) of this paragraph.

(F) If the developer of a resort guarantees the overnight lodging units required under subparagraphs (C) and (D) of this paragraph through surety bonding or other equivalent financial assurance, the overnight lodging units must be constructed within four years of the date of execution of the surety bond or other equivalent financial assurance.

(5) Commercial uses allowed are limited to types and levels of use necessary to meet the needs of visitors to the development. Industrial uses of any kind are not permitted.

(6) In lieu of the standards in subsections (1), (3) and (4) of this section, the standards set forth in subsection (7) of this section apply to a destination resort:

(a) On land that is not defined as agricultural or forest land under any statewide planning goal;

(b) On land where there has been an exception to any statewide planning goal on agricultural lands, forestlands, public facilities and services and urbanization; or

(c) On such secondary lands as the Land Conservation and Development Commission deems appropriate.

(7) The following standards apply to the provisions of subsection (6) of this section:

(a) The resort must be located on a site of 20 acres or more.

(b) At least $2 million must be spent on improvements for on-site developed recreational facilities and visitor-oriented accommodations exclusive of costs for land, sewer and water facilities and roads. Not less than one-third of this amount must be spent on developed recreational facilities.

(c) At least 25 units, but not more than 75 units, of overnight lodging must be provided.

(d) Restaurant and meeting room with at least one seat for each unit of overnight lodging must be provided.

(e) Residential uses must be limited to those necessary for the staff and management of the resort.

(f) The governing body of the county or its designee has reviewed the resort proposed under this subsection and has determined that the primary purpose of the resort is to provide lodging and other services oriented to a recreational resource which can only reasonably be enjoyed in a rural area. Such recreational resources include, but are not limited to, a hot spring, a ski slope or a fishing stream.

(g) The resort must be constructed and located so that it is not designed to attract highway traffic. Resorts may not use any manner of outdoor advertising signing except:

(A) Tourist oriented directional signs as provided in ORS 377.715 to 377.830; and

(B) On-site identification and directional signs.

(8) Spending required under subsections (3) and (7) of this section is stated in 1993 dollars. The spending required shall be adjusted to the year in which calculations are made in accordance with the United States Consumer Price Index.

(9) When making a land use decision authorizing construction of a destination resort in eastern Oregon, as defined in ORS [*321.405*] **321.805**, the governing body of the county or its designee shall require the resort developer to provide an annual accounting to document compliance with the overnight lodging standards of this section. The annual accounting requirement commences one year after the initial lot or unit sales. The annual accounting must contain:

(a) Documentation showing that the resort contains a minimum of 150 permanent units of overnight lodging or, during the phase-in period, documentation showing the resort is not yet required to have constructed 150 units of overnight lodging.

(b) Documentation showing that the resort meets the lodging ratio described in subsection (4) of this section.

(c) For a resort counting individually owned units as qualified overnight lodging units, the number of weeks that each overnight lodging unit is available for rental to the general public as described in ORS 197.435.

NOTE: Replaces reference to repealed section in (4)(b) and (9).

SECTION 142. ORS 197.455 is amended to read:

197.455. (1) A destination resort must be sited on lands mapped as eligible for destination resort siting by the affected county. The county may not allow destination resorts approved pursuant to ORS 197.435 to 197.467 to be sited in any of the following areas:

(a) Within 24 air miles of an urban growth boundary with an existing population of 100,000 or more unless residential uses are limited to those necessary for the staff and management of the resort.

(b)(A) On a site with 50 or more contiguous acres of unique or prime farmland identified and mapped by the United States Natural Resources Conservation Service, or its predecessor agency.

(B) On a site within three miles of a high value crop area unless the resort complies with the requirements of ORS 197.445 (6) in which case the resort may not be closer to a high value crop area than one-half mile for each 25 units of overnight lodging or fraction thereof.

(c) On predominantly Cubic Foot Site Class 1 or 2 forestlands as determined by the State Forestry Department, which are not subject to an approved goal exception.

(d) In the Columbia River Gorge National Scenic Area as defined by the Columbia River Gorge National Scenic Act, P.L. 99-663.

(e) In an especially sensitive big game habitat area as determined by the State Department of Fish and Wildlife in July 1984 or as designated in an acknowledged comprehensive plan.

(2)(a) In carrying out subsection (1) of this section, with respect to lands not identified in paragraph (b) of this subsection, a county shall adopt, as part of its comprehensive plan, a map consisting of eligible lands within the county. The map must be based on reasonably available information, and shall not be subject to revision or refinement after adoption, except in connection with periodic review. A map adopted pursuant to this section shall be the sole basis for determining whether tracts of land are eligible for destination resort siting pursuant to ORS 197.435 to 197.467.

(b) In carrying out subsection (1) of this section, with respect to lands in eastern Oregon, as defined in ORS [*321.405*] **321.805**, a county shall adopt, as part of its comprehensive plan, a map consisting of eligible lands within the county. The map must be based on reasonably available information, and may be amended pursuant to ORS 197.610 to 197.625, but not more frequently than once every 30 months. The county shall develop a process for collecting and processing concurrently all map amendments made within a 30-month planning period. A map adopted pursuant to this section shall be the sole basis for determining whether tracts of land are eligible for destination resort siting pursuant to ORS 197.435 to 197.467.

NOTE: Replaces reference to repealed section in (2)(b).

SECTION 143. ORS 197.485 is amended to read:

197.485. A jurisdiction shall not prohibit placement of a manufactured dwelling, due solely to its age, in a mobile home or manufactured dwelling park in a zone with a residential density of eight to 12 units per acre. A jurisdiction may impose reasonable safety and inspection requirements for homes [*which*] **that** were not constructed in conformance with the National Manufactured [*Home*] **Housing** Construction and Safety Standards Act of 1974 **(42 U.S.C. 5403)**.

NOTE: Corrects grammar; corrects reference to renamed federal act.

SECTION 144. ORS 197.505 is amended to read:

197.505. As used in ORS 197.505 to 197.540:

(1) "Public facilities" means those public facilities for which a public facilities plan is required under ORS 197.712.

(2) "Special district" refers to only those entities as defined in ORS 197.015 [*(19) which*] **(20) that** provide services for which public facilities plans are required.

NOTE: Updates reference to renumbered subsection and corrects grammar in (2); see section 137 (amending 197.015).

SECTION 145. ORS 197.660 is amended to read:

197.660. As used in ORS 197.660 to 197.670, 215.213, 215.263, 215.283, 215.284 and 443.422:

(1) "Residential facility" means a residential care, residential training or residential treatment facility, as those terms are defined in ORS 443.400, licensed [*or registered*] under ORS 443.400 to 443.460 or licensed under ORS 418.205 to 418.327 by the Department of Human Services that pro-

vides residential care alone or in conjunction with treatment or training or a combination thereof for six to fifteen individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.

(2) "Residential home" means a residential treatment or training or [*an*] adult foster home licensed by or under the authority of the department, as defined in ORS 443.400, under ORS 443.400 to 443.825, a residential facility registered under ORS 443.480 to 443.500 or an adult foster home licensed under ORS 443.705 to 443.825 that provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home.

(3) "Zoning requirement" means any standard, criteria, condition, review procedure, permit requirement or other requirement adopted by a city or county under the authority of ORS chapter 215 or 227 [*which*] **that** applies to the approval or siting of a residential facility or residential home. A zoning requirement does not include a state or local health, safety, building, occupancy or fire code requirement.

NOTE: Deletes inapplicable term in (1); corrects syntax in (2) and (3).

SECTION 146. ORS 197.825 is amended to read:

197.825. (1) Except as provided in ORS 197.320 and subsections (2) and (3) of this section, the Land Use Board of Appeals shall have exclusive jurisdiction to review any land use decision or limited land use decision of a local government, special district or a state agency in the manner provided in ORS 197.830 to 197.845.

(2) The jurisdiction of the board:

(a) Is limited to those cases in which the petitioner has exhausted all remedies available by right before petitioning the board for review;

(b) Is subject to the provisions of ORS 197.850 relating to judicial review by the Court of Appeals;

(c) Does not include those matters over which the Department of Land Conservation and Development or the Land Conservation and Development Commission has review authority under ORS 197.251, 197.430, 197.445, 197.450, 197.455 and 197.628 to 197.650;

(d) Does not include those land use decisions of a state agency over which the Court of Appeals has jurisdiction for initial judicial review under ORS 183.400, 183.482 or other statutory provisions;

(e) Does not include any rules, programs, decisions, determinations or activities carried out under ORS 527.610 to 527.770, 527.990 (1) and 527.992;

(f) Is subject to ORS 196.115 for any county land use decision that may be reviewed by the Columbia River Gorge Commission pursuant to sections 10(c) or 15(a)(2) of the Columbia River Gorge National Scenic Area Act, P.L. 99-663; and

(g) Does not include review of expedited land divisions under ORS 197.360.

(3) Notwithstanding subsection (1) of this section, the circuit courts of this state retain jurisdiction:

(a) To grant declaratory, injunctive or mandatory relief in proceedings arising from decisions described in ORS 197.015 [*(10)(b)*] **(11)(b)** or proceedings brought to enforce the provisions of an adopted comprehensive plan or land use regulations; and

(b) To enforce orders of the board in appropriate proceedings brought by the board or a party to the board proceeding resulting in the order.

NOTE: Updates reference to renumbered subsection in (3)(a); see section 137 (amending 197.015).

SECTION 147. ORS 198.330 is repealed.

NOTE: Repeals section containing moved definitions; see section 148 (amending 198.335).

SECTION 148. ORS 198.335 is amended to read:

198.335. As used in ORS 198.335 to 198.365, unless the context requires otherwise:

(1) "County board" means the board of county commissioners or the county court.

(2) "Special district" [*has the meaning given "district" by ORS 198.210 and 198.330*]**:**

(a) Has the meaning given the term "district" in ORS 198.010; and

(b) Also means:

(A) A diking district organized under ORS chapter 551.

(B) A corporation for irrigation, drainage, water supply or flood control organized under ORS chapter 554.

(C) A soil and water conservation district organized under ORS 568.210 to 568.808 and 568.900 to 568.933.

(D) A weed control district organized under ORS 570.505 to 570.575.

(E) A port district organized under ORS chapter 778.

NOTE: Consolidates existing applicable definitions in one section.

SECTION 149. ORS 199.464 is amended to read:

199.464. (1) Approval or disapproval under this section shall be based on the policy stated in ORS 199.410.

(2) Without the approval of a boundary commission, a district with territory in the jurisdiction of the commission may not initiate an additional function of the district. Any proposal by a district to initiate an additional function shall be referred immediately to the boundary commission that has jurisdiction of the territory in which the district lies. The district shall take no further action on the proposal unless the commission approves the proposal as proposed or modified.

(3) Except for lines which provide no extraterritorial service, without the approval of a boundary commission, a city or district with territory in the jurisdiction of the commission shall not extend a water or sewer line extraterritorially to an extent not effected on October 5, 1973. Tentative plans for such extraterritorial extension shall be submitted to the boundary commission that has jurisdiction of the territory in which the extension is proposed. If the commission disapproves the plans, no further action may be taken.

(4) Except as provided in subsection (5)(d) of this section, within territory subject to the jurisdiction of a boundary commission, no person may establish a community water supply system or a privately owned sewerage system or privately owned disposal system or extend a water line or sewer line without commission approval. Tentative plans for such approval shall be submitted to the boundary commission that has jurisdiction of the territory for which the establishment or extension is proposed. However, extension by a city or district of water lines or sewer lines shall be governed by subsection (3) of this section and the requirements of this section shall not apply to establishment of a city-owned or district-owned community water supply system within its boundaries.

(5)(a) A community water supply system within the territory subject to the jurisdiction of a commission may apply to the commission for allocation of service territory. If the territory is allocated to a community water supply system, no other community water supply system may serve within the territory without approval of the commission and the approval may not be given so long as the existing system is reliable and has an adequate quality and quantity of water.

(b) In condemning all or part of the properties and allocated service territory of a private community water supply system through eminent domain, the acquisition price shall be fair market value.

(c) No part of the acquisition price for all or part of a community water supply system acquired by eminent domain shall be specially assessed against the property within the acquired service territory, or its owners on a special benefit assessment basis.

(d) A community water supply system to which service territory has been allocated under this subsection may extend or establish water lines within the territory without further approval of the commission.

(6) Action which under this section requires approval by a boundary commission but is taken without that approval may be enjoined, upon suit in a court of competent jurisdiction, by the boundary commission in whose territorial jurisdiction the action is taken.

(7) As used in this section:

[*(a) "Water line" includes every water line except a line connecting a community water supply system with the premises of the water user unless the line provides for extraterritorial extension of service.*]

[*(b) "Sewer line" includes every gravity sewer line that is eight inches or more in diameter and all force lines regardless of size, except a line connecting a sewer system with the premises of the user unless the line provides for extraterritorial extension of service.*]

[*(c)*] **(a)** "Community water supply system" means a source of water and distribution system whether publicly or privately owned [*which*] **that** serves more than three residences or other users where water is provided for public consumption including, but not limited to, a school, farm labor camp, an industrial establishment, a recreational facility, a restaurant, a motel, a mobile home or manufactured dwelling park, or a group care home.

[*(d) "Sewerage system" is that system described by ORS 468B.005.*]

[*(e)*] **(b)** "Disposal system" is that system described by ORS 468B.005, except for individual subsurface disposal systems.

(c) "Sewer line" includes every gravity sewer line that is eight inches or more in diameter and all force lines regardless of size, except a line connecting a sewer system with the premises of the user unless the line provides for extraterritorial extension of service.

(d) "Sewerage system" is that system described by ORS 468B.005.

[*(f)*] **(e)** "Tentative plans" submitted to the boundary commission for approval shall include:

(A) For the establishment of a water system or extension of a water line:

(i) The source of the supply and quantity of water available.

(ii) The transmission, distribution and storage system size and location.

(iii) The proposed number of service connections, a map, and a legal description indicating the proposed service area.

(B) For the establishment of a sewer system or extension of a sewer line:

(i) The location of the treatment facility and outfall or other method of disposal.

(ii) The size and location of the collection system.

(iii) The proposed number of service connections, a map, and a legal description indicating the proposed service area.

(f) "Water line" includes every water line except a line connecting a community water supply system with the premises of the water user unless the line provides for extraterritorial extension of service.

NOTE: Alphabetizes definitions in (7); corrects grammar in (7)(a).

SECTION 150. ORS 200.005 is amended to read:

200.005. As used in ORS 200.005 to 200.075, 200.200 and 279.059:

(1) "Disadvantaged business enterprise" means a small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any corporation, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(2) "Economically disadvantaged individual" means an individual who is socially disadvantaged and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to another in the same business area who is not socially disadvantaged.

(3) "Emerging small business" means:

(a) A business with its principal place of business located in this state;

(b) A business with average annual gross receipts over the last three years not exceeding $1 million for construction firms and $300,000 for nonconstruction firms;

(c) A business [*which*] **that** has fewer than 20 employees;

(d) An independent business; and

(e) A business properly licensed and legally registered in this state.

(4) "Emerging small business" does not mean a subsidiary or parent company belonging to a group of firms [*which*] **that** are owned and controlled by the same individuals [*which*] **that** have aggregate annual gross receipts in excess of $1 million for construction or $300,000 for nonconstruction firms over the last three years.

(5) A business may be certified as an emerging small business for no more than seven years.

(6) "Minority or women business enterprise" means a small business concern which is at least 51 percent owned by one or more minorities or women, or in the case of a corporation, at least 51 percent of the stock of which is owned by one or more minorities or women, and whose management and daily business operations are controlled by one or more of such individuals.

(7) "Minority individual" means a person who is a citizen or lawful permanent resident of the United States[,] **and** who is:

(a) Black**,** [*who is*] a person having origins in any of the black racial groups of Africa;

(b) Hispanic**,** [*who is*] a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;

(c) Asian American**,** [*who is*] a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;

(d) Portuguese**,** [*who is*] a person of Portuguese, Brazilian or other Portuguese culture or origin, regardless of race;

(e) American Indian or Alaskan Native**,** [*who is*] a person having origins in any of the original peoples of North America; or

(f) A member of another group[,] or another individual [*who*] **that** is socially and economically disadvantaged as determined by the Advocate for Minority, Women and Emerging Small Business.

(8) "Small business concern" means a small business as defined by the United States Small Business Administration [*per C.F.R. 121, as amended*] **in 13 C.F.R. part 121**.

(9) "Socially disadvantaged individual" means an individual who has been subjected to racial or ethnic prejudice or cultural bias, without regard to individual qualities, because of the individual's identity as a member of a group.

(10) "Woman" means a person of the female sex who is a citizen or lawful permanent resident of the United States.

(11) "Responsible bidder" means one who, in the determination of the office of the Advocate for Minority, Women and Emerging Small Business, has undertaken both a policy and practice of actively pursuing participation by minority and women businesses in all bids, both public and private, submitted by such bidder.

NOTE: Tinkers with syntax in (3)(c), (4) and (7); completes federal citation in (8).

SECTION 151. ORS 200.005, as amended by section 213, chapter 794, Oregon Laws 2003, is amended to read:

200.005. As used in ORS 200.005 to 200.075, 200.200 and 279A.105:

(1) "Disadvantaged business enterprise" means a small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any corporation, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(2) "Economically disadvantaged individual" means an individual who is socially disadvantaged and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to another in the same business area who is not socially disadvantaged.

(3) "Emerging small business" means:

(a) A business with its principal place of business located in this state;

(b) A business with average annual gross receipts over the last three years not exceeding $1 million for construction firms and $300,000 for nonconstruction firms;

(c) A business [*which*] **that** has fewer than 20 employees;

(d) An independent business; and

(e) A business properly licensed and legally registered in this state.

(4) "Emerging small business" does not mean a subsidiary or parent company belonging to a group of firms [*which*] **that** are owned and controlled by the same individuals [*which*] **that** have aggregate annual gross receipts in excess of $1 million for construction or $300,000 for nonconstruction firms over the last three years.

(5) A business may be certified as an emerging small business for no more than seven years.

(6) "Minority or women business enterprise" means a small business concern which is at least 51 percent owned by one or more minorities or women, or in the case of a corporation, at least 51 percent of the stock of which is owned by one or more minorities or women, and whose management and daily business operations are controlled by one or more of such individuals.

(7) "Minority individual" means a person who is a citizen or lawful permanent resident of the United States[,] **and** who is:

(a) Black**,** [*who is*] a person having origins in any of the black racial groups of Africa;

(b) Hispanic**,** [*who is*] a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;

(c) Asian American**,** [*who is*] a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;

(d) Portuguese**,** [*who is*] a person of Portuguese, Brazilian or other Portuguese culture or origin, regardless of race;

(e) American Indian or Alaskan Native**,** [*who is*] a person having origins in any of the original peoples of North America; or

(f) A member of another group[,] or another individual [*who*] **that** is socially and economically disadvantaged as determined by the Advocate for Minority, Women and Emerging Small Business.

(8) "Small business concern" means a small business as defined by the United States Small Business Administration [*per C.F.R. 121, as amended*] **in 13 C.F.R. part 121**.

(9) "Socially disadvantaged individual" means an individual who has been subjected to racial or ethnic prejudice or cultural bias, without regard to individual qualities, because of the individual's identity as a member of a group.

(10) "Woman" means a person of the female sex who is a citizen or lawful permanent resident of the United States.

(11) "Responsible bidder" means one who, in the determination of the office of the Advocate for Minority, Women and Emerging Small Business, has undertaken both a policy and practice of actively pursuing participation by minority and women businesses in all bids, both public and private, submitted by such bidder.

NOTE: Tinkers with syntax in (3)(c), (4) and (7); completes federal citation in (8).

SECTION 152. ORS 200.100 is amended to read:

200.100. As used in ORS 200.100 to 200.120:

(1) "Contractor" means a person who contracts on predetermined terms to be responsible for the performance of all or part of a job of preparation or construction in accordance with established specifications or plans, retaining control of means, method and manner of accomplishing the desired result, and who provides:

(a) Labor at the site; or

(b) Materials, supplies and labor at the site.

(2) "Disadvantaged business enterprise" means a small business concern that is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any corporation, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(3) "Minority or women business enterprise" means a small business concern which is at least 51 percent owned by one or more minorities or women, or in the case of a corporation, at least 51 percent of the stock of which is owned by one or more minorities or women, and whose management and daily business operations are controlled by one or more of such individuals.

(4) "Minority individual" means a person who is a citizen or lawful permanent resident of the United States[,] **and** who is:

(a) Black**,** [*who is*] a person having origins in any of the black racial groups of Africa;

(b) Hispanic**,** [*who is*] a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;

(c) Asian American**,** [*who is*] a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;

(d) Portuguese**,** [*who is*] a person of Portuguese, Brazilian or other Portuguese culture or origin, regardless of race;

(e) American Indian or Alaskan Native**,** [*who is*] a person having origins in any of the original peoples of North America; or

(f) A member of another group[,] or another individual that is socially and economically disadvantaged as determined by the Advocate for Minority, Women and Emerging Small Business.

(5) "Subcontractor" means a contractor who has no direct contractual relationship with the owner.

NOTE: Tinkers with syntax in (4).

SECTION 153. ORS 203.740 is amended to read:

203.740. (1) Within 60 days after the county clerk finds that a petition for the appointment of a committee is sufficient, or within 60 days after the county court has filed with the county clerk its resolution requesting that a committee be appointed, a committee shall be appointed as provided in this section. Only one committee is to be in existence at any given period of time.

(2)(a) In all counties**:**[,]

[*(i)*] **(A)** A majority of the county court is entitled to appoint four members of the committee;

[*(ii)*] **(B)** A majority of the state Senators and state Representatives then representing the county is entitled to appoint four additional members; and

[*(iii)*] **(C)** A majority, consisting of at least five, of those persons appointed under [*(i) and (ii)*] **subparagraphs (A) and (B)** of this paragraph is entitled to appoint one additional member.

(b) If, within 45 days after the terms of committee members begin to run as provided in subsection (4) of this section, an appointing authority has not made the appointment or appointments it is entitled to make, the county clerk shall call a meeting of those persons constituting the appointing authority by giving written notice to each of them, specifying the purpose of the meeting and the time and place thereof. The time of the meeting shall be set within 15 days of the expiration of the 45-day period.

(3) All members of the committee must be electors of the county**.**[*; and*] No member shall be engaged, directly or indirectly, in any business with the county [*which*] **that** is inconsistent with the conscientious performance of duties as a member of the committee. An initial appointment, or an appointment to fill a vacancy, is made by delivering to the county clerk written notice of the name and address of the person appointed, signed by the person duly authorized to act for the appointing authority. No member of an appointive authority may serve as a member of such committee. If an appointing authority fails to make such an initial appointment within 60 days after the terms of committee members begin to run as provided in subsection (4) of this section, the county court shall make the appointment within 10 days after the expiration of the 60-day period.

(4) The terms of committee members run either from the date the county court receives the certification from the county clerk that the petition requesting the appointment of the committee is sufficient or from the date the county court files its resolution requesting appointment of the committee, as the case may be. The terms expire on the day of the election at which the committee's proposed charter is voted upon or within two years from the date the terms began, whichever is the sooner, unless, in the case where a proposed charter is not submitted at an election held within such two-year period, the county court by resolution filed with the county clerk before the expiration of the terms extends them until the day of the election on the proposed charter or for another two years, whichever is the sooner. Any vacancy occurring on the committee, in a position for which an initial appointment has been made, shall be filled by appointment for the unexpired term by the

appointing authority [*which*] **that** was entitled to make the initial appointment of the member whose position is vacant or, if such appointing authority fails to make the appointment within 10 days after the vacancy occurs, by the county court.

(5) Not later than 80 days after the terms of committee members begin to run as provided in subsection (4) of this section, the members of the committee shall meet and organize. A majority of the committee constitutes a quorum for the transaction of business. The committee may adopt such rules as it deems necessary for its operation. However, the committee may not prohibit the public from attending any of its meetings.

NOTE: Conforms structure in (2)(a) to legislative style; conforms punctuation to legislative style in (3); corrects grammar in (3) and (4).

SECTION 154. ORS 204.016 is amended to read:

204.016. (1) A person is not eligible to any office listed in ORS 204.005 unless the person is a citizen of the United States, an elector under the Oregon Constitution and a resident of the county wherein the person is elected for the period of one year next preceding election, except that in counties of less than 25,000 population the requirement of residency in the county wherein the person is elected does not apply to the county surveyor.

(2) A person is not eligible to be a candidate for election or appointment to the office of county surveyor unless registered under the laws of this state as a registered professional land surveyor.

(3) A person is not eligible to be a candidate for election or appointment to the office of county assessor unless:

(a) The person has qualified as a registered appraiser or is an appraiser trainee under ORS 308.015 and if an appraiser trainee, notwithstanding ORS 308.015, becomes a registered appraiser within two years after taking office; and [*in addition*]

(b) The person either has two years of office and accounting experience, including experience in office management activities**,** or has two years of full-time employment in the office of a county assessor.

(4) The Department of Revenue shall prepare applications and questionnaires, and obtain information it may deem necessary to determine that a candidate for the office of county assessor has met the requirements of this section, and shall furnish to applicants suitable certificates evidencing satisfactory compliance with the required qualifications.

NOTE: Corrects redundancy in (3)(a) and punctuation in (3)(b).

SECTION 155. ORS 205.135 is amended to read:

205.135. Whenever the text of a document presented for [*record*] **recording** may be made out but is not sufficiently legible to reproduce a readable photographic record, the county clerk shall require the person presenting it for [*record*] **recording** to substitute a legible original document or prepare a true copy thereof by handwriting or typewriting and attach the same to the original as a part of the document for making the permanent photographic record.

NOTE: Corrects word choice.

SECTION 156. ORS 205.450 is amended to read:

205.450. As used in ORS 205.450 to 205.470:

(1) "Encumbrance" means a claim, lien, charge or liability attached to and binding property.

(2) "Encumbrance claimant" means a person who purportedly benefits from the filing of an encumbrance.

(3) "Federal official or employee" has the meaning given the term "employee of the government" in the Federal Tort Claims Act (28 U.S.C. 2671).

(4) "Filing" includes filing or recording.

(5) "Invalid claim of encumbrance" means a claim of encumbrance that is not a valid claim of encumbrance.

(6) "Property" includes, but is not limited to, real and personal property.

(7) "State or local official or employee" means an appointed or elected official, employee or agent of:

(a) A branch of government of this state or a state agency, board, commission or department of a branch of government of this state;

(b) A state institution of higher education;

(c) A community college or local school district in this state; [*or*]

(d) A city, county or other political subdivision in this state; or

(e) A public corporation in this state.

(8) "Valid claim of encumbrance" is an encumbrance that:

(a) Is an encumbrance authorized by statute;

(b) Is a consensual encumbrance recognized under the laws of this state; or

(c) Is an equitable, constructive or other encumbrance imposed by a court of competent jurisdiction.

NOTE: Conforms structure to legislative style in (7)(c).

SECTION 157. ORS 205.525 is amended to read:

205.525. (1) Interest on [*penalties imposed by orders*] **a penalty imposed by an order** shall run from the date of issuance of a final order at the rate provided for interest on judgments provided for in ORS 82.010 unless the penalty is paid within the time allowed by law.

(2) An order or warrant may be satisfied by payment of the amount due under the order or warrant, any penalties or interest accruing in connection with the order or warrant under law, and all costs incurred by the agency in connection with recording, indexing or service of the order or warrant and the satisfaction thereof. When an order or warrant has been fully satisfied it shall be the responsibility of the agency or officer that issued the order or warrant to record a full satisfaction in each county in which the order or warrant was recorded.

(3) The lien of an order or warrant may be released only by the officer or agency that issued the order or warrant. A release of the lien may be recorded in the County Clerk Lien Record in which the order or warrant was recorded. If the officer or agency records a release, the cost of recording or indexing the release may be recovered in advance from the person seeking the release.

NOTE: Establishes consistent singular references in (1).

SECTION 158. ORS 208.110 is amended to read:

208.110. In all counties having a population of 100,000 or more, the county treasurer shall:

(1) Credit all fees, moneys received in trust for litigants or other persons and all other public moneys, except tax moneys, to the proper funds.

(2) Keep a trust fund for each public officer receiving money in trust for litigants or other persons.

(3) Pay out money from any such trust fund to the persons entitled to the same upon the order of any such officer.

(4) Receive checks, drafts and money orders for any such officer for collection only.

(5) [*In case any such check, draft or money order*] **If a check, draft or money order received under subsection (4) of this section** is returned to the treasurer unpaid, [*then the treasurer shall*] charge the same to the account of such officer.

NOTE: Adjusts syntax so that (5) reads in properly.

SECTION 159. ORS 209.250 is amended to read:

209.250. (1) Any registered professional land surveyor making a survey of lands within this state wherein the surveyor establishes or reestablishes a boundary monument shall, within 45 days thereafter, submit for filing a permanent map of the survey to the county surveyor for review. When filed, the map shall be a permanent public record in the office of the county surveyor. In establishing or reestablishing a public land survey corner, the surveyor shall comply with ORS 209.070 (4), 209.130 and 209.200. If the surveyor is unable to complete the survey and submit a permanent map within 45 days, the surveyor shall, within 45 days of establishing or reestablishing a boundary monument, provide written notice to the county surveyor containing the reasons for the delay, an estimate of the amount of time reasonably necessary to complete the survey but not exceeding 180 days, and a temporary map showing the position of any monuments established or reestablished.

(2) Such permanent map shall have a written narrative that may be on the face of the map. If the narrative is a separate document, the map and narrative shall be referenced to each other. The map and narrative shall be made on a suitable drafting material in such size as may be required by the county surveyor. The lettering on the map and narrative shall be of such size and clarity as to be clearly reproduced. The narrative shall explain the purpose of the survey and how the boundary lines or other lines were established or reestablished and shall state which deed records, deed elements, survey records, found survey monuments, plat records, road records or any other pertinent data were controlling when establishing or reestablishing the lines. If the narrative is a separate document, it shall also contain the following:

(a) Location of survey by one-fourth section, Township and Range.

(b) The date of survey.

(c) The surveyor's seal and original signature.

(d) The surveyor's business name and address.

(3) A permanent map shall show the following:

(a) Location of survey by one-fourth section, Township and Range.

(b) The date of survey.

(c) Scale of drawing and North Arrow.

(d) The distance and course of all lines traced or established, giving the basis of bearing and the measured distance and course to a monumented section corner, one-quarter corner, one-sixteenth corner or Donation Land Claim corner in Township and Range, or to a monumented lot or parcel corner or boundary corner of a recorded subdivision, partition or condominium.

(e) All measured bearings, angles and distances that are used as a basis for establishing or reestablishing lines or monuments separately indicated from those of record together with the recording reference. Metric measurements may be used if a conversion to feet is provided.

(f) All monuments set and their relation to older monuments found. A detailed description of monuments found and set shall be included and all monuments set shall be separately indicated from those found.

(g) The surveyor's seal and original signature.

(h) The surveyor's business name and address.

(4)(a) Within 30 days of receiving a permanent map under this section, the county surveyor shall review the map to determine if it complies with subsections (1), (2) and (3) of this section and any applicable local ordinances. A map shall be indexed by the county surveyor within 30 days following a determination that the map is in compliance with this section. Any survey prepared by the county surveyor in an official or private capacity shall comply with subsections (1), (2) and (3) of this section.

(b) Any survey map found not to be in compliance with subsection (1), (2) or (3) of this section shall be returned within 30 days of receipt for correction to the surveyor who prepared the map. The surveyor shall return the corrected survey map to the county surveyor within 30 days of receipt of the survey map from the county surveyor.

(c) Any map that is not corrected within the specified time period shall be forwarded to the State Board of Examiners for Engineering and Land Surveying for action, as provided in subsection (11) of this section.

(d) No action may be maintained against the county surveyor for recording a survey map that does not comply with this section.

(e) No action may be maintained against the county surveyor for refusal to file a survey map that does not comply with this section.

(5)(a) When a survey within this state is funded entirely or in part by public funds and the survey results in the establishment of horizontal or vertical positions for geodetic control, the registered professional land surveyor performing the survey, within 45 days after completion of the survey, shall file a report of the survey with the county surveyors of those counties in which the newly established points are located.

(b) When a survey within this state is funded entirely or in part by public funds and the survey results in the establishment of horizontal or vertical positions for mapping control, the registered professional land surveyor performing the survey, within 45 days of completing the survey, shall file a report of the survey with the county surveyor of a county in which a newly established point is located.

(6) A report required by subsection (5)(a) of this section may include maps or diagrams. The maps or diagrams, if included, shall be referenced to each other. The report shall contain the following:

(a) The name and number of each newly established geodetic control point.

(b) Location of newly established geodetic control points by Section, Township and Range.

(c) Location of the horizontal component of geodetic control points by the Oregon Coordinate System as described in ORS 93.320 and 93.330, including the scale factor, combined scale factor, convergence and geographic or geodetic coordinates, indicating datum used.

(d) Location of the vertical component of geodetic control points by orthometric height, ellipsoidal height and geoidal separation, indicating datum used.

(e) The date of survey.

(f) The business name and address of the surveyor.

(g) A description of all monuments set or found, including narrative or graphic information sufficient to locate the monuments.

(h) A statement explaining the purpose of the survey, the equipment and procedures used, including the geoid model and reference ellipsoid used, and the names or numbers of the found record control stations used and their source.

(i) The scale of drawing and North Arrow if a map or diagram is included.

(j) The seal and original signature of the surveyor.

(k) For geodetic control, a statement regarding the network accuracy and local accuracy of the survey, categorized by horizontal position, ellipsoidal height and orthometric height, relative to the National Spatial Reference System. The statement shall include the accuracy classification at the 95 percent confidence level for both network and local classifications in accordance with Standards for Geodetic Control Networks, Part 2 of the federal Geospatial Positioning Accuracy Standards (FGDC 1998) for the newly established points.

(7) The county surveyor shall file and index reports that comply with subsections (5) and (6) of this section within 30 days of determining compliance.

(8) Any monument set by a registered professional land surveyor to mark or reference a point on a property or land line or to mark or reference a geodetic control survey point shall be durably and visibly marked or tagged with the registered business name or the letters "L.S." followed by the registration number of the surveyor in charge or, if the monument is set by a public officer, it shall be marked with the official title of the office.

(9) If, in the performance of a survey, any registered professional land surveyor finds or makes any changes in any public land survey corner or [*their*] **its** accessories as [*they are*] described in an existing corner record or survey map in the office of the county surveyor, the surveyor shall complete and submit to the county surveyor a record of the changes found or made to any corner or accessories to the corner. The record shall be submitted within 45 days of the corner visits, and shall include the surveyor's seal and original signature, business name and address, and be on stable base reproducible material in the form required by the county surveyor.

(10) The signature and stamp of a registered professional land surveyor on any permanent survey map or plat constitutes certification that the map or plat complies with all applicable provisions of this chapter.

(11) Any registered professional land surveyor failing to comply with the provisions of subsections (1) to (9) of this section, ORS 92.050 to 92.080 or any county ordinance establishing standards for surveys or plats shall be subject to disciplinary action by the State Board of Examiners for Engineering and Land Surveying.

(12) Any federal or state agency, board or commission, special district or municipal corporation making a survey of lands within this state shall comply with this section.

NOTE: Corrects syntax in (9).

SECTION 160. ORS 210.130 is amended to read:

210.130. Whenever, in the opinion of the board of county commissioners, the county accountant's letter of credit, bond or any surety thereon becomes insufficient, [*they*] **the board** shall require an additional bond or letter of credit. An additional bond or letter of credit shall also be required when a surety to a bond dies or ceases to be a resident of the county. The county accountant or any of the deputies of the accountant, who are required by law to give bonds or letters of credit, may present as surety any lawfully authorized surety company, to be approved by the county commissioners, and the commissioners may pay the premium thereon.

NOTE: Resolves unclear antecedent.

SECTION 161. ORS 215.213 is amended to read:

215.213. (1) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use:

(a) Public or private schools, including all buildings essential to the operation of a school.

(b) Churches and cemeteries in conjunction with churches.

(c) The propagation or harvesting of a forest product.

(d) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in ORS 215.275.

[*(e)(A)*] **(e)** A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator.

[*(B)*] Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

(f) Nonresidential buildings customarily provided in conjunction with farm use.

(g) Primary or accessory dwellings customarily provided in conjunction with farm use if the dwellings are on a lot or parcel that is managed as part of a farm operation not smaller than the minimum lot size in a farm zone with a minimum lot size acknowledged under ORS 197.251.

(h) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (1)(a) or (b).

(i) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (1)(a) or (b).

(j) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.

(k) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned

to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under paragraph (t) of this subsection.

(L) The breeding, kenneling and training of greyhounds for racing in any county [*over 200,000 in*] **with a** population **of more than 200,000** in which there is located a greyhound racing track or in a county [*of over 200,000 in*] **with a** population **of more than 200,000 that is** contiguous to such a county.

(m) Climbing and passing lanes within the right of way existing as of July 1, 1987.

(n) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

(o) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(p) Minor betterment of existing public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(q) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.

(r) Creation of, restoration of or enhancement of wetlands.

(s) A winery, as described in ORS 215.452.

(t) Alteration, restoration or replacement of a lawfully established dwelling that:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement, is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this paragraph regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions and release statements filed under this paragraph.

(u) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

(v) An armed forces reserve center, if the center is within one-half mile of a community college. For purposes of this paragraph, "armed forces reserve center" includes an armory or National Guard support facility.

(w) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(x) A facility for the processing of farm crops located on a farm operation that provides at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm uses. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility.

(y) Fire service facilities providing rural fire protection services.

(z) Irrigation canals, delivery lines and those structures and accessory operational facilities associated with a district as defined in ORS 540.505.

(aa) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(A) A public right of way;

(B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(C) The property to be served by the utility.

(bb) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.

(2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use subject to ORS 215.296:

(a) A dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot if the farm operation or woodlot:

(A) Consists of 20 or more acres; and

(B) Is not smaller than the average farm or woodlot in the county producing at least $2,500 in annual gross income from the crops, livestock or forest products to be raised on the farm operation or woodlot.

(b) A dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot smaller than required under paragraph (a) of this subsection, if the lot or parcel:

(A) Has produced at least $20,000 in annual gross farm income in two consecutive calendar years out of the three calendar years before the year in which the application for the dwelling was made or is planted in perennials capable of producing upon harvest an average of at least $20,000 in annual gross farm income; or

(B) Is a woodlot capable of producing an average over the growth cycle of $20,000 in gross annual income.

(c) Commercial activities that are in conjunction with farm use but not including the processing of farm crops as described in subsection (1)(x) of this section.

(d) Operations conducted for:

(A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, not otherwise permitted under subsection (1)(h) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community, hunting and fishing preserves, public and private parks, playgrounds and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). A public park or campground may be established as provided under ORS 195.120. As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

(f) Golf courses.

(g) Commercial utility facilities for the purpose of generating power for public use by sale.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(i) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(j) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation. Notwithstanding the soil type or value of the site or expansion area, if a site that is approved under this paragraph before January 1, 2002, is lawfully used for the disposal of nonputrescible solid waste, the county shall allow the site, together with equipment, facilities or buildings necessary for its operation, to be maintained, expanded or enhanced as necessary for the disposal of the incoming solid waste.

(k) Dog kennels not described in subsection (1)(L) of this section.

(L) Residential homes as defined in ORS 197.660, in existing dwellings.

(m) The propagation, cultivation, maintenance and harvesting of aquatic and insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(n) Home occupations as provided in ORS 215.448.

(o) Transmission towers over 200 feet in height.

(p) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

(q) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

(r) Improvement of public road and highway related facilities such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.

(s) A destination resort [*which*] **that** is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

(t) Room and board arrangements for a maximum of five unrelated persons in existing residences.

(u)[*(A)*] A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of the metropolitan urban growth boundary.

[*(B)*] As used in this paragraph:

[*(i)*] **(A)** "Living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

[*(ii)*] **(B)** "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.

(v) Operations for the extraction and bottling of water.

(w) An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks.

(3) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), a single-family residential dwelling not provided in conjunction with farm use may be established on a lot or parcel with soils predominantly in capability classes IV through VIII as determined by the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983. A proposed dwelling is subject to approval of the governing body or its designee in any area zoned for exclusive farm use upon written findings showing all of the following:

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.

(b) The dwelling is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm use in conjunction with other land.

(c) Complies with such other conditions as the governing body or its designee considers necessary.

(4) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), one single-family dwelling, not provided in conjunction with farm use, may be established in any area zoned for exclusive farm use on a lot or parcel described in subsection (7) of this section that is not larger than three acres upon written findings showing:

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use;

(b) If the lot or parcel is located within the Willamette River Greenway, a floodplain or a geological hazard area, the dwelling complies with conditions imposed by local ordinances relating specifically to the Willamette River Greenway, floodplains or geological hazard areas, whichever is applicable; and

(c) The dwelling complies with other conditions considered necessary by the governing body or its designee.

(5) Upon receipt of an application for a permit under subsection (4) of this section, the governing body shall notify:

(a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be established; and

(b) Persons who have requested notice of such applications and who have paid a reasonable fee imposed by the county to cover the cost of such notice.

(6) The notice required in subsection (5) of this section shall specify that persons have 15 days following the date of postmark of the notice to file a written objection on the grounds only that the dwelling or activities associated with it would force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use. If no objection is received, the governing body or its designee shall approve or disapprove the application. If an objection is received, the governing body shall set the matter for hearing in the manner prescribed in ORS 215.402 to 215.438. The governing body may charge the reasonable costs of the notice required by subsection (5)(a) of this section to the applicant for the permit requested under subsection (4) of this section.

(7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1, 1948, and July 1, 1983. For the purposes of this section:

(a) Only one lot or parcel exists if:

(A) A lot or parcel described in this section is contiguous to one or more lots or parcels described in this section; and

(B) On July 1, 1983, greater than possessory interests are held in those contiguous lots, parcels or lots and parcels by the same person, spouses or a single partnership or business entity, separately or in tenancy in common.

(b) "Contiguous" means lots, parcels or lots and parcels that have a common boundary, including but not limited to, lots, parcels or lots and parcels separated only by a public road.

(8) A person who sells or otherwise transfers real property in an exclusive farm use zone may retain a life estate in a dwelling on that property and in a tract of land under and around the dwelling.

(9) No final approval of a nonfarm use under this section shall be given unless any additional taxes imposed upon the change in use have been paid.

(10) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

NOTE: Adjusts structure so that (1)(e) and (2)(u) read in properly; corrects grammar in (1)(L) and (2)(s).

SECTION 162. ORS 215.213, as amended by section 2, chapter 260, Oregon Laws 2001, and section 2, chapter 247, Oregon Laws 2003, is amended to read:

215.213. (1) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use:

(a) Public or private schools, including all buildings essential to the operation of a school.

(b) Churches and cemeteries in conjunction with churches.

(c) The propagation or harvesting of a forest product.

(d) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in ORS 215.275.

[*(e)(A)*] **(e)** A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator.

[*(B)*] Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

(f) Nonresidential buildings customarily provided in conjunction with farm use.

(g) Primary or accessory dwellings customarily provided in conjunction with farm use if the dwellings are on a lot or parcel that is managed as part of a farm operation not smaller than the minimum lot size in a farm zone with a minimum lot size acknowledged under ORS 197.251.

(h) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (1)(a) or (b).

(i) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (1)(a) or (b).

(j) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.

(k) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under paragraph (t) of this subsection.

(L) The breeding, kenneling and training of greyhounds for racing in any county [*over 200,000 in*] **with a** population **of more than 200,000** in which there is located a greyhound racing track or in a county [*of over 200,000 in*] **with a** population **of more than 200,000 that is** contiguous to such a county.

(m) Climbing and passing lanes within the right of way existing as of July 1, 1987.

(n) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right

of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

(o) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(p) Minor betterment of existing public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(q) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.

(r) Creation of, restoration of or enhancement of wetlands.

(s) A winery, as described in ORS 215.452.

(t) Alteration, restoration or replacement of a lawfully established dwelling that:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement, is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this paragraph regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions and release statements filed under this paragraph.

(u) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

(v) An armed forces reserve center, if the center is within one-half mile of a community college. For purposes of this paragraph, "armed forces reserve center" includes an armory or National Guard support facility.

(w) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is

used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(x) A facility for the processing of farm crops located on a farm operation that provides at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm uses. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility.

(y) Fire service facilities providing rural fire protection services.

(z) Irrigation canals, delivery lines and those structures and accessory operational facilities associated with a district as defined in ORS 540.505.

(aa) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(A) A public right of way;

(B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(C) The property to be served by the utility.

(bb) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.

(2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use subject to ORS 215.296:

(a) A dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot if the farm operation or woodlot:

(A) Consists of 20 or more acres; and

(B) Is not smaller than the average farm or woodlot in the county producing at least $2,500 in annual gross income from the crops, livestock or forest products to be raised on the farm operation or woodlot.

(b) A dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot smaller than required under paragraph (a) of this subsection, if the lot or parcel:

(A) Has produced at least $20,000 in annual gross farm income in two consecutive calendar years out of the three calendar years before the year in which the application for the dwelling was made or is planted in perennials capable of producing upon harvest an average of at least $20,000 in annual gross farm income; or

(B) Is a woodlot capable of producing an average over the growth cycle of $20,000 in gross annual income.

(c) Commercial activities that are in conjunction with farm use but not including the processing of farm crops as described in subsection (1)(x) of this section.

(d) Operations conducted for:

(A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, not otherwise permitted under subsection (1)(h) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community, hunting and fishing preserves, public and private parks, playgrounds and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). A public park or campground may be established as provided under ORS 195.120. As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

(f) Golf courses.

(g) Commercial utility facilities for the purpose of generating power for public use by sale.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(i) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(j) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(k) Dog kennels not described in subsection (1)(L) of this section.

(L) Residential homes as defined in ORS 197.660, in existing dwellings.

(m) The propagation, cultivation, maintenance and harvesting of aquatic and insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(n) Home occupations as provided in ORS 215.448.

(o) Transmission towers over 200 feet in height.

(p) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

(q) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

(r) Improvement of public road and highway related facilities such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.

(s) A destination resort [*which*] **that** is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

(t) Room and board arrangements for a maximum of five unrelated persons in existing residences.

(u)[*(A)*] A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of the metropolitan urban growth boundary.

[*(B)*] As used in this paragraph:

[*(i)*] **(A)** "Living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

[*(ii)*] **(B)** "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.

(v) Operations for the extraction and bottling of water.

(w) An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks.

(3) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), a single-family residential dwelling not provided in conjunction with farm use may be established on a lot or parcel with soils predominantly in capability classes IV through VIII as determined by the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983. A proposed dwelling is subject to approval of the governing body or its designee in any area zoned for exclusive farm use upon written findings showing all of the following:

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.

(b) The dwelling is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm use in conjunction with other land.

(c) Complies with such other conditions as the governing body or its designee considers necessary.

(4) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), one single-family dwelling, not provided in conjunction with farm use, may be established in any area zoned for exclusive farm use on a lot or parcel described in subsection (7) of this section that is not larger than three acres upon written findings showing:

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use;

(b) If the lot or parcel is located within the Willamette River Greenway, a floodplain or a geological hazard area, the dwelling complies with conditions imposed by local ordinances relating specifically to the Willamette River Greenway, floodplains or geological hazard areas, whichever is applicable; and

(c) The dwelling complies with other conditions considered necessary by the governing body or its designee.

(5) Upon receipt of an application for a permit under subsection (4) of this section, the governing body shall notify:

(a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be established; and

(b) Persons who have requested notice of such applications and who have paid a reasonable fee imposed by the county to cover the cost of such notice.

(6) The notice required in subsection (5) of this section shall specify that persons have 15 days following the date of postmark of the notice to file a written objection on the grounds only that the dwelling or activities associated with it would force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use. If no objection is received, the governing body or its designee shall approve or disapprove the application. If an objection is received, the governing body shall set the matter for hearing in the manner prescribed in ORS 215.402 to 215.438. The governing body may charge the reasonable costs of the notice required by subsection (5)(a) of this section to the applicant for the permit requested under subsection (4) of this section.

(7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1, 1948, and July 1, 1983. For the purposes of this section:

(a) Only one lot or parcel exists if:

(A) A lot or parcel described in this section is contiguous to one or more lots or parcels described in this section; and

(B) On July 1, 1983, greater than possessory interests are held in those contiguous lots, parcels or lots and parcels by the same person, spouses or a single partnership or business entity, separately or in tenancy in common.

(b) "Contiguous" means lots, parcels or lots and parcels that have a common boundary, including but not limited to, lots, parcels or lots and parcels separated only by a public road.

(8) A person who sells or otherwise transfers real property in an exclusive farm use zone may retain a life estate in a dwelling on that property and in a tract of land under and around the dwelling.

(9) No final approval of a nonfarm use under this section shall be given unless any additional taxes imposed upon the change in use have been paid.

(10) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

NOTE: Adjusts structure so that (1)(e) and (2)(u) read in properly; corrects grammar in (1)(L) and (2)(s).

SECTION 163. ORS 215.283 is amended to read:

215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

(a) Public or private schools, including all buildings essential to the operation of a school.

(b) Churches and cemeteries in conjunction with churches.

(c) The propagation or harvesting of a forest product.

(d) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in ORS 215.275.

[*(e)(A)*] **(e)** A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either,

if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator.

[*(B)*] Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

(f) Primary or accessory dwellings and other buildings customarily provided in conjunction with farm use.

(g) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (1)(a) or (b).

(h) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (1)(a) or (b).

(i) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.

(j) The breeding, kenneling and training of greyhounds for racing.

(k) Climbing and passing lanes within the right of way existing as of July 1, 1987.

(L) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

(m) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(n) Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(o) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.

(p) Creation of, restoration of or enhancement of wetlands.

(q) A winery, as described in ORS 215.452.

(r) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

(s) Alteration, restoration or replacement of a lawfully established dwelling that:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement, is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this paragraph regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions and release statements filed under this paragraph.

(t) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(u) A facility for the processing of farm crops located on a farm operation that provides at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm uses. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility.

(v) Fire service facilities providing rural fire protection services.

(w) Irrigation canals, delivery lines and those structures and accessory operational facilities associated with a district as defined in ORS 540.505.

(x) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(A) A public right of way;

(B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(C) The property to be served by the utility.

(y) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.

(2) The following nonfarm uses may be established, subject to the approval of the governing body or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

(a) Commercial activities that are in conjunction with farm use but not including the processing of farm crops as described in subsection (1)(u) of this section.

(b) Operations conducted for:

(A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under subsection (1)(g) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(c) Private parks, playgrounds, hunting and fishing preserves and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

(d) Parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.

(e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community.

(f) Golf courses.

(g) Commercial utility facilities for the purpose of generating power for public use by sale.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport, as used in this section, means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(i) Home occupations as provided in ORS 215.448.

(j) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(k) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(L) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under subsection (1)(s) of this section.

(m) Transmission towers over 200 feet in height.

(n) Dog kennels not described in subsection (1)(j) of this section.

(o) Residential homes as defined in ORS 197.660, in existing dwellings.

(p) The propagation, cultivation, maintenance and harvesting of aquatic or insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(q) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

(r) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

(s) Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.

(t) A destination resort [*which*] **that** is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

(u) Room and board arrangements for a maximum of five unrelated persons in existing residences.

(v) Operations for the extraction and bottling of water.

(w) Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.

(x)[*(A)*] A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary.

[*(B)*] As used in this paragraph:

[*(i)*] **(A)** "Living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

[*(ii)*] **(B)** "Local historical society" means the local historical society recognized by the county governing body and organized under ORS chapter 65.

(y) An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks.

(3) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

NOTE: Adjusts structure so that (1)(e) and (2)(x) read in properly; corrects grammar in (2)(t).

SECTION 164. ORS 221.725 is amended to read:

221.725. (1) Except as provided in ORS 221.727, when a city council considers it necessary or convenient to sell real property or any interest therein, the city council shall publish a notice of the proposed sale in a newspaper of general circulation in the city, and shall hold a public hearing concerning the sale prior to the sale.

(2) The notice required by subsection (1) of this section shall be published at least once during the week prior to the public hearing required under this section. The notice shall state the time and place of the public hearing, a description of the property or interest to be sold, the proposed uses

for the property and the reasons why the city council considers it necessary or convenient to sell the property. Proof of publication of the notice may be made [*or*] **as** provided by ORS 193.070.

(3) Not earlier than five days after publication of the notice, the public hearing concerning the sale shall be held at the time and place stated in the notice. Nothing in this section prevents a city council from holding the hearing at any regular or special meeting of the city council as part of its regular agenda.

(4) The nature of the proposed sale and the general terms thereof, including an appraisal or other evidence of the market value of the property, shall be fully disclosed by the city council at the public hearing. Any resident of the city shall be given an opportunity to present written or oral testimony at the hearing.

(5) As used in this section and ORS 221.727, "sale" includes a lease-option agreement under which the lessee has the right to buy the leased real property in accordance with the terms specified in the agreement.

NOTE: Corrects word choice in (2).

SECTION 165. ORS 221.916 is amended to read:

221.916. **(1)** The mayor and alderpersons shall compose the common council of any city organized under sections 1 to 6, pages 119 to 123, Oregon Laws 1893. At any regular council meeting, [*it*] **the common council** may:

[*(1)*] **(a)** Provide for lighting the streets and furnishing such city and its inhabitants with gas or other lights, and with pure and wholesome water. For such purpose it may construct such water, gas or other works, within or without the city limits, as may be necessary or convenient therefor. It may allow the use of the city streets and alleys to any person, company or corporation who may desire to establish works for supplying the city and inhabitants thereof with such water or lights upon such reasonable terms and conditions as the **common** council may prescribe.

[*(2)*] **(b)** Permit, allow and regulate the laying down of tracks for streetcars and other railroads upon such streets as the **common** council may designate, and upon such terms and conditions as the **common** council may prescribe**.**[*; and*]

(c) Allow and regulate the erection and maintenance of poles, or poles and wires, for telegraph, telephone, electric light or other purposes, upon or through the streets, alleys or public grounds of such city**.**[*;*]

(d) Permit and regulate the use of alleys, streets and public grounds of the city for [*the*] laying down or repairing gas and water mains, for building and repairing sewers[*,*] and [*the erection of*] **for erecting** gas or other lights.

[*(3)*] **(e)** Preserve the streets, lights, side and crosswalks, bridges[*,*] and public grounds from injury, prevent the unlawful use of the same[*,*] and regulate their use.

[*(4)*] **(f)** Fix the maximum rate of wharfage, rates for gas or other lights, **rates** for carrying passengers on street railways[*,*] and water rates. No city shall ever deprive itself of the right through its common council of regulating and adjusting any such rates, so that the same shall be reasonable for the service rendered, at least once in any period of two years.

[*(5)*] **(g)** License, tax, regulate, restrain and prohibit barrooms and tippling houses, and all places where spirituous, vinous or malt liquors are sold, or in any manner disposed of contrary to law. No license shall be issued for a [*less*] **lesser** sum than that provided by law.

[*(6)*] **(h)** Prevent and suppress gaming and gambling houses, and all games of chance, including lotteries and poolselling**.**[*;*]

(i) Prevent and suppress bawdyhouses, **lewd** and [*lewd,*] lascivious cohabitation, opium-smoking houses[*,*] and places occupied or kept therefor. [*Nothing contained in ORS 221.901 to 221.930 shall be so construed as to oust the state courts of jurisdiction to indict or punish persons for offenses against any law of the state committed within the limits of any such city.*]

[*(7)*] **(j)** License, regulate and control any lawful business, trade, occupation, profession or calling, carried on or conducted within the corporate limits of any such city.

[*(8)*] **(k)** Suppress and prohibit anything [*which*] **that** is injurious to the public morals, public safety or [*the*] public health of the inhabitants of any such city**.**[*, including the power to*] **The com-**

mon council may define, suppress and prohibit nuisances of every kind, including those arising out of the receipt, sale or disposal of intoxicating liquor in violation of law.

[*(9)*] **(L)** Regulate, suppress and prohibit the running at large within the corporate limits of any and all domestic animals, including fowls, and provide for the impoundment and sale, after notice, of such animals.

[*(10)*] **(m)** Exercise any and all police regulations concerning the public morals, public safety, public health and public convenience of the inhabitants of any such city.

[*(11)*] **(n)** Provide for the surveying of blocks and streets of the city and for marking the boundary lines of such blocks and streets, and the establishing of grades of the streets, sidewalks and crosswalks.

[*(12)*] **(o)** Prevent and punish trespass on real and personal property within the corporate limits of such city.

[*(13)*] **(p)** Make bylaws and ordinances not inconsistent with the laws of the United States or of this state to carry into effect the provisions of ORS 221.901 to 221.928.

[*(14)*] **(q)** Provide, in addition to such action as may be appropriate to carry into full effect the object to be achieved, for the punishment of persons violating any bylaws or ordinances by fine or imprisonment, or both, and the working of such persons on the city streets or at any other work. No fine shall exceed the sum of $50, nor shall any imprisonment exceed 20 days.

(2) Nothing contained in ORS 221.901 to 221.930 shall be so construed as to oust the state courts of jurisdiction to indict or punish persons for offenses against any law of the state committed within the limits of any such city.

NOTE: Conforms section to legislative style for punctuation, structure and word choice.

SECTION 166. ORS 224.232 is amended to read:

224.232. (1) The governing body of the municipality, by proposed charter amendment or ordinance, may refer the question of acquiring and constructing the facilities to a vote of its electors, and after approval thereof by a majority of such electors, may authorize the issuance of and cause to be issued bonds of the municipality for such purposes. The bonds may be general obligation, limited obligation or self-liquidating in character in a sum not more than the amount authorized at such election. The bonds may provide for payment of principal and interest thereon from service charges to be imposed by the governing body for services to be extended through employment and use of the facilities. If service charges are imposed to be paid as provided in ORS 224.220 (1971 Replacement Part), such portion thereof as may be deemed sufficient shall be set aside as a sinking fund for payment of interest on the bonds and the principal thereof at maturity.

(2) When the Environmental Quality Commission [*of the State of Oregon*] enters an order pursuant to ORS 468.090 that requires the acquisition or construction of facilities in a municipality for compliance, the governing body of the municipality must refer to its electors the question of a bond issue in an amount sufficient to finance the necessary acquisition or construction of such facilities. The election must be held within one year of the date on which the order of the [*Environmental Quality*] commission becomes final.

(3) If, within eight months after the final order of the [*Environmental Quality*] commission becomes final, the governing body of the municipality has not called an election in compliance with subsection (2) of this section, the [*Environmental Quality*] commission may apply to the circuit court of the county in which the municipality is located or to the circuit court of Marion County for an order compelling the holding of an election.

[*(4)*] **(4)(a)** If the electors do not approve the bond issue[,] submitted pursuant to subsection (2) or (3) of this section, the [*Environmental Quality*] commission may apply to the circuit court of the county in which the municipality is located or to the circuit court of Marion County for an order directing that**:**

(A) Self-liquidating bonds of the municipality be issued and sold pursuant to ORS 224.210 to 224.260 (1971 Replacement Part)[*, and directing that*]**; and**

(B) The proceeds be applied to the acquisition or construction of facilities required to comply with the order of the [*Environmental Quality*] commission.

(b) If the court finds that the facilities required by the order of the [*Environmental Quality*] commission are necessary to the public health under the minimum standards of the [*Environmental Quality*] commission, it shall issue an order directing that**:**

(A) Such bonds be issued and sold without elector approval in such an amount as the court finds necessary to acquire or construct such facilities[*, and that*]**; and**

(B) The proceeds be applied for such purposes.

(5) Any court proceeding authorized by subsection (3) or (4) of this section shall be advanced on the court docket for immediate hearing.

NOTE: Conforms structure in (4) and official titles in (2), (3) and (4) to legislative style.

SECTION 167. ORS 225.030 is amended to read:

225.030. Any city owning, controlling or operating a system of waterworks or electric light and power system for supplying water or electricity for its inhabitants and for general municipal purposes, and any person[*, persons, or corporation*] controlling or operating any water system or electric light and power system under contract, lease or private ownership, may sell, supply and dispose of water or electricity from such system to any person[*, persons, or corporation*] within or without the limits of the city in which the water or electric light and power system is operated, and may make contracts in reference to the sale and disposal of water or electricity from such system, for use within or without the corporate limits.

NOTE: Deletes superfluous terms; see 174.100 (5).

SECTION 168. ORS 225.040 is amended to read:

225.040. All contracts or agreements made prior to May 20, 1911, and in effect as of that date, for sale and disposal of water or electricity by any city[*, person, persons or corporation*] **or person** operating, controlling or owning water or electric light and power systems, to any person[*, persons or corporations*] within or without the limits of the city in which the system is operated, are ratified and declared legal and valid contracts in so far as the right of the city to contract with reference to same is concerned.

NOTE: Deletes superfluous terms; see 174.100 (5).

SECTION 169. ORS 225.110 is amended to read:

225.110. When authorized by its charter or act of incorporation, a city may purchase, build, own, operate [*and/or*] **and** maintain telephone or telegraph systems within or without its boundaries, for the benefit and use of its inhabitants at cost or for profit.

NOTE: Conforms conjunction to legislative style.

SECTION 170. ORS 225.370 is amended to read:

225.370. The city governing body may determine the maturities and tenor of bonds issued under ORS 225.360. However, [*such*] **the** bonds shall be serial in character and in accordance with any provisions of law or charter. [*They*] **The bonds** shall**:**

(1) Be payable in not to exceed 30 years from the date of issuance thereof. [*They shall*]

(2) Be sold at a price to net the city not less than the par value thereof with accrued interest**.**[*, and shall*]

(3) Bear interest at not to exceed six percent per annum.

NOTE: Corrects word choice and clarifies antecedents.

SECTION 171. ORS 226.110 is amended to read:

226.110. As used in ORS 226.120 to 226.240, unless the context requires otherwise:

[*(1) "City" means incorporated city containing not less than 3,000 inhabitants.*]

[*(2)*] **(1)** "Board" means board of city park commissioners.

(2) "City" means incorporated city containing not less than 3,000 inhabitants.

(3) "Commissioner" means city park commissioner.

NOTE: Alphabetizes definitions.

SECTION 172. ORS 226.400 is amended to read:

226.400. The city may permit and authorize **the following uses of parks, which are lawful uses of any grounds or premises dedicated as public parks, unless the use thereof for such purposes is forbidden by the terms of the conveyance creating such parks:**

(1) The erection and construction of memorial monuments [*or*] **and** buildings**.**[*, or both,*]

(2) Pioneer memorials[*,*] **and** pioneer museums**.**[*,*]

(3) Memorials and monuments to United States war veterans**.** [*and/or*]

(4) Buildings for meeting places of pioneer associations [*and/or*] **or** veterans upon any public park within the limits of the city. [*Such use of parks is a lawful use of any grounds or premises dedicated as public parks, unless the use thereof for such purposes is forbidden by the terms of the conveyance creating such parks.*]

NOTE: Resolves confusing conjunctions.

SECTION 173. ORS 226.520 is amended to read:

226.520. As used in ORS 226.510 to 226.630[*, the following words or phrases shall be given the meanings hereinafter set forth*]:

(1) "Abandoned cemetery" means any cemetery in which no remains of deceased persons have been interred for a period of five years.

(2) "Cemetery" means any tract of land set apart by deed, will or otherwise, for a burial ground, or for the purpose of interring the remains of deceased persons.

(3) [*"Diligent search." In connection with the provisions of ORS 226.510 to 226.630, a diligent search for the purpose of locating graves, and the location of human remains within a cemetery, shall be such*] **"Diligent search" means a** search as shall be reasonably calculated to discover [*such*]**:**

(a) Graves from the existence of monuments, contour of land and terrain, fencing, curbing and other evidences of the location of graves**; and** [*, and in connection with*]

(b) The location of human remains and the determination as to whether or not a given plot contains such remains, **for which** it shall be sufficient to employ the method commonly known as probing.

(4) [*"Municipal corporation." For the purposes of ORS 226.510 to 226.630, a municipal corporation shall mean*] **"Municipal corporation" means** the governing body of any city incorporated under the laws of this state.

(5) [*"Remains," for the purpose of ORS 226.510 to 226.630, shall mean*] **"Remains" means** the remains of any deceased person.

(6) "Suitable location" means any cemetery, now in existence or hereafter established, including a portion of any cemetery subject to the provisions of ORS 226.510 to 226.630, where provision is made for the perpetual care and upkeep of the graves.

NOTE: Conforms definitions to legislative style.

SECTION 174. ORS 226.540 is amended to read:

226.540. The governing body of any municipal corporation [*which shall have within the boundaries of such corporation*] **that has within its boundaries** a cemetery [*which shall have*] **that has** been abandoned, or [*which shall have become*] **that has** deteriorated and **become** neglected, and so located as to endanger the health, welfare, comfort or safety of the public, may upon petition signed by not less than 10 percent of the electors of the municipal corporation, and filed with the recorder, or similar officer thereof, set a date for public hearing, and give notice thereof by publication, once a week for two successive weeks, prior to the hearing, in a newspaper having general circulation within the county in which the municipal corporation is located, said public hearing to be had within 60 days after the filing of such petition.

NOTE: Corrects grammar and syntax.

SECTION 175. ORS 237.610 is amended to read:

237.610. As used in this section and ORS 237.620:

(1) "Firefighter" means:

(a) Persons employed by a city, county or district whose duties involve firefighting, but does not include volunteer firefighters; and

(b) The State Fire Marshal and the chief deputy fire marshal and deputy state fire marshals appointed under ORS 476.040.

(2)**(a)** "Police officer" includes**:**

(A) Police chiefs and police officers of a city who are classified as police officers by the council or other governing body of the city;

(B) Sheriffs and those deputy sheriffs whose duties, as classified by the county governing body, are the regular duties of police officers;

(C) County adult parole and probation officers, as defined in ORS 181.610, who are classified by the county governing body for purposes of this section and ORS 237.620;

(D) Corrections officers as defined in ORS 181.610;

(E) Employees of districts whose duties, as classified by the governing body of the district, are the regular duties of police officers; and

(F) Investigators of the Criminal Justice Division of the Department of Justice[*; but*]**.**

(b) "Police officer" does not include volunteer or reserve police officers or persons considered by the respective governing bodies to be civil deputies or clerical personnel.

(3) "Public employer" means any city, county or district that employs police officers or firefighters.

NOTE: Reformats (2) to conform to legislative style.

SECTION 176. ORS 238.430 is amended to read:

238.430. (1) Notwithstanding any other provisions of this chapter, a person who establishes membership in the Public Employees Retirement System on or after January 1, 1996, is entitled to receive only the benefits provided under ORS 238.435 for periods of service with participating public employers after January 1, 1996, and has no right or claim to any other benefit provided under this chapter. A person who establishes membership in the Public Employees Retirement System before January 1, 1996, is entitled to receive those benefits otherwise provided by this chapter, and is not subject to the provisions of ORS 238.435.

(2) A person establishes membership in the system before January 1, 1996, for the purposes of this section if:

(a) The person is a member of the system, or a judge member of the system, on January 1, 1996;

(b) The person was a member of the system before January 1, 1996, ceased to be a member of the system under the provisions of ORS 238.095, 238.265 or 238.545 before January 1, 1996, but restored part or all of the forfeited creditable service from before January 1, 1996, under the provisions of ORS 238.105[,] **or** 238.115 [*or 238.265*] after January 1, 1996;

(c) The person performed any period of service for a participating public employer before January 1, 1996, that is credited to the six-month period of employment required of an employee under ORS 238.015 before an employee may become a member of the system; or

(d) The person becomes a member of the system under the terms of an integration contract pursuant to the terms of ORS 238.680, and under the terms of the contract the person receives retirement credit in the system for periods of employment performed for the public employer before January 1, 1996.

(3) The provisions of ORS 238.435 do not apply to judge members of the system.

NOTE: Deletes reference in (2)(b) that was rendered incorrect by renumbering in 1995.

SECTION 177. ORS 238.460 is amended to read:

238.460. (1) If receipt in full by a person of a retirement allowance or other benefit under this chapter or ORS chapter 238A would prevent such person from receiving in full any other governmental pension to which the person is entitled, such person may waive for a calendar year sufficient monthly payments, or portions thereof, of retirement allowance or other benefit under this chapter or ORS chapter 238A to permit the person to receive in full the other governmental pension. The waiver shall be made in writing and filed with the Public Employees Retirement Board not less than 15 days before the first day of the month to which the waiver applies.

(2) If for any month the waiver does not apply to the full retirement allowance due under this chapter, the waiver applies first to all or the necessary portion [*or*] **of** prior service pension, then to all or to the necessary portion of current service pension, and then to the necessary portion of annuity.

(3) The waiver may be revoked at any time, but no retirement allowance or other benefit waived for the period of time in which the waiver is in effect shall be paid. The revocation shall be made in writing and filed with the board. If a person dies during the period of time in which the waiver is in effect, the waiver is considered revoked on the date of such death.

NOTE: Corrects word choice in (2).

SECTION 178. ORS 238.462 is amended to read:

238.462. (1) A member of the Public Employees Retirement System who is married on the effective date of **the** member's retirement shall receive a service retirement allowance in the form provided for in Option 3 under ORS 238.305 (1) or a disability retirement allowance in the form provided for in Option 3 under ORS 238.325 (1) unless the member provides proof of spousal consent to receiving an allowance in the form provided by ORS 238.300 or 238.320, or in one of the optional forms provided for in ORS 238.305 and 238.325 other than Option 3.

(2) Except as provided in subsection (3) of this section, a member of the system who is married on the effective date of the member's retirement may not change the form in which a retirement allowance is paid after an election has been made as to the form of the retirement allowance unless the member provides proof of spousal consent.

(3) A member of the system who is married on the effective date of the member's retirement is not required to provide spousal consent to a change in the form in which a retirement allowance is paid if the spouse of the member dies after the effective date of the member's retirement or disability and the change in the form of the allowance is made within the time periods provided by ORS 238.305 and 238.325. A member seeking to change the form of a retirement allowance without spousal consent under the provisions of this subsection must provide a notarized statement to the Public Employees Retirement Board that certifies to the board that the spouse of the member is deceased.

(4) Any member of the system who is not married on the effective date of the member's retirement must provide a notarized statement to the Public Employees Retirement Board that certifies to the board that the member is not married. No retirement allowance may be paid to a member of the system who is not married until the statement required by this subsection is provided to the board.

(5) A member of the system who is married on the effective date of the member's retirement must provide proof of spousal consent for the purposes of this section by submitting a statement to the board that:

(a) Contains the notarized signature of the member's spouse;

(b) Indicates the form in which the retirement allowance is to be paid; and

(c) Contains a statement that the member's spouse consents to the payment of the retirement allowance in the specified form.

(6) If a member of the system who is married on the effective date of the member's retirement fails to provide proof of spousal consent as required by this section, the board shall calculate and pay to the member a retirement allowance in the form provided for in Option 3 under ORS 238.305 (1) if the retirement is for service, or a retirement allowance in the form provided for in Option 3 under ORS 238.325 (1) if the retirement is for disability. The allowance will be calculated based on the ages of the member and the spouse, and the spouse will be designated as the beneficiary for any survivor benefits that may thereafter become payable.

(7) Proof of spousal consent under this section is not required for, and cannot alter, the designation of any form of a retirement allowance that is required under the terms of any judgment of annulment or dissolution of marriage or of separation, or the terms of any court order or court-approved property settlement agreement incident to any judgment of annulment or dissolution of marriage or of separation, that has been received by the board in compliance with the requirements prescribed by ORS 238.465.

NOTE: Supplies missing definite article in (1).

SECTION 179. ORS 238.535 is amended to read:

238.535. (1) Prior to attaining 60 years of age, all judge members shall elect in writing to retire under either paragraph (a) or (b) of this subsection. The election shall be irrevocable after the judge member attains 60 years of age. Any judge member who fails to make the election provided for in this subsection prior to attaining 60 years of age shall be retired under the provisions of paragraph (a) of this subsection.

(a) Upon retiring from service as a judge at the age of 65 years or thereafter**,** a judge member who has made contributions to the Public Employees Retirement Fund during each of five calendar years shall receive as a service retirement allowance, payable monthly, a life pension (nonrefund) provided by the contributions of the judge member and the state in an annual amount equal to 2.8125 percent of final average annual salary multiplied by the number of years of service as a judge not exceeding 16 years of service as a judge and 1.67 percent of final average salary multiplied by the number of years of service as a judge exceeding 16 years of service as a judge, but the annual amount shall not exceed 65 percent of final average salary.

(b) Upon retiring from service as a judge at the age of 60 years or thereafter, a judge member who has made contributions to the Public Employees Retirement Fund during each of five calendar years shall receive as a service retirement allowance, payable monthly, a life pension (nonrefund) provided by the contributions of the judge member and the state in an annual amount equal to 3.75 percent of final average salary multiplied by the number of years of service as a judge not exceeding 16 years of service as a judge and two percent of final average salary multiplied by the number of years of service as a judge exceeding 16 years of service as a judge, but the annual amount shall not exceed 75 percent of final average salary.

(c) Any judge member electing to retire under paragraph (b) of this subsection shall serve as a pro tem judge, without compensation, for 35 days per year for a period of five years. A judge who serves more than 35 days per year may carry over the additional days to fulfill the pro tem service obligation in future years. The five-year period shall commence on the judge member's date of retirement or the date on which the judge member commences pro tem service under ORS 238.545 (4), whichever is earlier. Judge members may be reimbursed for expenses incurred in providing pro tem services under this paragraph. Upon certification from the Chief Justice that any judge member who retired under paragraph (b) of this subsection has failed to perform the pro tem services required under this paragraph, and has not been relieved of the obligations to perform those services in the manner provided by this paragraph, the Public Employees Retirement Board shall recalculate the service retirement allowance of the noncomplying judge member as though the judge member elected to retire under paragraph (a) of this subsection, and the noncomplying judge member shall receive only that recalculated amount thereafter. A judge may be relieved of the pro tem service obligation imposed by this paragraph if the judge fails for good cause to complete the obligation. A retired judge member who is relieved of the obligation to serve as a pro tem judge shall continue to receive the retirement allowance provided in paragraph (b) of this subsection.

(d) For the purpose of paragraph (c) of this subsection:

(A) "Good cause" includes, but is not limited to:

(i) Physical or mental incapacitation of a judge that prevents the judge from discharging the duties of judicial office;

(ii) Failure of the appointing authority to assign a judge to the requisite amount of pro tem service, whether because of insufficient need for pro tem judges, a determination by the appointing authority that the skills of a judge do not match the needs of the courts, clerical mistake, or otherwise; or

(iii) Death of a judge.

(B) "Good cause" does not include:

(i) A judge's refusal, without good cause, to accept pro tem assignments sufficient to meet the required amount; or

(ii) A judge's affirmative voluntary act that makes the judge unqualified to serve as a judge of this state including, but not limited to, failure to maintain active membership in the Oregon State

Bar, acceptance of a position in another branch of state government, or acceptance of a position in the Government of the United States or of another state or nation.

(e) The Chief Justice may make rules for the implementation of this subsection.

(2) As used in subsection (1) of this section, "final average salary" means whichever of the following is greater:

(a) The average salary per calendar year paid to a judge member in three of the calendar years of service as a judge before the judge member retires, in which three years the judge member was paid the highest salary.

(b) One-third of the total salary paid to a judge member in the last 36 calendar months of service as a judge before the judge member retires.

(3) As used in subsection (1) of this section, "number of years of service" means the number of full years plus any remaining fraction of a year. In determining a remaining fraction, a full month shall be considered as one-twelfth of a year and a major fraction of a month shall be considered as a full month.

(4) For a judge who elects to become a judge member as provided in ORS 237.215 (3) (1989 Edition), the service retirement allowance under subsection (1) of this section on retirement at the age of 70 years and either 12 years of service or two full six-year terms as a judge shall be at least the equivalent of the retirement pay the judge would have received had the judge retired under ORS 1.314 to 1.390 (1989 Edition).

(5) A judge member who has made contributions to the Public Employees Retirement Fund during each of five calendar years and who attains the age of 60 years shall be retired upon written application by the judge member to the board on a reduced service retirement allowance [*which*] **that** shall be the actuarial equivalent of the service retirement allowance provided for in subsection (1)(a) of this section.

(6) For the purposes of this section, a judge who elects to become a judge member as provided in ORS 237.215 (3) (1989 Edition) shall be considered to have made contributions to the Public Employees Retirement Fund during one calendar year for each calendar year during which the judge made contributions to the Judges' Retirement Fund.

(7)(a) Notwithstanding subsection (1)(a) of this section, the maximum percentage used in calculating the annual amount of the life pension (nonrefund) for a judge who is a judge member on September 27, 1987, or who elected to become a judge member in the manner provided by ORS 237.215 (3)(b) or (4)(b) (1989 Edition), shall be the percentage specified by paragraph (b) of this subsection if either:

(A) On September 27, 1987, the judge had more than 28 years of service that were creditable either under the system; or

(B) On September 27, 1987, the judge had more than 28 years of service that were creditable under the Judges' Retirement Fund established pursuant to ORS 1.314 to 1.390 (1989 Edition) and the judge became a member of the system under the provisions of ORS 237.215 (3)(b) (1989 Edition).

(b) The maximum percentage used in calculating the annual amount of the life pension (nonrefund) of a judge member who meets the requirements of paragraph (a) of this subsection shall not exceed 45 percent plus 1.67 percent multiplied by the number of years of service as a judge that exceed 16 years and that were served on or before September 27, 1987.

(c) In computing the annual amount of the life pension of a judge who meets the requirements of paragraph (a) of this subsection, the board shall use the percentage specified by paragraph (b) of this subsection and the final average salary of the judge computed on the date of retirement, not the final average salary of the judge computed as of September 27, 1987. In making the computation under this subsection, the board shall use the definition of "final average salary" provided by ORS 238.535 as amended by section 2, chapter 625, Oregon Laws 1987.

NOTE: Supplies missing punctuation in (1)(a) and corrects word choice in (5).

SECTION 180. ORS 238.657 is amended to read:

238.657. The Attorney General shall consult with the Governor on appointment of separate counsel pursuant to ORS 180.235 to represent the Public Employees Retirement Board in any matter

or in any class of matters in which the benefits payable under the Public Employees Retirement System are at issue, including but not limited to defending the provisions of chapter 67, Oregon Laws 2003[*, in any proceeding commenced under section 37, chapter 67, Oregon Laws 2003*].

NOTE: Deletes obsolete provision.

SECTION 181. ORS 238.710 is amended to read:

238.710. In addition to the remedies otherwise provided by ORS 238.705**,** the board may, by petition in usual form**,** apply to the circuit court for the county in which is located the public employer concerned, or the principal office or place of business of [*such*] **the** public employer, for, and if warranted, to have issued, writs of mandamus to compel [*such*] **the** public employer to supply to the board a true and complete list and employment records of [*such*] **the** employer's employees and all information concerning [*such*] **the** employees that reasonably may be required and sought by [*said*] **the** board in [*such*] **the** petition. [*Such*] **The** writs, among other things, shall direct the defendant [*therein*] to make [*such*] contributions to the retirement fund on account of [*such*] **the** defendant's employees as may appear, from records and information concerning [*such*] **the** defendant's employees, to be required by law. Either or both parties thereby aggrieved may appeal to the Court of Appeals from, or from any part of, the judgment of the circuit court [*given and made in such*] **in the** proceeding, as in ordinary mandamus proceedings.

NOTE: Corrects punctuation and disperses swarm of suches.

SECTION 182. ORS 240.015 is amended to read:

240.015. As used in this chapter, unless the context clearly requires otherwise:

(1) "Administrator" means the Administrator of the Personnel Division.

[*(1)*] **(2)** "Appointing authority" means an officer or agency having power to make appointments to positions in the state service.

(3) "Board" means the Employment Relations Board.

[*(2)*] **(4)** "Class" or "classification" means a group of positions in the state classified service sufficiently alike in duties, authority and responsibilities that the same qualifications may reasonably be required for, and the same schedule of pay can be equitably applied to, all positions in the group.

[*(3) "Board" means the Employment Relations Board.*]

[*(4)*] **(5)** "Division" means, except in the phrase "division of the service," the Personnel Division referred to in ORS 240.055.

[*(5) "Administrator" means the Administrator of the Personnel Division.*]

(6) "Division of the service" means a state department or any division or branch thereof, any agency of the state government, or any branch of the state service, all the positions in which are under the same appointing authority.

(7) "Job-sharing position" means a full-time position in the classified service that is classified as one that may be held by more than one individual on a shared time basis whereby the individuals holding the position work less than full-time.

(8) "Regular employee" means an employee who has been appointed to a position in the classified service in accordance with this chapter after completing the trial service period.

(9) "State service" means all offices and positions in the employ of the state other than those of commissioned, warrant and enlisted personnel in the military and naval services thereof. However, as provided in ORS 396.330, the term includes members of the Oregon National Guard or Oregon State Defense Force who are not serving pursuant to provisions of Title 10 or 32 of the United States Code and who are employed as state employees in the Oregon Military Department.

NOTE: Alphabetizes definitions.

SECTION 183. ORS 241.260 is amended to read:

241.260. Whenever there is a vacancy in any position in the classified civil service, the appointing power shall immediately notify the commission thereof. The commission shall thereupon certify to the appointing power the names and addresses of the three eligible candidates standing highest upon the register for the classification or grade to which such position belongs. If there are [*less*] **fewer** than three**,** the commission shall certify all candidates upon the register. When vacan-

cies exist in two or more positions of the same classification in the same department at the same time, the commission shall certify [*not less than*] **at least** two candidates for each position**,** but those certified must be the eligible candidates standing highest upon the register. The appointing power may require the candidates so certified to come before the appointing power**,** and the appointing power may inspect their examination papers. The regulations for certification of applicants for promotion shall, as near as may be, follow the regulations governing the certification of applicants for original appointment.

NOTE: Corrects word choice and punctuation.

SECTION 184. ORS 242.570 is amended to read:

242.570. (1) Whenever there is a vacancy in any position in the classified civil service, the school board, or its designated representative, immediately shall notify the civil service board thereof.

(2) The civil service board thereupon shall certify to the appointing authority the names and addresses of the three eligible candidates standing highest upon the register for the class or grade to which such position belongs. If there are [*less*] **fewer** than three, the board shall certify all remaining candidates upon the register. When vacancies exist in two or more positions of the same class in the same department at the same time, the board may certify a smaller number than three candidates for each position, but those certified must be eligible candidates standing highest upon the register.

(3) The board may, by rule, limit the number of times the same candidate is certified to the appointing authorities.

(4) The appointing authority may require the candidates certified to come before the appointing authority for interview. When the candidates are applicants for beginning employment**,** the appointing authority shall be entitled to inspect their examination papers.

NOTE: Improves word choice in (2); corrects punctuation in (4).

SECTION 185. ORS 244.010 is amended to read:

244.010. (1) The Legislative Assembly hereby declares that a public office is a public trust, and that as one safeguard for that trust, the people require all public officials to adhere to the code of ethics set forth in ORS 244.040.

(2) The Legislative Assembly recognizes that it is the policy of the state to have serving on many state and local boards and commissions state and local officials who may have potentially conflicting public responsibilities by virtue of their positions as public officials and also as members of the boards and commissions, and declares it to be the policy of the state that the holding of such offices does not constitute the holding of incompatible offices unless expressly stated in the enabling legislation.

[*(3) Nothing in this chapter is intended to affect:*]

[*(a) Any other statute requiring disclosure of economic interest by any public official or public employee.*]

[*(b) Any statute prohibiting or authorizing specific conduct on the part of any public official or public employee.*]

NOTE: Eliminates redundant provisions in (3); see 244.030.

SECTION 186. ORS 244.180 is amended to read:

244.180. (1) As used in this section, "public officials of a city" means**:**

(a) Each person holding an elective city office;

(b) Each member of a city planning, zoning or development commission; and

(c) The chief executive officer of the city who performs the duties of manager or a principal administrator of the city.

(2) Public officials of a city are required to file a statement of economic interest with the Oregon Government Standards and Practices Commission if a majority of the votes cast by the electors of the city voting at the election as provided for in ORS 244.201 is in favor thereof.

NOTE: Reformats (1) to conform to legislative style.

SECTION 187. ORS 244.190 is amended to read:

244.190. (1) As used in this section, "public officials of a county" means**:**

(a) Each person holding an elective county office;

(b) Each member of a county planning, zoning or development commission; and

(c) The chief executive officer of the county who performs the duties of a principal administrator of the county.

(2) Public officials of a county are required to file a statement of economic interest with the Oregon Government Standards and Practices Commission if a majority of the votes cast by the electors of the county voting at the election as provided for in ORS 244.201 is in favor thereof.

NOTE: Reformats (1) to conform to legislative style.

SECTION 188. ORS 250.015 is amended to read:

250.015. The Secretary of State by rule shall:

(1) Design the form of the prospective petition, and the initiative and the referendum petition, including the signature sheets, to be used in any initiative or referendum in this state.

(2) Designate the quality of paper to be used for signature sheets in order to [*assure*] **ensure** the legibility of the signatures.

(3) Prescribe [*by rule*] a system for numbering the signature sheets to be used in any initiative or referendum in this state.

NOTE: Corrects word choice in (2); expunges redundancy in (3).

SECTION 189. ORS 261.010 is amended to read:

261.010. As used in this chapter, unless otherwise required by the context:

[*(1) "People's utility district" or "district" means an incorporated people's utility district, created under the provisions of this chapter.*]

(1) "Affected territory" means that territory proposed to be formed into, annexed to or consolidated with a district.

(2) "Board of directors," "directors" or "board" means the governing body of a people's utility district, elected and functioning under the provisions of this chapter.

(3) "County governing body" means either the county court or board of county commissioners and, if the affected territory is composed of portions of two or more counties, the governing body of that county having the greatest portion of the assessed value of all taxable property within the affected territory, as shown by the most recent assessment roll of the counties.

(4) "Electors' petition" means a petition addressed to the county governing body and filed with the county clerk, containing the signatures of electors registered in the affected territory, equal to not less than three percent of the total number of votes cast for all candidates for Governor within the affected territory at the most recent election at which a candidate for Governor was elected to a full term, setting forth and particularly describing the boundaries of the parcel of territory, separate parcels of territory, city and district, or any of them, referred to therein, and requesting the county governing body to call an election to be held within the boundaries of the parcel of territory, separate parcels of territory, city and district, or any of them, for the formation of a district, the annexation of a parcel of territory or a city to a district, or the consolidation of two or more districts.

(5) "Electric cooperative" means a cooperative corporation owning and operating an electric distribution system.

(6) "Initial utility system" means a complete operating utility system, including energy efficiency measures and installations within the district or proposed district, capable of supplying the consumers required to be served by the district at the time of acquisition or construction with all of their existing water or electrical energy needs.

[*(3)*] **(7)** "Parcel of territory" means a portion of unincorporated territory, or an area in a city comprised of less than the entire city.

(8) "People's utility district" or "district" means an incorporated people's utility district, created under the provisions of this chapter.

(9) "Replacement value of unreimbursed investment" means original cost new less depreciation of capitalized energy efficiency measures and installations in the premises of customers of an investor owned utility.

[*(4)*] **(10)** "Separate parcel of territory" means unincorporated territory that is not contiguous to other territory that is a part of a district or that is described in a petition filed with the county clerk in pursuance of the provisions of this chapter, but when a proposed district includes territory in more than one county, the contiguous territory in each such county shall be considered as a separate parcel of territory. When a proposed district includes any area in a city comprised of less than the entire city, that area shall be considered as a separate parcel of territory.

[*(5)*] **(11)** "Utility" means a plant, works or other property used for development, generation, storage, distribution or transmission of electric energy produced from resources including, but not limited to, hydroelectric, pump storage, wave, tidal, wind, solid waste, wood, straw or other fiber, coal or other thermal generation, geothermal or solar resources, or development or transmission of water for domestic or municipal purposes, waterpower or electric energy, but transmission of water shall not include water for irrigation or reclamation purposes, except as secondary to and when used in conjunction with a hydroelectric plant.

[*(6) "Initial utility system" means a complete operating utility system, including energy efficiency measures and installations within the district or proposed district, capable of supplying the consumers required to be served by the district at the time of acquisition or construction with all of their existing water or electrical energy needs.*]

[*(7) "Electric cooperative" means a cooperative corporation owning and operating an electric distribution system.*]

[*(8) "Affected territory" means that territory proposed to be formed into, annexed to or consolidated with a district.*]

[*(9) "Electors' petition" means a petition addressed to the county governing body and filed with the county clerk, containing the signatures of electors registered in the affected territory, equal to not less than three percent of the total number of votes cast for all candidates for Governor within the affected territory at the most recent election at which a candidate for Governor was elected to a full term, setting forth and particularly describing the boundaries of the parcel of territory, separate parcels of territory, city and district, or any of them, referred to therein, and requesting the county governing body to call an election to be held within the boundaries of the parcel of territory, separate parcels of territory, city and district, or any of them, for the formation of a district, the annexation of a parcel of territory or a city to a district, or the consolidation of two or more districts.*]

[*(10) "County governing body" means either the county court or board of county commissioners and, if the affected territory is composed of portions of two or more counties, the governing body of that county having the greatest portion of the assessed value of all taxable property within the affected territory, as shown by the most recent assessment roll of the counties.*]

[*(11) "Replacement value of unreimbursed investment" means original cost new less depreciation of capitalized energy efficiency measures and installations in the premises of customers of an investor owned utility.*]

NOTE: Alphabetizes definitions.

SECTION 190. ORS 262.005 is amended to read:

262.005. As used in ORS 262.015 to 262.105, unless the context requires otherwise:

(1) "Electric cooperative" means a cooperative corporation owning and operating an electric distribution system.

[*(1)*] **(2)** "Joint operating agency" means an agency organized by three or more cities or people's utility districts under the laws of this state for the purposes and according to ORS 262.005 to 262.105.

[*(2)*] **(3)** "Privately owned electric utility company" means an electric utility operated for profit and subject to regulation by the Public Utility Commission of Oregon or the equivalent officer or commission of any other state.

[*(3) "Electric cooperative" means a cooperative corporation owning and operating an electric distribution system.*]

(4) "Utility properties" means plants, systems and facilities, and any enlargement or extension thereof, used for or incidental to the generation and transmission of electric power and energy[*;*]**,** provided, however, that it shall not mean facilities for uranium refining, processing or reprocessing.

NOTE: Alphabetizes definitions; corrects punctuation in (4).

SECTION 191. ORS 264.335 is amended to read:

264.335. In addition to the other powers granted to districts under this chapter, a district may exercise the powers granted to sanitary districts under ORS 450.005 to 450.245 when:

(1) The district obtains all or part of its supply of water from a watershed;

(2) The watershed is located in a sole-source aquifer designated prior to September 29, 1991, by the United States Environmental Protection Agency under the Safe Drinking Water Act (42 U.S.C. [*300j*] **300h** et seq.);

(3) The watershed is recognized under rules of the Environmental Quality Commission as a watershed requiring protection from contamination in order to maintain high water quality; and

(4) The district adopts a resolution declaring that the health of the residents of the district and the general public interest requires the district to protect the water quality of the watershed.

NOTE: Corrects federal citation in (2).

SECTION 192. ORS 268.320 is amended to read:

268.320. (1) Subject to the provisions of a district charter, the electors of a district may, from time to time, and in exercise of their power of the initiative, or by approving a proposition referred to them by the governing body of the district, authorize the district to assume additional functions.

(2) When authorized to implement the results of a study of a boundary commission formed within the metropolitan area under ORS 199.410 to 199.519, a district may, subject to the provisions of ORS 268.351 and 268.354 [*and section 11, chapter 516, Oregon Laws 1997*], adopt an ordinance exercising jurisdiction over a boundary change, as defined in ORS 268.351, otherwise authorized under ORS chapters 198, 221 and 222.

NOTE: Deletes reference to obsolete provision in (2).

SECTION 193. ORS 268.347 is amended to read:

268.347. (1) Notwithstanding ORS chapters 198, 221 and 222, a metropolitan service district may exercise jurisdiction over boundary changes under ORS 268.351 and 268.354 [*and section 11, chapter 516, Oregon Laws 1997,*] within the boundaries of the district and within all territory designated as urban reserves by the district in an ordinance adopted by the district council prior to June 30, 1997.

(2) For purposes of ad valorem taxation, a boundary change must be filed in final approved form with the county assessor and the Department of Revenue as provided in ORS 308.225.

NOTE: Deletes reference to obsolete provision in (1).

SECTION 194. ORS 268.351 is amended to read:

268.351. As used in ORS 268.354 [*and section 11, chapter 516, Oregon Laws 1997*], unless the context requires otherwise:

(1) "Boundary change" means a major boundary change or a minor boundary change, as those terms are defined in ORS 199.415.

(2) "Contested case" means a boundary change decision that is contested or otherwise challenged by a city, county or special district.

NOTE: Deletes reference to obsolete provision in lead-in.

SECTION 195. ORS 268.354 is amended to read:

268.354. (1) In addition to the requirements established by ORS chapters 198, 221 and 222 for boundary changes, boundary changes within a metropolitan service district are subject to the requirements established by the district. The requirements established by a metropolitan service district shall be developed in consultation with the Metro Policy Advisory Committee and the district council. The requirements established by a district shall include the following:

(a) Boundary changes shall be subject to a uniform hearing and notification process adopted by the district.

(b) The district shall establish an expedited process for uncontested boundary changes.

(c) Contested cases shall be subject to appeal to a three-person commission established by the district with further appeals as provided by law. The district council shall appoint the members of the commission from a list of nominees provided by Clackamas, Multnomah and Washington Counties, with one member appointed from the nominees provided by each county.

(d) All boundary change decisions shall be subject to clear and objective criteria established by the district including, but not limited to, compliance with the adopted regional urban growth goals and objectives, functional plans, cooperative and urban service agreements adopted pursuant to ORS chapter 195 and the regional framework plan of the district.

(2) Except for contested cases, the role of a metropolitan service district in the boundary determination process shall be ministerial only.

(3) Except as provided in this section[,] **and** ORS 268.351 [*and section 11, chapter 516, Oregon Laws 1997*], within the area in which the metropolitan service district may exercise jurisdiction over boundary changes:

(a) Proceedings for annexation of territory to a city and for all other changes in city boundaries shall be conducted as provided in ORS chapter 222;

(b) Proceedings for annexation of territory to a district, including the metropolitan service district, and for all other changes in district boundaries, including the boundaries of a metropolitan service district, shall be conducted as provided in ORS chapter 198; and

(c) Notwithstanding any provision of ORS chapter 198, the metropolitan service district shall be the governing body responsible for conducting proceedings for minor boundary changes to the metropolitan service district. Proceedings for minor changes to the boundaries of a metropolitan service district shall be conducted as provided in ORS chapter 198.

NOTE: Deletes reference to obsolete provision in (3).

SECTION 196. ORS 271.110 is amended to read:

271.110. (1) The city recorder or other recording officer of the city shall give notice of the petition and hearing by publishing a notice in the city official newspaper once each week for two consecutive weeks prior to the hearing. If no newspaper is published in such city, written notice of the petition and hearing shall be posted in three of the most public places in the city. The notices shall describe the ground covered by the petition, give the date it was filed, the name of at least one of the petitioners and the date when the petition, and any objection or remonstrance, which may be made in writing and filed with the recording officer of the city prior to the time of hearing, will be heard and considered.

(2) Within five days after the first day of publication of the notice**,** the city recording officer shall cause to be posted at or near each end of the proposed vacation a copy of the notice**,** which shall be headed, "Notice of Street Vacation," "Notice of Plat Vacation" or "Notice of Plat and Street Vacation," as the case may be[*;*]**.** The notice shall be posted in at least two conspicuous places in the proposed vacation area. The posting and first day of publication of such notice shall be [*not less than*] **at least** 14 days before the hearing.

(3) The city recording officer shall, before publishing such notice, obtain from the petitioners a sum sufficient to cover the cost of publication, posting and other anticipated expenses. The city recording officer shall hold the sum so obtained until the actual cost has been ascertained, when the amount of the cost shall be paid into the city treasury and any surplus refunded to the depositor.

NOTE: Conforms punctuation to legislative style and improves word choice in (2).

SECTION 197. ORS 274.710 is amended to read:

274.710. (1) The Department of State Lands has exclusive jurisdiction over all ungranted tidal submerged lands owned by this state, whether within or beyond the boundaries of this state, heretofore or hereafter acquired by this state**:**

(a) By quitclaim, cession, grant, contract or otherwise from the United States or any agent thereof[,]**;** or

(b) By any other means.

(2) All jurisdiction and authority remaining in the state over tidal submerged lands as to which grants have been or may be made is vested in the department.

[*(2)*] **(3)** Notwithstanding ORS 273.551, the department shall administer and control all tidal submerged lands described in [*subsection (1)*] **subsections (1) and (2)** of this section under its jurisdiction, and may lease such lands and submersible lands and dispose of oil, gas and sulphur under such lands and submersible lands in the manner prescribed by ORS 274.705 to 274.860. However, submerged and submersible lands lying more than 10 miles easterly of the 124th West Meridian shall be subject to leasing for oil, gas and sulphur under ORS 273.551, rather than under ORS 274.705 to 274.860.

[*(3)*] **(4)** Notwithstanding any other provision of ORS 274.705 to 274.860, the department may not permit any interference other than temporary interference with the surface of the ocean shore, as defined in ORS 390.615. The department may, however:

(a) Grant easements underlying that part of the surface of the ocean shore owned by the state at such times and at such places as the department finds necessary to permit the extraction and transportation of oil, gas or sulphur from state, federal or private lands; and

(b) Issue oil and gas leases underlying the ocean shore under the same terms and conditions as provided in ORS 274.705 to 274.860.

NOTE: Reformats section to conform to legislative style; adjusts internal reference in (3).

SECTION 198. ORS 276.232 is repealed.

NOTE: Repeals unnecessary definition section.

SECTION 199. ORS 279A.010 is amended to read:

279A.010. (1) As used in the Public Contracting Code, unless the context or a specifically applicable definition requires otherwise:

(a) "Bidder" means a person that submits a bid in response to an invitation to bid.

(b) "Contracting agency" means a public body authorized by law to conduct a procurement. "Contracting agency" includes, but is not limited to, the Director of the Oregon Department of Administrative Services and any person authorized by a contracting agency to conduct a procurement on the contracting agency's behalf. "Contracting agency" does not include the judicial department or the legislative department.

(c) "Days" means calendar days.

(d) "Department" means the Oregon Department of Administrative Services.

(e) "Director" means the Director of the Oregon Department of Administrative Services or a person designated by the director to carry out the authority of the director under the Public Contracting Code.

(f) "Emergency" means circumstances that:

(A) Could not have been reasonably foreseen;

(B) Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and

(C) Require prompt execution of a contract to remedy the condition.

(g) "Energy savings performance contract" means a public contract between a contracting agency and a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures, including a design-build contract, that guarantee energy savings or performance.

(h) "Executive department" has the meaning given that term in ORS 174.112.

(i)(A) "Grant" means:

(i) An agreement under which a contracting agency receives moneys, property or other assistance, including but not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the contracting agency and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions; or

(ii) An agreement under which a contracting agency provides moneys, property or other assistance, including but not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the contracting agency is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions.

(B) "Grant" does not include a public contract for a public improvement, for public works, as defined in ORS 279C.800, or for emergency work, minor alterations or ordinary repair or maintenance necessary to preserve a public improvement, when under the public contract a contracting agency pays, in consideration for contract performance intended to realize or to support the realization of the purposes for which grant funds were provided to the contracting agency, moneys that the contracting agency has received under a grant.

(j) "Industrial oil" means any compressor, turbine or bearing oil, hydraulic oil, metal-working oil or refrigeration oil.

(k) "Judicial department" has the meaning given that term in ORS 174.113.

(L) "Legislative department" has the meaning given that term in ORS 174.114.

(m) "Local contract review board" means a local contract review board described in ORS 279A.060.

(n) "Local contracting agency" means a local government or special government body authorized by law to conduct a procurement. "Local contracting agency" includes any person authorized by a local contracting agency to conduct a procurement on behalf of the local contracting agency.

(o) "Local government" has the meaning given that term in ORS 174.116.

(p) "Lowest responsible bidder" means the lowest bidder who:

(A) Has substantially complied with all prescribed public contracting procedures and requirements;

(B) Has met the standards of responsibility set forth in ORS 279B.110 or 279C.375;

(C) Has not been debarred or disqualified by the contracting agency under ORS 279B.130 or 279C.440; and

(D) If the advertised contract is a public improvement contract, is not on the list created by the Construction Contractors Board under ORS 701.227.

(q) "Lubricating oil" means any oil intended for use in an internal combustion crankcase, transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equipment or machinery powered by an internal combustion engine.

(r) "Person" means a natural person capable of being legally bound, a sole proprietorship, a corporation, a partnership, a limited liability company or partnership, a limited partnership, a for-profit or nonprofit unincorporated association, a business trust, two or more persons having a joint or common economic interest, any other person with legal capacity to contract or a public body.

(s) "Post-consumer waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item. "Post-consumer waste" does not include manufacturing waste.

(t) "Price agreement" means a public contract for the procurement of goods or services at a set price with:

(A) No guarantee of a minimum or maximum purchase; or

(B) An initial order or minimum purchase combined with a continuing contractor obligation to provide goods or services in which the contracting agency does not guarantee a minimum or maximum additional purchase.

(u) "Procurement" means the act of purchasing, leasing, renting or otherwise acquiring goods or services. "Procurement" includes each function and procedure undertaken or required to be undertaken by a contracting agency to enter into a public contract, administer a public contract and obtain the performance of a public contract under the Public Contracting Code.

(v) "Proposer" means a person that submits a proposal in response to a request for proposals.

(w) "Public body" has the meaning given that term in ORS 174.109.

(x) "Public contract" means a sale or other disposal, or a purchase, lease, rental or other acquisition, by a contracting agency of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. "Public contract" does not include grants.

(y) "Public contracting" means procurement activities described in the Public Contracting Code relating to obtaining, modifying or administering public contracts or price agreements.

(z) "Public Contracting Code" or "code" means ORS chapters 279A, 279B and 279C.

(aa) "Public improvement" means a project for construction, reconstruction or major renovation on real property by or for a contracting agency. "Public improvement" does not include:

(A) Projects for which no funds of a contracting agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or

(B) Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.

(bb) "Public improvement contract" means a public contract for a public improvement. "Public improvement contract" does not include a public contract for emergency work, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement.

(cc) "Recycled material" means any material that would otherwise be a useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.

(dd) "Recycled oil" means used oil that has been prepared for reuse as a petroleum product by refining, rerefining, reclaiming, reprocessing or other means, provided that the preparation or use is operationally safe, environmentally sound and complies with all laws and regulations.

(ee) "Recycled paper" means a paper product with not less than:

(A) Fifty percent of its fiber weight consisting of secondary waste materials; or

(B) Twenty-five percent of its fiber weight consisting of post-consumer waste.

(ff) "Recycled PETE" means post-consumer polyethylene terephthalate material.

(gg) "Recycled product" means all materials, goods and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste with not less than 10 percent of its total weight consisting of post-consumer waste. "Recycled product" includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.

(hh) "Secondary waste materials" means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value. "Secondary waste materials" includes post-consumer waste. "Secondary waste materials" does not include excess virgin resources of the manufacturing process. For paper, "secondary waste materials" does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.

(ii) "Special government body" has the meaning given that term in ORS 174.117.

(jj) "State agency" means the executive department, except the Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices.

(kk) "State contracting agency" means an executive department entity authorized by law to conduct a procurement.

(LL) "State government" has the meaning given that term in ORS 174.111.

(mm) "Used oil" has the meaning given that term in ORS 459A.555.

(nn) "Virgin oil" means oil that has been refined from crude oil and that has not been used or contaminated with impurities.

(2) Other definitions appearing in the Public Contracting Code and the sections in which they appear are:

(a) "Adequate".....ORS 279C.305

(b) "Administering contracting agency" .....ORS 279A.200
(c) "Affirmative action" .....ORS 279A.100
(d) "Architect" .....ORS 279C.100
(e) "Architectural, engineering and land surveying services" .....ORS 279C.100
(f) "Bid documents" .....ORS 279C.400
(g) "Bidder" .....ORS 279B.415
(h) "Bids" .....ORS 279C.400
(i) "Brand name" .....ORS 279B.405
(j) "Brand name or equal specification" .....ORS 279B.200
(k) "Brand name specification" .....ORS 279B.200
(L) "Class special procurement" .....ORS 279B.085
(m) "Consultant" .....ORS 279C.115
(n) "Contract-specific special procurement" .....ORS 279B.085
(o) "Cooperative procurement" .....ORS 279A.200
(p) "Cooperative procurement group" .....ORS 279A.200
(q) "Donee" .....ORS 279A.250
(r) "Engineer" .....ORS 279C.100
(s) "Established catalog price" .....ORS 279B.005
(t) "Findings" .....ORS 279C.330
(u) "Fire protection equipment" .....ORS 279A.190
(v) "Flagger" .....ORS 279C.810
(w) "Fringe benefits" .....ORS 279C.800
(x) "Funds of a public agency" .....ORS 279C.810
(y) "Good cause" .....ORS 279C.585
(z) "Good faith dispute" .....ORS 279C.580
(aa) "Goods" .....ORS 279B.115
(bb) "Goods and services" or "goods or services" .....ORS 279B.005
(cc) "Interstate cooperative procurement" .....ORS 279A.200
(dd) "Invitation to bid" .....ORS 279B.005 .....and 279C.400
(ee) "Joint cooperative procurement" .....ORS 279A.200
(ff) "Labor dispute" .....ORS 279C.650
(gg) "Land surveyor" .....ORS 279C.100
(hh) "Legally flawed" .....ORS 279B.405
(ii) "Locality" .....ORS 279C.800
(jj) "Nonprofit organization" .....ORS 279C.810

(kk) "Nonresident bidder".....ORS 279A.120
(LL) "Not-for-profit organization".....ORS 279A.250
(mm) "Original contract".....ORS 279A.200
(nn) "Permissive cooperative procurement".....ORS 279A.200
(oo) "Person".....ORS 279C.500 .....and 279C.815
(pp) "Personal services".....ORS 279C.100
(qq) "Prevailing rate of wage".....ORS 279C.800
(rr) "Procurement description".....ORS 279B.005
(ss) "Property".....ORS 279A.250
(tt) "Public agency".....ORS 279C.800
(uu) "Public contract".....ORS 279A.190
(vv) "Public contract for goods or services".....ORS 279B.005
(ww) "Public works".....ORS 279C.800
(xx) "Purchasing contracting agency".....ORS 279A.200
(yy) "Regularly organized fire department".....ORS 279A.190
(zz) "Related services".....ORS 279C.100
(aaa) "Request for proposals" ORS 279B.005
(bbb) "Resident bidder".....ORS 279A.120
(ccc) "Responsible bidder".....ORS 279A.105 .....and 279B.005
(ddd) "Responsible proposer" .ORS 279B.005
(eee) "Responsive bid".....ORS 279B.005
(fff) "Responsive proposal"...ORS 279B.005
(ggg) "Retainage".....ORS 279C.550
(hhh) "Special procurement"...ORS 279B.085
(iii) "Specification".....ORS 279B.200
(jjj) "State agency".....ORS 279A.250
(kkk) "Substantial completion".....ORS 279C.465
(LLL) "Surplus property".....ORS 279A.250
(mmm) "Unnecessarily restrictive".....ORS 279B.405

NOTE: Reformats (2) to comply with legislative style.

SECTION 200. ORS 279A.025 is amended to read:

279A.025. (1) Except as provided in subsections (2) to (4) of this section, the Public Contracting Code applies to all public contracting.

(2) The Public Contracting Code does not apply to:

(a) Contracts between contracting agencies or between contracting agencies and the federal government;

(b) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145 for purposes of source selection;

(c) Grants;

(d) Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which a public body is or may become interested;

(e) Acquisitions or disposals of real property or interest in real property;

(f) Sole-source expenditures when rates are set by law or ordinance for purposes of source selection;

(g) Contracts for the procurement or distribution of textbooks;

(h) Procurements by a contracting agency from an Oregon Corrections Enterprises program;

(i) The procurement, transportation or distribution of distilled liquor, as defined in ORS 471.001, or the appointment of agents under ORS 471.750 by the Oregon Liquor Control Commission;

(j) Contracts entered into under ORS chapter 180 between the Attorney General and private counsel or special legal assistants;

(k) Contracts for the sale of forest products, as defined in ORS 321.005, from lands owned or managed by the State Board of Forestry and the State Forestry Department;

(L) Contracts for forest protection or forest related activities, as described in ORS 477.406, by the State Forester or the State Board of Forestry;

(m) Sponsorship agreements entered into by the Director of the Oregon State Fair and Exposition Center in accordance with ORS 565.080 (4);

(n) Contracts entered into by the Housing and Community Services Department in exercising the department's duties prescribed in ORS chapters 456 and 458, except that the department's public contracting for goods and services, as defined in ORS 279B.005, is subject to ORS chapter 279B;

(o) Contracts entered into by the State Treasurer in exercising the powers of that office prescribed in ORS chapters 178, 286, 287, 288, 289, 293, 294 and 295, including but not limited to investment contracts and agreements, banking services, clearing house services and collateralization agreements, bond documents, certificates of participation and other debt repayment agreements, and any associated contracts, agreements and documents, regardless of whether the obligations that the contracts, agreements or documents establish are general, special or limited, except that the State Treasurer's public contracting for goods and services, as defined in ORS 279B.005, is subject to ORS chapter 279B;

(p) Energy savings performance contracts;

(q) Contracts, agreements or other documents entered into, issued or established in connection with:

(A) The incurring of debt by a public body, including but not limited to the issuance of bonds, certificates of participation and other debt repayment obligations, and any associated contracts, agreements or other documents, regardless of whether the obligations that the contracts, agreements or other documents establish are general, special or limited;

(B) The making of program loans and similar extensions or advances of funds, aid or assistance by a public body to a public or private body for the purpose of carrying out, promoting or sustaining activities or programs authorized by law; or

(C) The investment of funds by a public body as authorized by law, and other financial transactions of a public body that by their character cannot practically be established under the competitive contractor selection procedures of ORS 279B.050 to 279B.085;

(r) Contracts for employee benefit plans as provided in ORS 243.105 (1), 243.125 (4), 243.221, 243.275, 243.291, 243.303 and 243.565; or

(s) Any other public contracting of a public body specifically exempted from the code by another provision of law.

(3) The Public Contracting Code does not apply to the public contracting activities of:

(a) The Oregon State Lottery Commission;

(b) The Oregon University System and member institutions, except as provided in ORS 351.086;

(c) The legislative department;

(d) The judicial department;

(e) Semi-independent state agencies listed in ORS 182.451[*, 182.452*] and 182.454, except as provided in ORS 279.835 to 279.855 and 279A.250 to 279A.290;

(f) Oregon Corrections Enterprises;

(g) The Oregon Film and Video Office, except as provided in ORS 279A.100 and 279A.250 to 279A.290;

(h) The Travel Information Council, except as provided in ORS 279A.250 to 279A.290;

(i) The Appraiser Certification and Licensure Board, except as provided in ORS 279.835 to 279.855 and 279A.250 to 279A.290; or

(j) Any other public body specifically exempted from the code by another provision of law.

(4) ORS 279A.200 to 279A.225 and 279B.050 to 279B.085 do not apply to contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals under ORS 279.835 to 279.855.

NOTE: Deletes reference to repealed section in (3)(e).

SECTION 201. ORS 283.327 is amended to read:

283.327. (1) To the maximum extent economically possible, state-owned motor vehicles shall use alternative fuel for operation.

(2) [*After July 1, 1994,*] State agencies shall acquire only motor vehicles capable of using alternative fuel, except that acquired vehicles assigned to areas unable economically to dispense alternative fuel need not be so configured.

(3) Each agency owning motor vehicles shall comply with all safety standards established by the United States Department of Transportation in the conversion, operation and maintenance of vehicles using alternative fuel.

NOTE: Deletes obsolete provision in (2).

SECTION 202. ORS 283.419 is amended to read:

283.419. The Oregon Department of Administrative Services shall develop and administer standards, plans and procedures for the abatement of asbestos by all agencies in all state-owned, leased or operated facilities. Standards, plans and procedures include development of:

(1) A survey of all state-owned, leased or operated facilities to identify **the** presence, nature and condition **of** or **the** absence of asbestos-containing materials in each one.

(2) An establishment of priorities of facilities for abatement in order of the nature or extent of asbestos exposure they present.

(3) Specifications and standards for acceptable asbestos abatement practices, projects and materials management.

(4) A checklist to guide and advise agency investigation, planning and implementation of asbestos abatement.

(5) Standard bid specifications, criteria for awarding bids and contract language for asbestos related contracts.

(6) A state government emergency response plan to deal with any facilities presenting extreme and immediate risk.

(7) Employee awareness, training and worker protection plans.

(8) Such other standards, plans and procedures as the department may require for the safe and economical abatement of asbestos by agencies.

NOTE: Improves awkward construction in (1).

SECTION 203. ORS 285A.312 is amended to read:

285A.312. All federal overlay statutes associated with moneys received from the federal Housing and Urban Development Community Development Block Grant Program for Small Cities shall continue to apply to the use of those moneys in the Title I Bank Fund received from sources described in ORS 285A.306 [*(3)(c) and (d)*] **(3)(b)**.

NOTE: Updates ORS reference.

SECTION 204. ORS 287.032 is amended to read:

287.032. (1) The **Oregon Municipal Debt** Advisory Commission shall meet**:**

(a) [*on*] **At** the call of the chairperson[*,*]**;** or

(b) At the request of**:**

(A) A majority of the members[*, or at the request of*]**;**

(B) The State Treasurer[*,*]**;** or

(C) [*at the request of*] The Governor.

(2) A majority of all members of the advisory commission constitutes a quorum for the transaction of business.

(3) All administrative and clerical assistance required by the advisory commission shall be furnished by the office of the State Treasurer.

NOTE: Sets out full title of commission in (1); reformats (1) to conform to legislative style; tweaks syntax in (1)(a).

SECTION 205. ORS 287.034 is amended to read:

287.034. The **Oregon Municipal Debt** Advisory Commission may:

(1) Provide assistance and consultation, upon request of the state or of local government units, to assist them in the planning, preparation, marketing and sale of new bond issues to reduce the cost of the issuance to the issuer and to assist in protecting the issuer's credit.

(2) Collect, maintain and provide financial, economic and social data on local government units pertinent to their ability to assume and service bonded obligations.

(3) Collect, maintain and provide information on bonds sold and outstanding and serve as a clearinghouse for all local bond issues.

(4) Maintain contact with municipal bond underwriters, credit rating agencies, investors and others to improve the market for local government bond issues.

(5) Prepare, advertise and distribute, upon request of issuers, preliminary official statements required by ORS 287.018 and notices of bond sales required by ORS 287.022.

(6) Undertake or commission studies on methods to reduce the costs of state and local issues.

(7) Recommend changes in state law and local practices to improve the sale and servicing of local bonds.

(8) Perform any other function required or authorized by law.

(9) Pursuant to ORS chapter 183 adopt rules necessary to carry out its duties.

NOTE: Sets out full title of commission in lead-in.

SECTION 206. ORS 287.036 is amended to read:

287.036. In providing services to local government units under ORS 287.034 (5), the **Oregon Municipal Debt** Advisory Commission may charge fees commensurate with its direct expenses incurred in providing the service. Amounts received under this section shall be deposited in the General Fund for the State Treasurer, and such moneys are continuously appropriated for payment of expenses incurred by the office of the State Treasurer in providing such services.

NOTE: Sets out full title of commission.

SECTION 207. ORS 287.038 is amended to read:

287.038. The **Oregon Municipal Debt** Advisory Commission shall publish:

(1) A regular newsletter describing proposed new bond issues, new bond sales, refundings, credit rating changes and other pertinent information to issuers, underwriters, investors and the public as such information relates to municipal bonds.

(2) An annual report describing and evaluating the operations of the advisory commission during the preceding year.

NOTE: Sets out full title of commission in lead-in.

SECTION 208. ORS 287.045 is amended to read:

287.045. In preparing a preliminary official statement under ORS 287.018, the **Oregon Municipal Debt Advisory** Commission shall use the most recent and accurate information [*which*] **that** has been compiled and is available to it. In no event shall a preliminary official statement prepared by the commission be construed as a contract or agreement between this state and the purchasers or holders of the bonds issued with it. Neither this state[*,*] **nor** the commission or its staff may be held liable, in the absence of actual fraud, for damages in any civil action or suit concerning the preparation and release of a preliminary official statement under ORS 287.018 and this section.

NOTE: Sets out full title of commission; corrects grammar.

SECTION 209. ORS 287.204 is amended to read:

287.204. The court or board in any county may issue and sell or exchange county refunding bonds for the purpose of paying, redeeming or retiring any or all outstanding lawfully issued bonds of such county when:

(1) The bonds have matured but have not been paid and canceled; [*or*]

(2) The bonds are about to mature and become payable; [*or*]

(3) The bonds are redeemable at the option of the county; or

(4) The holders of all or any part of any issue of the bonds of the county are willing to surrender such bonds in exchange for refunding bonds, whether or not the bonds to be surrendered have matured or are about to mature or become payable.

NOTE: Deletes superfluous conjunctions in (1) and (2).

SECTION 210. ORS 288.430 is amended to read:

288.430. (1) If an instrument has not yet matured, the governing body of the issuer shall direct the appropriate officer to execute and deliver a duplicate to the asserted owner of such instrument when, except as provided in subsection (2) of this section, such asserted owner:

(a) Submits a satisfactory affidavit describing the instrument and the circumstances surrounding acquisition of such instrument and giving a detailed statement of the circumstances surrounding its loss, mutilation or destruction; [*and*]

(b) Surrenders the instrument, if mutilated and in the possession of the asserted owner; [*and*]

(c) Furnishes an indemnity bond executed by a surety company licensed to do business in the state for the face amount of the instrument plus interest due and to become due thereon; and

(d) Deposits a sum sufficient to pay the expenses of issuing a duplicate with an appropriate officer of the issuer.

(2) If the asserted owner does not have personal knowledge of the information [*which*] **that** must be contained in the affidavit required under subsection (1)(a) of this section, the person having such personal knowledge may make the affidavit.

NOTE: Deletes superfluous conjunctions in (1)(a) and (b); corrects grammar in (2).

SECTION 211. ORS 288.450 is amended to read:

288.450. The paying officer may waive the requirement of an indemnity bond as imposed by ORS 288.420 and the governing body may waive such requirement as imposed by ORS 288.430 when[*:*]

[*(1)*] the asserted owner of the instrument furnishes an undertaking for the face amount of such instrument plus all interest due and to become due thereon to protect the issuer and the paying officer from loss or liability resulting from any demand or payment of the principal of or interest on such instrument[*;*] and**:** [*either*]

[*(2)*] **(1)** The asserted owner surrenders a mutilated instrument that is so complete that any missing portion thereof could not form the basis of a valid claim against the issuer; or

[*(3)*] **(2)** The asserted owner of the instrument is the state in its individual or fiduciary capacity or any county, municipality, district or civil subdivision [*which*] **that** is not in default on the payment of any of its outstanding obligations.

NOTE: Restructures section to conform to legislative style; corrects grammar in (2).

SECTION 212. ORS 289.110 is amended to read:

289.110. In addition to any other powers granted by law, in relation to an eligible project, the state, acting through the State Treasurer or a designee thereof, may:

(1) Enter into agreements to finance the costs of an eligible project by lending the proceeds of bonds authorized by this chapter to any participating institution under such terms and with such security as the state may approve[*;*]**.**

(2) Lease and sublease eligible projects to any participating institution in such manner that rents to be charged for the use of such projects shall be established, and revised from time to time as necessary, so as to produce income and revenue sufficient to provide for the prompt payment of principal of and interest on all bonds issued under this section when due, and the lease shall also provide that the lessee shall be required to pay all expenses of the operation and maintenance of

the project including, but without limitation, adequate insurance thereon and insurance against all liability for injury to persons or property arising from the operation thereof, and all taxes and special assessments levied upon or with respect to the leased premises and payable during the term of the lease, during which term ad valorem taxes in the same amount and to the same extent as though the lessee were the owner of all real and personal property comprising the project[*;*]**.**

(3) Pledge and assign to the holders of such bonds or a trustee therefor all or any part of the revenues of one or more eligible projects owned or to be acquired by the state, and define and segregate such revenues or provide for the payment thereof to a trustee[*;*]**.**

(4) Mortgage or otherwise encumber eligible projects in favor of the holders of such bonds or a trustee therefor. However, in creating any such mortgages or encumbrances, the state cannot obligate itself except with respect to the project[*;*]**.**

(5) Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers granted by this section, or in the performance of its covenants or duties, or in order to secure the payment of its bonds, including a contract entered into prior to the construction, acquisition and installation of the eligible project authorizing the lessee, subject to such terms and conditions as the state shall find necessary or desirable and proper, to provide for the construction, acquisition and installation of the buildings, improvements and equipment to be included in the project by any means available to the lessee and in the manner determined by the lessee[*;*]**.**

(6) Enter into and perform such contracts and agreements with participating institutions as the respective boards of directors may consider proper and feasible for or concerning the planning, construction, installation, lease, or other acquisition, and the financing of such facilities, which contracts and agreements may establish a body as may be considered proper for the supervision and general management of the facilities of the eligible project[*; and*]**.**

(7) Accept from any authorized agency of the federal government loans or grants for the planning, construction, acquisition, leasing, or other provision of any eligible project, and enter into agreements with such agency respecting such loans or grants.

NOTE: Corrects punctuation.

SECTION 213. ORS 291.276 is amended to read:

291.276. (1) With respect to each biennium beginning on July 1 of an odd-numbered year, [*commencing July 1, 1971,*] the Oregon Department of Administrative Services shall allocate among all state agencies the governmental service expenses, as determined by the department in accordance with ORS 291.272, for the biennium ending two years prior to the beginning of the biennium for which the allocation is made.

(2) The department, in accordance with the procedures and methods prescribed under subsection (3) of this section, shall determine and may at any time redetermine the reasonable share of governmental service expenses to be assessed against any fund or appropriation. Such expenses shall be a charge against any fund so designated and be considered an administrative expense of the agency administering the fund or appropriation.

(3) The department, with the approval of the Governor, shall prepare and prescribe the procedures and methods used in determining and redetermining the reasonable share of governmental service expenses assessed against any fund or appropriation.

(4) The department, with the approval of the Governor, may make rules necessary or proper to carry out the duties imposed upon it by ORS 291.272 to 291.280.

(5) The computation required by subsection (1) of this section shall be made by the department in advance of the biennium with respect to which the allocation is to be made.

NOTE: Expunges obsolete provision in (1).

SECTION 214. ORS 291.445 is amended to read:

291.445. (1) Before July 1 of each fiscal year, the Oregon Department of Administrative Services shall request from the appropriate state agency a certificate as prescribed in this section. The request shall be made by letter to the agency.

(2) Each state agency authorized to issue general obligation bonds that are ordinarily to be repaid from other than General Fund appropriations shall, on or before August 15 of each fiscal year:

(a) Certify to the Director of the Oregon Department of Administrative Services that the amounts available or that will become available during the current year to the bond program debt service fund to pay bond principal and interest that has accrued or will accrue during the current year are sufficient and will be sufficient to pay bond program principal and interest scheduled for payment during the current year; or

(b) Certify to the Director of the Oregon Department of Administrative Services that the amounts available or that will become available during the current year to the bond program debt service fund will not be sufficient to pay bond program principal and interest scheduled for payment during the current year. A certificate issued under this paragraph shall specify the amount of the anticipated current year deficit. The Director of the Oregon Department of Administrative Services shall review and confirm the correctness of each certification made under this paragraph.

(3) On or before August 15 of each fiscal year, the [*Accounting*] **administrative** division of the Oregon Department of Administrative Services[,] **that has primary responsibility for accounting** for each general obligation bond program in which the bond principal and interest is ordinarily to be repaid from General Fund appropriations shall:

(a) Certify to the Director of the Oregon Department of Administrative Services that the amounts available or that will become available during the current year from General Fund appropriations to defray program bond principal and interest that has accrued or will accrue during the current year are sufficient and will be sufficient to pay program bond principal and interest scheduled for payment during the current year; or

(b) Certify to the Director of the Oregon Department of Administrative Services that the amounts available or that will become available during the current year from General Fund appropriations will not be sufficient to pay program bond principal and interest scheduled for payment during the current year. A certificate issued under this paragraph shall specify the amount of the anticipated current year deficit.

(4)(a) If a deficit in funds available to pay principal and interest in any general obligation bond program is certified and confirmed under subsection (2) or certified under subsection (3) of this section, the amount of the deficit, together with any deficit that is certified for any other general obligation bond program shall upon certification constitute a state tax levy on property that shall be apportioned among and charged to the several counties in that proportion which the total assessed value of all the taxable property in each county bears to the total assessed value of all the taxable property of the state as equalized.

(b) If any agency fails to make the certification under subsection (2) or (3) of this section with respect to any general obligation bond fund program, the Oregon Department of Administrative Services shall determine the amount of revenue and other funds that are available and the amount of taxes, if any, that should be levied in addition to the revenues and funds, to pay bond principal and interest under the program for the fiscal year in question. The additional amount so determined shall thereupon constitute a state tax levy on property that shall be apportioned, certified, collected and distributed as if determined and certified as a deficit by the agency. The Oregon Department of Administrative Services shall charge the agency for cost recovery for time spent on that agency's behalf.

(5) Immediately after the department has determined the amount of a state tax levy on property in accordance with subsection (4) of this section, a certificate of levy, signed by the director of the department, shall be filed in the office of the department. If no state levy is required for the fiscal or tax year, a certificate so stating and signed by the director shall be filed in the office of the department.

(6) If, for any reason, after the close of any regular biennial session of the Legislative Assembly, it becomes necessary to reduce General Fund appropriations, General Fund appropriations for a debt service fund of a general obligation bond program described under subsection (3) of this section [*shall*] **may** not be reduced.

(7) For purposes of this section:

(a) State agencies that are authorized to issue general obligation bonds ordinarily to be repaid from other than General Fund appropriations include but are not limited to:

(A) The Department of Veterans' Affairs, as authorized by Article XI-A of the Oregon Constitution and ORS chapter 407 (veterans loans).

(B) The State Board of Higher Education, as authorized by Article XI-F(1) of the Oregon Constitution and ORS 351.350 (building projects).

(C) The Department of Environmental Quality, as authorized by Article XI-H of the Oregon Constitution and ORS 468.195 to 468.260 (pollution control).

(D) The Water Resources Commission and the Water Resources Director, as authorized by Article XI-I(1) of the Oregon Constitution and ORS 541.700 to 541.855 (water development).

(E) The Housing Agency, as authorized by Article XI-I(2) of the Oregon Constitution and ORS 456.515 to 456.725 and 458.505 to 458.515 (housing).

(F) The Director of the State Department of Energy, as authorized by Article XI-J of the Oregon Constitution and ORS 470.220 to 470.290 (small scale energy projects).

(G) Other agencies as required by the Oregon Department of Administrative Services by rule adopted using the criterion of this subsection.

(b) Each agency authorized to issue general obligation bonds that are ordinarily to be repaid from other than General Fund appropriations shall determine the amount of revenues or other funds that are available and the amount of taxes, if any, that should be levied for the ensuing year in the manner required under rules adopted by the Oregon Department of Administrative Services and make the certification required under subsection (2) of this section.

(8)(a) State agencies that are authorized to issue general obligation bonds that are ordinarily to be repaid from General Fund appropriations include but are not limited to:

(A) The State Board of Forestry and the State Forester, as authorized by Article XI-E of the Oregon Constitution and ORS 530.210 to 530.280 (state reforestation).

(B) The State Board of Higher Education, as authorized by Article XI-G of the Oregon Constitution and ORS 351.345 (higher education and community colleges).

(C) Other agencies as required by the Oregon Department of Administrative Services by rule adopted using the criterion of this subsection.

(b) Each agency authorized to issue general obligation bonds ordinarily to be repaid from General Fund appropriations shall furnish any data required by the Oregon Department of Administrative Services to determine the amount of revenues or other funds that are available and the amount of taxes, if any, that should be levied for the ensuing year and the [*Accounting*] **administrative** division of the Oregon Department of Administrative Services **that has primary responsibility for accounting** shall make the determination for purposes of the making of the certification required under subsection (3) of this section.

NOTE: Deletes outdated division title in (3) and (8)(b); corrects word choice in (6).

SECTION 215. ORS 292.220 is amended to read:

292.220. The amounts and nature of subsistence allowances for travel, and the rate of mileage allowance for travel by private automobile, payable by state agencies, shall be established and regulated by the Oregon Department of Administrative Services within any limits that may be prescribed by statute. The department shall prescribe by [*regulation*] **rule** the conditions under which allowances for travel by private automobile may be made.

NOTE: Corrects word choice.

SECTION 216. ORS 292.286 is amended to read:

292.286. (1) Any officer or employee of a state agency who desires a cash advance for the expenses of travel and subsistence arising out of official duties or employment shall file a written request for the approval of such advance with the administrative head of the state agency by which the officer or employee is employed.

(2) The administrative head of the state agency by which the officer or employee requesting the advance is employed shall forward a copy of the written approval to the official authorized to dis-

burse funds of such agency. The advance shall be paid from funds available to the agency for the payment of claims.

(3) The Oregon Department of Administrative Services shall make [*regulations*] **rules** setting forth procedures for request and disbursal of travel advances provided in ORS 292.286 and 292.288.

NOTE: Corrects word choice in (3).

SECTION 217. ORS 293.210 is amended to read:

293.210. If there is insufficient money to the credit of any fund in the State Treasury to pay the obligations against such fund and there is money to the credit of one or more other state funds [*which*] **that** is not then required to meet the respective obligations against such funds, the State Treasurer shall transfer so much as the State Treasurer deems advisable of such money standing to the credit of the funds having excess money to the fund having insufficient money if there are or will be moneys accruing to the borrowing fund or [*which*] **that** can be transferred to it in like manner, as provided in this section, to enable a retransfer to be made of such moneys to the credit of the lending funds from which they were so transferred in time to meet the requirements of the lending funds[*; but*]**. However,** unless conditions are such at the time when the original transfer of moneys is considered as to make sure that such retransfer can be so made, the original transfer shall not be made. All [*such transfers of*] moneys **transferred under this section** from lending to borrowing funds shall be retransferred to the lending funds when or before they are needed in the lending funds.

NOTE: Refines grammar and punctuation.

SECTION 218. ORS 293.212 is amended to read:

293.212. (1) If the Department of Transportation determines that there is insufficient money in any of its funds to pay the obligations against that fund, the department may request the State Treasurer to transfer money from one or more other funds to the fund that has insufficient money. The treasurer shall transfer the money if:

(a) The lending fund has money that is not required at the time of the transfer to meet the obligations against the fund; and

(b) The treasurer determines that there are or will be enough moneys accruing to the borrowing fund, or [*which*] **that** can be transferred to it, to enable a retransfer of the money to the lending fund in time to meet the requirements of the lending fund.

(2) All [*transfers of money*] **moneys transferred** under this section to a borrowing fund shall be retransferred to the lending funds when or before they are needed.

(3) The department may request transfers of money under this section regardless of whether or not the insufficiency in a fund that triggers the request was anticipated by the department.

NOTE: Corrects grammar in (1)(b); refines syntax in (2).

SECTION 219. ORS 293.229 is amended to read:

293.229. (1) Not later than October 1 of each fiscal year, each state agency shall submit a report to the Legislative Fiscal Office that describes the status of that agency's liquidated and delinquent accounts and efforts made by that agency to collect liquidated and delinquent accounts during the previous fiscal year. The report required under this subsection shall be in a form prescribed by the Legislative Fiscal Office and shall include but not be limited to:

(a) Beginning balance and total number of all liquidated and delinquent accounts;

(b) New liquidated and delinquent accounts added during the last preceding fiscal year;

(c) Total collections of liquidated and delinquent accounts;

(d) Total amount and total number of liquidated and delinquent accounts that have been written off;

(e) Total number and ending balance of all liquidated and delinquent accounts;

(f) Total amount of liquidated and delinquent accounts turned over to private collection agencies and total amount collected by those agencies under ORS 293.231; and

(g) Total number and total amount of all liquidated and delinquent accounts exempted under ORS 293.233.

(2) The Legislative Fiscal Office shall produce an annual report not later than December 31 of each fiscal year on the status of liquidated and delinquent accounts of state agencies. The report shall be based on the reports submitted by state agencies as required in this section.

[*(3) A state agency that cannot meet the reporting requirements in subsection (1) of this section for the fiscal year ending June 30, 2000, shall report to the Legislative Fiscal Office the status of the agency's progress toward meeting the reporting requirements.*]

[*(4) All state agencies shall provide the report required by subsection (1) of this section for the fiscal year ending June 30, 2001, and every fiscal year thereafter.*]

NOTE: Eliminates obsolete temporary provisions in (3) and (4).

SECTION 220. ORS 293.475 is amended to read:

293.475. (1) Upon satisfactory showing by the lawful owner of an instrument of the loss, destruction or theft of the instrument, the proper officer, board, department or commission that issued the original instrument, or the issuer's duly authorized legal successor, may issue a duplicate in lieu thereof for the same amount as the original. The duplicate shall bear the signature of the officer charged with the duty of signing instruments as of the date of issuance of the duplicate.

(2) Before a duplicate instrument is issued, the person making application for its issue shall furnish to the issuing officer a written statement signed by such person specifically alleging that the person is the lawful owner, payee or legal representative of the lawful owner or payee of the original instrument giving the date of issue, the number, amount, for what services or claim the original instrument was issued and that the original instrument has been lost, destroyed or stolen, and has not been paid. [*However,*] **A certificate may be furnished in lieu of an affidavit or affirmation** if the lawful owner, payee or legal representative is**:**

(a) The federal government**;** or

(b) This state or any board, department, commission or subdivision of this state, or any officer thereof in official capacity[*, a certificate may be furnished in lieu of an affidavit or affirmation*].

(3) The officer, board, department or commission issuing the duplicate instrument shall have the duty of searching for the original instrument out of the paid instruments returned from the State Treasurer to such officer, board, department or commission. If such original instrument is found, it shall immediately be returned to the State Treasurer. The State Treasurer shall then promptly return the instrument to the presenting or payer bank for credit. The State Treasurer shall not be liable for inability to obtain credit from the presenting or payer bank for an instrument returned under this section.

NOTE: Restructures (2) to conform to legislative style.

SECTION 221. ORS 293.796 is amended to read:

293.796. **(1)** The Legislative Assembly finds that:

[*(1)*] **(a)** The availability of venture capital for the start-up and subsequent expansion of new businesses is critical to the continued growth and development of the economy of Oregon.

[*(2)*] **(b)** There exists an estimated gap of between $100 million and $200 million between available venture capital resources and the need of Oregon businesses for such resources.

[*(3)*] **(c)** Investments in start-up and expanding businesses, in minority or women business enterprises and in emerging growth businesses can produce substantial positive returns for long-term investors.

[*(4)*] **(d)** Pension funds managed by the Oregon Investment Council constitute a major financial resource of the State of Oregon, and that such funds may be prudently invested in start-up and emerging growth businesses in this state under policies established by the Oregon Investment Council.

[*(5)*] **(2)** As used in this section:

(a) "Emerging growth business" has the meaning given that term in ORS 348.701.

(b) "Minority or women business enterprise" has the meaning given that term in ORS 200.005.

NOTE: Reformats section to correct lead-in problem.

SECTION 222. ORS 294.025 is amended to read:

294.025. When any warrant is paid, other than as authorized by ORS 294.005 to 294.025, such wrongful payment [*shall*] **does** not relieve the political body issuing the warrant from liability to the true and lawful owner thereof[*; but*]**. However,** the officer or person making such wrongful payment and the sureties on the official bond of the officer or person, if any, shall be responsible to the political body represented by the officer or person in making such payment, for the full amount of the loss occasioned thereby.

NOTE: Conforms word choice and punctuation to legislative style.

SECTION 223. ORS 294.361 is amended to read:

294.361. (1) Each municipal corporation shall estimate in detail its budget resources for the ensuing year or ensuing budget period by funds and sources.

(2) Budget resources include but are not limited to:

(a) The balance of cash, cash equivalents and investments (in the case of a municipal corporation on the cash basis) or the net working capital (in the case of a municipal corporation on the accrual or modified accrual basis of accounting) that will remain in each fund on the last day of the current year or current budget period;

(b) Taxes;

(c) Fees;

(d) Licenses;

(e) Fines;

(f) Interest on deposits or on securities of any kind;

(g) Endowments;

(h) Annuities;

(i) Penalties;

(j) Sales of property or other assets or products of any kind;

(k) Delinquent taxes;

(L) Judgments;

(m) Damages;

(n) Rent;

(o) Premiums on sales of bonds;

(p) Reimbursement for services, road or other work performed for others;

(q) Transfer or reverter of unused balances of any kind;

(r) Reimbursement for services provided other funds;

(s) Rebates;

(t) Refunds of moneys heretofore paid on any account;

(u) Apportionment, grant, contribution, payment or allocation from the federal or state government or any unit of government;

(v) Taxes for the ensuing year or ensuing budget period;

(w) Interfund revenue transfers; and

(x) Revenues from any and all other sources of whatsoever kind or character.

(3) Budget resources [*shall*] **do** not include:

(a) The estimate for the ensuing year or ensuing budget period of discounts under ORS 311.505.

(b) The estimate of uncollectible amounts of taxes, fees or charges for the ensuing year or ensuing budget period.

(c) Moneys accumulated under an approved employee deferred compensation plan and interest or investment returns earned on such moneys.

(d) Grants, gifts, bequests or devises transferred to a municipal corporation in trust for specific uses in the year of transfer. However, such grants, gifts, bequests or devises shall be included as budget resources if, by the time the budget committee approves the budget, the amount thereof that will be received in the ensuing year or ensuing budget period can be reasonably estimated. Such grants, gifts, bequests or devises may be placed in a trust and agency fund, to then be appropriated from such fund or funds.

NOTE: Reformats (2) to conform to legislative style; improves grammar in (3).

SECTION 224. ORS 294.366 is amended to read:

294.366. (1) Any port or dock commission may reserve any portion of the receipts from any revenue-producing property or facility[,]**.** [*and*] Any city may reserve any portion of the receipts from any public utility operation of such city[,]**.** [*and*] Any such port, dock commission or city may reserve any proceeds from the sale of any such property[,] for future maintenance, alteration, repair, equipment, relocation or replacement of such properties or facilities of the general nature and type from which the proceeds or receipts were received[,] or for insurance funds or retirement pension funds, as the governing body may deem necessary or appropriate[*; provided, that*]**. However,** if money is received from the sale of property [*which*] **that** has been purchased with the proceeds from the sale of bonds or utility certificates, the governing body shall first apply the receipts from the sale of such property to the payment of any applicable outstanding bonded indebtedness before allocation of any portion of the receipts to a reserve fund.

(2) Moneys reserved under subsection (1) of this section shall be placed in a special fund or funds.

NOTE: Breaks up run-on sentence and corrects grammar in (1).

SECTION 225. ORS 295.155 is amended to read:

295.155. (1) In selecting banks or trust companies to act as depositories, public officials are not limited to the appointment of banks or trust companies in any particular locality[*; but*]**. However,** if banks or trust companies are engaged in business at an office or offices within the corporate limits of the political subdivision or public corporation and qualify to receive the funds, such depositories shall be given preference. If there is more than one such local qualifying depository, the depositing public official shall apportion the funds in the hands of the public official to such depositories in a manner that is equitable and in the best interests of the political subdivision or public corporation.

(2) The depositories shall be required to pay to the political subdivision or public corporation upon deposits evidenced by certificates of deposit or deposits [*which*] **that** by agreement may not be withdrawn on less than 30 days′ notice, interest at such rate or rates as shall be agreed upon between the governing body of the political subdivision or public corporation and the depository.

(3) All interest received on deposits of moneys under this section shall accrue to and become a part of the fund the moneys of which were deposited.

(4) This section does not apply to the State Treasurer.

NOTE: Conforms punctuation to legislative style in (1); corrects grammar in (2).

SECTION 226. ORS 305.589 is amended to read:

305.589. (1) A local government unit or an association of local government units acting for the common benefit of and on behalf of consenting members may petition the regular division of the Oregon Tax Court for a judicial declaration of the court concerning a question described in ORS 305.580.

(2) Notice of the commencement of a proceeding under this section shall be given by the petitioner or petitioners by publication of notice directed to all electors, taxpayers and other interested persons, without naming such electors, taxpayers or other interested persons individually. The notice shall be published at least once a week for three successive weeks in a newspaper of general circulation within the boundaries of the local government unit and each of the consenting members of the association of local government units, if any, or if no such newspaper is published therein, then in a contiguous county.

(3) The petitioner or petitioners may elect to give further notice to affected electors, taxpayers and other interested persons, or the court may order such further notice as the court considers practicable.

(4) The action authorized by this section shall be a special proceeding in the nature of an ex parte proceeding in the absence of the intervention of a respondent in opposition to the petition.

(5) Jurisdiction of the local government unit and of consenting members of an association of local government units shall be obtained by filing of the petition. Jurisdiction over the electors, taxpayers and other interested persons shall be complete 10 days after the date of completing pub-

lication of the notice provided for in subsection (2) of this section, or giving of any further notice as provided for in subsection (3) of this section. Jurisdiction of any other party shall be obtained by appearance of any interested person who seeks and is granted leave to intervene in the proceeding.

(6)(a) Any elector, taxpayer or interested person or local government unit that may be affected by the tax, fee, charge or assessment that is the subject of the petition may intervene as a petitioner or respondent by filing the appropriate appearance.

(b) Any elector, taxpayer or interested person or local government unit that may be affected by the use of the proceeds of the bonded indebtedness or a person that is subject to a tax, fee, charge or assessment that is pledged to secure or available for payment of the bonded indebtedness that is the subject of the petition may intervene as a petitioner or respondent by filing the appropriate appearance.

(7) Any party to a proceeding commenced under this section, including a consenting member of an association of local government units that was a party to the proceeding, may appeal from the judgment rendered by the tax court to the Oregon Supreme Court in the manner provided for appeals from other decisions of the tax court under ORS 305.445.

(8)(a) If, in a proceeding commenced under this section, the court finds that a tax, fee, charge or assessment is subject to the limits of section 11b, Article XI of the Oregon Constitution, the court may order such relief as it considers appropriate, but such relief shall be prospective only.

(b) If, in a proceeding commenced under this section, the court finds that a use of the proceeds of bonded indebtedness is not authorized, the tax court may prohibit the expenditure or proceed in accordance with ORS 305.586.

(9) Costs of the proceeding may be allowed and apportioned between the parties in the discretion of the court.

(10) As used in this section:

(a) "Association of local government units" means an association, or any other lawful organization, composed of member local government units organized for the mutual benefit of such local government units.

(b) "Consenting member" means a member of an association of local government units who affirmatively consents, through filing of a consenting certificate with the tax court, to the commencement of a proceeding under this section.

[*(a)*] **(c)** "Local government unit" means any unit of local government, including a city, county, incorporated town or village, school district, any other special district, or any other municipal or quasi-municipal corporation, intergovernmental authority created pursuant to ORS 190.010, a district as defined in ORS 198.010, 198.180[*, 198.210 and 198.330*] **and 198.210** or an urban renewal agency established under ORS 457.035.

[*(b) "Consenting member" means a member of an association of local government units who affirmatively consents, through filing of a consenting certificate with the tax court, to the commencement of a proceeding under this section.*]

[*(c) "Association of local government units" means an association, or any other lawful organization, composed of member local government units organized for the mutual benefit of such local government units.*]

NOTE: Alphabetizes definitions and deletes reference to repealed section in (10); see sections 147 (repealing 198.330) and 148 (amending 198.335).

SECTION 227. ORS 319.415 is amended to read:

319.415. (1) [*On or before July 15, 1987, and*] On or before July 15 of each year [*thereafter*], the Oregon Department of Administrative Services, after consultation with the Department of Transportation and the State Marine Board, shall determine the amount of the motor vehicle fuel tax imposed under ORS 319.010 to 319.430 during the preceding fiscal year with respect to fuel purchased and used to operate or propel motor boats. The amount determined shall be reduced by the amount of any refunds for motor boats used for commercial purposes actually paid during the preceding year on account of ORS 319.280 (1)(a).

(2)(a) The Oregon Department of Administrative Services shall estimate the amount of fuel described in subsection (1) of this section that is used to operate or propel motor boats by conducting a statistically valid, unbiased, independent survey of boat owners. The survey shall be conducted once every four years and shall be designed to estimate the average daily fuel consumption by motor boats and the total days of motor boat use per year. The survey shall be used to determine the amount of the transfer required by subsection (3) of this section for the first transfer that occurs after the survey is completed. If the tax rate changes during the fiscal year, the amount of tax to be transferred shall be prorated based on the percentage of total motor boat use taking place during each tax period.

(b) In years when no survey is conducted, the amount to be transferred under subsection (3) of this section shall be calculated by multiplying the per boat fuel consumption factors from the preceding survey by the number of motor boats as shown by the annual actual count of boat registrations. The resulting amount, in gallons per year, shall be the basis for the determination of the amount to be transferred.

(c) The survey required by paragraph (a) of this subsection shall be developed by a research department within the Oregon University System, in consultation with the State Marine Board and the Department of Transportation. The Oregon Department of Administrative Services shall contract for the development and conduct of the survey, and the costs shall be paid by the Department of Transportation. Costs paid by the Department of Transportation may be deducted from the amount transferred to the State Marine Board under subsection (3) of this section.

(3) The Oregon Department of Administrative Services shall certify the amount of the estimate made under subsection (1) of this section, as reduced by refunds, to the Department of Transportation, to the State Marine Board and to the State Treasurer. Thereupon, that amount shall be transferred from the Department of Transportation Driver and Motor Vehicle Suspense Account to the Boating Safety, Law Enforcement and Facility Account created under ORS 830.140, and is continuously appropriated to the State Marine Board for the purposes for which the moneys in the Boating Safety, Law Enforcement and Facility Account are appropriated.

NOTE: Deletes obsolete provision in (1).

SECTION 228. ORS 323.800 is amended to read:

323.800. As used in ORS [*19.312 and*] 323.800 to 323.806:

(1) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(2)(a) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person.

(b) For purposes of defining "affiliate":

(A) The terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10 percent or more; and

(B) The term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(3) "Allocable share" means Allocable Share as that term is defined in the Master Settlement Agreement.

(4)(a) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(A) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(B) Tobacco, in any form, that is functional in the product and that because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

(C) Any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A) of this paragraph.

(b) The term "cigarette" includes "roll-your-own tobacco" (i.e., tobacco that, because of its appearance, type, packaging or labeling, is suitable for use and likely to be offered to, or purchased

by, consumers as tobacco for making cigarettes). For purposes of this paragraph, 0.09 ounces of roll-your-own tobacco shall constitute one individual cigarette.

(5) "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998, by the State of Oregon and leading United States tobacco product manufacturers.

(6) "Qualified escrow fund" means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least $1 billion where such arrangement requires that such financial institution hold the escrowed funds′ principal for the benefit of releasing parties and prohibits the tobacco product manufacturer who is placing the funds into escrow from using, accessing or directing the use of the escrowed funds′ principal except as consistent with ORS 323.806 (2)(b).

(7) "Released claims" means Released Claims as that term is defined in the Master Settlement Agreement.

(8) "Releasing parties" means Releasing Parties as that term is defined in the Master Settlement Agreement.

(9)(a) "Tobacco product manufacturer" means an entity that, after October 23, 1999, directly (and not exclusively through any affiliate):

(A) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an Original Participating Manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(B) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(C) Becomes a successor of an entity described in subparagraph (A) or (B) of this paragraph.

(b) The term "tobacco product manufacturer" does not include an affiliate of a tobacco product manufacturer unless such affiliate is itself a tobacco product manufacturer under paragraph (a)(A), (B) or (C) of this subsection.

(10) "Units sold" means the number of individual cigarettes sold in the State of Oregon by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State of Oregon on packs (or roll-your-own tobacco containers) bearing the excise tax stamp of this state. The Department of Revenue shall promulgate such rules as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

NOTE: Corrects reference in lead-in to split series repaired in section 8.

SECTION 229. ORS 323.862 is amended to read:

323.862. The Department of Revenue may disclose information submitted to the department related to cigarettes, tobacco product manufacturers and tobacco retailers to the Attorney General, and such other parties as the Attorney General determines necessary, to monitor and enforce compliance by tobacco product manufacturers with ORS [*19.312 and*] 323.800 to 323.806.

NOTE: Corrects reference to split series repaired in section 8.

SECTION 230. ORS 326.382 is amended to read:

326.382. (1) The Department of Community Colleges and Workforce Development shall establish by rule a process for making grants or loans to public-private partnerships to provide advanced technology education and training opportunities. The purpose of the grants and loans is to support the development and implementation of public-private partnerships to provide advanced technology education and training opportunities in all business and industry sectors for individuals in communities throughout Oregon. The partnerships shall be between public and private entities and may

include joint ventures among business and industry, school districts, education service districts, eligible post-secondary institutions as defined in ORS 348.180 and public bodies as defined in ORS 174.109.

(2) **A** public-private [*partnerships*] **partnership** that [*receive*] **receives** a grant or loan under this section must provide advanced technology education and training opportunities that:

(a) Address current and future workforce development needs dictated by Oregon's rapidly changing economy;

(b) Facilitate sustainable and dynamic economic development in communities by creating flexible opportunities for workforce development;

(c) Establish results oriented, collaborative investments of public and private resources in communities throughout Oregon;

(d) Ensure that Oregon's capacity for economic growth and vitality is not limited by a lack of opportunities for workforce development; and

(e) Provide support to existing community efforts to establish innovative strategies for delivering advanced technology education and training.

(3) The process established by the department for making grants and loans shall ensure that:

(a) Local communities are informed about the availability of the grants and loans;

(b) Advanced technology education and training projects are geographically distributed throughout Oregon;

(c) There is equal opportunity for urban and rural access to quality education and training opportunities;

(d) Representatives of related, ongoing community efforts assist in the implementation of advanced technology education and training projects; and

(e) Procedures and timelines are designed to minimize barriers to receiving funds.

(4) When considering applications for grants and loans, the department shall give priority to advanced technology education and training projects that:

(a) Provide or increase access for individuals to advanced technology education and training through the efforts of local and regional career centers and partnerships and distance education technology available locally and regionally;

(b) In combination with other projects receiving funds, contribute to advanced technology education and training opportunities in every part of the state;

(c) Use federal funds;

(d) Have widespread community support as evidenced by a memorandum of agreement or similar documentation;

(e) Represent an effective sharing of resources through public-private partnerships among business and industry, school districts, education service districts, eligible post-secondary institutions as defined in ORS 348.180 and public bodies as defined in ORS 174.109;

(f) Have a long-term strategic plan and lack only the necessary financial resources;

(g) Provide state-of-the-art technology that meets current standards of business and industry and addresses local and regional economic development priorities;

(h) Help individuals connect education and training with career planning and job opportunities through local and regional career centers as implemented under the federal Workforce Investment Act;

(i) Provide articulated education programs that lead to a degree or an industry-specific skills certification; and

(j) Establish short-term training programs that meet the immediate needs of local employers in their communities.

(5)(a) **A** public-private [*partnerships*] **partnership** awarded a grant or loan under this section shall use the grant or loan for:

(A) Infrastructure construction or reconstruction;

(B) Equipment or technology purchases;

(C) Curriculum development; and

(D) Expanding or revising a current project to increase the capacity of the project, alter the project plan, change the members of [*a*] **the** partnership or address education or employment deficiencies in the community served by the public-private partnership.

(b) A grant or loan awarded under this section for the purpose described in paragraph (a)(D) of this subsection may not exceed $25,000.

(6) The application for a grant or loan under this section shall include:

(a) The names of the members of the public-private partnership;

(b) A description of standards used to assess the performance of the project;

(c) An estimate of the number of individuals who will be served by the project;

(d) The name of the fiscal agent of the public-private partnership;

(e) A project plan covering at least the first two years after receipt of a grant or loan; and

(f) The name of the person who will be responsible for convening the public-private partnership on a regular basis.

(7) The department may accept contributions of funds and assistance from the United States Government or its agencies or from any other source, public or private, and agree to conditions placed on the funds not inconsistent with the purposes of this section.

(8) Any moneys received by the department through repayment of a loan awarded under this section, or received by the department under subsection (7) of this section, shall be deposited by the department in the Advanced Technology Education and Training Fund.

NOTE: Improves word choice in (2) and (5)(a).

SECTION 231. ORS 327.297 is amended to read:

327.297. (1) In addition to those moneys distributed through the State School Fund, the Department of Education shall award grants to school districts, the Youth Corrections Education Program and the Juvenile Detention Education Program for activities that relate to increases in student achievement, including:

(a) Class size reduction;

(b) Increases in instructional time;

(c) Professional development;

(d) Remediation and alternative learning;

(e) Early childhood support;

(f) Services to at-risk youth;

(g) Additional instructional materials;

(h) Curriculum and instructional support;

(i) Services for English as a second language students; and

(j) Other activities approved by the State Board of Education that are shown to have a relationship to increasing student achievement.

(2) Each school district, the Youth Corrections Education Program and the Juvenile Detention Education Program may apply to the Department of Education for a grant. The department shall review and approve applications based on criteria established by the State Board of Education. In establishing the criteria, the State Board of Education shall consider the recommendations of the Quality Education Commission established under Executive Order 99-16 and the recommendations of the Quality Education Commission established under ORS 327.500. The applications shall include the activities to be funded and the goals of the school district or program for increases in student performance. The applications shall become part of the local district improvement plan described in ORS 329.095.

(3) The Department of Education shall evaluate the annual progress of each recipient of grant funds under this section toward the performance targets established by the Quality Education Commissions that have been funded by the Legislative Assembly. The evaluation shall become part of the requirements of the department for assessing the effectiveness of the district under ORS 329.085, 329.095 and 329.105. The department shall ensure school district and program accountability by providing appropriate assistance, intervening and establishing consequences in order to support progress toward the performance targets.

(4) [*Beginning with the 2003-2005 biennium,*] Each biennium the Department of Education shall report to the Legislative Assembly on the grant program and the results of the grant program.

(5)(a) Notwithstanding ORS 338.155 (9), the Department of Education may not award a grant under this section directly to a public charter school.

(b) A school district that receives a grant under this section may transfer a portion of the grant to a public charter school based on the charter of the school or any other agreement between the school district and the public charter school.

(c) A public charter school that receives grant funds under this subsection shall use those funds for the activities specified in subsection (1) of this section.

(6)(a) The amount of each grant = the program's or school district's ADMw × (the total amount available for the grants in each distribution year ÷ the total statewide ADMw).

(b) As used in this subsection:

(A) "ADMw" means:

(i) For a school district, the extended weighted average daily membership as calculated under ORS 327.013, 338.155 (1) and 338.165 (2);

(ii) For the Youth Corrections Education Program, the average daily membership as defined in ORS 327.006 multiplied by 2.0; and

(iii) For the Juvenile Detention Education Program, the average daily membership as defined in ORS 327.006 multiplied by 1.5.

(B) "Total statewide ADMw" means the total extended ADMw of all school districts plus the ADMw of the Youth Corrections Education Program plus the ADMw of the Juvenile Detention Education Program.

(7) Each school district or program shall deposit the grant amounts it receives under this section in a separate account, and shall apply amounts in that account to pay for activities described in the district's or program's application.

(8) The State Board of Education may adopt any rules necessary for the administration of the grant program.

NOTE: Deletes obsolete provision in (4).

SECTION 232. ORS 336.095 is amended to read:

336.095. (1) The district school board of every common school district shall provide kindergarten facilities free of charge for the kindergarten children residing in the district by operating such facilities either singly or jointly with other districts or by contracting with public or private providers that conform to standards adopted by rule by the State Board of Education.

(2) However, nothing in this section prevents a district school board from admitting free of charge a child **who is a resident of the district and** whose needs for cognitive, social and physical development would best be met in the school program, as defined by policies of the district school board, [*to school*] even though the child has not attained the minimum age requirement [*but is a resident of the district*].

(3) Kindergartens established under subsection (1) of this section shall be funded in the same manner as other schools of the district are funded.

(4) Kindergartens are an integral part of the public school system of this state.

NOTE: Modifies syntax for clarity in (2).

SECTION 233. ORS 336.640 is amended to read:

336.640. (1) The State Board of Education shall establish by rule procedures for considering and obtaining special services for pregnant and parenting students. Such rules shall include, but not be limited to, the obligation of the school district to:

(a) Inform pregnant and parenting students and their parents of the availability of such services in the school district, education service district or in the community;

(b) Facilitate the provision of such services, including counseling, life skills and parenting education, child care, transportation, career development and health and nutrition services to pregnant and parenting students;

(c) Inform pregnant and parenting students and their parents of the availability of resources provided by other agencies, including health and social services;

(d) Provide educational programs and schedules that address the individual learning styles and needs of pregnant and parenting students; and

(e) Develop individualized educational programs or services, or both, to address the needs of pregnant or parenting students when their educational needs cannot be met by the regularly provided school program.

(2) Each school district shall adopt policies and guidelines for implementation of [*the*] **this** section in a manner consistent with the rules of the state board adopted under subsection (1) of this section.

(3) No pregnant or parenting student shall be excluded from the public schools solely on the basis of pregnancy or parenthood.

(4) For purposes of reporting enrollments, school districts may count eligible students who are receiving individualized programs or services, or both, as described in subsection (1)(e) of this section, in the same category as students eligible for special education as children with disabilities under ORS 343.035.

NOTE: Corrects internal reference in (2).

SECTION 234. ORS 339.505 is amended to read:

339.505. (1) For purposes of the student accounting system required by ORS 339.515, the following definitions shall be used:

(a) "Graduate" means an individual who has:

(A) Not reached 21 years of age or whose 21st birthday occurs during the current school year;

(B) [*Has*] Met all state requirements and local requirements for attendance, competence and units of credit for high school; and

(C) [*Has*] Received one of the following:

(i) A high school diploma issued by a school district.

(ii) An adult high school diploma issued by an authorized community college.

(iii) A modified high school diploma based on the successful completion of an individual education plan.

(b) "School dropout" means an individual who:

(A) Has enrolled for the current school year, or was enrolled in the previous school year and did not attend during the current school year;

(B) Is not a high school graduate;

(C) Has not received a General Educational Development (GED) certificate; and

(D) Has withdrawn from school.

(c) "School dropout" does not include a student described by at least one of the following:

(A) **A** student **who** has transferred to another educational system or institution that leads to graduation and the school district has received a written request for the transfer of the student's records or transcripts.

(B) **A** student **who** is deceased.

(C) **A** student **who** is participating in home instruction paid for by the district.

(D) **A** student **who** is being taught by a private teacher, parent or legal guardian pursuant to ORS 339.030 (1)(c) or (d).

(E) **A** student **who** is participating in a Department of Education approved public or private education program, an alternative education program as defined in ORS 336.615 or a hospital education program, or is residing in a Department of Human Services facility.

(F) **A** student **who** is temporarily residing in a shelter care program certified by the Oregon Youth Authority or the Department of Human Services or in a juvenile detention facility.

(G) **A** student **who** is enrolled in a foreign exchange program.

(H) **A** student **who** is temporarily absent from school because of suspension, a family emergency, or severe health or medical problems [*which*] **that** prohibit the student from attending school.

(I) **A** student **who** has received a General Educational Development (GED) certificate.

(2) The State Board of Education shall prescribe by rule when an unexplained absence becomes withdrawal, when a student is considered enrolled in school, acceptable alternative education programs under ORS 336.615 to 336.665 and the standards for excused absences for purposes of ORS 339.065 for family emergencies and health and medical problems.

NOTE: Remedies read-in problem in (1)(a)(B) and (C); corrects grammar in (1)(c).

SECTION 235. ORS 341.937 is amended to read:

341.937. In preparing budget requests for each biennium [*beginning on and after July 1, 1993*], after consultation with the community colleges and their respective representatives of the disabled community at the colleges, the State Board of Education shall include amounts for capital improvements that will be applied to the substantial reduction and eventual elimination of barriers to access by disabled persons.

NOTE: Excises archaic provision.

SECTION 236. ORS 342.513 is amended to read:

342.513. (1) Each district school board shall give written notice of the renewal or nonrenewal of the contract for the following school year by March 15 of each year to all teachers and administrators in its employ who are not contract teachers as defined in ORS 342.815. In case the district school board does not renew the contract, the material reason therefor shall, at the request of the teacher or administrator, be [*spread upon*] **included in** the records of the school district**,** and the board shall furnish a statement of the reason for nonrenewal to the teacher or administrator. If any district school board fails to give such notice by March 15, the contract shall be considered renewed for the following school year at a salary not less than that being received at the time of renewal. The teacher or administrator may bring an action of mandamus to compel the district school board to issue such a contract for the following school year.

(2) This section is not effective unless teachers or administrators notify the board in writing on or before April 15 of acceptance or rejection of the position for the following school year.

NOTE: Improves word choice and corrects punctuation in (1).

SECTION 237. ORS 343.041 is amended to read:

343.041. (1) Pursuant to rules of the State Board of Education, the Superintendent of Public Instruction shall be responsible for the general supervision of all special education programs for children with disabilities, early childhood special education and early intervention services for preschool children with disabilities within the state, including all such programs administered by any state agency or common or union high school district or education service district.

(2) All special education programs for children with disabilities, early childhood special education and early intervention services for preschool children with disabilities within this state shall meet the standards and criteria established therefor by the State Board of Education.

(3) The State Board of Education shall adopt by rule procedures whereby the superintendent investigates and resolves complaints that the Department of Education, a local education agency or an early intervention or early childhood special education contractor has violated a federal law or statute that applies to a special education or early childhood special education program.

(4) The State Board of Education shall adopt rules relating to the establishment and maintenance of standards to ensure that personnel providing special education and early childhood special education and early intervention services are appropriately and adequately trained.

(5) The Governor shall direct that agencies affected by this section [*shall*] enter into cooperative agreements to achieve necessary uniformity in meeting the standards and criteria established by the state board under subsection (2) of this section.

(6) The Governor shall direct that each public agency obligated under federal or state law to provide or pay for any services that are also considered special education or related services necessary for ensuring a free appropriate public education to children with disabilities, including but not limited to the [*Office of Medical Assistance Programs, shall*] **Department of Human Services,** enter into cooperative agreements with the Department of Education concerning:

(a) Allocation among agencies of financial responsibility for providing services;

(b) Conditions, terms and procedures for reimbursement; and

(c) Policies and procedures for coordinating timely and appropriate delivery of services.

(7) All cooperative agreements entered into under subsections (5) and (6) of this section shall include procedures for resolving interagency disputes.

NOTE: Corrects grammar in (5) and (6); changes agency title to comply with statutory naming scheme in (6).

SECTION 238. ORS 344.055 is amended to read:

344.055. It shall be the policy on professional technical education and employment training in this state that:

(1) Accessibility to professional technical education programs should be facilitated. Individuals should have a choice of training opportunities for which they are qualified and from which they can benefit. Such opportunities should be available from school districts, community colleges, federal and state [*manpower*] **workforce** training programs, private professional technical schools, apprenticeship programs and institutions of higher education. The student should have easy access to training with the flexibility to move in and out of programs as needs indicate. Opportunities should be available for all individuals to obtain the skills and knowledge needed for initial employment as well as for occupational upgrading and job changes.

(2) State and local planning and program operations should be coordinated to provide the most efficient use of federal, state, local and private resources.

(3) A comprehensive system of education and employment training should be developed. Secondary schools should provide an educational program [*which*] **that** balances the educational skills of reading, writing, speaking, computation and reasoning ability, occupational skills including technical knowledge, manipulative ability and other skills required to perform job tasks and employment skills such as job seeking, work attitude, work adjustment and job-coping abilities. Community colleges should provide comprehensive programs in both academic and professional technical subjects. In addition, community colleges should provide short-term training designed for specific occupations, related training for apprenticeships and opportunities for employed persons to improve their skills. Other providers of employment training should compliment this effort with programs aimed at specific job training.

(4) Full working partnerships among education, business, industry, labor, government and agriculture should be developed to meet employer needs for a skilled workforce and to promote employee job satisfaction. Such partnerships should be fostered by promoting efforts such as work site training stations, lending or donating of equipment to training programs, employee-teacher exchange programs, advisory committees and cooperative work experience programs. All segments of the community should be encouraged to assist in professional technical training.

(5) Federal, state, local and private funding resources should be combined to [*insure*] **ensure** the development and implementation of quality programs. Both the governmental and private sectors should make a commitment to professional technical training as an investment [*which*] **that** will help bring about economic development and stability as well as high social and financial returns. Improvement of existing training programs, as opposed to development of duplicative or parallel efforts, should be utilized to promote flexibility and economy in the design and delivery of professional technical education.

(6) High quality professional technical training requires an adequate supply of well prepared teachers and support personnel. Provisions should be made for the formal preparation of teachers and for the recruitment of teachers from business and industry. Programs should be designed and implemented to [*insure*] **ensure** that teachers remain current in their areas of expertise, and instructors should be encouraged to return to business and industry to gain additional experience in their fields. To promote retention of qualified personnel, institutions preparing and licensing teachers and agencies employing teachers should allow credit for relevant professional technical experiences.

(7) Professional technical education programs and other employment training programs should be developed, operated and evaluated jointly with representatives of the professional technical in-

structional areas included in the programs. Evaluation of efforts should consider the cost effectiveness of the program both for society and the state.

(8) Each student's educational, professional technical and employment skills should be assessed upon entering so that proper placement in the educational program can occur. Credit should be given for prior education, work experience and community service. Assessments to determine progress, competency attainment and needed corrective action should be made on a periodic basis. Assistance in obtaining employment and follow-through services to help students succeed on the job should be provided.

(9) Provisions should be made to meet the needs of women, minorities, disadvantaged or persons with disabilities and others who have special training needs. Special curricula, facilities, equipment, counseling and instruction should be provided as necessary. The agencies and institutions serving these groups should coordinate use of the available resources to provide cost effective services.

(10) Career education provides the learning experiences needed to make effective career choices and to develop the attitudes, knowledges and skills that enable persons to perform successfully in the producer role and to assist them in other related life roles. It progresses through the steps of awareness and exploration of work, preparation for a broad range of occupations and specialization in a specific occupation.

(11) Professional technical education is taught at the secondary school level, in post-secondary professional technical institutions, community colleges and apprenticeship programs and may continue through skill upgrading or retraining for a new career.

NOTE: Eliminates gender-specific term in (1); corrects word choice in (3), (5) and (6).

SECTION 239. ORS 344.058 is amended to read:

344.058. Each biennium, in addition to and not in lieu of any other moneys, the Department of Education shall award a grant to the Frontier Learning Network professional technical education program. The grant may be used for**:**

(1) Mobile classrooms[*,*]**;**

(2) Developing information and technical systems[*,*]**;**

(3) Creating and implementing curricula[*,*]**;**

(4) Capital improvements[*,*]**;**

(5) Teachers[*,*] **and** technical staff[*,*]**;**

(6) Distance learning communications expenses**;** and

(7) Special project materials.

NOTE: Reformats section to conform to legislative style.

SECTION 240. ORS 344.550 is amended to read:

344.550. **(1)** Vocational rehabilitation services shall be provided to any disabled individual:

[*(1)*] **(a)** Who is in the state and files an application therefor and who is not in the state for the sole purpose of receiving vocational rehabilitation services.

[*(2)*] **(b)** Who is eligible for vocational rehabilitation service under the terms of an agreement with another state or with the federal government.

[*(3)*] **(2)** Except as otherwise provided by law or as specified in any agreement with the federal government with respect to classes of individuals certified by the Department of Human Services, the following rehabilitation services shall be provided at public cost only to disabled individuals found to require financial assistance with respect thereto:

(a) Physical restoration.

(b) Transportation not provided to determine the eligibility of the individual for vocational rehabilitation services and the nature and extent of the services necessary.

(c) Occupational licenses.

(d) Customary occupational tools and equipment.

(e) Maintenance.

(f) Training books and materials.

NOTE: Restructures section to eliminate read-in problem.

SECTION 241. ORS 345.525 is amended to read:

345.525. (1) The owner or operator of a private school, or the superintendent or principal thereof, may apply to the Department of Education for registration of the school by submitting an application therefor on a form provided by the department.

(2) In order to become registered, the applicant must demonstrate to the satisfaction of the department that:

(a) The teachers in the applicant schools are possessed of those qualifications necessary to establish the applicant's fitness as a teacher, but such qualifications shall not include the requirement that teachers be licensed.

(b) The applicant and the school employees are qualified by education and experience to provide instruction at the grade level or in the program to which they are assigned.

(c) The facility at which the school is located and the operation thereof are adequate to protect the health and safety of the children enrolled therein, including but not limited to[,] **providing** fire protection and sanitation.

(d) The curriculum in prekindergarten, kindergarten and grades 1 through 12 shall be such that it will consider the goals of modern education and the requirements of a sound, comprehensive curriculum with particular emphasis on establishment of the highest practical standards, and in secondary schools establishment of academic standards necessary for students to qualify to attend community colleges and institutions of higher education both within and without the State of Oregon. Courses shall be taught for a period of time equivalent to that required for children attending public schools in the 1994-1995 school year.

NOTE: Corrects punctuation and improves syntax in (2)(c).

SECTION 242. ORS 348.005 is amended to read:

348.005. (1) The Legislative Assembly finds that:

(a) The State of Oregon can achieve its full economic and social potential only if all Oregonians have the opportunity to contribute to the full extent of their capabilities and only when financial barriers to their educational goals are removed;

(b) All Oregonians who meet the appropriate admissions requirements should be able to attend any community college, state institution of higher education or independent not-for-profit institution of post-secondary education regardless of individual economic or social circumstances;

(c) The interests of this state are best served when public subsidies supporting college students are distributed fairly, equitably and consciously to [*assure*] **ensure** maximum access and choice for all Oregonians at the least cost to the taxpayers;

(d) Need-based student financial aid is an effective, efficient and essential means of assisting Oregonians who are unable to afford the full cost of higher education;

(e) Student financial aid allows Oregonians with limited resources to select academic programs based on their interests, aptitudes and career goals;

(f) Student financial aid encourages and permits capable and promising Oregonians to persist in their education and training within this state; and

(g) By assisting Oregonians in this manner, student financial aid contributes to the quality of life of each Oregonian and to the social, cultural and economic well-being of all Oregonians.

(2) It is the intention of the Legislative Assembly to establish financial assistance programs to enable qualified Oregonians who need student aid to obtain post-secondary education in Oregon's community colleges, state institutions **of higher education** or independent not-for-profit institutions of [*higher*] **post-secondary** education.

NOTE: Corrects word choice in (1)(c). Provides uniform terminology in (2); see (1)(b).

SECTION 243. ORS 348.010 is amended to read:

348.010. (1) The Department of Higher Education shall maintain with the State Treasurer a fund separate and distinct from the General Fund known as the Higher Education Student Loan Fund**,** which shall consist of:

(a) All moneys made available to the State Board of Higher Education for student loan purposes by state appropriations and by the federal government under terms of the National Defense Educa-

tion Act of 1958 and amendments thereto, and under terms of the Health Professions Educational Assistance Act of 1963 and the Nurses Training Act of 1964 and amendments thereto;

(b) Repayments of loans identified in paragraph (a) of this subsection;

(c) Interest earned on student loans identified in paragraph (a) of this subsection; and

(d) Earnings from investments of the Higher Education Student Loan Fund.

(2) All moneys in the Higher Education Student Loan Fund are continuously appropriated **to the Department of Higher Education** for the purpose of granting student loans under the terms established by the National Defense Education Act of 1958 and amendments thereto, under terms of the Health Professions Educational Assistance Act of 1963 and the Nurses Training Act of 1964 and amendments thereto.

(3) The repayment in whole or part of any student loan made under terms of the National Defense Education Act of 1958 and amendments thereto, under terms of the Health Professions Educational Assistance Act of 1963 and the Nurses Training Act of 1964 and amendments thereto, shall be made pursuant to the provisions of the applicable federal statutes and repayment to the Higher Education Student Loan Fund shall be made in accordance with applicable federal statutes.

(4) Funds in the Higher Education Student Loan Fund not needed for student loans may be invested by the State Treasurer as other public funds are invested under ORS 293.701 to 293.820. The State Treasurer shall credit to the Higher Education Student Loan Fund any interest or other income derived from such investment.

NOTE: Corrects punctuation in (1); clarifies continuous appropriation in (2).

SECTION 244. ORS 348.105 is amended to read:

348.105. (1) As used in this section:

[*(a) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.*]

[*(b)*] **(a)** "Educational institution" means any post-secondary educational institution **that is** approved or accredited by the Northwest Association of Schools and Colleges, by its regional equivalent[,] or by the appropriate official, department or agency of the state or nation in which the institution is located**,** and [*which*] **that** is:

(A) A four-year college or university;

(B) A junior college or community college; or

(C) A technical, professional or career school.

[*(c)*] **(b)** "Educational loan" means a loan or other aid or assistance for the purpose of furthering the obligor's education at an educational institution.

(c) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(2) Notwithstanding any other provision of law, any written obligation made by any minor in consideration of an educational loan received by the minor from any person shall be as valid and binding as if the minor had, at the time of making and executing the obligation, attained the age of majority, but only if prior to the making of the educational loan an educational institution has certified in writing to the person making the educational loan that the minor is enrolled, or has been accepted for enrollment, in the educational institution.

(3) Any obligation mentioned in subsection (2) of this section may be enforced in any action or proceeding against such person in the name of the person and shall be valid, insofar as the issue of age is concerned, without the consent thereto of the parent or guardian of such person. Such person may not disaffirm the obligation because of age nor may such person interpose in any action or proceeding arising out of the educational loan the defense that the borrower is, or was, at the time of making or executing the obligation, a minor.

(4) Any parent or legal guardian who did not consent to guarantee or otherwise ensure performance of the obligation mentioned in subsection (2) of this section shall not be liable for payment of such obligation.

NOTE: Alphabetizes definitions in (1); corrects punctuation in (1)(a); improves syntax in (1)(a) and (c).

SECTION 245. ORS 348.210 is amended to read:

348.210. (1) In addition to any other scholarships provided by law, the Oregon Student Assistance Commission may award scholarships at Eastern Oregon University[*, not to exceed two and one-half percent of the enrollment therein,*] to resident undergraduate students applying for enrollment in the university or who are pursuing courses therein. **The number of students who receive scholarships under this subsection may not exceed two and one-half percent of the number of students who are enrolled at the university.** The scholarships shall be awarded upon the basis of a record of high intellectual standing and deportment in the school or institution where the applicant has received or is receiving preparatory training, the necessity for financial assistance and other qualifications of such nature that the awarding of scholarships will operate not only to the advantage of the applicant but to the people of Oregon. [*No scholarships so*] **A scholarship** awarded [*shall*] **under this subsection may not** exceed in value the amount of the tuition and other fees, including the fees [*which*] **that** are levied against the recipient of the scholarship by the State Board of Higher Education at the university.

(2) The commission may award tuition and fee-exempting scholarships [*not exceeding the amount of tuition and all fees*] to students from foreign nations who are enrolled in state institutions of higher education. **A student may not receive a scholarship under this subsection that exceeds the amount of tuition and fees owed by the student.**

(3) The value of scholarships awarded each year under subsection (2) of this section [*shall*] **may** not exceed in aggregate an amount equal to 10 percent of the amount of tuition and fees paid in the preceding year to the Department of Higher Education by students enrolled [*therein*] **in state institutions of higher education** who were not Oregon residents.

NOTE: Improves syntax.

SECTION 246. ORS 348.696 is amended to read:

348.696. Pursuant to section 4 (4)(d), Article XV of the Oregon Constitution, the Education Stability Fund is established separate and distinct from the General Fund. Except for earnings on moneys in the school capital matching subaccount, moneys in the fund shall be invested as provided in ORS 293.701 to 293.790. All declared earnings on moneys in the fund shall be transferred and **are** appropriated continuously as follows:

(1) All declared earnings from the Oregon Growth Account to the Higher Education Technology Transfer Fund established in ORS 351.691;

(2) All declared earnings from the Higher Education Technology Transfer Account to the Department of Higher Education;

(3) 75 percent of all declared earnings not described in subsection (1) or (2) of this section to the Oregon Education Fund established by ORS 348.716; and

(4) 25 percent of all declared earnings not described in subsection (1) or (2) of this section to the Oregon Student Assistance Commission for the Oregon Opportunity Grant program under ORS 348.260.

NOTE: Tweaks syntax in lead-in.

SECTION 247. ORS 348.696, as amended by section 28, chapter 922, Oregon Laws 2001, and section 3, chapter 6, Oregon Laws 2002 (third special session), is amended to read:

348.696. Pursuant to section 4 (4)(d), Article XV of the Oregon Constitution, the Education Stability Fund is established separate and distinct from the General Fund. Except for earnings on moneys in the school capital matching subaccount, moneys in the fund shall be invested as provided in ORS 293.701 to 293.790. All declared earnings on moneys in the fund shall be transferred and **are** appropriated continuously as follows:

(1) All declared earnings from the Oregon Growth Account to the Higher Education Technology Transfer Fund established in ORS 351.691;

(2) 75 percent of all declared earnings not described in subsection (1) of this section to the Oregon Education Fund established in ORS 348.716; and

(3) 25 percent of all declared earnings not described in subsection (1) of this section to the Oregon Student Assistance Commission for the Oregon Opportunity Grant program under ORS 348.260.

NOTE: Tweaks syntax in lead-in.

SECTION 248. ORS 351.075 is amended to read:

351.075. (1) The State Board of Higher Education shall appoint a chief executive officer who shall be known as the Chancellor of the Oregon University System and who shall serve at the pleasure of the board. The board may appoint one or more assistants as may be necessary.

(2) The chancellor and the assistants of the chancellor shall be persons who by training and experience are well qualified to perform the duties of their offices and to assist in carrying out the functions of the board under ORS 351.010 to 351.070, 351.075 to 351.260, 351.310 to 351.615, 351.770 to 351.840, 352.002 to 352.006, 352.010 to 352.053, [*352.065 (1985 Replacement Part),*] 352.230, 352.360, 352.370, 352.390, 352.400 and 352.510 to 352.760.

(3) The State Board of Higher Education shall fix the compensation of the chancellor and the assistants of the chancellor.

NOTE: Deletes reference to repealed statute in (2).

SECTION 249. ORS 352.004 is amended to read:

352.004. The president of each [*university and college*] **state institution of higher education within the Oregon University System** is also president of the faculty. The president is also the executive and governing officer of the [*school*] **institution**, except as otherwise provided by statute. Subject to the supervision of the **State** Board **of Higher Education**, the president of the [*university*] **institution** has authority to control and give general directions to the practical affairs of the [*school*] **institution**.

NOTE: Updates terminology and sets out full title of board.

SECTION 250. ORS 352.035 is amended to read:

352.035. The State Board of Higher Education may open, establish, lay out and dedicate to the public use such streets through the lands situated within the corporate limits of the City of Eugene, owned by or belonging to the University of Oregon, upon such terms and conditions as may be agreed upon by the State Board of Higher Education and the common council of the City of Eugene. [*Such streets may be opened, established, laid out and dedicated in such manner, form and procedure as the State Board of Higher Education shall prescribe and agree upon with the common council of the City of Eugene.*] When such streets are so opened, laid out and established, they hereby are declared to be dedicated to the public use and are further declared to be public streets of the City of Eugene.

NOTE: Excises redundant provision.

SECTION 251. ORS 352.045 is amended to read:

352.045. (1) The anthropological collections at the University of Oregon are designated and established as the Oregon State Museum of Anthropology. The Oregon State Museum of Anthropology is designated as the official depository for any material of an archaeological or anthropological nature that may come into the possession of the State of Oregon through the operation of ORS 358.935, 390.235 or 390.237 or as a consequence of gifts from the federal government, the Smithsonian Institution or from other public or private agencies. The University of Oregon, through the director of the Oregon State Museum of Anthropology**,** shall assume full responsibility for the custody and safekeeping of said collection. If responsibility for a collection is reassigned under ORS 390.235, the Oregon State Museum of Anthropology shall serve as the ultimate depository in the event the assigned curator is unable or fails to continue that responsibility.

(2) ORS 390.235 or 390.237 or this section shall not interfere with any collections now in the possession of any institution of higher learning in Oregon, nor prevent any private person making a gift of any collection owned by the person directly to any institution.

NOTE: Corrects punctuation in (1).

SECTION 252. ORS 354.420 is amended to read:

354.420. (1) The purpose of ORS 354.410 to 354.430 is to encourage the development of and provide means for making educational television and radio and distance learning programs of direct

instruction and instructional enrichment for pupils available to the public schools of the state and to provide for the authorization and approval of such programs by the State Board of Education.

(2) [*Educational television and radio and distance learning are declared to be and authorized as suitable means of instruction in the public schools of Oregon to the extent that may be approved by the state board and accepted by local school district officials.*] **Subject to the approval of the state board, school districts may use educational television and radio and distance learning to provide instruction in the public schools of Oregon.**

NOTE: Improves syntax in (2).

SECTION 253. ORS 354.635 is amended to read:

354.635. (1) In addition to matters named in ORS 198.750**,** the petition to form a translator district shall include:

(a) A brief description of the proposed system including the type of construction, location, number of translators to be erected and the number of television channels to be provided.

(b) The maximum service charge that may be charged by the district.

(2) The petition shall be addressed to and filed with the county board of the principal county and the proceeding conducted as provided in ORS 198.705 to 198.845.

NOTE: Corrects punctuation in (1).

SECTION 254. ORS 354.680 is amended to read:

354.680. (1) A district shall not delete television commercial matter in the signals it transmits, without written permission from the broadcasting television station, or in any manner finance [*its*] **the district's** operation through the sale of commercial matter in [*its*] **the district's** transmissions.

(2) A district may, without elector approval but with permission from the broadcasting television station, generate revenue in [*its*] **the district's** transmissions through the acknowledgment or solicitation of financial support considered necessary for the continued operation of the translator.

NOTE: Clarifies indefinite pronouns.

SECTION 255. ORS 358.160 is repealed.

NOTE: Eliminates redundant definition.

SECTION 256. ORS 358.415 is amended to read:

358.415. For the purposes of ORS 358.420 to 358.440:

(1) "Loan," "loaned" and "on loan" include all deposits of property with a museum that are not accompanied by a transfer of title to the property.

[*(1) A*] **(2)** "Museum" [*is*] **means** an institution located in Oregon [*and operated by a nonprofit corporation or public agency,*] **that:**

(a) Is primarily educational, scientific or aesthetic in purpose[*, which*]**;**

(b) Owns, borrows or cares for, and studies, archives or exhibits property**; and**

(c) Is operated by a nonprofit corporation or public agency.

[*(2) The terms "loan," "loaned" and "on loan" include all deposits of property with a museum which are not accompanied by a transfer of title to the property.*]

(3) "Property" includes all tangible objects, animate and inanimate, under a museum's care [*which*] **that** have intrinsic value to science, history, art or culture, except that it does not include botanical or zoological specimens loaned to a museum for scientific research purposes.

NOTE: Overhauls section to alphabetize definitions, clarify meaning and conform grammar to legislative style.

SECTION 257. ORS 358.487 is amended to read:

358.487. (1)(a) An owner of historic property desiring classification and special assessment under ORS 358.480 to 358.545 for the property may make application for the classification and special assessment to the State Historic Preservation Officer on forms approved by the State Historic Preservation Officer. The forms shall include or be accompanied by the written consent of the owner to the viewing of the property by the State Historic Preservation Officer. Any application made under this subsection shall include a preservation plan and be sent by the State Historic Preservation Officer to the appropriate county assessor, local landmark commission and governing body. An ap-

plication must be made during the calendar year preceding the first property tax year for which classification and special assessment as historic property is desired.

(b) Classification and special assessment pursuant to an application made under this subsection shall be granted only for 15 consecutive property tax years, commencing in the tax year beginning on the July 1 following the calendar year in which the application was made.

(2)**(a)** An owner may make preliminary application for classification of property as historic upon approval by the State Advisory Committee on Historic Preservation of the nomination of the property for listing on the National Register of Historic Places or, if the National Register of Historic Places ceases accepting nominations, the nomination of the property for listing on an Oregon register of historic places.

(b) The preliminary application shall be considered an application made or received for purposes of subsection (1) of this section[*, ORS 358.490 or 358.495 or other law,*] if**, by September 15 of the year for which classification and special assessment are first sought,** the property is**:**

(A) [*actually*] Listed in the National Register of Historic Places**;** or[*,*]

(B) If the National Register of Historic Places ceases accepting nominations, [*the property is*] approved for listing on an Oregon register of historic places [*by September 15 of the year for which classification and special assessment are first desired*].

(c) If the requirements of paragraph (b) of this subsection are not satisfied, the preliminary application may not be considered an application made for purposes of subsection (1) of this section until the calendar year in which, as of September 15, the property is listed as described in paragraph (b) of this subsection. [*If the property is not listed on the National Register of Historic Places or, if the National Register of Historic Places ceases accepting nominations, the property is not approved for listing on an Oregon register of historic places by September 15 of the year for which classification and special assessment are first desired, then the preliminary application shall be considered an application made or received for purposes of subsection (1) of this section, ORS 358.490 or 358.495 or other law, for the tax year next beginning after the date the property is actually listed.*]

(3) Immediately upon receipt of a copy of the application under subsection (1) of this section, the county assessor shall review the application for accuracy and completeness of description and other matters within the expertise of the county assessor and shall make recommendations regarding the classification to the State Historic Preservation Officer.

(4) Immediately upon receipt of a copy of the application under subsection (1) of this section, the governing body shall review the application for matters relating to public benefit and shall make recommendations regarding the classification to the State Historic Preservation Officer.

(5) By making application for classification and assessment under this section, the owner consents that the State Historic Preservation Officer has access to the property for inspection at reasonable times to ensure that the terms of the national register or other federal or state laws or requirements are being met.

(6) The application for classification and assessment under ORS 358.480 to 358.545 may not be processed unless accompanied by a nonrefundable fee of one-third of one percent of the real market value of the property**, as of the assessment date,** for the year in which application is made. The fee shall be deposited in the State Parks and Recreation Department Fund for use by the State Parks and Recreation Director or for transfer to the Oregon Property Management Account established under ORS 358.680 to 358.690, upon the advice of the State Advisory Committee on Historic Preservation.

NOTE: Restructures (2) to conform to legislative style; clarifies meaning in (6).

SECTION 258. ORS 359.120 is amended to read:

359.120. There hereby is established an account separate and distinct from the General Fund to be known as the Arts Trust Account. Except for moneys received for the purposes of the Trust for Cultural Development Account, all moneys received by the Arts Program of the Economic and Community Development Department pursuant to ORS 359.100 and 359.110 shall be paid into the State Treasury and credited to the Arts Trust Account. All moneys in the Arts Trust Account are

[*appropriated*] continuously [*for*] **appropriated to the Economic and Community Development Department** and shall be used by the program in carrying out the purposes for which the funds were received.

NOTE: Clarifies continuous appropriation.

SECTION 259. ORS 366.365 is amended to read:

366.365. The Department of Transportation may go upon private property in the manner provided by ORS 35.220 to determine the advisability or practicability of locating and constructing a highway [*thereover*] **over the property** or the source, suitability or availability of road-building materials thereon.

NOTE: Corrects diction.

SECTION 260. ORS 366.512 is amended to read:

366.512. (1) The Department of Transportation shall collect all registration fees for campers, manufactured structures, motor homes and travel trailers. Such fees shall be paid into the State Parks and Recreation Department Fund.

(2) As used in this section[*, the words*]**:**

(a) "Camper[,]" **has the meaning given that term in ORS 801.180.**

(b) "Manufactured structure[,]" **has the meaning given that term in ORS 801.333.**

(c) "Motor home" **has the meaning given that term in ORS 801.350** [*and*]**.**

(d) "Travel trailer" [*have the meanings given those terms in ORS chapter 801*] **has the meaning given that term in ORS 801.565**.

NOTE: Deletes inappropriate chapter reference in (2); reformats (2) to conform to legislative style.

SECTION 261. ORS 366.512, as amended by section 72, chapter 655, Oregon Laws 2003, is amended to read:

366.512. (1) The Department of Transportation shall collect all registration fees for campers, motor homes and travel trailers. Such fees shall be paid into the State Parks and Recreation Department Fund.

(2) As used in this section[*, the words*]**:**

(a) "Camper[,]" **has the meaning given that term in ORS 801.180.**

(b) "Motor home" **has the meaning given that term in ORS 801.350** [*and*]**.**

(c) "Travel trailer" [*have the meanings given those terms in ORS chapter 801*] **has the meaning given that term in ORS 801.565**.

NOTE: Deletes inappropriate chapter reference in (2); reformats (2) to conform to legislative style.

SECTION 262. ORS 366.576 is amended to read:

366.576. The Department of Transportation may enter into an agreement with any county, city, town or road district for the construction, reconstruction, improvement, repair or maintenance of any road, highway or street, upon terms and conditions mutually agreed to by the contracting parties[*;*]**,** and the department may acquire by purchase, agreement, donation or by exercise of the power of eminent domain, any real property necessary for rights of way therefor.

NOTE: Corrects punctuation.

SECTION 263. ORS 382.310 is amended to read:

382.310. (1) The Board of County Commissioners of Multnomah County shall:

(a) Maintain, keep in good condition and repair and operate the bridges and their approaches. The lighting of the bridges and their approaches is a part of the duty to maintain and operate such bridges[*;*]**,** and the board may enter into contracts for such lighting.

(b) Operate, maintain and keep in good condition all parts of the bridges owned by the city or leased by the city or by the board of county commissioners.

(2) The Board of County Commissioners of Multnomah County shall, at the cost and expense of the county:

(a) Employ, hire and discharge, from time to time, agents, workers, laborers and servants, as it deems necessary in the conduct, maintenance, repair and operation of the bridges and their approaches.

(b) Make needful rules and regulations for the operation and maintenance of the bridges, but such rules and regulations shall be subject to the exercise by the City of Portland of such police power and authority as the city has under its charter with respect to the bridges owned by the city.

(3) The Board of County Commissioners of Multnomah County may enter into agreements or leases for the use by the public, for highway purposes and for the operation of street cars thereon, of the upper highway deck of the bridges constructed across the Willamette River in Portland, by persons or corporations other than the City of Portland.

NOTE: Corrects punctuation in (1)(a).

SECTION 264. ORS 383.009 is amended to read:

383.009. (1) There is hereby established the State Tollway Account as a separate account within the State Highway Fund. The State Tollway Account shall consist of:

(a) All moneys and revenues received by the Department of Transportation from or made available by the federal government to the department for any tollway project or for the operation or maintenance of any tollway;

(b) Any moneys received by the department from any other unit of government or any private entity for a tollway project or from the operation or maintenance of any tollway;

(c) All moneys and revenues received by the department from any loan made by the department for a tollway project pursuant to ORS 383.005, and from any lease, agreement, franchise or license for the right to the possession and use, operation or management of a tollway project;

(d) All tolls and other revenues received by the department from the users of any tollway project;

(e) The proceeds of any bonds authorized to be issued under ORS 383.023 for tollway projects;

(f) Any moneys that the department has legally transferred from the State Highway Fund to the State Tollway Account for tollway projects;

(g) All moneys and revenues received by the department from all other sources that by donation, grant, contract or law are allocated or dedicated for tollway projects; and

(h) All interest earnings on investments made from any of the moneys held in the State Tollway Account.

(2) Moneys in the State Tollway Account may be used by the department for the following purposes:

(a) To finance preliminary studies and reports for any tollway project;

(b) To acquire land to be owned by the state for tollways and any related facilities therefor;

(c) To finance the construction, renovation, operation, improvement, maintenance or repair of any tollway project;

(d) To make grants or loans to a unit of government for tollway projects;

(e) To make loans to private entities for tollway projects;

(f) To pay the principal, interest and premium due with respect to, and to pay the costs connected with the issuance or ongoing administration of any bonds or other financial obligations authorized to be issued by, or the proceeds of which are received by, the department for any tollway project;

(g) To provide a guaranty or other security for any bonds or other financial obligations, including but not limited to financial obligations with respect to any bond insurance, surety or credit enhancement device issued or incurred by the department, a unit of government or a private entity, for the purpose of financing a single tollway project or any related group or system of tollways or related facilities; and

(h) To pay the costs incurred by the department in connection with its oversight, operation and administration of the State Tollway Account, the proposals and projects submitted under ORS 383.015 and the tollway projects financed under ORS 383.005.

(3) For purposes of securing bonds authorized by ORS 383.023 or providing a guaranty, surety or other security authorized by subsection (2)(g) of this section, the department may:

(a) Irrevocably pledge all or any portion of the amounts that are credited to, or are required to be credited to, the State Tollway Account;

(b) Establish subaccounts in the State Tollway Account, and make covenants regarding the credit to and use of amounts in those accounts and subaccounts; and

(c) Establish separate trust funds or accounts and make covenants to transfer to those separate trust funds or accounts all or any portion of the amounts that are required to be deposited in the State Tollway Account.

(4) Notwithstanding any other provision of ORS 383.001 to 383.027 and 383.315, the department shall not pledge any funds or amounts at any time held in the State Tollway Account as security for the obligations of a private entity unless the department has entered into a binding and enforceable agreement that provides the department reasonable assurance that the department will be repaid, with appropriate interest, any amounts that the department is required to advance pursuant to that pledge.

(5) **Moneys in** the State Tollway Account [*is*] **are** continuously appropriated to the department for purposes authorized by this section.

NOTE: Conforms continuous appropriation to legislative style in (5).

SECTION 265. ORS 390.134 is amended to read:

390.134. (1) As used in this section:

(a) [*The terms*] "Camper[,]" **has the meaning given that term in ORS 801.180** [*"manufactured structure," "motor home" and "travel trailer" have the meanings given those terms in ORS chapter 801*].

(b) "County" includes a metropolitan service district organized under ORS chapter 268, but only to the extent that the district has acquired, through title transfer, and is operating a park or recreation site of a county pursuant to an intergovernmental agreement.

(c) "Manufactured structure" has the meaning given that term in ORS 801.333.

(d) "Motor home" has the meaning given that term in ORS 801.350.

(e) "Travel trailer" has the meaning given that term in ORS 801.565.

(2) The State Parks and Recreation Department Fund is established separate and distinct from the General Fund. The fund shall consist of the following:

(a) All moneys placed in the fund as provided by law. Any interest or other income derived from the depositing or other investing of the fund shall be credited to the fund.

(b) All registration fees received by the Department of Transportation for campers, manufactured structures, motor homes and travel trailers [*which*] **that** are transferred to the fund under ORS 366.512. Such funds shall be deposited in a separate subaccount established under subsection (3) of this section.

(c) Revenue from fees and charges pursuant to ORS 390.124.

(3) Any moneys placed in the fund for a particular purpose may be placed in a separate subaccount within the fund. Each separate subaccount established under this subsection shall be separately accounted for. Moneys placed in a subaccount shall be used for the purposes for which they are deposited.

(4) All of the moneys in the fund except those moneys described in subsection (3), (5), (6) or (7) of this section shall be deposited in a separate subaccount within the fund and shall be used by the State Parks and Recreation Department for the acquisition, development, maintenance, care and use of park and recreation sites. The moneys in the subaccount under this subsection shall be accounted for separately and shall be stated separately in the State Parks and Recreation Department's biennial budget.

(5) Thirty percent of the amount transferred to the State Parks and Recreation Department under ORS 366.512 from the registration of travel trailers, campers and motor homes and under ORS 803.601 from recreational vehicle trip permits shall be deposited in a separate subaccount within the fund and is appropriated for the maintenance, care and use of county park and recreation sites. The

moneys in the subaccount under this subsection shall be accounted for separately. The following apply to the distribution of moneys under this subsection:

(a) The appropriation shall be distributed among the several counties for the purposes described in this subsection. The distribution shall be made at times determined by the State Parks and Recreation Department but shall be made not less than once a year.

(b) The sums designated under this subsection shall be remitted to the county treasurers of the several counties by warrant.

(c) The department shall establish an advisory committee to advise the department in the performance of its duties under this subsection. The composition of the advisory committee under this subsection shall be as determined by the department by rule. In determining the composition of the advisory committee, the department shall attempt to provide reasonable representation for county officials or employees with responsibilities relating to county parks and recreation sites.

(d) The department, by rule, shall establish a program to provide moneys to counties for the acquisition, development, maintenance, care and use of county park and recreation areas. The rules under this paragraph shall provide for distribution of moneys based on use and need and, as the department determines necessary, on the need for the development and maintenance of facilities to provide camping sites for campers, motor homes and travel trailers.

(6) The department shall create a separate City and County Subaccount within the fund to be used to reimburse cities and counties as provided in ORS 390.290.

(7) The department shall create a separate rural Fire Protection District Subaccount to be used to provide funds for the fire protection districts as provided in ORS 390.290.

(8) On or before January 15 of each odd-numbered year, the State Parks and Recreation Director shall report to the Joint Legislative Committee on Ways and Means created by ORS 171.555 on the use of moneys deposited pursuant to ORS 805.256 in the fund. The director shall make the report in a form and manner as the committee may prescribe.

NOTE: Reformats (1) to conform to legislative style; deletes inappropriate chapter reference in (1)(a); corrects grammar in (2)(b).

SECTION 266. ORS 390.134, as amended by section 74, chapter 655, Oregon Laws 2003, is amended to read:

390.134. (1) As used in this section:

(a) [*The terms*] "Camper[,]" **has the meaning given that term in ORS 801.180** [*"motor home" and "travel trailer" have the meanings given those terms in ORS chapter 801*].

(b) "County" includes a metropolitan service district organized under ORS chapter 268, but only to the extent that the district has acquired, through title transfer, and is operating a park or recreation site of a county pursuant to an intergovernmental agreement.

(c) "Motor home" has the meaning given that term in ORS 801.350.

(d) "Travel trailer" has the meaning given that term in ORS 801.565.

(2) The State Parks and Recreation Department Fund is established separate and distinct from the General Fund. The fund shall consist of the following:

(a) All moneys placed in the fund as provided by law. Any interest or other income derived from the depositing or other investing of the fund must be credited to the fund.

(b) All registration fees received by the Department of Transportation for campers, motor homes and travel trailers that are transferred to the fund under ORS 366.512. The funds must be deposited in a separate subaccount established under subsection (3) of this section.

(c) Revenue from fees and charges pursuant to ORS 390.124.

(3) Any moneys placed in the fund for a particular purpose may be placed in a separate subaccount within the fund. Each separate subaccount established under this subsection must be separately accounted for. Moneys placed in a subaccount must be used for the purposes for which they are deposited.

(4) All of the moneys in the fund except those moneys described in subsection (3), (5), (6) or (7) of this section must be deposited in a separate subaccount within the fund and used by the State Parks and Recreation Department for the acquisition, development, maintenance, care and use of

park and recreation sites. The moneys in the subaccount under this subsection must be accounted for separately and stated separately in the State Parks and Recreation Department's biennial budget.

(5) Thirty percent of the amount transferred to the State Parks and Recreation Department under ORS 366.512 from the registration of travel trailers, campers and motor homes and under ORS 803.601 from recreational vehicle trip permits must be deposited in a separate subaccount within the fund and is appropriated for the maintenance, care and use of county park and recreation sites. The moneys in the subaccount under this subsection must be accounted for separately. The following apply to the distribution of moneys under this subsection:

(a) The appropriation must be distributed among the several counties for the purposes described in this subsection. The distribution shall be made at times determined by the State Parks and Recreation Department but must be made not less than once a year.

(b) The sums designated under this subsection must be remitted to the county treasurers of the several counties by warrant.

(c) The department shall establish an advisory committee to advise the department in the performance of its duties under this subsection. The composition of the advisory committee under this subsection is as determined by the department by rule. In determining the composition of the advisory committee, the department shall attempt to provide reasonable representation for county officials or employees with responsibilities relating to county parks and recreation sites.

(d) The department, by rule, shall establish a program to provide moneys to counties for the acquisition, development, maintenance, care and use of county park and recreation areas. The rules under this paragraph shall provide for distribution of moneys based on use and need and, as the department determines necessary, on the need for the development and maintenance of facilities to provide camping sites for campers, motor homes and travel trailers.

(6) The department shall create a separate City and County Subaccount within the fund to be used to reimburse cities and counties as provided in ORS 390.290.

(7) The department shall create a separate rural Fire Protection District Subaccount to be used to provide funds for the fire protection districts as provided in ORS 390.290.

(8) On or before January 15 of each odd-numbered year, the State Parks and Recreation Director shall report to the Joint Legislative Committee on Ways and Means created by ORS 171.555 on the use of moneys deposited pursuant to ORS 805.256 in the fund. The director shall make the report in a form and manner as the committee may prescribe.

NOTE: Reformats (1) to conform to legislative style; deletes inappropriate chapter reference in (1)(a).

SECTION 267. ORS 390.560 is amended to read:

390.560. Moneys in the All-Terrain Vehicle Account established under ORS 390.555 shall be used for the following purposes only:

(1) In each 12-month period, no less than 10 percent of the moneys described in ORS 390.555 that are attributable to Class I all-terrain vehicles shall be transferred to the Department of Transportation [*to be used*] for the development and maintenance of snowmobile facilities as provided in ORS 802.110;

(2) Planning, [*promotion and implementation of*] **promoting and implementing** a statewide all-terrain vehicle program**,** including **the** acquisition, development and maintenance of all-terrain vehicle recreation areas;

(3) Education and safety training for all-terrain vehicle operators;

(4) Provision of first aid and police services in all-terrain vehicle recreation areas designated by the appropriate authority;

(5) **Paying the** costs of instigating, developing or promoting new programs for all-terrain vehicle users and of advising people of possible usage areas for all-terrain vehicles;

(6) **Paying the** costs of coordinating between all-terrain vehicle user groups and the managers of public lands;

(7) **Paying the** costs of providing consultation and guidance to all-terrain vehicle user programs; and

(8) **Paying the** costs of administration of the all-terrain vehicle programs, including staff support provided under ORS 390.565 as requested by the All-Terrain Vehicle Account Allocation Committee.

NOTE: Corrects read-in problems in (1) and (5) to (8); improves syntax and punctuation in (2).

SECTION 268. ORS 401.802 is amended to read:

401.802. (1) Every provider required to collect the tax imposed by ORS 401.792 to 401.804 shall be deemed to hold the same in trust for the State of Oregon and for the payment thereof to the Department of Revenue in the manner and at the time provided by ORS 401.798.

(2) At any time the provider required to collect the tax fails to remit any amount deemed to be held in trust for the State of Oregon or if the subscriber fails to pay the tax, the department may enforce collection by the issuance of a distraint warrant for the collection of the delinquent amount and all penalties, interest and collection charges accrued thereon. Such warrant shall be issued[*, docketed*] and proceeded upon in the same manner and shall have the same force and effect as is prescribed with respect to warrants for the collection of delinquent income taxes.

NOTE: Deletes obsolete term in (2).

SECTION 269. ORS 406.010 is amended to read:

406.010. As used in this chapter**,** "director" means Director of Veterans' Affairs.

NOTE: Corrects punctuation.

SECTION 270. ORS 408.380 is amended to read:

408.380. **(1)** The Oregon Veterans' Home authorized by section 1, chapter 591, Oregon Laws 1995, is subject to all state laws and administrative rules and all federal laws and administrative regulations to which long term care facilities operated by nongovernmental entities are subject, including the requirement to obtain a certificate of need under ORS 442.315 from the [*office of the Director*] **Department** of Human Services.

(2) As used in this section, "long term care facility" has the meaning given that term in ORS 442.015.

NOTE: Reformats section to conform to legislative style. Corrects name of issuing agency in (1); see 442.315.

SECTION 271. ORS 409.050 is amended to read:

409.050. (1) Pursuant to ORS chapter 183, the Director **of Human Services** may adopt such administrative rules as the director considers necessary to carry out the functions of the Department **of Human Services**.

(2) Notwithstanding any other provision of law, the director by order may delegate authority under subsection (1) of this section to such extent as the director considers proper to assistant directors of the department.

NOTE: Provides full titles on first references in (1).

SECTION 272. ORS 410.050 is amended to read:

410.050. **(1)** The State of Oregon finds**:**

(a) That the needs of the elderly population can be best served and planned for at the local community level;

(b) That a longer life expectancy and a growing elderly population demands services be provided in a coordinated manner and a single local agency system for such services be instituted;

(c) That local resources and volunteer help will augment state funds and needed [*manpower*] **personnel**;

(d) That local flexibility in providing services should be encouraged; and

(e) That a single state agency should regulate and provide leadership to [*insure*] **ensure** that the elderly citizens of Oregon will receive the necessary care and services at the least cost and in the least confining situation.

(2) The State of Oregon further finds that within budgetary constraints, it is appropriate that savings in nursing home services allocations within a planning and service area be reallocated to alternative care services under Title XIX and Oregon Project Independence in that area.

NOTE: Reformats section to conform to legislative style; eliminates gender-specific language in (1)(c); corrects word choice in (1)(e).

SECTION 273. ORS 410.080 is amended to read:

410.080. (1) The Department of Human Services is the designated single state agency for all federal programs under ORS [*327.525,*] 409.010, 410.040 to 410.320, 411.590 and 441.630.

(2) Except as provided in ORS 410.070 (2)(d) and 410.100, the administration of services to clients under ORS [*327.525,*] 409.010, 410.040 to 410.320, 411.590 and 441.630 shall be through area agencies, and shall comply with all applicable federal regulations.

NOTE: Deletes inappropriate ORS references.

SECTION 274. ORS 410.160 is amended to read:

410.160. Nothing in ORS [*327.525,*] 409.010, 410.040 to 410.320, 411.590 and 441.630 extends estate claims requirements and procedures related to certain Title XIX services under current Oregon statutes and federal regulations to other services.

NOTE: Deletes inappropriate ORS reference.

SECTION 275. ORS 410.230 is amended to read:

410.230. Nothing in ORS [*327.525,*] 409.010, 410.040 to 410.320, 411.590 and 441.630 requires an area agency or local governmental unit to expend local funds for the purpose of maintaining or expanding services to elderly and disabled persons.

NOTE: Deletes inappropriate ORS reference.

SECTION 276. ORS 410.240 is amended to read:

410.240. On and after October 1, 1981, a type A area agency shall operate in the same manner as it operated with local administrative responsibility for Title III of the Older Americans Act and Oregon Project Independence before October 1, 1981. Nothing in ORS [*327.525,*] 409.010, 410.040 to 410.320, 411.590 and 441.630 requires a type A area agency to become a type B area agency.

NOTE: Deletes inappropriate ORS reference.

SECTION 277. ORS 410.300 is amended to read:

410.300. (1) A type B area agency may contract with the Department of Human Services for services of state employees or have such employees transferred to employment by the area agency by transfer agreement.

(2) State employees whose services have been contracted to a type B area agency shall be supervised for program purposes by the area agency.

(3) If state employees are transferred to a type B area agency, the provisions of ORS 236.610 to 236.640 shall apply.

(4) Prior to transfer of any state employee to any other public employer under ORS [*327.525,*] 409.010, 410.040 to 410.320, 411.590 and 441.630, at a date to be determined by the Director of Human Services, each type B area agency shall prepare a plan in coordination with local staff of the department for implementation of ORS [*327.525,*] 409.010, 410.040 to 410.320, 411.590 and 441.630. The plan shall show how statutory responsibilities are to be met and how all staff are to be utilized.

NOTE: Deletes inappropriate ORS references in (4).

SECTION 278. ORS 410.450 is amended to read:

410.450. (1) Eligibility determinations and determinations of services for Oregon Project Independence shall be made in accordance with rules of the Department of Human Services.

(2) Determination of services shall be based on each client's financial, physical, functional, medical and social need for such services.

(3) Clients who appear eligible for services provided by the department because of disability or age and income shall be encouraged to apply to [*that*] **the** department for service.

NOTE: Corrects word choice in (3).

SECTION 279. ORS 411.692 is amended to read:

411.692. As used in ORS 93.268[*, 411.692*] and 411.694, "encumbrance" means a voluntary instrument granting a security interest in the affected real property to secure a monetary obligation.

NOTE: Deletes inappropriate reflexive reference.

SECTION 280. ORS 412.025 is amended to read:

412.025. (1) In determining need, the Department of Human Services shall take into consideration all income and resources of an applicant or recipient, as well as any expenses reasonably attributable to the earning of any such income. Subject to the provisions of this section, aid shall be granted on the basis of need but in any case only to the extent that funds are available.

(2) The retention by the applicant of resources [*which*] **that** have a total value no greater than a maximum amount established by department rule shall not affect the eligibility of the applicant or recipient or the amount of payment to the applicant or recipient. The department may determine by rule that certain items retained by the applicant or recipient shall not be considered in determining the total value of the resources of the applicant or recipient.

(3) In the determination of eligibility and the amount of need, and in any reconsideration thereof, with respect to an applicant or recipient of aid pursuant to ORS 412.005 to 412.125, such amounts of income and resources may be disregarded as the department may prescribe by [*rules and regulations promulgated by it*] **rule**.

NOTE: Corrects grammar in (2); improves word choice in (3).

SECTION 281. ORS 412.530 is amended to read:

412.530. (1) The amount of aid to be granted shall be determined on the basis of need, within the limits of available public assistance funds, with due regard to any other income and resources of the applicant, as well as any expenses reasonably attributable to the earning of any such income and the conditions existing in each case, and in accordance with the rules and regulations made by the Department of Human Services.

(2) In the determination of eligibility and the amount of need, and in any reconsideration thereof, with respect to an applicant or recipient of aid pursuant to ORS 412.510 to 412.630, such amounts of income and resources may be disregarded as the department may prescribe by [*rules and regulations promulgated by it*] **rule**.

NOTE: Improves word choice in (2).

SECTION 282. ORS 412.600 is amended to read:

412.600. (1) The amount of any aid [*to the disabled assistance*] paid under [*the provisions of this chapter*] **ORS 412.510 to 412.630** is a claim against the property or interest [*therein*] **in the property** belonging to and a part of the estate of any deceased recipient[*, or if there be*]**. If the deceased recipient has** no estate, the estate of the surviving spouse **of the deceased recipient**, if any, shall be charged for [*such aid paid to either or both. However,*] **aid paid under ORS 412.510 to 412.630 to the deceased recipient or the surviving spouse.** There shall be no adjustment or recovery of [*public assistance*] **aid** correctly paid on behalf of any [*individual*] **deceased recipient** under [*this chapter*] **ORS 412.510 to 412.630** except after the death of the surviving spouse of the [*individual*] **deceased recipient**, if any, and only at a time when the [*individual*] **deceased recipient** has no surviving child who is under 21 years of age or who is blind or permanently and totally disabled. Transfers of real or personal property by recipients of [*such assistance*] **aid** without adequate consideration are voidable and may be set aside under ORS 411.620 (2).

(2) Except [*where*] **when** there is a surviving spouse, or a surviving child who is under 21 years of age or who is blind or permanently and totally disabled, the amount of any aid paid under [*this chapter*] **ORS 412.510 to 412.630** is a claim against the estate in any conservatorship proceedings and may be paid pursuant to ORS 125.495.

(3) Nothing in this section authorizes the recovery of the amount of any aid from the estate or surviving spouse of a recipient to the extent that the need for aid resulted from a crime committed against the recipient.

NOTE: Restricts chapter citations to relevant series and corrects syntax in (1) and (2).

SECTION 283. ORS 413.120 is amended to read:

413.120. (1) All assistance granted under this chapter is subject to reconsideration from time to time and as frequently as is required by the rules [*and regulations*] of the Department of Human Services[*; and*]**. All assistance granted under this chapter** is subject to change or cancellation when the circumstances have changed sufficiently to warrant such action.

(2) In the determination of eligibility and the amount of need, and in any reconsideration thereof, with respect to an applicant or recipient of old-age assistance, such amounts of income and resources may be disregarded as the department may prescribe by [*rules and regulations promulgated by it*] **rule**.

NOTE: Improves word choice; corrects punctuation in (1).

SECTION 284. ORS 414.019 is amended to read:

414.019. As used in ORS 414.018 to 414.024, 414.042, 414.107, 414.710[,] **and** 414.720 [*and 735.712*], as of November 4, 1993, "Oregon Health Plan" means chapter 815, Oregon Laws 1993, and the seven pieces of legislation enacted during the 1987, 1989 and 1991 legislative sessions, the goal of which is to [*assure*] **ensure that** Oregonians **have** access to health care coverage, including the high-risk pool created by chapter 838, Oregon Laws 1989, the employer-based coverage reforms contained in chapter 591, Oregon Laws 1987, chapter 381, Oregon Laws 1989, and chapter 916, Oregon Laws 1991, the cost containment and technology assessments contained in chapter 470, Oregon Laws 1991, and the prioritization and medical assistance reforms contained in chapter 836, Oregon Laws 1989, and chapter 753, Oregon Laws 1991.

NOTE: Deletes incorrect reference to statute; corrects word choice; improves syntax.

SECTION 285. ORS 414.348 is amended to read:

414.348. The Senior Prescription Drug Assistance Fund is established separate and distinct from the General Fund. The Senior Prescription Drug Assistance Fund may receive any appropriations, allocations, federal moneys or gifts designated for the Senior Prescription Drug Assistance Program. The moneys in the Senior Prescription Drug Assistance Fund are continuously appropriated to the Department of Human Services and shall be used to reimburse retail pharmacies for subsidized prices provided to enrollees and to reimburse the department for the costs of administering the program, including contracted services costs, computer costs, professional fees paid to [*retained*] **retail** pharmacies and other reasonable program costs. Interest earned on the fund accrues to the fund.

NOTE: Corrects word choice.

SECTION 286. ORS 414.730 is amended to read:

414.730. The **Health Services** Commission shall establish a Subcommittee on Mental Health Care and Chemical Dependency to assist the commission in determining priorities for mental health care and chemical dependency. The subcommittee shall include mental health and chemical dependency professionals who provide inpatient and outpatient mental health and chemical dependency care.

NOTE: Sets out full title of agency.

SECTION 287. ORS 416.448 is amended to read:

416.448. (1) As used in this section:

(a) "Child support judgment" has the meaning given that term in ORS 25.089.

(b) "Governing child support judgment" has the meaning given that term in ORS 25.091.

(2) Notwithstanding any other provision of this section or ORS 25.089, when there exist two or more child support judgments involving the same obligor and child, and when one or more of the judgments was issued by a tribunal of another state, the administrator shall apply the provisions of ORS chapter 110 before enforcing or modifying a child support judgment under this section or ORS 25.089.

(3) When the administrator finds that there exist two or more child support judgments involving the same obligor and child and the same period of time, and each child support judgment was issued in this state:

(a) The administrator may petition the court for the county where a child who is subject to the judgments resides for a governing child support judgment under ORS 25.091; or

(b) The administrator may apply the presumption described in ORS 25.091, determine the controlling terms of the child support judgments and issue a proposed governing child support order and notice to the parties in the manner prescribed by rules adopted by the [*administrator*] **Department of Justice** under ORS 416.455. The proposed governing child support order must include all

of the information described in ORS 25.091 (8). The administrator shall serve the proposed governing child support order and notice in the manner provided in ORS 416.425. The notice must include a statement that the proposed governing child support order shall become final unless a written objection is made to the administrator within 60 days after service of the proposed governing child support order and notice.

(4) If the administrator receives a timely written objection to a proposed governing child support order issued under subsection (3)(b) of this section, the administrator shall certify the matter to the court for the county where a child who is subject to the judgments resides for a governing child support judgment under ORS 25.091.

(5) If the administrator does not receive a timely written objection to a proposed governing child support order issued under subsection (3)(b) of this section, the governing child support order is final. The administrator shall certify the governing child support order to a court for review and approval under ORS 416.425 (10). The governing child support order is not effective until reviewed and approved by the court. If the court approves the governing child support order, the governing child support order becomes the governing child support judgment upon filing as provided in ORS 416.440.

(6) Once a governing child support judgment is created under this section, the noncontrolling terms of each earlier child support judgment regarding monetary support or **a** health [*insurance*] **benefit plan** under ORS [*25.255*] **25.321 to 25.343** are terminated. However, the creation of a governing child support judgment does not affect any support payment arrearage or any liability related to health [*insurance*] **benefit plan** coverage that has accrued under a child support judgment before the governing child support judgment is created.

(7) Not sooner than 30 days and not later than 60 days after entry of the governing child support judgment, the administrator shall file a certified copy of the governing child support judgment with each court that issued an earlier child support judgment. A failure to file does not affect the validity or enforceability of the governing child support judgment.

(8) When [*a hearing officer*] **an administrative law judge** finds that there exist two or more child support judgments involving the same obligor and child and the same period of time, and each child support judgment was issued in this state, the [*hearing officer*] **administrative law judge** shall remand the matter to the administrator to follow the provisions of subsection (3) of this section.

NOTE: Corrects name of rulemaking authority in (3)(b); replaces reference to repealed section with proper series in (6); and corrects terminology in (6) and (8).

SECTION 288. ORS 418.017 is amended to read:

418.017. (1) A parent may leave an infant at an authorized facility in the physical custody of an agent, employee, [*doctor*] **physician** or other medical professional working at the authorized facility if the infant:

(a) Is 30 days of age or younger as determined to a reasonable degree of medical certainty; and

(b) Has no evidence of abuse.

(2) A parent leaving an infant under this section is not required to provide any identifying information about the infant or the parent.

(3) An **agent,** employee, [*agent, doctor*] **physician** or other medical professional working at an authorized facility shall receive an infant brought to the authorized facility under this section.

(4) If acting in good faith in receiving an infant, an authorized facility receiving an infant under this section and any agent, employee, [*doctor*] **physician** or other medical professional working at the authorized facility are immune from any criminal or civil liability that otherwise might result from their actions relating to receiving the infant. A city, county or other political subdivision of this state that operates a sheriff's office, police station or fire station that receives an infant under this section is immune from any criminal or civil liability that otherwise might result from the actions taken by its employees or agents in receiving the infant.

(5) When an infant has been left at an authorized facility as provided in this section:

(a) The authorized facility shall notify the Department of Human Services that an infant has been left at the facility as provided in subsection (1) of this section no later than 24 hours after receiving the infant.

(b) The infant is deemed abandoned for purposes of ORS 419B.100, and the department is deemed to have protective custody of the infant under ORS 419B.150 from the moment the infant was left at the facility. The department shall comply with the applicable provisions of ORS chapter 419B with regard to the infant.

(6) The authorized facility shall release the infant to the department when release is appropriate considering the infant's medical condition and shall provide the department with all information the facility has regarding the infant.

(7) As used in this section:

(a) "Abuse" has the meaning given that term in ORS 419B.005.

(b) "Authorized facility" means a hospital as described in ORS 442.015, freestanding birthing center as defined in ORS 442.015, physician's office, sheriff's office, police station or fire station.

(c) "Physician" means a person licensed by the Board of Medical Examiners for the State of Oregon to practice medicine and surgery.

NOTE: Repairs inconsistent terminology in (1), (3) and (4).

SECTION 289. ORS 418.040 is amended to read:

418.040. (1) Aid pursuant to the temporary assistance for needy families program shall be granted under ORS 418.035 to 418.125 to any dependent child who is living in a home meeting the standards of care and health fixed by the rules and regulations of the Department of Human Services and who is a resident of the State of Oregon, if the parent or other relative with whom the child is living is a resident of the State of Oregon.

(2) No parent of a child receiving aid under ORS 418.035 to 418.125 shall be exempt from a requirement to participate in programs to develop employment or self-sufficiency skills due to the age of the child except:

(a) During the first two months of the third trimester of pregnancy, the parent shall not be required to participate more than 10 hours per week and shall be exempt from participation during the last month of pregnancy; and

(b) During the first 90 days after the birth of a child.

(3) No individual in a household receiving [*assistance*] **aid** under ORS 418.035 to 418.125 shall be exempt, due to the pregnancy of the individual, from a requirement to obtain a high school diploma or its equivalent or to participate in programs to develop employment or self-sufficiency skills.

(4) No parent shall be eligible to receive [*benefits*] **aid** under ORS 418.035 to 418.125 if the parent fails to participate in programs to develop employment or self-sufficiency skills during the period of eligibility determination.

(5) The provisions of subsection (3) of this section shall not apply to an individual experiencing medical complications due to pregnancy, as determined by a person licensed by the Board of Medical Examiners or the Oregon State Board of Nursing, that prohibit participation in the activities otherwise required.

(6) Notwithstanding section 16, chapter 739, Oregon Laws 1993, and subsection (5) of this section, no individual in a household receiving [*assistance*] **aid** under ORS 418.035 to 418.125 shall be exempt from any requirement to participate in programs to develop employment or self-sufficiency skills, as defined by the department, unless the individual and the individual's department case manager agree in writing that the exemption is appropriate under guidelines developed by the department.

(7) The department by rule shall define programs to develop employment or self-sufficiency skills for purposes of this section.

NOTE: Repairs inconsistent terminology in (3), (4) and (6).

SECTION 290. ORS 418.150 is amended to read:

418.150. (1) The Legislative Assembly declares that it is in the public interest of the State of Oregon to assist appropriate individuals who are current, former or potential recipients of, or who

are included in assistance households receiving, temporary assistance for needy families to attain self-care or self-support.

(2) The Legislative Assembly declares that it is in the public interest of the State of Oregon that all available [*manpower*] **workforce** services, including those authorized under other provisions of law, be utilized to provide incentives, opportunities and necessary services to appropriate individuals in order that they may be employed in the regular economy, may be trained for regular employment and may participate in special work projects.

NOTE: Excises gender-specific term in (2).

SECTION 291. ORS 418.640 is amended to read:

418.640. (1) The Department of Human Services shall adopt such rules, not inconsistent with ORS 418.625 to 418.645, as it deems necessary or advisable to protect the best interests of children in foster homes and to carry out the intent and purpose of ORS 418.625 to 418.645.

(2) The department shall adopt rules assuring that all foster parents receive training designed to assist the foster parent in both understanding the mental and emotional problems that occur in child victims of abuse and neglect, including sexual abuse and rape of a child, as defined in ORS 419B.005, and in managing the behavior that may result from such problems. The training shall be provided in accordance with rules adopted by the department.

(3) [*By July 1, 1991,*] The Board on Public Safety Standards and Training shall develop a training program for law enforcement officers investigating child abuse cases and interviewing child abuse victims. The curriculum shall address the area of training and education necessary to facilitate the skills necessary to investigate reports of child abuse. The curriculum shall include, but not be limited to:

(a) Assessment of risk to child;

(b) Dynamics of child abuse; and

(c) Legally sound and age appropriate interview and investigatory techniques.

(4) The department or duly authorized representative shall visit every certified foster home from time to time and as often as appears necessary to determine that such foster home consistently maintains the standards fixed by the department and that proper care is being given to the children therein.

NOTE: Deletes outdated provision in (3).

SECTION 292. ORS 418.965 is amended to read:

418.965. (1) A city or county shall approve or deny an application for the siting of a child-caring facility within 90 days after the date of application, unless both the applicant and the city or county agree to an extension of time.

(2) [*After July 1, 1980, no*] **A** city or county may **not** deny an application for the siting of a child-caring facility unless it has adopted the procedure authorized by ORS 418.960.

NOTE: Deletes obsolete provision and improves syntax in (2).

SECTION 293. ORS 419A.015, 419A.045 to 419A.048 and 419A.107 are added to and made a part of ORS chapter 419A.

NOTE: Adds sections to chapter to pick up appropriate definitions.

SECTION 294. ORS 419C.237, 419C.441 and 419C.461 are added to and made a part of ORS chapter 419C.

NOTE: Adds sections to chapter to pick up appropriate definitions.

SECTION 295. ORS 419C.443 is amended to read:

419C.443. (1) Except when otherwise provided in subsection (3) of this section, when a youth offender has been found to be within the jurisdiction of the court under ORS 419C.005 for a first violation of the provisions under ORS 475.992 prohibiting delivery for no consideration of less than five grams of marijuana or prohibiting possession of less than one ounce of marijuana, the court shall order an evaluation and designate agencies or organizations to perform diagnostic assessment and provide programs of information and treatment. The designated agencies or organizations must meet the standards set by the Director of Human Services. Whenever possible, the court shall designate agencies or organizations to perform the diagnostic assessment that are separate from those

that may be designated to carry out a program of information or treatment. The parent of the youth offender shall pay the cost of the youth offender's participation in the program based upon the ability of the parent to pay. The petition shall be dismissed by the court upon written certification of the youth offender's successful completion of the program from the designated agency or organization providing the information and treatment.

(2) Monitoring the youth offender's progress in the program shall be the responsibility of the diagnostic assessment agency or organization. [*It*] **The agency or organization** shall make a report to the court stating the youth offender's successful completion or failure to complete all or any part of the program specified by the diagnostic assessment. The form of the report shall be determined by agreement between the court and the diagnostic assessment agency or organization. The court shall make the report a part of the record of the case.

(3) The court is not required to make the disposition required by subsection (1) of this section if the court determines that the disposition is inappropriate in the case or if the court finds that the youth offender has previously entered into a formal accountability agreement under ORS 419C.239 (1)(i).

NOTE: Clarifies indefinite pronoun in (2).

SECTION 296. ORS 421.284 is amended to read:

421.284. The Western Interstate Corrections Compact hereby is enacted into law and entered into on behalf of this state with all other states legally joining therein in a form substantially as follows:

ARTICLE I

PURPOSE AND POLICY

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders.

ARTICLE II

DEFINITIONS

As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States[*, the Territory of Hawaii,*] or, subject to the limitation contained in Article VII, Guam.

(b) "Sending state" means a state party to this compact in which conviction was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had.

(d) "Inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution.

(e) "Institution" means any prison, reformatory or other correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates may lawfully be confined.

ARTICLE III

CONTRACTS

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of

rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific percentum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that monies are legally available therefor, pay to the receiving state, a reasonable sum as consideration for such enlargement of capacity, or provision of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(c) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV

PROCEDURES AND RIGHTS

(a) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending

state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subdivision shall be borne by the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or the status of the inmate changed on account of any action or proceeding in which the inmate could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in the exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

ARTICLE V

ACTS NOT REVIEWABLE IN RECEIVING STATE: EXTRADITION

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which the inmate is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI

FEDERAL AID

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision provided that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VII

ENTRY INTO FORCE

This compact shall enter into force and become effective and binding upon the state so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states, or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of Congress to such joinder. For the purposes of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon and Washington.

ARTICLE VIII

WITHDRAWAL AND TERMINATION

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until two years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

ARTICLE IX

OTHER ARRANGEMENTS UNAFFECTED

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE X

CONSTRUCTION AND SEVERABILITY

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

NOTE: Updates archaic definition in Article II (a).

SECTION 297. ORS 430.630 is amended to read:

430.630. (1) In addition to any other requirements that may be established by rule by the Department of Human Services and subject to the availability of funds, each community mental health and developmental disabilities program shall provide the following basic services to persons with mental retardation and developmental disabilities and alcohol abuse, alcoholism, drug abuse and drug dependence:

(a) Outpatient services;

(b) Aftercare for persons released from hospitals and training centers;

(c) Training, case and program consultation and education for community agencies, related professions and the public; and

(d) Guidance and assistance to other human service agencies for joint development of prevention programs and activities to reduce factors causing mental retardation and developmental disabilities and alcohol abuse, alcoholism, drug abuse and drug dependence.

(2) As alternatives to state hospitalization, it shall be the responsibility of the community mental health and developmental disabilities program to [*insure*] **ensure** that, subject to the availability of funds, the following services for the mentally retarded and developmentally disabled, alcohol abuser, alcoholic, drug abuser and drug-dependent persons are available when needed and approved by the Department of Human Services:

(a) Emergency services on a 24-hour basis, such as telephone consultation, crisis intervention and prehospital screening examination;

(b) Care and treatment for a portion of the day or night, which may include day treatment centers, work activity centers and preschool programs;

(c) Residential care and treatment in facilities such as halfway houses, detoxification centers and other community living facilities;

(d) Continuity of care, such as that provided by service coordinators, community case development specialists and core staff of federally assisted community mental health centers;

(e) Inpatient treatment in community hospitals; and

(f) Other alternative services to state hospitalization as defined by the department.

(3) In addition to any other requirements that may be established by rule of the department, each community mental health and developmental disabilities program, subject to the availability of funds, shall provide or ensure the provision of the following services to persons with mental or emotional disturbances:

(a) Screening and evaluation to determine the client's service needs;

(b) Crisis stabilization to meet the needs of persons suffering acute mental or emotional disturbances, including the costs of investigations and prehearing detention in community hospitals or other facilities approved by the department for persons involved in involuntary commitment procedures;

(c) Vocational and social services that are appropriate for the client's age, designed to improve the client's vocational, social, educational and recreational functioning;

(d) Continuity of care to link the client to housing and appropriate and available health and social service needs;

(e) Psychiatric care in state and community hospitals, subject to the provisions of subsection (4) of this section;

(f) Residential services;

(g) Medication monitoring;

(h) Individual, family and group counseling and therapy;

(i) Public education and information;

(j) Prevention of mental or emotional disturbances and promotion of mental health;

(k) Consultation with other community agencies; and

(L)[*(A)*] Preventive mental health services for children and adolescents, including primary prevention efforts, early identification and early intervention services. Preventive services should be patterned after service models that have demonstrated effectiveness in reducing the incidence of emotional, behavioral and cognitive disorders in children.

[*(B)*] As used in this [*subsection*] **paragraph**:

[*(i)*] **(A)** "Early identification" means detecting emotional disturbance in its initial developmental stage[*;*]**.**

[*(ii)*] **(B)** "Early intervention services" for children at risk of later development of emotional disturbance means programs and activities for children and their families that promote conditions, opportunities and experiences that encourage and develop emotional stability, self-sufficiency and increased personal competence[*; and*]**.**

[*(iii)*] **(C)** "Primary prevention efforts" means efforts that prevent emotional problems from occurring by addressing issues early so that disturbances do not have an opportunity to develop.

(4) A community mental health and developmental disabilities program shall assume responsibility for psychiatric care in state and community hospitals, as provided in subsection (3)(e) of this section, in the following circumstances:

(a) The person receiving care is a resident of the county served by the program. For purposes of this paragraph, "resident" means the resident of a county in which the person maintains a current mailing address or, if the person does not maintain a current mailing address within the state, the county in which the person is found, or the county in which a court committed mentally ill person has been conditionally released.

(b) The person has been hospitalized involuntarily or voluntarily, pursuant to ORS 426.130 or 426.220, except for persons confined to the Secure Child and Adolescent Treatment Unit at Oregon State Hospital, or has been hospitalized as the result of a revocation of conditional release.

(c) Payment is made for the first 60 consecutive days of hospitalization.

(d) The hospital has collected all available patient payments and third-party reimbursements.

(e) In the case of a community hospital, the department has approved the hospital for the care of mentally or emotionally disturbed persons, the community mental health and developmental disabilities program has a contract with the hospital for the psychiatric care of residents and a representative of the program approves voluntary or involuntary admissions to the hospital prior to admission.

(5) Subject to the review and approval of the department, a community mental health and developmental disabilities program may initiate additional services after the services defined in this section are provided.

(6) Each community mental health and developmental disabilities program and the state hospital serving the program's geographic area shall enter into a written agreement concerning the policies and procedures to be followed by the program and the hospital when a patient is admitted to, and discharged from, the hospital and during the period of hospitalization.

(7) Each community mental health and developmental disabilities program shall have a mental health advisory committee, appointed by the board of county commissioners or the county court or, if two or more counties have combined to provide mental health services, the boards or courts of the participating counties or, in the case of a Native American reservation, the tribal council.

(8) A community mental health and developmental disabilities program may request and the department may grant a waiver regarding provision of one or more of the services described in subsection (3) of this section upon a showing by the county and a determination by the department that mentally or emotionally disturbed persons in that county would be better served and unnecessary institutionalization avoided.

(9) Each community mental health and developmental disabilities program shall cooperate fully with the Governor's Council on Alcohol and Drug Abuse Programs in the performance of its duties.

(10)(a) As used in this subsection, "local mental health authority" means one of the following entities:

(A) The board of county commissioners of one or more counties that establishes or operates a community mental health and developmental disabilities program;

(B) The tribal council, in the case of a federally recognized tribe of Native Americans that elects to enter into an agreement to provide mental health services; or

(C) A regional local mental health authority comprised of two or more boards of county commissioners.

(b) Each local mental health authority that provides mental health services shall determine the need for local mental health services and adopt a comprehensive local plan for the delivery of mental health services for children, families and adults that describes the methods by which the local mental health authority shall provide those services. The local mental health authority shall review and revise the local plan biennially. The purpose of the local plan is to create a blueprint to provide mental health services that are directed by and responsive to the mental health needs of individuals in the community served by the local plan.

(c) The local plan shall identify ways to:

(A) Coordinate and ensure accountability for all levels of care described in paragraph (e) of this subsection;

(B) Maximize resources for consumers and minimize administrative expenses;

(C) Provide supported employment and other vocational opportunities for consumers;

(D) Determine the most appropriate service provider among a range of qualified providers;

(E) Ensure that appropriate mental health referrals are made;

(F) Address local housing needs for persons with mental health disorders;

(G) Develop a process for discharge from state and local psychiatric hospitals and transition planning between levels of care or components of the system of care;

(H) Provide peer support services, including but not limited to drop-in centers and paid peer support;

(I) Provide transportation supports; and

(J) Coordinate services among the criminal and juvenile justice systems, adult and juvenile corrections systems and local mental health programs to ensure that persons with mental illness who come into contact with the justice and corrections systems receive needed care and to ensure continuity of services for adults and juveniles leaving the corrections system.

(d) When developing a local plan, a local mental health authority shall:

(A) Coordinate with the budgetary cycles of state and local governments that provide the local mental health authority with funding for mental health services;

(B) Involve consumers, advocates, families, service providers, schools and other interested parties in the planning process;

(C) Coordinate with the local public safety coordinating council to address the services described in paragraph (c)(J) of this subsection;

(D) Conduct a population based needs assessment to determine the types of services needed locally;

(E) Determine the ethnic, cultural and diversity needs of the population served by the local plan;

(F) Describe the anticipated outcomes of services and the actions to be achieved in the local plan;

(G) Ensure that the local plan coordinates planning, funding and services with:

(i) The educational needs of children and adults;

(ii) Providers of social supports, including but not limited to housing, employment, transportation and education; and

(iii) Providers of physical health and medical services;

(H) Describe how funds, other than state resources, may be used to support and implement the local plan;

(I) Demonstrate ways to integrate local services and administrative functions in order to support integrated service delivery in the local plan; and

(J) Involve the local mental health advisory committees described in subsection (7) of this section.

(e) The local plan must describe how the local mental health authority will ensure the delivery of and be accountable for clinically appropriate services in a continuum of care based on consumer needs. The local plan shall include, but not be limited to, services providing the following levels of care:

(A) Twenty-four-hour crisis services;

(B) Secure and nonsecure extended psychiatric care;

(C) Secure and nonsecure acute psychiatric care;

(D) Twenty-four-hour supervised structured treatment;

(E) Psychiatric day treatment;

(F) Treatments that maximize client independence;

(G) Family and peer support and self-help services;

(H) Support services;

(I) Prevention and early intervention services;

(J) Transition assistance between levels of care;

(K) Dual diagnosis services;

(L) Access to placement in state-funded psychiatric hospital beds; and

(M) Precommitment and civil commitment in accordance with ORS chapter 426.

(f) In developing the part of the local plan referred to in paragraph (c)(J) of this subsection, the local mental health authority shall collaborate with the local public safety coordinating council to address the following:

(A) Training for all law enforcement officers on ways to recognize and interact with persons with mental illness, for the purpose of diverting them from the criminal and juvenile justice systems;

(B) Developing voluntary locked facilities for crisis treatment and follow-up as an alternative to custodial arrests;

(C) Developing a plan for sharing a daily jail and juvenile detention center custody roster and the identity of persons of concern and offering mental health services to those in custody;

(D) Developing a voluntary diversion program to provide an alternative for persons with mental illness in the criminal and juvenile justice systems; and

(E) Developing mental health services, including housing, for persons with mental illness prior to and upon release from custody.

(g) Services described in the local plan shall:

(A) Address the vision, values and guiding principles described in the Report to the Governor from the Mental Health Alignment Workgroup, January 2001;

(B) Be provided to children and families as close to their homes as possible;

(C) Be culturally appropriate and competent;

(D) Be, for children and adults with mental health needs, from providers appropriate to deliver those services;

(E) Be delivered in an integrated service delivery system with integrated service sites or processes, and with the use of integrated service teams;

(F) Ensure consumer choice among a range of qualified providers in the community;

(G) Be distributed geographically;

(H) Involve consumers, families, clinicians, children and schools in treatment as appropriate;

(I) Maximize early identification and early intervention;

(J) Ensure appropriate transition planning between providers and service delivery systems, with an emphasis on transition between children and adult mental health services;

(K) Be based on the ability of a client to pay;

(L) Be delivered collaboratively;

(M) Use age-appropriate, research-based quality indicators;

(N) Use best-practice innovations; and

(O) Be delivered using a community-based, multisystem approach.

(h) A local mental health authority shall submit to the Department of Human Services a copy of the local plan and biennial revisions adopted under paragraph (b) of this subsection at time intervals established by the department.

(i) Each local commission on children and families shall reference the local plan for the delivery of mental health services in the local coordinated comprehensive plan created pursuant to ORS 417.775.

NOTE: Corrects word choice in (2) lead-in; corrects read-in woes, internal reference and punctuation in (3)(L).

SECTION 298. ORS 438.040 is amended to read:

438.040. [*On and after July 1, 1970,*] It [*shall be*] **is** unlawful:

(1) For any owner or director of a clinical laboratory to operate or maintain a clinical laboratory without a license issued under ORS 438.110 or without a temporary permit issued under ORS 438.150 or to perform or permit the performance of any laboratory specialty for which the laboratory is not licensed except as specified under ORS 438.050, unless the laboratory has been issued a valid

certificate from the federal government under the Clinical Laboratory Improvement Amendments of 1988 (P.L. 100-578, 42 U.S.C. 201 and 263a).

(2) For an out-of-state laboratory to perform health screen testing in Oregon without a permit issued under ORS 438.150 (5).

(3) For any person to serve in the capacity of director of a clinical laboratory without being qualified as a clinical laboratory director under ORS 438.210.

NOTE: Removes outdated provision and improves word choice in lead-in.

SECTION 299. ORS 441.995 is amended to read:

441.995. (1) In adopting criteria for establishing the amount of civil penalties for violations of ORS 441.630 to 441.680 [*and 441.995*], the Department of Human Services shall consider:

(a) Any prior violations of laws or rules pertaining to facilities[*, as defined in ORS 441.630*];

(b) The financial benefits, if any, realized by the facility as a result of the violation;

(c) The gravity of the violation, including the actual or potential threat to the health, safety and well-being of one or more residents;

(d) The severity of the actual or potential harm caused by the violation; and

(e) The facility's past history of correcting violations and preventing the recurrence of violations.

(2) The department may impose a civil penalty for abuse[*, as defined in ORS 441.630,*] in accordance with rules adopted under ORS 441.637 (1). Facilities assessed civil penalties for abuse shall be entitled to a contested case hearing under ORS chapter 183.

(3) If the department finds the facility is responsible for abuse and if the abuse resulted in a resident's death or serious injury, the department shall impose a civil penalty of not less than $500 nor more than $1,000 for each violation, or as otherwise required by federal law.

(4) Nothing in ORS 441.637 and this section is intended to expand, replace or supersede the department's authority to impose civil penalties pursuant to ORS 441.710 or 441.715 for violations that do not constitute abuse.

NOTE: Deletes inappropriate reflexive reference in (1); eliminates redundant provision in (1)(a) and (2).

SECTION 300. ORS 442.015 is amended to read:

442.015. As used in ORS chapter 441 and this chapter, unless the context requires otherwise:

(1) "Acquire" or "acquisition" [*refers to*] **means** obtaining equipment, supplies, components or facilities by any means, including purchase, capital or operating lease, rental or donation, with intention of using such equipment, supplies, components or facilities to provide health services in Oregon. When equipment or other materials are obtained outside of this state, acquisition is considered to occur when the equipment or other materials begin to be used in Oregon for the provision of health services or when such services are offered for use in Oregon.

(2) "Adjusted admission" means the sum of all inpatient admissions divided by the ratio of inpatient revenues to total patient revenues.

(3) "Affected persons" has the same meaning as given to "party" in ORS 183.310.

(4) "Ambulatory surgical center" means a facility that performs outpatient surgery not routinely or customarily performed in a physician's or dentist's office, and is able to meet health facility licensure requirements.

(5) "Audited actual experience" means data contained within financial statements examined by an independent, certified public accountant in accordance with generally accepted auditing standards.

(6) "Budget" means the projections by the hospital for a specified future time period of expenditures and revenues with supporting statistical indicators.

(7) "Case mix" means a calculated index for each hospital, based on financial accounting and case mix data collection as set forth in ORS 442.425, reflecting the relative costliness of that hospital's mix of cases compared to a state or national mix of cases.

(8) "Commission" means the Oregon Health Policy Commission.

(9) "Department" means the Department of Human Services of the State of Oregon.

(10) "Develop" means to undertake those activities [*which*] **that** on their completion will result in the offer of a new institutional health service or the incurring of a financial obligation, as defined under applicable state law, in relation to the offering of such a health service.

(11) "Director" means the Director of Human Services.

(12) "Expenditure" or "capital expenditure" means the actual expenditure, an obligation to an expenditure, lease or similar arrangement in lieu of an expenditure, and the reasonable value of a donation or grant in lieu of an expenditure but not including any interest thereon.

(13) "Freestanding birthing center" means a facility licensed for the primary purpose of performing low risk deliveries.

(14) "Governmental unit" means the state, or any county, municipality or other political subdivision, or any related department, division, board or other agency.

(15) "Gross revenue" means the sum of daily hospital service charges, ambulatory service charges, ancillary service charges and other operating revenue. "Gross revenue" does not include contributions, donations, legacies or bequests made to a hospital without restriction by the donors.

(16)(a) "Health care facility" means a hospital, a long term care facility, an ambulatory surgical center, a freestanding birthing center or an outpatient renal dialysis facility.

(b) "Health care facility" does not mean:

(A) An establishment furnishing residential care or treatment not meeting federal intermediate care standards, not following a primarily medical model of treatment, prohibited from admitting persons requiring 24-hour nursing care and licensed or approved under the rules of the Department of Human Services or the Department of Corrections; or

(B) An establishment furnishing primarily domiciliary care.

(17) "Health maintenance organization" or "HMO" means a public organization or a private organization organized under the laws of any state [*which*] **that**:

(a) Is a qualified HMO under section 1310 (d) of the U.S. Public Health Services Act; or

(b)(A) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services:

(i) Usual physician services[*,*]**;**

(ii) Hospitalization[*,*]**;**

(iii) Laboratory[*,*]**;**

(iv) X-ray[*,*]**;**

(v) Emergency and preventive services[*,*]**;** and

(vi) Out-of-area coverage;

(B) Is compensated, except for copayments, for the provision of the basic health care services listed in subparagraph (A) of this paragraph to enrolled participants on a predetermined periodic rate basis; and

(C) Provides physicians' services primarily directly through physicians who are either employees or partners of such organization, or through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.

(18) "Health services" means clinically related diagnostic, treatment or rehabilitative services, and includes alcohol, drug or controlled substance abuse and mental health services that may be provided either directly or indirectly on an inpatient or ambulatory patient basis.

(19) "Hospital" means a facility with an organized medical staff, with permanent facilities that include inpatient beds and with medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment primarily for but not limited to acutely ill patients and accident victims, to provide treatment for the mentally ill or to provide treatment in special inpatient care facilities.

(20) "Institutional health services" means health services provided in or through health care facilities and includes the entities in or through which such services are provided.

(21) "Intermediate care facility" means a facility that provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment that a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical con-

dition require care and services above the level of room and board that can be made available to them only through institutional facilities.

(22) "Long term care facility" means a facility with permanent facilities that include inpatient beds, providing medical services, including nursing services but excluding surgical procedures except as may be permitted by the rules of the director, to provide treatment for two or more unrelated patients. "Long term care facility" includes skilled nursing facilities and intermediate care facilities but may not be construed to include facilities licensed and operated pursuant to ORS 443.400 to 443.455.

(23) "Major medical equipment" means medical equipment that is used to provide medical and other health services and that costs more than $1 million. "Major medical equipment" does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services, if the clinical laboratory is independent of a physician's office and a hospital and has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs (10) and (11) of section 1861(s) of that Act.

[*(24) "Medically indigent" means a person who has insufficient resources or assets to pay for needed medical care without utilizing resources required to meet basic needs for shelter, food and clothing.*]

[*(25)*] **(24)** "Net revenue" means gross revenue minus deductions from revenue.

[*(26)*] **(25)** "New hospital" means a facility that did not offer hospital services on a regular basis within its service area within the prior 12-month period and is initiating or proposing to initiate such services. "New hospital" also includes any replacement of an existing hospital that involves a substantial increase or change in the services offered.

[*(27)*] **(26)** "New skilled nursing or intermediate care service or facility" means a service or facility that did not offer long term care services on a regular basis by or through the facility within the prior 12-month period and is initiating or proposing to initiate such services. [*A*] "New skilled nursing or intermediate care service or facility" also includes the rebuilding of a long term care facility, the relocation of buildings [*which*] **that** are a part of a long term care facility, the relocation of long term care beds from one facility to another or an increase in the number of beds of more than 10 or 10 percent of the bed capacity, whichever is the lesser, within a two-year period.

[*(28)*] **(27)** "Offer" means that the health care facility holds itself out as capable of providing, or as having the means for the provision of, specified health services.

[*(29)*] **(28)** "Operating expenses" means the sum of daily hospital service expenses, ambulatory service expenses, ancillary expenses and other operating expenses, excluding income taxes.

[*(30)*] **(29)** "Outpatient renal dialysis facility" means a facility that provides renal dialysis services directly to outpatients.

[*(31)*] **(30)** "Person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies and insurance companies), a state, or a political subdivision or instrumentality, including a municipal corporation, of a state.

[*(32)*] **(31)** "Skilled nursing facility" means a facility or a distinct part of a facility, that is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care, or an institution that provides rehabilitation services for the rehabilitation of injured, disabled or sick persons.

[*(33)*] **(32)** "Special inpatient care facility" means a facility with permanent inpatient beds and other facilities designed and utilized for special health care purposes, including but not limited to a rehabilitation center, a college infirmary, a chiropractic facility, a facility for the treatment of alcoholism or drug abuse, an inpatient care facility meeting the requirements of ORS 441.065, and any other establishment falling within a classification established by the Department of Human Services, after determination of the need for such classification and the level and kind of health care appropriate for such classification.

[*(34)*] **(33)** "Total deductions from gross revenue" or "deductions from revenue" means reductions from gross revenue resulting from inability to collect payment of charges. Such reductions include bad debts[*;*]**,** contractual adjustments[*;*]**,** uncompensated care[*;*]**,** administrative, courtesy and

policy discounts and adjustments and other such revenue deductions. The deduction shall be net of the offset of restricted donations and grants for indigent care.

NOTE: Corrects word choice in (1), (10), (17) and (26); tabulates (17)(b)(A); deletes definition of unused term; adjusts punctuation in (33).

SECTION 301. ORS 442.505 is amended to read:

442.505. The Office of Rural Health shall institute a program to provide technical assistance to hospitals defined by the office as rural. The Office of Rural Health shall be primarily responsible for providing:

(1) A recruitment and retention program for [*physician*] **physicians** and other primary care [*provider manpower*] **providers** in rural areas.

(2) An informational link between rural hospitals and state and federal policies regarding regulations and payment sources.

(3) A system for effectively networking rural hospitals and providers so that they may compete or negotiate with urban based health maintenance organizations.

(4) Assistance to rural hospitals in identifying strengths, weaknesses, opportunities and threats.

(5) In conjunction with the Oregon Association of Hospitals, a report [*which*] **that** identifies models that will replace or restructure inefficient health services in rural areas.

NOTE: Improves word choice and expunges gender-specific term in (1); corrects grammar in (5).

SECTION 302. ORS 443.035 is amended to read:

443.035. (1) A license may be granted, or may be renewed annually, for [*the*] **a** calendar year [*beginning on or after January 1, 1996,*] upon payment of a fee as follows:

(a) For a new home health agency:

(A) $1,000; and

(B) An additional $1,000 for each subunit of a parent home health agency.

(b) For renewal of a license:

(A) $600; and

(B) An additional $600 for each subunit of a parent home health agency.

(c) For a change of ownership at a time other than the annual renewal date:

(A) $500; and

(B) An additional $500 for each subunit of a parent home health agency.

(2) Notwithstanding subsection (1)(c) of this section, the fee for a change in ownership shall be $100 if a change in ownership does not involve:

(a) The majority owner or partner; or

(b) The administrator operating the agency.

(3) All fees received pursuant to subsection (1) of this section shall be paid over to the State Treasurer and credited to the Public Health Account. Such moneys are appropriated continuously to the Department of Human Services for the administration of ORS 443.005 to 443.095.

NOTE: Deletes archaic provision in (1).

SECTION 303. ORS 443.085 is amended to read:

443.085. The Department of Human Services shall adopt rules relating to the home health agencies licensed under ORS 443.005 to 443.095 [*and 443.991 (1)*], governing:

(1) The qualifications of professional and ancillary personnel in order to adequately furnish home health services;

(2) Standards for the organization and quality of patient care;

(3) Procedures for maintaining records; and

(4) Provision for contractual arrangements for professional and ancillary health services.

NOTE: Deletes inappropriate reference to penalty section in lead-in.

SECTION 304. ORS 443.095 is amended to read:

443.095. No provision of ORS 443.005 to 443.095 [*and 443.991 (1)*] shall be construed to prevent repair or domestic services by any person.

NOTE: Deletes inappropriate reference to penalty section.

SECTION 305. ORS 443.315 is amended to read:

443.315. (1) A person shall not operate or maintain an in-home care agency or purport to operate or maintain an in-home care agency without obtaining a license from the Department of Human Services.

(2) The department shall establish requirements and qualifications for licensure under this section by rule. The department shall issue a license to an applicant that has the necessary qualifications and meets all requirements established by rule, including the payment of required fees.

(3) Application for a license required under subsection (1) of this section shall be made in the form and manner required by the department by rule and shall be accompanied by any required fees.

(4) The department shall adopt a schedule of required fees by rule. The fee for initial licensure shall not exceed $500 per subunit of an in-home care agency. The fees established under this subsection are subject to the prior approval of the Oregon Department of Administrative Services and, if their adoption occurs between regular sessions of the Legislative Assembly, a report to the Emergency Board. The fees shall not exceed the cost of administering the provisions of ORS 443.305 to 443.350 [*as authorized by the Legislative Assembly*].

(5) A license issued under this section is valid for one year. A license may be renewed by payment of the required renewal fee established by rule, and by demonstration of compliance with requirements for renewal established by rule.

(6) A license issued under this section is not transferable.

NOTE: Deletes superfluous language in (4).

SECTION 306. ORS 443.400 is amended to read:

443.400. As used in ORS 443.400 to 443.455 and 443.991 (2), unless the context requires otherwise:

(1) "Department" means the Department of Human Services.

(2) "Director" means the Director of Human Services.

(3) "Resident" means any individual residing in a facility who receives residential care, treatment or training. For purposes of ORS 443.400 to 443.455, an individual is not considered to be a resident if [*he or she*] **the individual** is related by blood or marriage within the fourth degree as determined by civil law to the person licensed to operate or maintain the facility.

(4) "Residential care" means services such as supervision; protection; assistance while bathing, dressing, grooming or eating; management of money; transportation; recreation; and the providing of room and board.

(5) "Residential care facility" means a facility that provides, for six or more physically disabled or socially dependent individuals, residential care in one or more buildings on contiguous properties.

(6) "Residential facility" means a residential care facility, residential training facility, residential treatment facility, residential training home or residential treatment home.

(7) "Residential training facility" means a facility that provides, for six or more mentally retarded or other developmentally disabled individuals, residential care and training in one or more buildings on contiguous properties.

(8) "Residential training home" means a facility that provides, for five or fewer mentally retarded or other developmentally disabled individuals, residential care and training in one or more buildings on contiguous properties, when so certified and funded by the department.

(9) "Residential treatment facility" means a facility that provides, for six or more mentally, emotionally or behaviorally disturbed individuals or alcohol or drug dependent persons, residential care and treatment in one or more buildings on contiguous properties.

(10) "Residential treatment home" means a facility that provides for five or fewer mentally, emotionally or behaviorally disturbed individuals or alcohol or drug dependent persons, residential care and treatment in one or more buildings on contiguous properties.

(11) "Training" means the systematic, planned maintenance, development or enhancement of self-care skills, social skills or independent living skills, or the planned sequence of systematic interactions, activities or structured learning situations designed to meet each resident's specified needs in the areas of physical, social, emotional and intellectual growth.

(12) "Treatment" means a planned, individualized program of medical, psychological or rehabilitative procedures, experiences and activities designed to relieve or minimize mental, emotional, physical or other symptoms or social, educational or vocational disabilities resulting from or related to the mental or emotional disturbance, physical disability or alcohol or drug problem.

NOTE: Adjusts syntax to conform to legislative style in (3).

SECTION 307. ORS 443.405 is amended to read:

443.405. For purposes of ORS 443.400 to 443.455 and 443.991 (2), "residential facility" does not include:

(1) A residential school;

(2)[*(a)*] **A** state or local correctional [*facilities*] **facility**, other than **a** local [*facilities*] **facility** for persons enrolled in work release programs maintained under ORS 144.460;

[*(b)*] **(3) A** youth correction [*facilities*] **facility** as defined in ORS 420.005;

[*(c)*] **(4) A** youth care [*centers*] **center** operated by a county juvenile department under administrative control of a juvenile court pursuant to ORS 420.855 to 420.885; [*and*]

[*(d)*] **(5) A** juvenile detention [*facilities*] **facility** as defined in ORS 419A.004;

[*(3)*] **(6)** A nursing home;

[*(4)*] **(7)** A hospital;

[*(5)*] **(8)** A place primarily engaged in recreational activities;

[*(6)*] **(9)** A foster home; or

[*(7)*] **(10)** A place providing care and treatment on less than a 24-hour basis.

NOTE: Restructures section to conform to legislative style.

SECTION 308. ORS 443.415 is amended to read:

443.415. (1) Applications for licensure to maintain and operate a residential facility shall be made to the Department of Human Services on forms provided for that purpose by the department. Each application shall be accompanied by a fee of $60 for facilities defined in ORS 443.400 (5), (7) and (9) and a fee of $30 for homes defined in ORS 443.400 (8) and (10). No fee is required of any governmentally operated residential facility.

(2) Upon receipt of an application and fee, the department shall conduct an investigation. The department shall issue a license to any applicant for operation of a residential facility in compliance with ORS 443.400 to 443.455 [*and 443.991 (2)*] and the rules of the director. Licensure may be denied when a residential facility is not in compliance with ORS 443.400 to 443.455 [*and 443.991 (2)*] or the rules of the Director of Human Services. Licensure shall be denied if the State Fire Marshal or other authority has given notice of noncompliance of facilities defined in ORS 443.400 (5), (7) and (9) pursuant to ORS 479.220.

NOTE: Deletes inappropriate references to penalty section in (2).

SECTION 309. ORS 443.435 is amended to read:

443.435. The Director of Human Services or authorized representative shall periodically visit and inspect every residential facility to determine whether it is maintained and operated in accordance with ORS 443.400 to 443.455 [*and 443.991 (2)*] and the rules of the director, and to consult with and advise management concerning methods of care, treatment, training, records, housing and equipment. Employees of the Department of Human Services and the State Fire Marshal or authorized representative on request shall be permitted access to the premises and records of individuals in a residential facility pertinent to fire safety.

NOTE: Deletes inappropriate reference to penalty section.

SECTION 310. ORS 443.440 is amended to read:

443.440. The Department of Human Services may revoke or suspend the license of any residential facility [*which*] **that** is not operated in accordance with ORS 443.400 to 443.455 [*and 443.991 (2)*] or the rules adopted thereunder. Such revocation or suspension shall be taken in accordance with rules of the department and ORS chapter 183. However, in cases where an imminent danger to the health or safety of the residents exists, a license may be suspended immediately pending a fair hearing not later than the 10th day after such suspension.

NOTE: Corrects grammar; deletes inappropriate reference to penalty section.

SECTION 311. ORS 443.455 is amended to read:

443.455. For purposes of imposing civil penalties, residential facilities approved under ORS 443.400 to 443.455 [*and 443.991 (2)*] are considered to be long-term care facilities, subject to ORS 441.705 to 441.745. However, the Director of Human Services shall exercise the powers conferred under ORS 441.705 to 441.745. The director shall by rule prescribe a schedule of penalties appropriate to residential facilities licensed under ORS 443.400 to 443.455 [*and 443.991 (2)*].

NOTE: Deletes inappropriate references to penalty section.

SECTION 312. ORS 443.886 is amended to read:

443.886. (1) [*On and after June 1, 1993, whenever any*] **If a** facility intends to provide care for patients or residents with Alzheimer's disease or other dementia by means of an Alzheimer's care unit, the facility must obtain a special indorsement on its license or registration.

(2) The Department of Human Services, with the input from representatives of advocate groups and the long term care industry, shall adopt by rule standards that [*assure*] **ensure** that the special needs of any Alzheimer's patient or resident who is cared for in a special unit are met and that quality care is provided. The standards must include but are not limited to provisions for:

(a) Care planning, including physical design, staffing, staff training, safety, egress control, individual care planning, admission policy, family involvement, therapeutic activities and social services;

(b) Continuity of basic care requirements; and

(c) Marketing and advertising of the availability of and services from Alzheimer's care units.

(3) The department shall adopt a fee schedule for indorsement, taking into account the type of facility and the number of patients and residents.

(4) The department shall enforce rules adopted under subsection (2) of this section and shall allow a licensee or registrant to retain the special indorsement required to care for patients and residents with Alzheimer's disease or other dementia only so long as the licensee or registrant complies with the rules.

(5) The special indorsement may be suspended or revoked in the same manner as the license or registration is suspended or revoked.

(6) Unless a facility has obtained the indorsement required by subsection (1) of this section, the facility shall not:

(a) Advertise the facility as providing an Alzheimer's care unit; or

(b) Market the facility as providing an Alzheimer's care unit.

(7) As used in this section:

(a) "Alzheimer's care unit" means a special care unit in a designated, separated area for patients and residents with Alzheimer's disease or other dementia that is locked, segregated or secured to prevent or limit access by a patient or resident outside the designated or separated area.

(b) "Facility" means a nursing home, residential care facility, assisted living facility or any other like facility required to be licensed by the department.

(c) "Registry" means a facility will provide the department with information relating to the Alzheimer's care unit including the number of residents in the unit, stage of dementia for each resident, description of how services are provided, and length of time the unit has been operating.

NOTE: Deletes obsolete provision and simplifies diction in (1); corrects word choice in (2).

SECTION 313. ORS 446.003 is amended to read:

446.003. As used in ORS 446.003 to 446.200 and 446.225 to 446.285, and for the purposes of ORS chapters 195, 196, 197, 215 and 227, the following definitions [*shall*] apply, unless the context requires otherwise, or unless administration and enforcement by the State of Oregon under the existing or revised National Manufactured Housing Construction and Safety Standards Act would be adversely affected, and except as provided in ORS 446.265:

(1) "Accessory building or structure" means any portable, demountable or permanent structure established for use of the occupant of the manufactured structure and as further defined by rule by the Director of the Department of Consumer and Business Services.

(2)(a) "Alteration" means any change, addition, repair, conversion, replacement, modification or removal of any equipment or installation that may affect the operation, construction or occupancy of a manufactured structure.

(b) "Alteration" does not include:

(A) Minor repairs with approved component parts;

(B) Conversion of listed fuel-burning appliances in accordance with the terms of their listing;

(C) Adjustment and maintenance of equipment; or

(D) Replacement of equipment or accessories in kind.

(3) "Approved" means approved, licensed or certified by the Department of Consumer and Business Services or its designee.

[*(4) "Awning" means any stationary structure, permanent or demountable, used in conjunction with a manufactured structure, other than window awning, for the purpose of providing shelter from the sun and rain, and having a roof with supports and not more than one wall or storage cabinet substituting for a wall.*]

[*(5)*] **(4)** "Board" means the Manufactured Structures and Parks Advisory Board.

[*(6)*] **(5)** "Cabana" means a stationary, lightweight structure that may be prefabricated, or demountable, with two or more walls, used adjacent to and in conjunction with a manufactured structure to provide additional living space.

[*(7) "Carport" means a stationary structure consisting of a roof with its supports and not more than one wall, or storage cabinet substituting for a wall, and used for sheltering a motor vehicle.*]

[*(8)*] **(6)** "Certification" means an evaluation process by which the department verifies a manufacturer's ability to produce manufactured structures to the department rules and to the department approved quality control manual.

[*(9)*] **(7)** "Conversion" or "to convert" means the process of changing a manufactured structure in whole or in part from one type of vehicle or structure to another.

[*(10)*] **(8)** "Dealer" means any person engaged in selling or distributing manufactured structures or equipment, or both, primarily to persons who in good faith purchase or lease manufactured structures or equipment, or both, for purposes other than resale.

[*(11)*] **(9)** "Department" means the Department of Consumer and Business Services.

[*(12)*] **(10)** "Director" means the Director of the Department of Consumer and Business Services.

[*(13)*] **(11)** "Distributor" means any person engaged in selling and distributing manufactured structures or equipment for resale.

[*(14)*] **(12)** "Equipment" means materials, appliances, subassembly, devices, fixtures, fittings and apparatuses used in the construction, plumbing, mechanical and electrical systems of a manufactured structure.

[*(15)*] **(13)** "Federal manufactured housing construction and safety standard" means a standard for construction, design and performance of a manufactured dwelling promulgated by the Secretary of Housing and Urban Development pursuant to the federal National Manufactured Housing Construction and Safety Standards Act of 1974 (Public Law 93-383).

[*(16) "Fire inspector" means a deputy or assistant of the State Fire Marshal.*]

[*(17)*] **(14)** "Fire Marshal" means the State Fire Marshal.

[*(18)*] **(15)** "Imminent safety hazard" means an imminent and unreasonable risk of death or severe personal injury.

[*(19)*] **(16)** "Insignia of compliance" means:

(a) For a manufactured dwelling built to HUD standards for such dwellings, the HUD label; or

(b) For all other manufactured structures, the insignia issued by this state indicating compliance with state law.

[*(20)*] **(17)** "Inspecting authority" or "inspector" means the Director of the Department of Consumer and Business Services or representatives as appointed or authorized to administer and enforce provisions of ORS 446.111, 446.160, 446.176, 446.225 to 446.285, 446.310 to 446.350, 446.990 and this section.

[*(21)*] **(18)** "Installation" in relation to:

(a) [*"*]Construction[*"*] means the arrangements and methods of construction, fire and life safety, electrical, plumbing and mechanical equipment and systems within a manufactured structure.

(b) [*"*]Siting[*"*] means the manufactured structure and cabana foundation support and tiedown, the structural, fire and life safety, electrical, plumbing and mechanical equipment and material connections and the installation of skirting and temporary steps.

[*(22)*] **(19)** "Installer" means any individual licensed by the director to install, set up, connect, hook up, block, tie down, secure, support, install temporary steps **for**, install skirting for or make electrical, plumbing or mechanical connections to manufactured dwellings or cabanas or who provides consultation or supervision for any of these activities, except architects licensed under ORS 671.010 to 671.220 or engineers licensed under ORS 672.002 to 672.325.

[*(23) "Limited installer" means any individual with a limited license issued by the director who is engaged in the occupation of installing, setting up, connecting, hooking up, supporting, blocking, tying down, securing, installing temporary steps, installing skirting or making electrical, plumbing or mechanical connections to manufactured dwellings or cabanas under the direct supervision of a licensed installer.*]

[*(24)*] **(20)** "Listed" means equipment or materials included in a list, published by an organization concerned with product evaluation acceptable to the department that maintains periodic inspection of production of listed equipment or materials, and whose listing states either that the equipment or materials meets appropriate standards or has been tested and found suitable in a specified manner.

[*(25)*] **(21)** "Lot" means any space, area or tract of land, or portion of a manufactured dwelling park, mobile home park or recreation park that is designated or used for occupancy by one manufactured structure.

[*(26)(a)*] **(22)(a)** "Manufactured dwelling" means[*:*] **a residential trailer, mobile home or manufactured home.**

[*(A) Residential trailer, a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed before January 1, 1962.*]

[*(B) Mobile home, a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed between January 1, 1962, and June 15, 1976, and met the construction requirements of Oregon mobile home law in effect at the time of construction.*]

[*(C) Manufactured home:*]

[*(i) For any purpose other than that set forth in sub-subparagraph (ii) of this subparagraph, "manufactured home" means a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction; or*]

[*(ii) For purposes of implementing any contract pertaining to manufactured homes between the department and the federal government, "manufactured home" has the meaning given the term in the contract.*]

(b) "Manufactured dwelling" does not include any building or structure constructed to conform to the State of Oregon Structural Specialty Code or the Low-Rise Residential Dwelling Code adopted pursuant to ORS 455.100 to 455.450 and 455.610 to 455.630 or any unit identified as a recreational vehicle by the manufacturer.

[*(27)*] **(23)** "Manufactured dwelling park" means any place where four or more manufactured dwellings are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent or lease space or keep space for rent or lease to any person for a charge or fee paid or to be paid for the rental or lease or use of facilities or to offer space free in connection with securing the trade or patronage of such person. "Manufactured dwelling park" does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one manufactured dwelling per lot if the subdivision was ap-

proved by the local government unit having jurisdiction under an ordinance adopted pursuant to ORS 92.010 to 92.190.

(24)(a) "Manufactured home," except as provided in paragraph (b) of this subsection, means a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction.

(b) For purposes of implementing any contract pertaining to manufactured homes between the department and the federal government, "manufactured home" has the meaning given the term in the contract.

[*(28)(a)*] **(25)(a)** "Manufactured structure" means a[*:*] **recreational vehicle, manufactured dwelling or recreational structure.**

[*(A) "Recreational vehicle" as set forth in this section;*]

[*(B) "Manufactured dwelling" as set forth in this section; or*]

[*(C) "Recreational structure" as set forth in this section.*]

(b) "Manufactured structure" does not include any building or structure regulated under the State of Oregon Structural Specialty Code or the Low-Rise Residential Dwelling Code.

[*(29)*] **(26)** "Manufacturer" means any person engaged in manufacturing, building, rebuilding, altering, converting or assembling manufactured structures or equipment.

[*(30)*] **(27)** "Manufacturing" means the building, rebuilding, altering or converting of manufactured structures that bear or are required to bear an Oregon insignia of compliance.

[*(31)*] **(28)** "Minimum safety standards" means the plumbing, mechanical, electrical, thermal, fire and life safety, structural and transportation standards prescribed by rules adopted by the director.

(29) "Mobile home" means a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed between January 1, 1962, and June 15, 1976, and met the construction requirements of Oregon mobile home law in effect at the time of construction.

[*(32)*] **(30)** "Mobile home park" means any place where four or more manufactured structures are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee paid or to be paid for the rental or use of facilities or to offer space free in connection with securing the trade or patronage of such person. "Mobile home park" does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one manufactured dwelling per lot if the subdivision was approved by the municipality unit having jurisdiction under an ordinance adopted pursuant to ORS 92.010 to 92.190.

[*(33)*] **(31)** "Municipality" means a city, county or other unit of local government otherwise authorized by law to enact codes.

[*(34) "Provider" means any person approved by the director to provide instruction for the purpose of licensing manufactured dwellings and cabana installers or certifying manufactured dwelling inspectors.*]

[*(35) "Ramada" means a stationary structure having a roof extending over a manufactured structure, which may also extend over a patio or parking space for motor vehicles, and is used principally for protection from snow, sun or rain.*]

[*(36)*] **(32)** "Recreational structure" means a campground structure with or without plumbing, heating or cooking facilities intended to be used by any particular occupant on a limited-time basis for recreational, seasonal, emergency or transitional housing purposes and may include yurts, cabins, fabric structures or similar structures as further defined, by rule, by the director.

[*(37)*] **(33)** "Recreational vehicle" means a vehicle with or without motive power, [*which*] **that** is designed for human occupancy and to be used temporarily for recreational, seasonal or emergency purposes and as further defined, by rule, by the director.

(34) "Residential trailer" means a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed before January 1, 1962.

[*(38)*] **(35)** "Sale" means rent, lease, sale or exchange.

[*(39)*] **(36)** "Skirting" means a weather resistant material used to enclose the space below the manufactured structure.

[*(40)*] **(37)** "Tiedown" means any device designed to anchor a manufactured structure securely to the ground.

[*(41)*] **(38)** "Transitional housing accommodations" means accommodations described under ORS 446.265.

[*(42)*] **(39)** "Utilities" means the water, sewer, gas or electric services provided on a lot for a manufactured structure.

NOTE: Updates terminology in lead-in; eliminates definitions for unused terms; deletes extraneous quotation marks in (18); corrects grammar in (19); liberates embedded definitions in (22)(a); streamlines (25)(a); corrects grammar in (33).

SECTION 314. ORS 446.100 is amended to read:

446.100. (1) A person may not:

(a) Construct a mobile home or manufactured dwelling park at a place that is unsuitable due to swampy terrain, lack of adequate drainage or proximity to the breeding places of insects or rodents.

(b) Install a manufactured dwelling closer than five feet from a property boundary line.

(c) Construct in a mobile home or manufactured dwelling park a manufactured dwelling space less than 30 feet in width or less than 40 feet in length.

(2) The Director of the Department of Consumer and Business Services shall adopt rules pursuant to the rulemaking provisions of ORS chapter 183 specifying minimum distances between adjacent manufactured dwellings and between manufactured dwellings and other structures. In adopting these rules, the director shall take into consideration the standards established by the National Fire Protection Association and standards recommended by the State Fire Marshal.

(3) Except as provided in this subsection, the rules adopted by the director under subsection (2) of this section must provide for at least 10 feet of space between manufactured dwellings. The director may adopt a rule allowing less than 10 feet of space between manufactured dwellings that are separated by a one-hour fire-resistive wall. A standard established by the director for a one-hour fire-resistive wall separating manufactured dwellings must be at least as stringent as the equivalent standard, if any, for a fire-resistive wall in a two family dwelling under the [*One and Two Family*] **Low-Rise Residential** Dwelling Code.

NOTE: Updates title of building code in (3).

SECTION 315. ORS 446.125 is amended to read:

446.125. A person may occupy a manufactured dwelling or a camping vehicle on private land with the consent of the owner of the land if:

(1) The lot, tract or parcel of land upon which the manufactured dwelling or camping vehicle is situated has an area adequate to provide safe, approved water supply and sewage disposal facilities and is not in conflict with ORS 446.310 [*(10)*] **(9)**.

(2) The person complies with all applicable standards of sanitation, water, plumbing and electrical and sewerage installations prescribed by the laws of this state and the rules issued thereunder, or by local authorities.

NOTE: Updates renumbered subsection reference in (1); see section 316 (amending 446.310).

SECTION 316. ORS 446.310 is amended to read:

446.310. As used in ORS 446.310 to 446.350, unless the context requires otherwise:

(1) "Camping vehicle" means either a vacation trailer or a self-propelled vehicle or structure equipped with wheels for highway use and [*which*] **that** is intended for human occupancy and is being used for vacation and recreational purposes, but not for residential purposes, and is equipped with plumbing, sink or toilet.

(2) "Construction" means work regulated by the state building code as defined in ORS 455.010.

(3) "Department" means the Department of Human Services.

(4) "Director" means the Director of Human Services.

(5) "Health official" means a local public health administrator appointed pursuant to ORS 431.418.

(6) "Hostel" means any establishment having beds rented or kept for rent on a daily basis to travelers for a charge or fee paid or to be paid for rental or use of facilities and [*which are*] **that is** operated, managed or maintained under the sponsorship of a nonprofit organization [*which*] **that** holds a valid exemption from federal income taxes under the Internal Revenue Code of 1954 as amended.

(7) "Organizational camp" includes any area designated by the person establishing, operating, managing or maintaining the same for recreational use by groups or organizations [*which*] **that** include but are not limited to youth camps, scout camps, summer camps, day camps, nature camps, survival camps, athletic camps, camps [*which*] **that** are operated and maintained under the guidance, supervision or auspices of religious, public and private educational systems and community service organizations.

(8) "Picnic park" means any recreation park [*which*] **that** is for day use only and provides no recreation vehicle or overnight camping spaces.

[*(9) "Tourist facility" means any travelers' accommodation, hostel, picnic park, recreation park and organizational camp.*]

[*(10)*] **(9)** "Recreation park" means any area designated by the person establishing, operating, managing or maintaining the same for picnicking, overnight camping or use of recreational vehicles by the general public or any segment of the public. "Recreation park" includes but is not limited to areas open to use free of charge or through payment of a tax or fee or by virtue of rental, lease, license, membership, association or common ownership and further includes, but is not limited to**,** those areas divided into two or more lots, parcels, units or other interests for purposes of such use.

[*(11)*] **(10)** "Regulating agency" means, with respect to a tourist facility, the Department of Human Services.

(11) "Tourist facility" means any travelers' accommodation, hostel, picnic park, recreation park and organizational camp.

(12) "Travelers' accommodation" includes any establishment, which is not a hostel, having rooms, apartments or sleeping facilities rented or kept for rent on a daily or weekly basis to travelers or transients for a charge or fee paid or to be paid for rental or use of facilities.

NOTE: Corrects grammar in (1), (6), (7) and (8); fixes punctuation in (9); alphabetizes definitions.

SECTION 317. ORS 446.321 is amended to read:

446.321. (1) Every [*application*] **applicant** for licensing of a tourist facility as defined in ORS 446.310 and required by ORS 446.320 shall pay to the Department of Human Services a fee established by department rule. The fee [*shall*] **may** not exceed $60, except that recreation parks shall pay an additional fee not to exceed $2 for each space.

(2) Rules adopted pursuant to subsection (1) of this section shall be adopted in accordance with ORS chapter 183.

NOTE: Corrects word choice in (1).

SECTION 318. ORS 446.543 is amended to read:

446.543. (1) An Office of [*the*] Manufactured Dwelling Park Community Relations is established in the Housing and Community Services Department.

(2) Office personnel shall:

(a) Undertake, participate in or cooperate with persons and agencies in such conferences, inquiries, meetings or studies as might lead to improvements in manufactured dwelling park landlord and tenant relationships;

(b) Develop and implement a centralized resource referral program for tenants and landlords to encourage the voluntary resolution of disputes;

(c) Maintain a current list of manufactured dwelling parks in the state, indicating the total number of spaces;

(d) Not be directly affiliated, currently or previously, in any way with a manufactured dwelling park within the preceding two years; and

(e) Take other actions or perform such other duties as the Director of the Housing and Community Services Department deems necessary or appropriate.

NOTE: Deletes infelicitous article in title in (1).

SECTION 319. ORS 446.621 (7) is added to and made a part of ORS 446.566 to 446.646.

NOTE: Herds stray subsection into appropriate series.

SECTION 320. ORS 446.626 is amended to read:

446.626. (1) The owner of a manufactured structure that qualifies under this subsection may apply to the county assessor to have the structure recorded in the deed records of the county. The application must be on a form approved by the Department of Consumer and Business Services. The application must include a description of the location of the real property on which the manufactured structure is or will be sited. If the structure is being sold by a manufactured structure dealer, the dealer may file the application on behalf of the owner at the time the dealer notifies the county assessor of the sale under ORS 308.253. A manufactured structure qualifies for recording in the deed records if the owner of the structure:

(a) Also owns the land on which the manufactured structure is located; or

(b) Is the holder of a recorded leasehold estate of 20 years or more if the lease specifically permits the manufactured structure owner to record the structure under this section.

(2) If the assessor, as agent for the department, determines that the manufactured structure qualifies for recording in the deed records of the county, the assessor shall cause the structure to be recorded in the deed records. The deed records must contain any unreleased security interest in the manufactured structure. If the department has issued an ownership document for the manufactured structure, the owner must submit the ownership document to the assessor with the application described in subsection (1) of this section. Upon recording the manufactured structure in the deed records, the assessor shall send the ownership document to the department for cancellation. The department shall cancel the ownership document and send confirmation of the cancellation to the assessor and the owner.

(3) The recording of a security interest in the deed records of the county under this section satisfies the requirements for filing a financing statement for a fixture to real property under ORS 79.0502. The recording of a manufactured structure in the deed records of the county is independent of the assessment and taxation of the structure as real property under ORS 308.875. The recording of a manufactured structure in the deed records of the county makes the structure subject to the same provisions of law applicable to any other building, housing or structure on the land. However, the manufactured structure may not be sold separately from the land or leasehold estate unless the owner complies with subsection (4) of this section.

(4) The owner of a manufactured structure that is recorded in the deed records of the county may apply to have the structure removed from the deed records and an ownership document issued for the structure. Unless the manufactured structure is subject to ORS 446.631, the owner must apply to the county assessor, as agent for the department, for an ownership document as provided in ORS 446.571. Upon approval of the application, the assessor shall terminate the recording of the manufactured structure in the deed records.

(5) If a manufactured structure described in paragraph (1)(b) of this section is recorded in the deed records, the owner of the structure has a real property interest in the manufactured structure for purposes of:

(a) Recordation of documents pursuant to ORS 93.600 to 93.800, 93.802, 93.804, 93.806 and 93.808;

(b) Deed forms pursuant to ORS 93.850 to 93.870;

(c) Mortgages, trust deeds and other liens pursuant to ORS 86.010 to [*86.996*] **86.990** and ORS chapters 87 and 88; and

(d) Real property tax collection pursuant to ORS chapters 311 and 312. The structure owner is considered the owner of the real property for purposes of assessing the structure under ORS 308.875.

NOTE: Corrects series reference in (5)(c).

SECTION 321. ORS 446.631 is amended to read:

446.631. (1) A person may not move a manufactured structure to a different situs unless the Department of Consumer and Business Services approves the move and the county assessor issues a trip permit on behalf of the department. An application to move a manufactured structure must be filed in the manner and form required by department rule and include the following:

(a) The ownership document or, if an ownership document does not exist, another document acceptable to the department evidencing ownership of the structure or, if the structure is recorded in the deed records of the county, the property description for the current and proposed [*situs*] **situses** for the structure.

(b) The identity of the owner of the proposed situs or, if the proposed situs is a facility as defined in ORS 90.100, the name of the facility.

(c) Any other information required by the department by rule.

(2)(a) Except as provided in paragraph (b) of this subsection, the department may not approve an application to move a manufactured structure to a situs in another county unless all taxes and special assessments for the current year that will become a lien against the structure prior to the move as described in ORS 311.405 and all delinquent taxes and special assessments for past years are paid.

(b) A purchaser or landlord may obtain a trip permit from the county assessor without payment if the county cancels the taxes and assessments as provided in ORS 90.425 or 90.675.

(3) If the assessor cannot compute the exact amount of taxes due, the owner shall pay an amount based on the current assessed value of the manufactured structure or the value that would be used on the next assessment roll, or an amount based on the assessor's best estimate of the total taxes and assessments. ORS 311.370 applies to taxes and assessments collected under this section.

(4) If the county assessor determines that all due or pending taxes and assessments have been paid, the assessor may issue a trip permit on behalf of the department and shall forward the application information to the department. The department shall update the department's record for the manufactured structure and issue an updated ownership document for the structure indicating the change in information. If no ownership document exists for the manufactured structure, the department shall record the information for the structure and issue an ownership document.

(5) The department shall deliver an ownership document updated or issued under subsection (4) of this section to the holder of the earliest perfected unreleased security interest in the manufactured structure or, if none, to the owner of the structure. The department shall also send a copy of the ownership document to any other holders of unreleased security interests in the structure and to the county assessor for the county in which the structure is to be sited.

(6) The Department of Consumer and Business Services or a county may charge fees for services provided under this section. The fees charged pursuant to this subsection may not exceed the cost of the services provided.

(7) Subsections (1) to (6) of this section do not apply to the movement of a manufactured structure described under ORS 446.576 (1)(a) or (b) or 446.736.

NOTE: Corrects word choice in (1)(a).

SECTION 322. ORS 446.671 is amended to read:

446.671. (1) **Except as provided in ORS 446.676,** a person commits the crime of acting as a manufactured structure dealer without a license if the person does not have a valid, current manufactured structure dealer license issued under ORS 446.691 or 446.696 or a temporary or limited manufactured structure dealer license issued under ORS 446.701 or 446.706 and the person:

(a) Sells, brokers, trades or exchanges a manufactured structure, or offers to sell, trade or exchange a manufactured structure, either outright or by means of any conditional sale, consignment or otherwise;

(b) Displays a new or used manufactured structure for sale; or

(c) Acts as an agent for the owner of a manufactured structure to sell the structure or for a person interested in buying a manufactured structure to buy the structure.

[*(2) This section does not apply to persons or manufactured structures exempted from this section under ORS 446.676.*]

[*(3)*] **(2)** Acting as a manufactured structure dealer without a license is a Class A misdemeanor.

NOTE: Conforms exception language to legislative style in (1); deletes redundant provision in (2).

SECTION 323. ORS 446.751 is amended to read:

446.751. (1) A manufactured structure dealer commits the crime of engaging in illegal consignment practices if the dealer does any of the following:

(a) Takes a manufactured structure on consignment from a person who is not a licensed dealer and does not have proof that the consignor is the owner of, or a security interest holder in, the structure.

(b) Takes a manufactured structure on consignment from a security interest holder without the security interest holder first completing a repossession action prior to consigning the structure and providing the dealer with proper documentary proof of the repossession action.

(c) Takes a manufactured structure on consignment and does not have the terms of the consignment agreement in writing and provide a copy of the agreement to the consignor, unless the consignor is a security interest holder described in paragraph (b) of this subsection. The agreement must include a provision stating that, if the terms of the agreement are not met, the consignor may file a complaint in writing with the Department of Consumer and Business Services, Salem, Oregon.

(d) Sells a manufactured structure that the dealer has on consignment and does not pay the consignor within 10 days after the sale.

(e) Refuses to allow the department or any duly authorized representative to inspect and audit any records of any separate accounts into which the dealer deposits any funds received or handled by the dealer in the course of business as a dealer from consignment sales of manufactured structures at such times as the department may direct.

(f) Takes any money paid to the dealer in connection with any consignment transaction as part or all of the dealer's commission or fee until the transaction has been completed or terminated.

(g) Does not make **an** arrangement with the seller for the disposition of money from a consignment transaction at the time of establishing a consignment agreement.

(h) Sells a manufactured structure that the dealer has taken on consignment without first giving the purchaser the following disclosure in writing:

DISCLOSURE REGARDING
CONSIGNMENT SALE

_____ (Name of Dealer) is selling the following described manufactured structure: _____ (Year) _____ (Make) _____ (Model) _____ (Identification Number) on consignment. Ownership of this manufactured structure is in the name of: _____ (Owner(s) as shown on the ownership document) and the following are listed on the ownership document as security interest holders:

YOU SHOULD TAKE ACTION TO ENSURE THAT ANY SECURITY INTERESTS ARE RELEASED AND THAT THE OWNERSHIP DOCUMENT FOR THE MANUFACTURED STRUCTURE IS TRANSFERRED TO YOU. OTHERWISE, YOU MAY TAKE OWNERSHIP SUBJECT TO ANY UNSATISFIED SECURITY INTERESTS.

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(2) Engaging in illegal consignment practices is a Class A misdemeanor.

NOTE: Improves syntax in (1)(g).

SECTION 324. ORS 453.075 is amended to read:

453.075. (1) Any article or substance sold by its manufacturer, distributor, or dealer [*which*] **that** is a banned hazardous substance, whether or not it was such at the time of its sale, shall, in accordance with rules of the Director of Human Services, be repurchased as provided in this section.

(2) The manufacturer or distributor of any such article shall repurchase it from the person to whom the manufacturer or distributor sold it, and shall:

(a) Refund to that person the purchase price paid for such article or substance; [*and*]

(b) If that person has repurchased such article or substance pursuant to this paragraph or paragraph (a) of this subsection, reimburse the person for any amounts paid in accordance with this section for the return of such article or substance in connection with its repurchase; and

(c) If the manufacturer requires the return of such article or substance in connection with the repurchase of it, reimburse that person for any reasonable and necessary expenses incurred in returning it to the manufacturer.

(3) In the case of any such article or substance sold at retail by a dealer, if the person who purchased it from the dealer returns it to the dealer, the dealer shall refund to the purchaser the purchase price paid for it and reimburse the person for any reasonable and necessary transportation charges incurred in its return.

(4) As used in this section:

[*(a) "Manufacturer" includes an importer for resale.*]

[*(b)*] **(a)** "Distributor" includes a dealer who sells at wholesale an article or substance with respect to that sale.

(b) "Manufacturer" includes an importer for resale.

NOTE: Corrects word choice in (1); deletes superfluous conjunction in (2); alphabetizes definitions in (4).

SECTION 325. ORS 453.245 is amended to read:

453.245. (1) [*For the 1986-1987 academic year and for each academic year thereafter, no*] Art or craft material [*which*] **that** is considered by the Department of Human Services to contain a toxic substance causing chronic illness[*, as defined in ORS 453.205, shall*] **may not** be ordered or purchased by [*any*] **a** school or school district for use by students in kindergarten and grades 1 through 6.

(2) [*Commencing June 1, 1986,*] Any substance [*which*] **that** is [*defined in ORS 453.205 as*] a toxic substance causing chronic illness [*shall*] **may** not be **ordered or** purchased [*or ordered*] by a school or school district for use by students in grades 7 through 12 unless [*it*] **the substance** meets the labeling standards specified in ORS 453.235.

(3) If the department finds that, because the chronically toxic, carcinogenic or radioactive substances contained in an art or craft material cannot be ingested, inhaled or otherwise absorbed into the body during any reasonably foreseeable use of the material in a way that could pose a potential health risk, the department may exempt the material from these requirements to the extent [*it*] **the department** determines to be consistent with adequate protection of the public health and safety.

NOTE: Deletes obsolete date references and extraneous statute references; tweaks syntax.

SECTION 326. ORS 453.370 is amended to read:

453.370. (1) In order to maintain and ensure the effectiveness of state programs established under ORS 453.307 to 453.414, as well as to ensure the effectiveness of local efforts, a local government may establish, enforce or enact a local community right to know regulatory program provided that the local program complies with the requirements of this section.

(2) To the extent that a local program is supported in whole or in part by fees, those fees may be set, imposed or assessed only by the local government that is implementing the local program. Such fees are allowed only to the extent not otherwise prohibited or limited by law. Such fees:

(a) Shall be adopted by ordinance as a fee schedule, after notice and public hearing; and

(b) May not exceed $2,000 for any single facility in any calendar year.

(3)(a) All local community right to know regulatory program enforcement, including but not limited to penalties, may be imposed only by a local fire official or a board established by the local government to implement the local community right to know regulatory program.

(b) Penalties for violations of a community right to know regulatory program [*shall*] **may** not exceed $1,000 per day and shall be assessed according to a schedule adopted by the local government after notice and public hearing. Except when a local government has reasonable grounds to find that an employer willfully and knowingly avoided compliance with the local program, and as long as the employer submits the required information within 30 days following a written notification of noncompliance, penalties shall be suspended if the employer has no history of violating the local program.

(4) After notice and public hearing, the local government must determine that:

(a) Existing reporting to local, state or federal agencies is inadequate to meet the needs and concerns of the local government;

(b) The state or federal government does not collect data that will provide substantially the same information desired by the local government;

(c) The local government has asked the appropriate state agency to operate the program desired by the local government and the state agency has not committed to do so within 180 days;

(d) The Department of Environmental Quality, the State Fire Marshal and the Department of Human Services have had an opportunity to comment on the proposed program and the local government has responded to those comments; and

(e) The local government has provided an opportunity for written and oral public comment on the proposed program.

(5) Any local government that operates a local community right to know regulatory program shall:

(a) Provide for an opportunity to report data electronically;

(b) Place data reported under the program on the Internet with instructions for the general public that explain the organization of the data; and

(c) Keep records of data usage and otherwise document interest in the collected data.

(6) Data and other information presented under a local community right to know regulatory program:

(a) Shall clearly distinguish, where appropriate, public health interpretations from the raw data;

(b) May, where feasible, indicate specifically which hazardous substances and toxic substances are being released into the local air, water and land; and

(c) Shall include locations where a person may obtain epidemiological statistics related to health effects of the hazardous substances and toxic substances, if available.

(7) For any hazardous substance or toxic substance that a local government proposes to require an employer to report under a local community right to know regulatory program established pursuant to this section, the local government shall seek written and oral public comment and provide written notice to interested parties prior to adoption as a reporting requirement. The local government must provide the public with an opportunity to comment on the appropriateness of reporting on the proposed hazardous substance or toxic substance, including but not limited to commenting on health and environmental considerations, economic concerns and feasibility of compliance. The local government shall consider the comments before adopting a list or making additions to a list of hazardous substances and toxic substances to be reported.

(8) In administering a local community right to know regulatory program, a local government shall establish procedures to exempt, when reasonable, an entity from all or part of the local program for the purpose of protecting trade secrets or where the local government determines that the operations of the entity pose little or no risk to the public health or the environment.

(9) Except as prohibited by federal or state law, a local program [*shall*] **may** not differentiate between public and private employers.

(10) Nothing in this section shall be construed to limit the authority of a local government to:

(a) Distribute information collected under the state Community Right to Know and Protection Act; or

(b) Adopt or enforce a local ordinance, rule or regulation strictly necessary to comply with:

(A) The Uniform Building Code as adopted and amended by the Director of the Department of Consumer and Business Services;

(B) A uniform fire code; or

(C) Any requirement of a state or federal statute, rule or regulation, including but not limited to those controlling hazardous substances, toxic substances or other environmental contaminants.

[*(11) For any local community right to know regulatory program established before January 1, 1999, subsections (2), (4) to (7) and (9) of this section shall not apply until July 1, 2003.*]

NOTE: Tweaks word choice in (3)(b) and (9); deletes obsolete provisions in (11).

SECTION 327. ORS 453.752 is amended to read:

453.752. (1) [*No X-ray machine shall*] **An X-ray machine may not** be operated [*on or after July 1, 1996,*] unless the X-ray machine has a valid X-ray machine registration.

(2) Prior to issuance of an X-ray machine registration to a hospital, the X-ray machine shall be approved by an X-ray machine inspector employed by the Department of Human Services or inspected by an accredited radiology inspector. The inspector shall also review procedures used during X-ray machine operation and the adequacy of the physical surroundings and equipment used in conjunction with operation of the X-ray machine.

(3) Prior to issuance of an X-ray machine registration to a facility other than a hospital, the X-ray machine shall be approved by an X-ray machine inspector employed by the department.

(4) An accredited radiology inspector conducting a registration inspection on a hospital X-ray machine shall conduct information gathering tests in the manner required by the department. The inspector shall make calculations in the manner prescribed by the department and shall enter the results and such other information as the department may require on a form provided by the department.

(5) The department shall evaluate the test results submitted by an accredited radiology inspector and shall grant a hospital X-ray machine registration provided that all standards adopted by rule of the department are met, a properly completed registration application has been submitted by the X-ray machine owner and all required fees have been paid.

(6) When an X-ray machine is registered by the department, the department shall issue the X-ray machine owner a document, sticker, plate or other device selected by the department to evidence registration of the X-ray machine.

NOTE: Tweaks syntax and deletes obsolete date reference in (1).

SECTION 328. ORS 455.148 is amended to read:

455.148. (1)(a) A municipality that assumes the administration and enforcement of a building inspection program on or after January 1, 2002, [*must*] **shall** administer and enforce the program for all of the following:

(A) The state building code, as defined in ORS 455.010, except as set forth in paragraph (b) of this subsection;

(B) Manufactured structure installation requirements under ORS 446.155, 446.185 (1) and 446.230;

(C) Manufactured dwelling parks and mobile home parks under ORS chapter 446;

(D) Park and camp programs regulated under ORS 455.680;

(E) Tourist facilities regulated under ORS 446.310 to 446.350;

(F) Manufactured dwelling alterations regulated under ORS 446.155; and

(G) Manufactured structure accessory buildings and structures under ORS 446.253.

(b) A building inspection program of a municipality may not include:

(A) Boiler and pressure vessel programs under ORS 480.510 to 480.670;

(B) Elevator programs under ORS 460.005 to 460.175;

(C) Amusement ride regulation under ORS 460.310 to 460.370;

(D) Prefabricated structure regulation under ORS chapter 455;

(E) Manufacture of manufactured structures programs under ORS 446.155 to 446.285, including the administration and enforcement of federal manufactured dwelling construction and safety standards adopted under ORS 446.155 or the National Manufactured Housing Construction and Safety Standards Act of 1974;

(F) Licensing and certification, or the adoption of statewide codes and standards, under ORS chapter 446, 447, 455, 479 or 693; [*and*] **or**

(G) Review of plans and specifications as provided in ORS 455.685.

(2) A municipality that administers a building inspection program as allowed under this section shall do so for periods of four years. The Department of Consumer and Business Services shall adopt rules to adjust time periods for administration of a building inspection program to allow for variations in the needs of the department and participants.

(3) When a municipality administers a building inspection program, the governing body of the municipality shall, unless other means are already provided, appoint a person to administer and enforce the building inspection program, who shall be known as the building official. A building official shall, in the municipality for which appointed, attend to all aspects of code enforcement, including the issuance of all building permits. Two or more municipalities may combine in the appointment of a single building official for the purpose of administering a building inspection program within their communities.

(4)(a) By January 1 of the year preceding the expiration of the four-year period described in subsection (2) of this section, the governing body of the municipality shall notify the Director of the Department of Consumer and Business Services and, if **the municipality is** not a county, notify the county whether the municipality will continue to administer and enforce the building inspection program after expiration of the four-year period.

(b) Notwithstanding the January 1 date set forth in paragraph (a) of this subsection, the director and the municipality and, if the municipality is not a county, the county may by agreement extend that date to no later than March 1.

(5) If a city does not notify the director, or notifies the director that it will not administer the building inspection program, the county or counties in which the city is located shall administer and enforce the county program within the city in the same manner as the program is administered and enforced outside the city, except as provided by subsection (6) of this section.

(6) If a county does not notify the director, or notifies the director that it will not administer and enforce a building inspection program, the director shall contract with a municipality or other person or use such state employees or state agencies as are necessary to administer and enforce a building inspection program, and permit or other fees arising therefrom shall be paid into the Consumer and Business Services Fund created by ORS 705.145 and credited to the account responsible for paying the expenses thereof. A state employee may not be displaced as a result of using contract personnel.

(7) The governing body of a municipality may commence responsibility for the administration and enforcement of a building inspection program beginning July 1 of any year by notifying the director no later than January 1 of the same year and obtaining the director's approval of an assumption plan as described in subsection (11)(c) of this section.

(8) The department shall adopt rules to require the governing body of each municipality assuming or continuing a building inspection program under this section to submit a written plan with the notice required under subsection (4) or (7) of this section. If the department is the governing body, the department shall have a plan on file. The plan [*shall*] **must** specify how cooperation with the State Fire Marshal or a designee of the State Fire Marshal will be achieved and how a uniform fire code will be considered in the review process of the design and construction phases of buildings or structures.

(9) A municipality that administers and enforces a building inspection [*plan*] **program** pursuant to this section shall recognize and accept the performances of state building code activities by businesses and persons authorized under ORS 455.457 to perform the activities as if the activities

were performed by the municipality. A municipality is not required to accept an inspection, a plan or a plan review that does not meet the requirements of the state building code.

(10) The department or a municipality that accepts an inspection or plan review as required by this section by a person licensed under ORS 455.457 has no responsibility or liability for the activities of the licensee.

(11) In addition to the requirements of ORS 455.100 and 455.110, the director shall regulate building inspection programs that municipalities assume on or after January 1, 2002. Regulation under this subsection shall include but not be limited to:

(a) Creating building inspection program application and amendment requirements and procedures;

(b) Granting or denying applications for building inspection program authority and amendments;

(c) Requiring a municipality assuming a building inspection program to submit with the notice given under subsection (7) of this section an assumption plan that includes, at a minimum:

(A) A description of the intended availability of program services, including proposed service agreements for carrying out the program during at least the first two years;

(B) Demonstration of the ability and intent to provide building inspection program services for at least two years;

(C) An estimate of proposed permit revenue and program operating expenses;

(D) Proposed staffing levels; and

(E) Proposed service levels;

(d) Reviewing procedures and program operations of municipalities;

(e) Creating standards for efficient, effective, timely and acceptable building inspection programs;

(f) Creating standards for justifying increases in building inspection program fees adopted by a municipality;

(g) Creating standards for determining whether a county or department building inspection program is economically impaired in its ability to reasonably continue providing the program throughout a county, if another municipality is allowed to provide a building inspection program within the same county; and

(h) Enforcing the requirements of this section.

(12) The department may assume administration of a building inspection program:

(a) During the pendency of activities under ORS 455.770;

(b) If a municipality abandons or is no longer able to administer the building inspection program; and

(c) If a municipality fails to substantially comply with any provision of this section or of ORS 455.465, 455.467 and 455.469.

(13) A municipality that abandons or otherwise ceases to administer a building inspection program that the municipality assumed under this section may not resume the administration or enforcement of the program for at least two years. The municipality may resume the administration and enforcement of the abandoned program only on July 1 of an odd-numbered year. Prior to resuming the administration and enforcement of the program, the municipality must follow the notification procedure set forth in subsection (7) of this section.

NOTE: Modifies syntax in (1)(a), (1)(b)(F), (4)(a) and (8); corrects terminology in (9).

SECTION 329. ORS 455.446 is amended to read:

455.446. (1)(a) New essential facilities described in ORS 455.447 (1)(a)(A), (B) and (G) and new special occupancy structures described in ORS 455.447 (1)(e)(B), (C) and (E) [*shall*] **may** not be constructed in the tsunami inundation zone established under paragraph (c) of this subsection. The provisions of this paragraph apply to buildings with a capacity greater than 50 individuals for every public, private or parochial school through secondary level and child care centers.

(b) The State Department of Geology and Mineral Industries shall establish the parameters of the area of expected tsunami inundation based on scientific evidence that may include geologic field data and tsunami modeling.

(c) The governing board of the State Department of Geology and Mineral Industries, by rule, shall determine the tsunami inundation zone based on the parameters established by the department. The board shall adopt the zone as determined by the department under paragraph (b) of this subsection except as modified by the board under paragraph (d) of this subsection.

(d) The board may grant exceptions to restrictions in the tsunami inundation zone established under paragraph (c) of this subsection after public hearing and a determination by the board that the applicant has demonstrated that the safety of building occupants will be ensured to the maximum reasonable extent:

(A) By addressing the relative risks within the zone.

(B) By balancing competing interests and other considerations.

(C) By considering mitigative construction strategies.

(D) By considering mitigative terrain modification.

(e) The provisions of paragraph (a) of this subsection do not apply:

(A) To fire or police stations where there is a need for strategic location; and

(B) To public schools if there is a need for the school to be within the boundaries of a school district and [*this*] **fulfilling that need** cannot otherwise be accomplished.

(f) All materials supporting an application for an exception to the tsunami inundation zone are public records under ORS 192.005 to 192.170 and [*shall*] **must** be retained in the library of the department for periods of time determined by its governing board.

(g) The applicant for an exception to the tsunami inundation zone established under paragraph (c) of this subsection shall pay any costs for department review of the application and the costs, if any, of the approval process.

(2) The definitions in ORS 455.447 apply to this section.

(3) The provisions of this section do not apply to water-dependent and water-related facilities, including but not limited to docks, wharves, piers and marinas.

(4) Decisions made under this section are not land use decisions under ORS 197.015 [*(10)*] **(11)**.

NOTE: Modifies word choice in (1)(a), (e)(B) and (f). Updates reference to renumbered subsection in (4); see section 137 (amending 197.015).

SECTION 330. ORS 458.540 is amended to read:

458.540. ORS 458.530 to 458.545 may be cited as the "Oregon Hunger Relief Act [*of 1991*]."

NOTE: Conforms title to legislative style.

SECTION 331. ORS 459.386 is amended to read:

459.386. As used in ORS 459.386 to 459.405:

[*(1) "Disposal" means the final placement of treated infectious waste in a disposal site operating under a permit issued by a state or federal agency.*]

[*(2) "Infectious waste" includes:*]

[*(a)*] **(1)** "Biological waste[,]" [*which*] includes blood and blood products, excretions, exudates, secretions, suctionings and other body fluids that cannot be directly discarded into a municipal sewer system, and waste materials saturated with blood or body fluids, but does not include diapers soiled with urine or feces.

[*(b)*] **(2)** "Cultures and stocks[,]" [*which*] includes etiologic agents and associated biologicals, including specimen cultures and dishes and devices used to transfer, inoculate and mix cultures, wastes from production of biologicals, and serums and discarded live and attenuated vaccines. "Cultures **and stocks**" does not include throat and urine cultures.

(3) "Disposal" means the final placement of treated infectious waste in a disposal site operating under a permit issued by a state or federal agency.

(4) "Infectious waste" includes biological waste, cultures and stocks, pathological waste and sharps.

[*(c)*] **(5)(a)** "Pathological waste[,]" [*which*] includes**:**

(A) Biopsy materials and all human tissues[,]**;**

(B) Anatomical parts that emanate from [*surgery,*] **surgeries, autopsies and** obstetrical [*procedures, autopsy*] and laboratory procedures**;** and

(C) Animal carcasses exposed to pathogens in research and the bedding and other waste from such animals.

(b) "Pathological waste" does not include teeth or formaldehyde or other preservative agents.

[*(d)*] **(6)** "Sharps[,]" [*which*] includes needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes that have been removed from their original sterile containers.

[*(3)*] **(7)** "Storage" means the temporary containment of infectious waste in a manner that does not constitute treatment or disposal of such waste.

[*(4)*] **(8)** "Transportation" means the movement of infectious waste from the point of generation over a public highway to any intermediate point or to the point of final treatment.

[*(5)*] **(9)** "Treatment" means incineration, sterilization or other method, technique or process approved by the Department of Human Services that changes the character or composition of any infectious waste so as to render the waste noninfectious.

NOTE: Restructures section to conform to legislative style; tweaks language in (5).

SECTION 332. ORS 459.422 is amended to read:

459.422. (1) A person selling lead-acid batteries at retail or offering lead-acid batteries for retail sale in the State of Oregon shall accept [*after December 31, 1993,*] used lead-acid batteries of the same type purchased from a customer at the point of transfer in a quantity at least equal to the number of new batteries purchased, if offered by the customer.

(2) Any person selling new lead-acid batteries at wholesale shall accept used lead-acid batteries of the same type from any customer at the point of transfer in a quantity at least equal to the number of new batteries purchased, if offered by a customer.

(3) A person accepting batteries in transfer from an automotive battery retailer shall be allowed up to 90 days to remove batteries from the retail point of collection.

NOTE: Deletes obsolete date reference in (1).

SECTION 333. ORS 459.435 is amended to read:

459.435. [*On and after January 1, 1996, no*] **A** person [*shall*] **may not** sell, offer for sale or offer for promotional purposes any button cell mercuric oxide battery for use in Oregon.

NOTE: Tweaks word choice and deletes obsolete date reference.

SECTION 334. ORS 459.437 is amended to read:

459.437. (1) [*On and after January 1, 1996, no*] **A** person [*shall*] **may not** sell, offer for sale or offer for promotional purposes a mercuric oxide battery for use in Oregon unless the battery manufacturer:

(a) Identifies a collection site that has all required governmental approvals, to which persons may send used mercuric oxide batteries for recycling or proper disposal;

(b) Informs each person who purchases the manufacturer's mercuric oxide batteries of the collection site identified under paragraph (a) of this subsection; and

(c) Informs each person who purchases the manufacturer's mercuric oxide batteries of a telephone number the person may call to obtain information about sending mercuric oxide batteries for recycling or proper disposal.

(2) Subsection (1) of this section does not apply to mercuric oxide button cell batteries.

NOTE: Tweaks word choice and deletes obsolete date reference in (1) lead-in.

SECTION 335. ORS 459A.505 is amended to read:

459A.505. [*Unless exempted under section 30, chapter 385, Oregon Laws 1991, on and after January 1, 1995,*] Every consumer of newsprint in Oregon shall [*insure*] **ensure** that at least 7.5 percent of the annual aggregate fiber content of all newsprint used by the consumer of newsprint is composed of post-consumer waste paper, if:

(1) Recycled-content newsprint is available at the same or lower weighted net price compared to that of newsprint made from virgin material;

(2) The average mechanical and optical properties of recycled-content newsprint from any individual mill measured quarterly [*must meet or exceed*] **meets or exceeds** the average mechanical and

optical properties of all newsprint produced in the northwest as reported in the most current quarterly American Newspaper Publisher Association Newsprint Quality Program Special Report; and

(3) The recycled-content newsprint is available within the same period of time as virgin material.

NOTE: Deletes reference to repealed session law section and obsolete date and updates word choice in lead-in; corrects grammar in (2).

SECTION 336. ORS 459A.520 is amended to read:

459A.520. (1) [*On and after January 1, 1995,*] Every directory publisher shall [*insure*] **ensure** that directories distributed in Oregon:

(a) Have a minimum recycled content of at least 25 percent by weight, with no less than 15 percent of the total weight consisting of post-consumer waste, if:

(A) The recycled-content paper is available on the market; and

(B) The recycled-content paper is of the same quality as paper made from virgin material;

(b) Use bindings that do not impede recycling; and

(c) Use inks that do not impede recycling.

(2) For each local jurisdiction where directories are distributed, directory publishers will cooperate with local government agencies to [*insure*] **ensure** that recycling opportunities exist for directories at the time the directories are distributed provided markets exist for the directories.

(3) The Department of Environmental Quality shall develop a report format and survey directory publishers in Oregon on an annual basis to determine whether the publishers are meeting the requirements under subsections (1) and (2) of this section.

(4) As used in this section, "directory" means a telephone directory that weighs one pound or more for a local jurisdiction in Oregon distributed in this state.

NOTE: Deletes obsolete date reference in (1) lead-in; updates word choice in (1) lead-in and (2).

SECTION 337. ORS 459A.552 is amended to read:

459A.552. It is the goal of the State of Oregon that [*by January 1, 1996,*] the amount of recycling and recovery of used oil from households in Oregon shall be at least [*50 percent and that by January 1, 2000, the amount of recycling and recovery of used oil from households in Oregon shall be at least*] 70 percent.

NOTE: Deletes obsolete provisions.

SECTION 338. ORS 459A.620 is amended to read:

459A.620. [*After January 1, 1994,*] Any state agency that prepares a request for bid for soil amendments, ground cover materials, mulching materials or other similar products shall first determine that compost or sewage sludge is not available in adequate quantities, cannot practically be used for the intended applications, would jeopardize the intended project results or would be used in combination with a fertilizer or other similar product.

NOTE: Deletes obsolete date reference.

SECTION 339. ORS 460.035 is amended to read:

460.035. (1) [*No*] Fees [*shall be*] **are not** required under ORS 460.005 to 460.175 to install, alter, repair, operate or maintain an elevator:

(a) Under the supervision of the United States Government.

(b) That is a nonpower-driven lifting device.

(c) Located in a private residence, except for initial installation.

(2) [*However, the Department of Consumer and Business Services may, at the request of the owner or user thereof, make an inspection of the above exempt elevators and*] **The owner or user of an elevator described in subsection (1) of this section may request that the Department of Consumer and Business Services inspect the elevator. If the department performs the inspection, the department, notwithstanding subsection (1) of this section, may** collect the appropriate fee listed in ORS 460.165.

[*(2)*] **(3)** Pipes installed in an elevator hoistway prior to July 1, 1961, [*which*] **that** do not convey gases or liquids that would endanger life if discharged into the hoistway[*, are not required to*] **need not** be removed.

[*(3)*] **(4)** ORS 460.005 to 460.175 do not apply to:

(a) Belt, bucket, scoop, roller or similar type material conveyors.

(b) Hoists for raising or lowering materials and [*which*] **that** are provided with unguided hooks, slings and similar means for attachment to the materials.

(c) Material hoists used only to raise and lower building material in buildings under construction.

(d) Stackers that serve one floor only.

(e) Window-washing scaffolds.

(f) Nonpower-driven lifting devices.

(g) Amusement rides.

(h) Mine elevators.

(i) Elevators under the supervision of the United States Government.

(j) Elevators located in private residences, except for initial installation.

NOTE: Restructures section to eliminate blank line; tweaks syntax.

SECTION 340. ORS 465.104 is amended to read:

465.104. (1) [*Beginning September 1, 1989,*] The seller of a petroleum product withdrawn from a bulk facility, on withdrawal from bulk of the petroleum product, shall collect from the person who orders the withdrawal a petroleum products withdrawal delivery fee in the maximum amount of $10.

(2) [*Beginning September 1, 1989,*] Any person who imports petroleum products in a cargo tank or a barge for delivery into a storage tank, other than a tank connected to a bulk facility, shall pay a petroleum products import delivery fee in the maximum amount of $10 to the Department of Revenue for each such delivery of petroleum products into a storage tank located in the state.

(3) Subsections (1) and (2) of this section do not apply to a delivery or import of petroleum products destined for export from this state if the petroleum products are in continuous movement to a destination outside the state.

(4) The seller of petroleum products withdrawn from a bulk facility and each person importing petroleum products shall remit [*the first*] payment [*on October 1, 1989. Beginning January 1, 1990, payment of the fee due shall be*] on a quarterly basis **on January 1, April 1, July 1 and October 1**.

(5) Each operator of a bulk facility and each person who imports petroleum products shall register with the Department of Revenue [*by August 1, 1989, or*] **at least** 30 days prior to operating a bulk facility or importing a cargo tank of petroleum products[*, whichever comes first*].

NOTE: Deletes obsolete date references in (1), (2), (4) and (5).

SECTION 341. ORS 468B.075 is amended to read:

468B.075. [*For the purposes of*] **As used in** ORS 468B.080[*, the term*]:

(1) "Buildings or structures" [*shall also include*] **includes** but is not limited to floating buildings and structures, houseboats, moorages, marinas, or any boat used as such.

(2) "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and serving of food.

[*(2)*] **(3)** "Sewage" means human excreta as well as kitchen, bath and laundry wastes.

[*(3) "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and serving of food.*]

NOTE: Alphabetizes definitions; conforms lead-in to legislative style.

SECTION 342. ORS 469.710 is amended to read:

469.710. As used in ORS [*317.112 and*] 469.710 to 469.720, unless the context requires otherwise:

(1) "Annual rate" means the yearly interest rate specified on the note, and is not the annual percentage rate, if any, disclosed to the applicant to comply with the federal Truth in Lending Act.

(2) "Commercial lending institution" means any bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in this state.

(3) "Cost-effective" means that an energy conservation measure that provides or saves a specific amount of energy during its life cycle results in the lowest present value of delivered energy costs of any available alternative. However, the present value of the delivered energy costs of an energy

conservation measure [*shall*] **may** not be treated as greater than that of a nonconservation energy resource or facility unless that cost is greater than 110 percent of the present value of the delivered energy cost of the nonconservation energy resource or facility.

(4) "Dwelling" means real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant. "Dwelling" includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 830.700 and a single unit in multiple-unit residential housing. "Dwelling" does not include a recreational vehicle as defined in ORS 446.003.

(5) "Dwelling owner" means the person who has legal title to a dwelling, including the mortgagor under a duly recorded mortgage of real property, the trustor under a duly recorded deed of trust or a purchaser under a duly recorded contract for purchase of real property.

(6) "Energy audit" means:

(a) The measurement and analysis of the heat loss and energy utilization efficiency of a dwelling;

(b) An analysis of the energy savings and dollar savings potential that would result from providing energy conservation measures for the dwelling;

(c) An estimate of the cost of the energy conservation measures that includes:

(A) Labor for the installation of items designed to improve the space heating and energy utilization efficiency of the dwelling; and

(B) The items installed; and

(d) A preliminary assessment, including feasibility and a range of costs, of the potential and opportunity for installation of:

(A) Passive solar space heating and solar domestic water heating in the dwelling; and

(B) Solar swimming pool heating, if applicable.

(7) "Energy conservation measures" means measures that include the installation of items and the items installed that are primarily designed to improve the space heating and energy utilization efficiency of a dwelling. These items include, but are not limited to, caulking, weatherstripping and other infiltration preventative materials, ceiling and wall insulation, crawl space insulation, vapor barrier materials, timed thermostats, insulation of heating ducts, hot water pipes and water heaters in unheated spaces, storm doors and windows, double glazed windows and dehumidifiers. "Energy conservation measures" does not include the dwelling owner's own labor.

(8) "Finance charge" means the total of all interest, loan fees and other charges related to the cost of obtaining credit and includes any interest on any loan fees financed by the lending institution.

(9) "Fuel oil dealer" means a person, association, corporation or any other form of organization that supplies fuel oil at retail for the space heating of dwellings.

(10) "Residential fuel oil customer" means a dwelling owner or tenant who is billed by a fuel oil dealer for fuel oil service for space heating received at the dwelling.

(11) "Space heating" means the heating of living space within a dwelling.

(12) "Wood heating resident" means a person whose primary space heating is provided by the combustion of wood.

NOTE: Removes superfluous reference to statute in lead-in (see 317.112 (7)); tweaks word choice in (3).

SECTION 343. ORS 471.105 is amended to read:

471.105. Before being qualified to purchase alcoholic liquor from the Oregon Liquor Control Commission, a person must be [*over*] **at least** 21 years of age.

NOTE: Adjusts age requirement to purchase liquor to conform with rest of Liquor Control Act.

SECTION 344. ORS 471.200 is amended to read:

471.200. (1) A brewery-public house license [*shall allow*] **allows** the licensee:

(a) To manufacture [*annually*] on the licensed premises, store, transport, sell to wholesale malt beverage and wine licensees of the Oregon Liquor Control Commission and export malt beverages;

(b) To sell malt beverages manufactured on or off the licensed premises at retail for consumption on or off the premises;

(c) To sell malt beverages in brewery-sealed packages at retail directly to the consumer for consumption off the premises;

(d) To sell on the licensed premises at retail malt beverages manufactured on or off the licensed premises in unpasteurized or pasteurized form directly to the consumer for consumption off the premises, delivery of which may be made in a securely covered container supplied by the consumer;

(e) To sell wine and cider at retail for consumption on or off the premises; and

(f) To conduct the activities described in paragraphs (b) to (e) of this subsection at one location other than the premises where the manufacturing occurs.

(2) In addition to the privileges specified in subsection (1) of this section, in any calendar year a brewery-public house licensee may sell at wholesale to licensees of the commission malt beverages produced by the brewery-public house licensee if the brewery-public house licensee produced 1,000 barrels or less of malt beverages in the immediately preceding calendar year.

(3) A brewery-public house licensee, or any person having an interest in the licensee, is a retail licensee for the purposes of ORS 471.394 and, except as otherwise provided by this section and ORS 471.396, may not acquire or hold any right, title, lien, claim or other interest, financial or otherwise, in, upon or to the premises, equipment, business or merchandise of any manufacturer or wholesaler, as defined in ORS 471.392. A brewery-public house licensee, or any person having an interest in the licensee, is also a manufacturer for the purposes of ORS 471.398 and, except as otherwise provided by this section and ORS 471.400, may not acquire or hold any right, title, lien, claim or other interest, financial or otherwise, in, upon or to the premises, equipment, business or merchandise of any other retail licensee, as defined in ORS 471.392.

(4) A brewery-public house licensee, or any person having an interest in the licensee, is a retail licensee for the purposes of ORS 471.398 and, except as otherwise provided by this section and ORS 471.400, may not accept directly or indirectly any financial assistance described in ORS 471.398 from any manufacturer or wholesaler, as defined in ORS 471.392. A brewery-public house licensee, or any person having an interest in the licensee, is also a manufacturer for the purposes of ORS 471.398 and, except as otherwise provided by this section and ORS 471.400, may not provide directly or indirectly any financial assistance described in ORS 471.398 to any retail licensee, as defined in ORS 471.392. The prohibitions on financial assistance in ORS 471.398 do not apply to financial assistance between manufacturing and retail businesses licensed to the same person under the provisions of this section.

(5) Notwithstanding subsection (3) of this section, a brewery-public house licensee, or any person having an interest in the licensee, may also hold a winery license authorized by ORS 471.223. A brewery-public house licensee, or any person having an interest in the licensee, may also hold a warehouse license authorized by ORS 471.242.

(6) Notwithstanding subsection (3) of this section, a brewery-public house licensee is eligible for limited on-premises sales licenses and temporary sales licenses.

(7)(a) Notwithstanding subsection (3) of this section, and except as provided in this subsection, a brewery-public house licensee, or any person having an interest in the licensee, may also hold a full on-premises sales license. If a person holds both a brewery-public house license and a full on-premises sales license, nothing in this chapter shall prevent the sale by the licensee of both distilled liquor and malt beverages manufactured under the brewery-public house license.

(b) The commission may not issue a full on-premises sales license to a brewery-public house licensee under the provisions of this subsection if the brewery-public house licensee, or any person having an interest in the licensee or exercising control over the licensee, is a brewery that brews more than 200,000 barrels of malt beverages annually or a winery that produces more than 200,000 gallons of wine annually.

(c) The commission may not issue a full on-premises sales license to a brewery-public house licensee under the provisions of this subsection if the brewery-public house licensee, or any person having an interest in the licensee or exercising control over the licensee, is a distillery, unless the distillery produces only pot distilled liquor and produces no more than 12,000 gallons of pot distilled liquor annually.

(8) Notwithstanding any other provision of this chapter, a brewery-public house licensee, or any person having an interest in the licensee, may also hold a distillery license if the licensee produces only pot distilled liquor, and produces no more than 12,000 gallons of pot distilled liquor annually. No provision of this chapter prevents a brewery-public house licensee from becoming a retail sales agent of the commission for the purpose of selling distilled liquors.

(9) Notwithstanding subsection (3) of this section, the commission by rule may authorize a brewery-public house licensee to coproduce special events with other manufacturers.

(10)(a) Notwithstanding subsection (3) of this section, a brewery-public house licensee may hold, directly or indirectly, an interest in a manufacturer or wholesaler, provided that the interest does not result in exercise of control over, or participation in the management of, the manufacturer′s or wholesaler′s business or business decisions and does not result in exclusion of any competitor′s brand of alcoholic liquor.

(b) Notwithstanding subsection (3) of this section, a manufacturer or wholesaler, and any officer, director or substantial stockholder of any corporate manufacturer or wholesaler, may hold, directly or indirectly, an interest in a brewery-public house licensee, provided that the interest does not result in exercise of control over, or participation in the management of, the licensee′s business or business decisions and does not result in exclusion of any competitor′s brand of alcoholic liquor.

(11) For purposes of ORS chapter 473, a brewery-public house licensee shall be considered to be a manufacturer.

NOTE: Tweaks language in (1) lead-in; deletes unnecessary term in (1)(a).

SECTION 345. ORS 471.311 is amended to read:

471.311. (1) Any person desiring a license or renewal of a license under this chapter shall make application to the Oregon Liquor Control Commission upon forms to be furnished by the commission showing the name and address of the applicant, location of the place of business [*which*] **that** is to be operated under the license, and such other pertinent information as the commission may require. No license shall be granted or renewed until the applicant has complied with the provisions of the Liquor Control Act, the provisions of the Oregon Distilled Liquor Control Act and the rules of the commission.

(2) The commission may reject any application that is not submitted in the form required by rule. The commission shall give applicants an opportunity to be heard if an application is rejected. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS chapter 183.

(3) Subject to subsection (4) of this section, the commission shall assess a nonrefundable fee for processing a renewal application for any license authorized by this chapter only if the renewal application is received by the commission less than 20 days before expiration of the license. If the renewal application is received prior to expiration of the license but less than 20 days prior to expiration, this fee shall be 25 percent of the annual license fee. If a renewal application is received by the commission after expiration of the license but no more than 30 days after expiration, this fee shall be 40 percent of the annual license fee. This subsection [*shall*] **does** not apply to a certificate of approval, a brewery-public house license or [*to*] any license [*which*] **that** is issued for a period of less than 30 days.

(4) The commission may waive the fee imposed under subsection (3) of this section if it finds that failure to submit a timely application was due to unforeseen circumstances or to a delay in processing the application by the local governing authority that is no fault of the licensee.

(5) The annual license fee is nonrefundable and shall be paid by each applicant upon the granting or committing of a license. The annual license fee and the minimum bond required of each class of license under this chapter are as follows:

License	Fee	Minimum Bond
Brewery, including		

Certificate of Approval	$ 500	$ 1,000
Winery	250	1,000
Distillery	100	None
Wholesale Malt Beverage and Wine	275	1,000
Warehouse	100	1,000
Special events winery license may be issued to a winery licensee at	$ 10 per day	
Brewery-Public House, including Certificate of Approval	$ 250	$ 1,000
Limited On-Premises Sales	$ 200	None
Off-Premises Sales	$ 100	None
Temporary Sales	$ 25 for events lasting five hours or less and $25 for each additional period of five hours or less	
Grower sales privilege license	$ 250	$ 1,000
Special events grower sales privilege license	$ 10 per day	

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(6) The fee for a certificate of approval or special certificate of approval granted under ORS 471.289 is nonrefundable and must be paid by each applicant upon the granting or committing of a certificate of approval or special certificate of approval. No bond is required for the granting of a certificate of approval or special certificate of approval. Certificates of approval are valid for a period commencing on the date of issuance and ending on December 31 of the fifth calendar year following the calendar year of issuance. The fee for a certificate of approval is $175. Special certificates of approval are valid for a period of 30 days. The fee for a special certificate of approval is $10.

(7) Except as provided in subsection (8) of this section, the annual license fee for a full on-premises sales license is $400. No bond is required for any full on-premises sales license.

(8) The annual license fee for a full on-premises sales license held by a private club as described in ORS 471.175 [*(7)*] **(8)**, or held by a nonprofit or charitable organization that is registered with the state, is $200.

NOTE: Improves grammar in (1) and (3); corrects subsection reference in (8).

SECTION 346. ORS 475.302 is amended to read:

475.302. As used in ORS 475.300 to 475.346:

(1) "Attending physician" means a physician licensed under ORS chapter 677 who has primary responsibility for the care and treatment of a person diagnosed with a debilitating medical condition.

(2) "Debilitating medical condition" means:

(a) Cancer, glaucoma, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, or treatment for these conditions;

(b) A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:

(A) Cachexia;

(B) Severe pain;

(C) Severe nausea;

(D) Seizures, including but not limited to seizures caused by epilepsy; or

(E) Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis; or

(c) Any other medical condition or treatment for a medical condition adopted by the department by rule or approved by the department pursuant to a petition submitted pursuant to ORS 475.334.

(3) "Delivery" has the meaning given that term in ORS 475.005.

(4) "Department" means the Department of Human Services.

(5) "Designated primary caregiver" means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the department. "Designated primary caregiver" does not include the person's attending physician.

(6) "Marijuana" has the meaning given that term in ORS 475.005.

(7) "Medical use of marijuana" means the production, possession, delivery, or administration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of [*his or her*] **the person's** debilitating medical condition.

(8) "Production" has the [*same*] meaning given that term in ORS 475.005.

(9) "Registry identification card" means a document issued by the department that identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

(10) "Usable marijuana" means the dried leaves and flowers of the plant Cannabis family Moraceae, and any mixture or preparation thereof, that are appropriate for medical use as allowed in ORS 475.300 to 475.346. "Usable marijuana" does not include the seeds, stalks and roots of the plant.

(11) "Written documentation" means a statement signed by the attending physician of a person diagnosed with a debilitating medical condition or copies of the person's relevant medical records.

NOTE: Adjusts syntax to conform to legislative style in (7) and (8).

SECTION 347. ORS 475.319 is amended to read:

475.319. (1) Except as provided in ORS 475.316 and 475.342, it is an affirmative defense to a criminal charge of possession or production of marijuana, or any other criminal offense in which possession or production of marijuana is an element, that the person charged with the offense is a person who:

(a) Has been diagnosed with a debilitating medical condition within 12 months prior to arrest and been advised by [*his or her*] **the person's** attending physician **that** the medical use of marijuana may mitigate the symptoms or effects of that debilitating medical condition;

(b) Is engaged in the medical use of marijuana; and

(c) Possesses or produces marijuana only in the amounts allowed in ORS 475.306 (1), or in excess of those amounts if the person proves by a preponderance of the evidence that the greater amount is medically necessary as determined by the person's attending physician to mitigate the symptoms or effects of the person's debilitating medical condition.

(2) It is not necessary for a person asserting an affirmative defense pursuant to this section to have received a registry identification card in order to assert the affirmative defense established in this section.

(3) No person engaged in the medical use of marijuana who claims that marijuana provides medically necessary benefits and who is charged with a crime pertaining to such use of marijuana shall be precluded from presenting a defense of choice of evils, as set forth in ORS 161.200, or from presenting evidence supporting the necessity of marijuana for treatment of a specific disease or medical condition, provided that the amount of marijuana at issue is no greater than permitted un-

der ORS 475.306 and the patient has taken a substantial step to comply with the provisions of ORS 475.300 to 475.346.

(4) Any defendant proposing to use the affirmative defense provided for by this section in a criminal action shall, not less than five days before the trial of the cause, file and serve upon the district attorney a written notice of the intention to offer such a defense that specifically states the reasons why the defendant is entitled to assert and the factual basis for such affirmative defense. If the defendant fails to file and serve such notice, the defendant [*shall*] **is** not [*be*] permitted to assert the affirmative defense at the trial of the cause unless the court for good cause orders otherwise.

NOTE: Adjusts syntax to conform to legislative style in (1)(a) and (4).

SECTION 348. ORS 475.323 is amended to read:

475.323. (1) Possession of a registry identification card or designated primary caregiver identification card pursuant to ORS 475.309 [*shall*] **does** not alone constitute probable cause to search the person or property of the cardholder or otherwise subject the person or property of the cardholder to inspection by any governmental agency.

(2) Any property interest possessed, owned or used in connection with the medical use of marijuana or acts incidental to the medical use of marijuana that has been seized by state or local law enforcement officers [*shall*] **may** not be harmed, neglected, injured or destroyed while in the possession of any law enforcement agency. A law enforcement agency has no responsibility to maintain live marijuana plants lawfully seized. No such property interest may be forfeited under any provision of law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense. Usable marijuana and paraphernalia used to administer marijuana that was seized by any law enforcement office shall be returned immediately upon a determination by the district attorney in whose county the property was seized, or [*his or her*] **the district attorney's** designee, that the person from whom the marijuana or paraphernalia used to administer marijuana was seized is entitled to the protections contained in ORS 475.300 to 475.346. [*Such*] **The** determination may be evidenced, for example, [*be*] **by** a decision not to prosecute, the dismissal of charges[,] or acquittal.

NOTE: Adjusts syntax to conform to legislative style.

SECTION 349. ORS 475.999 is amended to read:

475.999. **(1)** Except as authorized by ORS 475.005 to 475.285 and 475.940 to 475.999, it is unlawful for any person to[*:*]

[*(1)*] manufacture or deliver a schedule I, II or III controlled substance within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2)(a) Unlawful manufacture or delivery of a controlled substance within 1,000 feet of a school is a Class A felony.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, delivery for no consideration of less than five grams of the dried leaves, stems and flowers of the plant Cannabis family Moraceae in a public place, as defined in ORS 161.015, that is within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors to a person who is 18 years of age or older is a Class C misdemeanor.

[*(2)(a)*] **(3) Except as authorized by ORS 475.005 to 475.285 and 475.940 to 475.999, it is unlawful for any person to** possess less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae in a public place, as defined in ORS 161.015, that is within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

[*(b)*] **(4)** Possession of less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae in a public place that is within 1,000 feet of a school is a Class C misdemeanor.

NOTE: Restructures section to conform to legislative style.

SECTION 350. Section 35, chapter 780, Oregon Laws 2001, as amended by section 254, chapter 576, Oregon Laws 2003, is amended to read:

Sec. 35. (1) If it has been determined in an action brought under the provisions of ORS 475A.075 that the plaintiff has prevailed as to some or all of the defendant property, the plaintiff shall serve on the claimant a proposed judgment of forfeiture and a statement of costs as defined in ORS 475A.120 (1)(a) and [*475A.125 (1)(a) (1999 Edition)*] **section 38 (1)(a), chapter 780, Oregon Laws 2001**.

(2)**(a)** A claimant who has filed a claim to seized property, appeared in the action, and part or all of whose interest in the claimed property is forfeited under the terms of the proposed judgment may file a motion for a mitigation hearing[*:*]**.**

[*(a)*] **(b)** A motion under this section must list all evidence not previously received that is relevant to the determination to be made by the court under ORS 475A.100. Every argument that the claimant wishes to raise in mitigation must be set out in specific detail in the motion.

[*(b)*] **(c)** Before filing a motion for mitigation, the claimant and the plaintiff must make a good faith effort to confer with one another concerning any issues in dispute. The claimant must file a certificate of compliance with the requirements of this paragraph before the time set for hearing on the motion. The certificate is sufficient if the certificate states that the parties conferred or the certificate contains facts showing good cause for not conferring.

[*(c)*] **(d)** A motion under this section may [*only*] be filed **only** after the service of a proposed judgment on the claimants. If a motion for a mitigation hearing is not filed with the court within 14 days after the date the plaintiff serves the proposed judgment on the claimant, the court shall enter judgment.

(3) If a motion for a mitigation hearing is filed, the court shall determine whether any portion of the proposed judgment is excessive in the manner provided by ORS 475A.100.

(4) A hearing under the provisions of this section is subject to the Oregon Rules of Evidence.

(5) The court may make such orders, as may be necessary to [*insure*] **ensure** that the forfeiture is not excessive, including but not limited to the following orders:

(a) An order directing that the defendant property, or part of it, be sold and the proceeds of sale distributed between the litigants.

(b) An order directing that the claimant make available to the court other assets, not named as defendants in the forfeiture action, for the purpose of fashioning a judgment that is not excessive.

(6) The court shall make written findings of fact and shall enter written conclusions of law in proceedings under the provisions of this section.

NOTE: Deletes reference to repealed section and inserts equivalent citation in (1); restructures (2) to conform to legislative style; corrects syntax in (2)(d) and (5).

SECTION 351. Section 36, chapter 780, Oregon Laws 2001, is amended to read:

Sec. 36. (1) Subject to subsection (2) of this section, the court shall forfeit to the forfeiting agency at least [*so*] **as** much of the defendant property as may be required to pay the forfeiting agency's costs as defined in ORS 475A.120 (1)(a) and [*475A.125 (1)(a) (1999 Edition)*] **section 38 (1)(a), chapter 780, Oregon Laws 2001**.

(2) At least 10 days before a trial under ORS 475A.075, a claimant may serve upon the forfeiting agency an offer to allow judgment to be given against all or part of the defendant property for a specified sum, specified property, or to a specified effect. If the forfeiting agency accepts the offer, the forfeiting agency must file a written acceptance with the clerk of the court within three days after the date on which the offer was served upon the forfeiting agency. If an acceptance is filed with the court, judgment shall be entered based on the acceptance as a stipulated judgment. Unless otherwise agreed by the parties, costs and disbursements as defined in ORCP 68 shall be entered as part of the judgment pursuant to the procedure provided by Rule 68. If an acceptance is not filed with the court within three days after the time the offer was served upon the forfeiting agency, the offer shall be considered withdrawn, and [*shall*] **may** not be given in evidence on the trial. If the forfeiting agency fails to obtain a judgment after trial that is more favorable than the offer made by the claimant, the court shall award to the claimant costs and disbursements as defined in ORCP

68, and the court may enter a judgment that forfeits to the forfeiting agency less of the defendant property than may be required to pay the forfeiting agency's costs as defined in ORS 475A.120 (1)(a) and [*475A.125 (1)(a) (1999 Edition)*] **section 38 (1)(a), chapter 780, Oregon Laws 2001**.

NOTE: Deletes references to repealed section and inserts equivalent citation in (1) and (2); corrects word choice in (1) and (2).

SECTION 352. Section 37, chapter 780, Oregon Laws 2001, as amended by section 255, chapter 576, Oregon Laws 2003, is amended to read:

Sec. 37. (1) In any appeal from a judgment of forfeiture, review of any mitigation ordered by the trial court shall be limited to the following:

(a) Whether the findings of fact are supported by the evidence in the record.

(b) Whether the ultimate conclusion modifying or declining to modify the judgment submitted by the plaintiff was an abuse of discretion by the trial court.

(c) Whether the judgment complies with applicable constitutional limitations.

(2) An appellate court may reverse, affirm, modify or remand the provisions of a judgment of forfeiture relating to mitigation[.]**,** but the appellate court may not consider arguments for mitigation of a judgment of forfeiture unless those arguments were timely raised by the motion provided for in [*ORS 475A.090 (1999 Edition)*] **section 35, chapter 780, Oregon Laws 2001**.

NOTE: Deletes reference to repealed section and inserts equivalent citation and corrects sentence structure in (2).

SECTION 353. ORS 476.010 is amended to read:

476.010. (1) As used in ORS 476.010 to 476.115, 476.150 to 476.170 and 476.210 to 476.270, "alterations," "construction," "family," "hospital," "occupancy[,]" and "private residence" [*shall*] have the [*same*] meanings [*as are provided for such*] **given those** terms in ORS 479.010.

(2) As used in ORS 476.030 and other laws relating to the duties of the State Fire Marshal, "governmental subdivision" means a city, county, municipal corporation, quasi-municipal corporation and rural fire protection district, created under the laws of Oregon.

(3) As used in ORS 476.380:

(a) "Commercial waste"**:**

(A) Means any waste produced in any business involving the lease or sale, including wholesale and retail, of goods or services, including but not limited to housing[*, and*]**.**

(B) Means any waste produced by a governmental, educational or charitable institution[*; however, it*]**.**

(C) Does not include any waste produced in a dwelling containing four living units or less.

(b) "Demolition material" means any waste resulting from the complete or partial destruction of any man-made structure**,** such as a house, apartment, commercial building or industrial building.

(c) "Domestic waste" means any nonputrescible waste, consisting of combustible materials, such as paper, cardboard, yard clippings, wood[,] or similar materials, generated in a dwelling, including the real property upon which it is situated, containing four living units or less.

(d) "Field burning" means the burning of any grass field, grain field, pasture, rangeland[,] or other field by open burning or by use of mobile equipment or flaming equipment on any land or vegetation.

(e) "Industrial waste" means any waste resulting from any process or activity of manufacturing or construction.

(f) "Land clearing debris" means any waste generated by the removal of debris, logs, trees, brush or demolition material from any site in preparation for land improvement or construction projects.

(g) "Open burning" means any burning conducted in such a manner that combustion air is not effectively controlled and that combustion products are not vented through a stack or chimney, including but not limited to burning conducted in open outdoor fires, common burn barrels and backyard incinerators.

NOTE: Modifies word choice and punctuation in (1) and (3)(a), (b), (c) and (d) to conform to legislative style.

SECTION 354. ORS 476.113 is amended to read:

476.113. (1) The State Fire Marshal may by order from time to time designate not more than seven regions within the state and establish regional appeal advisory boards for each of [*such*] **the** designated regions.

(2) Each regional appeal advisory board shall consist of three regular members and three alternate members appointed by the State Fire Marshal. A member or alternate member of a regional appeal advisory board shall receive no compensation for services as a member[*,*]**,** but, subject to any other applicable law regulating travel and other expenses for state offices, shall receive actual and necessary travel and other expenses incurred in the performance of official duties. All [*such*] appointed members [*shall*] **must** be persons qualified by experience and training. At least one member of each board [*shall*] **must** be a qualified architect who has practiced the profession for at least two years. Appointments shall be made for three-year terms. Any member may be removed by the State Fire Marshal for cause. Upon the death, resignation or removal of any member, a successor shall be appointed by the State Fire Marshal to serve the balance of the unexpired term. No member of a regional appeal advisory board shall sit in a case in which the member is interested and if any such case comes before the board, an alternate shall act in the place of the member.

NOTE: Updates word and punctuation choice in (1) and (2).

SECTION 355. ORS 476.290 is amended to read:

476.290. Whenever a fire is extinguished pursuant to ORS 476.280, the governing body of the city or the district board of the rural fire protection district that provided [*such*] **the** fire suppression service may**, on forms furnished by the State Fire Marshal for such purposes,** bill the owner of the property involved in [*such*] **the** fire for the cost of providing [*such*] **the** fire suppression service [*on forms furnished by the State Fire Marshal for such purposes*]. The governing body of the city or the district board of the rural fire protection district that provided [*such*] **the** fire suppression service may determine the cost of providing [*such*] **the** fire suppression service by use of a state standardized-costs schedule as approved by the State Fire Marshal[*; but, in no event, shall any such*]**. The** cost **charged for providing the fire suppression service may not** be greater than the pro rata cost that would have been charged by [*such*] **the** city or district for the performance by [*it*] **the city or district** of a similar fire suppression service within its jurisdiction. If [*any such*] **the** cost is not paid within 30 days after the second billing, the governing body of the city or the district board of the rural fire protection district that provided the fire suppression service may bring an action for the recovery of [*such*] **the** unpaid cost from the owner of the real property upon which the fire suppression service was rendered.

NOTE: Fiddles with syntax for clarity.

SECTION 356. ORS 476.310 is amended to read:

476.310. (1) The governing body of each county may, in cooperation with the State Board of Forestry, zone and, as often as necessary, rezone any lands within the county lying outside the boundaries of incorporated cities, organized rural fire protection districts, federal and state-owned lands, lands protected under ORS chapter 477 and railroad rights of way[*,*]**,** except that railroad rights of way may be zoned or rezoned if the owners of such rights of way file their written consent with the governing body. Lands, when zoned or rezoned, shall be divided into two zones as follows:

(a) Zone 1 shall be composed of forest, range, grass or undeveloped lands, or any of such lands intermingled with grazing and agricultural lands.

(b) Zone 2 shall be composed of rural lands not included in zone 1.

(2) During the season of the year when there is danger of fire, every owner of zone 1 land shall provide adequate protection against the starting or spread of fire thereon or therefrom, which protection shall meet with the approval of the governing body of the county in which the zone 1 land is located.

(3) An owner shall be deemed to have complied with the requirements of subsection (2) of this section if, on January 1 of each year, the owner files with the governing body of the county a bona fide fire protection plan [*which*] **that** meets with the approval of the county governing body. The

governing body of the county, or its appointed representative, shall periodically inspect the protection facilities provided under such a plan in order to confirm compliance by the owner.

(4) If any owner of zone 1 land fails or neglects to file a fire protection plan, or to comply with the standard of protection approved by the county governing body, the governing body shall provide for forest protection pursuant to ORS 476.320.

(5) Nothing contained in ORS 476.310 to 476.340 shall prevent interested property owners in any nonzoned territory [*as described above*] from petitioning the governing body and State Board of Forestry to hold a hearing on the matter of zoning the territory if a majority of the landowners within the territory file such petition. The governing body, cooperating with the State Board of Forestry, shall give full consideration to the wishes of the landowners as shown by the hearing.

NOTE: Updates punctuation choice in (1) lead-in; corrects word choice in (3); removes excess verbiage in (5).

SECTION 357. ORS 476.600 is amended to read:

476.600. Neither the state nor any county, city or fire district or other political subdivision nor any firefighter acting as the agent of any of the foregoing [*shall be*] **is** liable for any injury to person or property resulting from the performance of any duty imposed by the authority of ORS 476.520 to 476.590. In carrying out the provisions of ORS 476.520 to 476.590 or while acting within the scope of any duty imposed by authority of [*those*] **the** provisions **of ORS 476.520 to 476.590**, no person shall incur civil liability[*; provided that*]**.** [*No person shall*] **A person does not, however,** escape full liability for injury to person or property resulting from willful misconduct or gross negligence of the person.

NOTE: Updates word and punctuation choices.

SECTION 358. ORS 477.220 is amended to read:

477.220. (1) The forester is not required to provide protection for forestland that is either a small parcel or a tract isolated from a forest protection district and which land is found by the forester as not practicable to be included in a forest patrol system.

(2) ORS 477.205 to 477.281 do not apply to federal grazing land or federal timberland within this state for which adequate protection is provided unless the lands have been included within the boundaries of a forest protection district pursuant to a cooperative agreement with the federal government approved by the State Board of Forestry.

(3) Upon written request of the owner of lands [*which*] **that** have been incorporated within a rural fire protection district, the forester shall determine whether [*such*] **the** lands, or any part thereof, are forestland[*;*]**.** Thereafter, those lands [*which*] **that** have been so determined shall be included within ORS 477.205 to 477.281 unless excluded pursuant to subsection (1) of this section.

NOTE: Tinkers with syntax in (3).

SECTION 359. ORS 477.230 is amended to read:

477.230. (1) The annual cost of protection provided by the forester for forestland within a forest protection district shall be as follows:

(a) Grazing land within the district shall be protected by the forester at a pro rata cost per acre for all grazing land within the district boundary[*; provided,*]**.** However, forest patrol assessments levied and assessed under ORS 477.270 against such lands that are not owned by public agencies [*shall*] **may** not exceed one-half of the pro rata cost per acre, exclusive of any assessment per acre under ORS 477.880.

(b) Timberland within the district shall be protected by the forester at a pro rata cost per acre for all timberland within the district boundary[*; provided,*]**.** However, forest patrol assessments levied and assessed under ORS 477.270 against such lands that are not owned by public agencies [*shall*] **may** not exceed one-half of the pro rata cost per acre, exclusive of any assessment per acre under ORS 477.880.

(2) The cost of protection described in this section shall be in accordance with a budget for the district approved by the State Board of Forestry.

NOTE: Tinkers with syntax in (1)(a) and (b).

SECTION 360. ORS 479.010 is amended to read:

479.010. [*(1) For the purpose of*] **As used in** ORS 479.170 to 479.190 and 479.990 (4):

[*(a)*] **(1)** "Alter" in its various modes and tenses and its participial forms refers to an alteration [*as defined herein*].

[*(b)*] **(2)** "Alterations," as applied to a building or structure, means any change, addition or modification in construction or occupancy.

[*(c)*] **(3)** "Construction" means the making, building, alteration, erection, reconstruction, rebuilding or production of a building or addition or extension thereto, or enlargement thereof, in any manner not included in the term "repair**.**" [*as defined in this section.*]

[*(d)*] **(4)** "Family" means an individual or two or more persons related by blood or marriage or a group of not more than five persons, excluding servants, who need not be related by blood or marriage, living together in a dwelling unit.

[*(e)*] **(5)** "Hospital" means a building of any sort in which sick or injured persons are received or kept for medical, surgical or nursing purposes.

[*(f)*] **(6)** "Occupancy" means the purpose for which a building or structure is used or intended to be used. Change of occupancy is not intended to include change of tenants or proprietors.

[*(g)*] **(7)** "Owner" includes a duly authorized agent or attorney, a purchaser, **a** devisee, **a** fiduciary and a person having a vested or contingent interest in the property in question.

[*(h)*] **(8)** "Private residence" means that part of a single, double or multiple dwelling house or building occupied as living or sleeping quarters by one or more family units, exclusive of any portion of such house or building devoted to commercial, processing or manufacturing use.

[*(i)*] **(9)** "Public building" means a building in which persons congregate for civic, political, educational, religious, social or recreational purposes, including among others, state buildings, courthouses, schools, colleges, libraries, museums, exhibit buildings, lecture halls, churches, assembly halls, lodge rooms, dance halls, theaters, skating rinks, bath houses, armories, recreation piers, grandstands and bleachers in exhibition parks or fields, and jails.

[*(j)*] **(10)** "Repair" means restoration of an existing thing to its former state, to refit, to mend, to make good. [*It*] **"Repair"** does not include construction, reconstruction, alteration or rebuilding of a building or any part thereof.

[*(2) For the purposes of ORS 479.020, 479.030, 479.060 and 479.080, "story" is that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story is that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement, cellar or unused under-floor space is more than six feet above the ground surrounding the building for more than 50 percent of the total perimeter or is more than 12 feet above the ground surrounding the building at any point the basement, cellar or unused under-floor space shall be considered a story.*]

NOTE: Separates definitions pertaining to different statutes; see section 363 (creating new section from (2)). Tweaks language.

SECTION 361. ORS 479.010 is added to and made a part of ORS 479.170 to 479.190.

NOTE: Adds section to relevant series.

SECTION 362. Section 363 of this 2005 Act is added to and made a part of ORS 479.010 to 479.200.

NOTE: Adds section to relevant series.

SECTION 363. As used in ORS 479.020 and 479.060, "story" means:

(1) That portion of a building included between the upper surface of any floor and the upper surface of the floor next above;

(2) For the topmost story, that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above; and

(3) A basement, cellar or unused under-floor space, if the finished floor level directly above the basement, cellar or unused under-floor space is more than:

(a) Six feet above the ground surrounding the building for more than 50 percent of the total perimeter; or

(b) Twelve feet above the ground surrounding the building at any point.

NOTE: Sets forth and tweaks definition removed from 479.010; see section 360 (amending 479.010).

SECTION 364. ORS 479.155 is amended to read:

479.155. (1) As used in this section, "director" means the Director of the Department of Consumer and Business Services.

(2) Prior to construction or alteration of a hospital, public building as defined in ORS 479.010 [*(1)*], public garage, dry cleaning establishment, apartment house, hotel, bulk oil storage plant, school, institution as defined in ORS 479.210, or any other building or structure regulated by the State Fire Marshal for use and occupancy or requiring approval by the State Fire Marshal pursuant to statute, the owner shall submit to the director two copies of a plan or sketch showing the location of the building or structure with relation to the premises, distances, lengths and details of construction as the director shall require. [*Such filing shall not be*] **A filing is not** required with respect to any such building or structure in any area exempted by order of the State Fire Marshal pursuant to ORS 476.030. Approval of [*such*] **the** plans **or sketches** by the director [*shall be*] **is** considered approval by the State Fire Marshal and [*shall satisfy*] **satisfies** any statutory provision requiring approval by the State Fire Marshal.

(3) A declaration of the value of the proposed construction or alteration and the appropriate fee required under ORS 455.210 [*shall*] **must** accompany the plan or sketch. However, the determination of value or valuation shall be made by the director.

(4) The director shall be furnished with not fewer than two accurate copies of the plan or sketch and details for the purpose of ascertaining compliance with applicable fire prevention and protection statutes and regulations. The plan examiner shall indicate on the plan or sketch and in writing approval or disapproval and conditions for approval of the construction or alteration. One copy of the plan or sketch shall be retained by the director and one copy shall be returned to the applicant. No building or structure referred to in subsection (2) of this section shall be erected or constructed without approval by the director if the building or structure requires approval by the State Fire Marshal. After such approval or issuance of the required permit, construction or alteration [*shall*] **must** comply with the plan or sketch in all respects unless modified by subsequent permit or order of the director.

(5) The approval of a plan or sketch [*shall*] **may** not be construed to be a permit for, or an approval of, any violation of any statute or regulation or the applicable ordinances and regulations of any governmental subdivision of the state. The approval of a plan or sketch [*shall*] **may** not be construed as an approval for noncompliance with fire marshal regulations. Any condition upon approval or disapproval [*shall be deemed*] **is** an order subject to appeal as other orders are appealable.

(6) Notwithstanding the requirements of subsections (2) and (4) of this section, the State Fire Marshal may, by rule, require an additional copy of a plan or sketch for local government use and may specify that plans or sketches submitted for review be drawn clearly and to scale.

NOTE: Adjusts for renumbering in (2); see section 360 (amending 479.010). Tinkers with word choice in (2), (3), (4) and (5).

SECTION 365. ORS 479.200 is amended to read:

479.200. (1) Any public building, as defined in ORS 479.010 [*(1)(i)*], erected after July 1, 1967, that exceeds 5,000 square feet in usable or occupied floor area or is more than two stories in height and exceeds 2,000 square feet in usable or occupied ground floor area [*shall*] **must** have a readily available water supply within 500 feet of such building of sufficient capacity to allow fire-fighting apparatus to pump 500 gallons per minute for a period of 10 minutes for each 5,000 square feet of occupied or usable floor area or fraction thereof, up to 500 gallons per minute for 30 minutes.

(2) Required water supplies may be provided by underground cisterns or surface ponds, lakes or streams when approved and readily accessible standpipes of not less than four inches inside diameter with not less than two two-and-one-half-inch outlets or equivalent are provided.

NOTE: Tinkers with word choice and adjusts for renumbering in (1); see section 360 (amending 479.010).

SECTION 366. ORS 479.853 is amended to read:

479.853. If any person is aggrieved by a decision made upon inspection under authority of ORS 455.148, 455.150 or 479.510 to 479.945 and 479.995 of an electrical product or electrical inspection, the person may appeal the decision. The following apply to an appeal under this section:

(1) An appeal under this section [*shall be*] **is** subject to ORS chapter 183.

(2) An appeal under this section [*shall*] **must** be made first to the Chief Electrical Inspector of the Department of Consumer and Business Services. The decision of the [*department*] Chief **Electrical** Inspector may be appealed to the Electrical and Elevator Board. The decision of the Electrical and Elevator Board may [*only*] be appealed to the Director of the Department of Consumer and Business Services **only** if codes in addition to the electrical code are at issue.

(3) If the Electrical and Elevator Board determines that a decision by the Chief Electrical Inspector is a major code interpretation, then the inspector shall distribute the decision in writing to all public and private electrical inspection authorities in the state. The decision shall be distributed within 60 days after the board's determination, and there shall be no charge for the distribution of the decision. As used in this subsection, a "major code interpretation" means a code interpretation decision that affects or may affect more than one job site or more than one inspection jurisdiction.

(4) If an appeal is made under this section, an inspection authority shall extend the electrical plan review deadline by the number of days it takes for a final decision to be issued for the appeal.

(5) Unless the department determines that the electrical product or electrical installation presents an immediate fire or life safety hazard, a person may operate an electrical product or electrical installation that is the subject of an appeal under this section until the appeal process is complete. If the department determines that an immediate fire or life safety hazard exists and the product or installation may not be operated during appeal, the department shall provide the person with a written report detailing the problems found by the department. If a determination is made under this subsection that products described in ORS 479.540 (12) may not be operated during appeal, that determination may be appealed immediately under the procedure established in subsection (2) of this section without first completing any appeal procedure established by a city or county.

NOTE: Updates word choice in (1) and (2); clarifies title of inspector and corrects word placement in (2).

SECTION 367. ORS 480.585 is amended to read:

480.585. (1) Any person may apply to the Department of Consumer and Business Services for a permit for a boiler or pressure vessel:

(a) By filing reports showing details of the proposed construction before construction is started; or

(b) By submitting satisfactory proof that the boiler or pressure vessel has been constructed in accordance with minimum safety standards and has been found to be safe.

(2) [*Such*] **A** permit **for a boiler or pressure vessel** shall bear the date of the inspection period and specify the maximum pressure under which the boiler or pressure vessel may be operated. Except as provided by regulation, [*permits shall*] **a permit must** be posted in the room containing the **boiler or pressure** vessel for which [*it*] **the permit** is issued.

[*(2)*] **(3)** The department may at any time suspend or revoke a permit when, in [*its*] **the department's** opinion, the boiler[*,*] **or** pressure vessel**,** or related appurtenances**,** for which [*it*] **the permit** was issued is found not to comply with ORS 480.510 to 480.670. Suspension of any permit continues in effect until the vessel [*shall have been made to conform*] **conforms** to ORS 480.510 to 480.670 and the permit **is** reissued. However, before suspending or revoking a permit, the department shall first notify the person concerned of [*its*] **the department's** intention. The notice [*shall*] **must** be in writing and [*shall*] advise the person concerned of the right to appeal in writing within 10 days and that the appeal will be heard by the Board of Boiler Rules. [*Provided, in case*] **When** there is a timely appeal, the **department may not suspend or revoke the** permit [*will not be suspended or revoked*] pending the appeal unless the reason for suspension or revocation constitutes an immediate menace to health or safety or the person concerned fails to prosecute an appeal with diligence.

[*(3)*] **(4)(a)** Except as provided in ORS 480.510 to 480.670, [*no*] **a** person [*shall*] **may not** operate a boiler or pressure vessel unless a valid permit for [*its*] **the** operation **of the boiler or pressure**

vessel, issued under this section, is attached thereto or posted in a conspicuous place in the room where the boiler or pressure vessel is located[*; nor shall any*]**.**

(b) A person **may not** permit or suffer the operation of [*the*] **a** boiler or pressure vessel on property [*which*] the person owns, controls, manages or supervises unless a valid permit for [*its*] **the** operation **of the boiler or pressure vessel**, issued under this section, is attached thereto or posted in a conspicuous place in the room where [*said*] **the** boiler or pressure vessel is located[*; nor shall*]**.**

(c) The owner or lessee or person having possession of a boiler or pressure vessel **may not** permit or suffer [*its*] **the** operation **of the boiler or pressure vessel** unless a valid permit, issued under this section, is attached thereto or posted in a conspicuous place in the room where the boiler or pressure vessel is located.

(5) The board may waive by rule the provisions of this section.

NOTE: Restructures section and adjusts syntax to conform to legislative style.

SECTION 368. ORS 496.085 is amended to read:

496.085. (1) There is established within the State Department of Fish and Wildlife the Fish Screening Task Force consisting of seven members appointed by the State Fish and Wildlife Commission.

(2) Three members shall be appointed to represent agricultural interests, three shall be appointed to represent fishing or fish conservation interests and one member shall be appointed to represent the public. Members of the task force shall serve for two-year terms. No member of the task force shall serve for more than three consecutive two-year terms.

(3) A member of the task force shall receive no compensation for services as a member. However, subject to any applicable law regulating travel and other expenses of state officers and employees, a member shall be reimbursed for actual and necessary travel and other expenses incurred in the performance of official duties from such moneys as may be available therefor in the State Wildlife Fund.

(4) The task force shall meet at such times and places as may be determined by the chair or by a majority of the members of the task force.

(5) The duties of the task force are:

(a) To advise the department in the development of a comprehensive cost-sharing program for the installation of fish screening or by-pass devices in water diversions.

(b) To advise the department in establishing a stable and equitable funding system for the installation and maintenance of fish screening and by-pass devices.

(c) To advise the department in identifying sources and applying for grants from local, state and federal governmental agencies for funding the installation and maintenance of fish screening and by-pass devices.

(d) To advise the department in monitoring fish screening programs.

(e) To advise the department in a survey and study of fish screening technology to determine the most cost-effective alternatives for screening in the various situations that may be encountered in the implementation of fish screening in this state.

(f) To advise the department in preparing a report on the capital costs and effectiveness of the program provided in ORS 498.306.

(g) To advise the department on the creation of the priority criteria and the priority listing referred to in ORS 498.306 [*(12)(a) or (d)*] **(13)(a) or (d)**.

NOTE: Adjusts for renumbering; see section 370 (amending 498.306).

SECTION 369. ORS 496.232 is amended to read:

496.232. (1) The Access and Habitat Board shall meet, adopt and recommend to the State Fish and Wildlife Commission, within 120 days after November 4, 1993, and at not more than 120-day intervals thereafter, access and habitat programs.

(2) The commission shall review such programs and may approve or disapprove the program recommendation by the board. Funds may be expended from the subaccount referred to in ORS 496.242 for projects that have been approved by the commission.

(3) The State Department of Fish and Wildlife and the board jointly shall submit to each biennial session of the Legislative Assembly a report on expenditure of funds for the access and habitat programs and on the status of various projects. [*On or about July 1, 1995, the board and the department shall make another such report to the Legislative Assembly or to the Emergency Board if the Legislative Assembly is not then in session.*]

(4) In recommending access and habitat programs, the board shall:

(a) Recommend a mix of projects that provides a balance between access and habitat benefits.

(b) Recommend projects that are to be implemented by volunteers under volunteer coordinators and nonprofit organizations engaged in approved access and habitat activities.

(c) Recommend programs that recognize and encourage the contributions of landowners to wildlife and programs that minimize the economic loss to those landowners.

(d) Encourage agreements with landowners who request damage control hunts to [*insure*] **ensure** public access to those hunts.

(e) Encourage projects that result in obtaining matching funds from other sources.

(5) All moneys made available for the access and habitat programs from surcharges received under section 19, chapter 659, Oregon Laws 1993, and from gifts and grants made to carry out the access and habitat programs may be expended only if the board so recommends and the commission so approves. Such amounts may be expended:

(a) On programs that benefit wildlife by improving habitat. These programs shall be in coordination with the Wildlife Division and shall be in addition to programs provided by federal funds. These programs may:

(A) Be on private lands.

(B) Provide seed and fertilizer to offset forage consumed by wildlife and for other programs that enhance forage.

(C) Be adjacent to agricultural and forest land to attract animals from those crops.

(b) On programs that promote access to public and private lands through contracting for various levels of management of these lands. These management programs may include:

(A) Creating hunting lease programs that provide access at present levels or stimulate new access.

(B) Controlling access.

(C) Opening vehicle access.

(D) Promoting land exchanges.

(E) Promoting proper hunting behavior.

(c) On programs that would provide for wildlife feeding to alleviate damage, to intercept wildlife before [*they become*] **wildlife becomes** involved in a damage situation and for practical food replacement in severe winters.

(d) On programs to coordinate volunteers to improve habitat, repair damage to fences or roads by wildlife or recreationists, monitor orderly hunter utilization of public and private lands and assist the Oregon State Police in law enforcement activities.

(e) On programs that provide for auction or raffle of tags to provide incentives for habitat or access.

(6) The board may accept, from whatever source, gifts or grants for the purposes of access and habitat. All moneys so accepted shall be deposited in the subaccount referred to in ORS 496.242. Unless otherwise required by the terms of a gift or grant, gifts or grants shall be expended as provided in subsection (5) of this section.

NOTE: Deletes obsolete provisions in (3); updates word choice in (4)(d); corrects grammar in (5)(c).

SECTION 370. ORS 498.306 is amended to read:

498.306. **(1)** Any person who diverts water, at a rate of less than 30 cubic feet per second, from any body of water in this state in which any fish, subject to the State Fish and Wildlife Commission's regulatory jurisdiction, exist may be required to install, operate and maintain screening or

by-pass devices to provide adequate protection for fish populations present at the water diversion in accordance with the [*following*] provisions[*:*] **of this section.**

[*(1)(a)*] **(2)(a)** The State Department of Fish and Wildlife shall establish a cost-sharing program to implement the installation of screening or by-pass devices on not less than 75 water diversions referred to in this section per year. The department shall select the water diversions to be screened from the priority listing of diversions established by the department and reviewed by the Fish Screening Task Force. The installation of a screening or by-pass device may be required only when:

(A) Fewer than 75 persons per year volunteer to request such installation on the diversions for which they are responsible; or

(B) The Fish Screening Task Force has reviewed and approved the department's request to require installation of screening or by-pass devices in order to complete the screening of a stream system or stream reach.

(b) The limitations on the number of diversions to be screened as provided in this section [*and section 5, chapter 858, Oregon Laws 1991,*] do not prevent the installation of fish screening and by-pass devices for diversions by persons responsible for diversions who are willing to pay the full cost of installing fish screening and by-pass devices.

[*(2)*] **(3)** When selecting diversions to be equipped with screening or by-pass devices, the department shall attempt to solicit persons who may volunteer to request the installation of such devices on the diversions for which they are responsible. When selecting diversions to be equipped with screening or by-pass devices, the department shall select those diversions that will provide protection to the greatest number of indigenous naturally spawning fish possible.

[*(3)*] **(4)** If the department constructs and installs the by-pass or screening device, a fee shall be assessed against the person responsible for the diversion in an amount that does not exceed $5,000 or 40 percent of the construction and installation cost of the devices, whichever amount is the lesser. The fee shall be paid into the Fish Screening Subaccount. If the person responsible for the diversion constructs and installs the by-pass or screening device, the person shall be reimbursed from the Fish Screening Subaccount in an amount that does not exceed $10,000 or 60 percent of the actual construction and installation costs of the device, whichever amount is the lesser.

[*(4)*] **(5)** The department's cost of major maintenance and repair of screening or by-pass devices shall be paid from the Fish Screening Subaccount.

[*(5)*] **(6)** The department is responsible for major maintenance and repair of screening or by-pass devices, and if failure by the department to perform major maintenance on or repair such devices results in damage or blockage to the water diversion on which the devices have been installed, the person responsible for the water diversion shall give written notice of such damage or blockage to the department. If within seven days of the notice, the department fails to take appropriate action to perform major maintenance on or repair the devices, and to repair any damage that has occurred, the person responsible for the water diversion may remove the device. If an emergency exists that will result in immediate damage to livestock or crops, the person responsible for the water diversion may remove the screening or by-pass device. A person required to comply with this section [*shall be*] **is** responsible for minor maintenance and shall, in a timely manner, notify the department of the need for activities associated with major maintenance.

[*(6)*] **(7)** A person required to comply with this section may design, construct and install screening or by-pass devices adequate to prevent fish from leaving the body of water and entering the diversion or may request the department to design, construct and install such devices. However, if a person required to comply with this section fails to comply within 180 days after notice to comply by the department, the department shall design, install and operate on that person's water diversion appropriate screening or by-pass devices and shall charge and collect from the person the actual costs thereof in an amount not to exceed the average cost for diversions of that size.

[*(7)*] **(8)** If the diversion requiring screening or by-pass devices is located on public property, the department shall obtain from the property owner approval or permits necessary for such devices. Activities of the department pursuant to this section shall not interfere with existing rights of way or easements of the person responsible for the diversion.

[*(8)(a)*] **(9)(a)** The department or its agent [*shall have*] **has** the right of ingress and egress to and from those places where screening or by-pass devices are required, doing no unnecessary injury to the property of the landowner, for the purpose of designing, installing, inspecting, performing major maintenance on or repairing such devices.

(b) If a screening or by-pass device installed by the department must be removed or replaced due to inadequate design or faulty construction, the person responsible for the diversion shall bear no financial responsibility for its replacement or reconstruction.

(c) If a screening or by-pass device installed by the person responsible for the diversion must be removed or replaced due to faulty construction, the person shall bear full financial responsibility for its replacement or reconstruction.

(d) If the person responsible for a diversion on which a screening or by-pass device is installed fails to conduct appropriate inspection and minor maintenance, the department may perform such activities and charge and collect from the person responsible a fee not to exceed $25 for each required visit to the location of the screening or by-pass device.

[*(9)*] **(10)** No person shall interfere with, tamper with, damage, destroy or remove in any manner not associated with regular and necessary maintenance procedures any screening or by-pass devices installed pursuant to this section.

[*(10)*] **(11)** The department may maintain an action to cover any costs incurred by the department when a person who is required to comply with this section fails to comply. Such action shall be brought in the circuit court for the county in which the water diversion is located.

[*(11)*] **(12)** Upon receiving notice from the department to comply with this section, a person responsible for a water diversion may be excused from compliance if the person demonstrates to the Fish Screening Task Force that:

(a) The installation and operation of screening or by-pass devices would not prevent appreciable damage to the fish populations in the body of water from which water is being diverted.

(b) Installation and operation of screening or by-pass devices would not be technically feasible.

(c) Installation of screening or by-pass devices would result in undue financial hardship.

[*(12)(a)*] **(13)(a)** Not later than January 1, 1996, the department, with the assistance of the Fish Screening Task Force and the Water Resources Department, shall establish and publish an updated priority listing of 3,500 water diversions in the state that should be equipped with screening or by-pass devices. Changes may be made to the list whenever deletions are made for any reason. The priority listing shall include the name and address of the person currently responsible for the water diversion, the location of the diversion, size of the diversion, type of screening or by-pass device required, estimated costs for construction and the installation of screening or by-pass devices for the individual diversion and species of fish present in the water body. When developing the priority listing, the department shall base priorities for the installation of screening or by-pass devices on unscreened diversions on the following criteria:

(A) Fish species status.

(B) Fish numbers.

(C) Fish migration.

(D) Diversion size.

(E) Diversion amount.

(F) Any other criteria that the department, in consultation with the Fish Screening Task Force, considers appropriate.

(b) Criteria identified in this subsection shall be given appropriate consideration by the department when updating its priority listing. The priority list will be updated to give the highest priority to those diversions that save the greatest number of fish and simultaneously protect the greatest number of threatened or endangered fish species.

(c) After the priority list has been updated, the persons responsible for the diversions on the list shall be notified that their [*diversion appears*] **diversions appear** on the list. Such persons also shall be furnished a description of the fish screening program.

(d)(A) The department shall notify, by means of registered mail, each person responsible for the first 250 diversions on the priority listing on or before January 1, 1996. The department shall furnish information regarding the fish screening program to each person responsible for a diversion included in the first 250 diversions on the priority listing on or before January 1, 1996. No person shall be required to install a screening or by-pass device unless previously notified by the department of the requirement to install such devices.

(B) On [*or before*] January 1[*, 1998, and*] **of** each even-numbered year [*thereafter*], the department will notify each person responsible for **a diversion included in** the first 250 diversions on the priority listing. However, the department is not required to notify in a subsequent year any person previously notified. The department shall include with such notification, information regarding the fish screening program to each person responsible for a diversion included in the first 250 diversions on the priority listing.

(C) Before any person is required to install a screening or by-pass device on a diversion of less than 30 cubic feet per second, the department shall confirm the need for the screening device through a visual, on-site inspection by appropriate staff of the fish screening division of the department, or a district biologist of the department.

[*(13)*] **(14)** As used in this section:

(a) "Behavioral barrier" means a system that utilizes a stimulus to take advantage of natural fish behavior to attract or repel fish. A behavioral barrier does not offer a physical impediment to fish movement, but uses such means as electricity, light, sound or hydraulic disturbance to move or guide fish.

(b) "Body of water" includes but is not limited to irrigation ditches, reservoirs, stock ponds and other artificially created structures or impoundments.

(c) "By-pass device" means any pipe, flume, open channel or other means of conveyance that transports fish back to the body of water from which the fish were diverted but does not include fishways or other passages around a dam.

(d) "Fish screen" means a screen, bar, rack or other barrier, including related improvements necessary to [*insure*] **ensure** its effective operation, to provide adequate protection for fish populations present at a water diversion.

(e) "Major maintenance" means all maintenance work done on a fish screening or by-pass device other than minor maintenance.

(f) "Minor maintenance" means periodic inspection, cleaning and servicing of fish screening or by-pass devices at such times and in such manner as to ensure proper operation of the screening or by-pass device.

(g) "Screening device" means a fish screen or behavioral barrier.

(h) "Person" means any person, partnership, corporation, association, municipal corporation, political subdivision or governmental agency.

NOTE: Restructures section to conform to legislative style; deletes outdated references in (2)(b) and (13)(d)(B); updates word choice in (6), (9)(a) and (14)(d); corrects grammar in (13)(c) and (13)(d)(B).

SECTION 371. ORS 498.321 is amended to read:

498.321. (1) In order to carry out the provisions of ORS 498.301 and 498.306 [*and section 5, chapter 858, Oregon Laws 1991*], the following minimum standards and criteria [*shall*] apply to actions of the State Fish and Wildlife Commission and the State Department of Fish and Wildlife with regard to fish screening or by-pass devices:

(a) Standards and criteria shall address the overall level of protection necessary at a given water diversion and [*shall*] **may** not favor one technology or technique over another.

(b) Standards and criteria shall take into account at least the following factors relating to the fish populations present at a water diversion:

(A) The source of the population, whether native or introduced and whether hatchery or wild.

(B) The status of the population, whether endangered, threatened or sensitive.

(c) Standards and criteria may take into account the cumulative effects of other water diversions on the fish populations being protected.

(d) Design and engineering recommendations shall consider cost-effectiveness.

(e) Alternative design and installation proposals must be approved if they can be demonstrated to provide an equal level of protection to fish populations as those recommended by the department.

(2) In order to maximize effectiveness and promote consistency relating to the protection of fish at nonhydroelectric water diversions, the department shall establish a single organizational entity to administer all agency activities related to fish screening and by-pass devices.

(3) The department shall emphasize cooperative effort and mutual understanding with those responsible for water diversions that need fish screening or by-pass devices.

(4) The department shall aggressively investigate and encourage the development of new technologies and techniques to provide protection for fish populations at water diversions in order to reduce initial costs, reduce operating costs and improve cost-effectiveness.

NOTE: Deletes outdated reference to session law section in (1) lead-in; corrects word choice in (1) lead-in and (1)(a).

SECTION 372. ORS 498.341 is amended to read:

498.341. Notwithstanding the limitation on the number of diversions to be screened as provided in ORS 498.306 [*and section 5, chapter 858, Oregon Laws 1991*], if sufficient funds are made available in the Fish Screening Subaccount of the Fish and Wildlife Account, by allocation from the Administrative Services Economic Development Fund or from other sources, the State Department of Fish and Wildlife may provide financial assistance for construction and installation of screening or by-pass devices on an additional 250 water diversions.

NOTE: Deletes outdated reference to session law section.

SECTION 373. ORS 516.100 is amended to read:

516.100. (1) The State Department of Geology and Mineral Industries shall have prepared, printed and published reports, pamphlets, charts and maps, embracing the matters addressed in ORS 516.030 and ORS chapters 517, 520 and 522. All maps, charts, special bulletins and other publications shall be for public distribution[*;*]**,** but the department may make a reasonable charge to cover publication and distribution costs.

(2)(a) When a report embodies results of surveys or studies of economic importance, no information of any kind concerning the contents of such report shall be given out prior to publication, if such prior information could place the recipient in a preferential position as regards its use.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, if an investigation of a mineral property or geologic hazard within the state is made by an employee of the department at the request of either the owner or a person in control of such property, results of the investigation shall be conveyed to the owner or person in control prior to the publication of a report of such results. After they have been conveyed to the owner or person, the results shall be open to public inspection prior to their publication.

NOTE: Updates punctuation choice in (1).

SECTION 374. ORS 520.125 is amended to read:

520.125. (1) The governing board of the State Department of Geology and Mineral Industries may summon witnesses, administer oaths and require the production of records, books and documents for examination at any hearing or investigation conducted before [*it*] **the board**. No person shall be excused from attending and testifying or from producing books, papers and records before the board or a court or from obedience to the subpoena of the board or a court on the grounds that such testimony or evidence required of the person may tend to incriminate the person or subject the person to any penalty or forfeiture[*; provided, however, that*]**.** Nothing [*contained*] in this section**, however,** shall be construed as requiring any person to produce any books, papers or records or to testify in response to any inquiry not pertinent to some question lawfully before such board or court for determination. No natural person shall be subjected to criminal prosecution or to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which, in spite of the objection of the person, the person may be required to testify or produce evidence before the board

or a court[*; provided, however,*]. **However,** no person so testifying shall be exempted from prosecution and punishment for perjury in so testifying.

(2) In case of failure or refusal on the part of any person to comply with the subpoena issued by the board or in the case of the refusal of any witness to testify as to any matter regarding which the witness may lawfully be interrogated it shall be the duty of the circuit court of any county or any judge thereof, upon application of the board, to issue an order to show cause why such person should not be held for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

(3) The board or any party may, in any matter before the board, cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil suits in the circuit courts of this state.

NOTE: Modifies syntax in (1).

SECTION 375. ORS 522.005 is amended to read:

522.005. As used in this chapter, unless the context requires otherwise:

(1) "Board" means the governing board of the State Department of Geology and Mineral Industries.

(2) "By-product" means any mineral or minerals, exclusive of helium or of oil, hydrocarbon gas or other hydrocarbon substances, [*which*] **that** are found in solution or in association with geothermal resources and [*which*] **that** have a value of less than 75 percent of the value of the geothermal resource or are not, because of quantity, quality, or technical difficulties in extraction and production, of sufficient value to warrant extraction and production by themselves.

(3) "Completed geothermal well" means a well producing geothermal resources for which the operator has received the department's written assurance that the manner of drilling of and producing geothermal resources from the well are satisfactory.

(4) "Cooperative agreement" means an agreement or plan of development and operation for the production or utilization of geothermal resources in which separate ownership units independently operate without allocation of production.

(5) "Correlative rights" means the right of each owner in a geothermal area to obtain that owner's just and equitable share of the underlying geothermal resource, or an economic equivalent of that share of the resource, produced in a manner and in an amount that does not injure the reservoir to the detriment of others.

(6) "Department" means the State Department of Geology and Mineral Industries.

(7) "Drilling" includes drilling, redrilling and deepening of a geothermal well.

(8) "Enhanced recovery" means the increased recovery from a reservoir achieved by artificial means or by the application of energy extrinsic to the reservoir. The artificial means include, but are not limited to, reinjection of hot brine, fluid or water into a reservoir.

(9) "Geothermal area" means any parcel of land that is, or reasonably appears to be, underlaid by geothermal resources.

(10) "Geothermal reinjection well" means any well or converted well constructed to dispose of geothermal fluids derived from geothermal resources into an underground reservoir.

(11) "Geothermal resources" means the natural heat of the earth, the energy, in whatever form, below the surface of the earth present in, resulting from, or created by, or [*which*] **that** may be extracted from, the natural heat, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases, and steam, in whatever form, found below the surface of the earth, exclusive of helium or of oil, hydrocarbon gas or other hydrocarbon substances, but including, specifically:

(a) All products of geothermal processes, [*embracing*] **including** indigenous steam, hot water and hot brines;

(b) Steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(c) Heat or other associated energy found in geothermal formations; and

(d) Any by-product derived from them.

(12) “Geothermal well” includes any excavation made for producing geothermal resources and any geothermal reinjection well [*as defined in subsection (10) of this section*].

(13) “Land” means both surface and mineral rights.

(14) “Operator” means the person:

(a) Who possesses the legal right to drill a geothermal well;

(b) Who has obtained a drilling permit pursuant to ORS 522.135; or

(c) Who possesses the legal right to operate a completed geothermal well [*as defined in subsection (3) of this section*] or who has been granted the authority to operate the well by that person.

(15) “Prospect well” includes any well drilled as a geophysical test well, seismic shot hole, mineral exploration drilling, core drilling or temperature gradient test well, less than 2,000 feet in depth, and drilled in prospecting for geothermal resources. “Prospect well” does not include a geothermal well [*as defined in subsection (12) of this section*].

(16) “Reservoir” means an aquifer or combination of aquifers or zones containing a common geothermal or ground water resource. “Reservoir” includes, but is not limited to, a hot dry rock conductive system.

(17) “Royalty interest” means a right or interest in geothermal resources produced from land or in the proceeds of the first sale of those resources.

(18) “Unit agreement” means an agreement or plan of development and operation developed under the provisions of ORS 273.775, 308A.050 to 308A.128, 522.015, 522.405 to 522.545, 522.815[,] **and** 522.990 and this section for the production or use of geothermal resources in separately owned interests as a single consolidated unit and [*which*] **that** provides for the allocation of costs and benefits.

(19) “Unit area” means the area described in a unit agreement [*which*] **that** constitutes the land subject to development under the agreement.

(20) “Unit operator” means the person designated in the unit agreement to manage and conduct the operation involving unitized land.

(21) “Unit production” means all geothermal resources produced from a unit area from the effective date of a unit agreement approved by the board under ORS 522.405.

(22) “Waste” means**:**

(a) Any physical waste, including, but not limited to, underground waste resulting from the inefficient, excessive or improper use or dissipation of reservoir energy or resulting from the location, spacing, drilling, equipping, operation or production of a geothermal resource well in such a manner that reduces or tends to reduce the ultimate economic recovery of the geothermal resources within a reservoir; and

(b) Surface waste resulting from the inefficient storage of geothermal resources and the location, spacing, drilling, equipping, operation or production of a geothermal resource well in such a manner that causes or tends to cause the unnecessary or excessive surface loss or destruction of geothermal resources released from a reservoir.

(23) “Working interest” means an interest in geothermal resources or in land containing [*them which*] **geothermal resources that** is held under a lease, operating agreement, fee title or otherwise and under which, except as otherwise provided in a unit or cooperative agreement, the owner of the interest has the right to explore for, develop, produce or utilize the resources. “Working interest” does not include a right delegated to a unit operator as such by a unit agreement.

NOTE: Corrects syntax, deletes unnecessary internal references and conforms semicolon use to legislative style.

SECTION 376. ORS 526.245 is repealed.

NOTE: Repeals obsolete statute.

SECTION 377. ORS 527.650 is amended to read:

527.650. (1) The State Board of Forestry shall establish a forest practice committee for each forest region established pursuant to ORS 527.640. Each such committee shall consist of nine members, a majority of whom must reside in the region. Members of each committee shall be qualified by education or experience in natural resource management and not less than two-thirds of the

members of each committee shall be private landowners, private timber owners or authorized representatives of such landowners or timber owners who regularly engage in operations.

(2) Members of forest practice committees shall be appointed by the board for three-year terms. [*Appointments under this subsection shall be made by the board within 60 days after July 1, 1972.*] If there is a vacancy for any cause, the board shall make an appointment to become immediately effective for the unexpired term. Each such committee shall select a chairperson from among its members. A staff member of the State Forestry Department shall be designated by the State Forester to serve as the secretary, without voting power, for each such committee.

[*(3) Notwithstanding the terms of the committee members specified by subsection (2) of this section, of the members first appointed to each such committee:*]

[*(a) Three shall serve for a term of one year.*]

[*(b) Three shall serve for a term of two years.*]

[*(c) Three shall serve for a term of three years.*]

NOTE: Eliminates obsolete provisions.

SECTION 378. ORS 527.750 is amended to read:

527.750. (1) Notwithstanding the requirements of ORS 527.740, a harvest type 3 unit within a single ownership that exceeds 120 acres but does not exceed 240 acres may be approved by the State Forester if all the requirements of this section and any additional requirements established by the State Board of Forestry are met. Proposed harvest type 3 units that are within 300 feet of the perimeter of a prior harvest type 3 unit, and that would result in a total combined harvest type 3 area under a single ownership exceeding 120 acres but not exceeding 240 acres, may be approved by the State Forester if the additional requirements are met for the combined area. No harvest type 3 unit within a single ownership shall exceed 240 contiguous acres. No harvest type 3 unit shall be allowed within 300 feet of the perimeter of a prior harvest type 3 unit within a single ownership if the combined acreage of the areas subject to regulation under the Oregon Forest Practices Act would exceed 240 acres, unless**:**

(a) The prior harvest type 3 unit has been reforested by all applicable regulations [*and:*]**;**

[*(a)*] **(b)** At least the minimum tree stocking required by rule is established per acre; and [*either*]

[*(b)*] **(c)(A)** The resultant stand of trees has attained an average height of at least four feet; or

[*(c)*] **(B)** At least 48 months have elapsed since the stand was created and it is "free to grow" as defined by the board.

(2) The requirements of this section are in addition to all other requirements of the Oregon Forest Practices Act and the rules adopted thereunder. The requirements of this section shall be applied in lieu of such other requirements only to the extent the requirements of this section are more stringent. Nothing in this section shall apply to operations conducted under ORS 527.740 (4) or (5).

(3) The board shall require that a plan for an alternate practice be submitted prior to approval of a harvest type 3 operation under this section. The board may establish by rule any additional standards applying to operations under this section.

(4) The State Forester shall approve the harvest type 3 operation if the proposed operation would provide better overall results in meeting the requirements and objectives of the Oregon Forest Practices Act.

(5) The board shall specify by rule the information to be submitted for approval of harvest type 3 operations under this section, including evidence of past satisfactory compliance with the Oregon Forest Practices Act.

NOTE: Conforms structure to legislative style in (1).

SECTION 379. ORS 537.460 is amended to read:

537.460. (1) The Legislative Assembly finds and declares that conservation and efficient utilization of water benefits all water users, provides water to satisfy current and future needs through reduction of consumptive waste, improves water quality by reducing contaminated return flow, prevents erosion and allows increased in-stream flow[*; and*]**.**

(2) It is therefore declared to be the policy of the State of Oregon to:

(a) Aggressively promote conservation;

(b) Encourage the highest and best use of water by allowing the sale or lease of the right to the use of conserved water; and

(c) Encourage local cooperation and coordination in development of conservation projects to provide incentives for increased efficiency and to improve streamflows.

(3) As used in this section, "efficient utilization" means use without waste, upgrading of irrigation equipment to comply with modern practices within a reasonable time period or other methods used to meet both current and future water needs at the least cost.

NOTE: Conforms structure to legislative style in (1).

SECTION 380. ORS 541.455 is amended to read:

541.455. [*After January 1, 1958, it shall be*] **It is** unlawful to operate a splash dam on any of the navigable or nonnavigable waters of this state. [*No*] **An** officer or agency of this state [*shall*] **may not** issue any permit for the construction or maintenance of any dam to be used for splash dam purposes.

NOTE: Deletes obsolete date reference; modifies syntax.

SECTION 381. ORS 543.660 is amended to read:

543.660. (1) A district, alone or jointly with other districts, electric cooperatives, as defined in ORS 261.010 [*(7)*], people's utility districts, a cooperative as defined in ORS 62.015, municipal corporations authorized to engage in generating and distributing electricity or public utilities, as defined in ORS 757.005, engaged in the business of generating and distributing electricity, may enlarge or modify its water system for the purpose of generating electricity and may operate and maintain such facilities, notwithstanding any provision of paragraph (a) of this subsection. If a district already has hydroelectric generating capability, the district may enlarge or modify the district's facilities used for generation of hydroelectric power. Two or more districts may, as a joint venture, generate electricity under ORS 543.650 to 543.685 [*so*] **as** long as the structure or facility that is enlarged or modified to produce the electricity is part of the water system of at least one of the districts participating in the joint venture. However, a district may not:

(a) Construct, acquire, operate or maintain any facility or structure that is not an enlargement or modification of the district's water system solely or primarily for the purpose of generating electricity; or

(b) Be created solely or primarily for the purpose of constructing, acquiring, operating or maintaining hydroelectric facilities.

(2) A district shall sell the excess electric energy generated at such hydroelectric facilities to the Bonneville Power Administration, a public utility as defined in ORS 757.005, an electric cooperative as defined in ORS 261.010 [*(7)*], a people's utility district, a cooperative as defined in ORS 62.015, a municipal corporation or a municipally owned utility. Any sale of excess electric energy shall be made in accordance with terms and conditions of the Federal Power Act, as amended by the Public Utility Regulatory Policies Act of 1978. As used in this subsection, "excess electric energy" means electric energy not used by the district to meet its own electric pumping requirements.

(3) The board of directors of the district shall establish regulations governing electric energy generation and sale under this section.

(4) Electricity shall be sold under this section only at wholesale.

NOTE: Deletes references to renumbered subsection in (1) and (2); see section 189 (amending 261.010). Alters word choice in (1) lead-in.

SECTION 382. ORS 561.303 is amended to read:

561.303. (1) Notwithstanding the provisions of ORS 293.445 (2), the State Department of Agriculture may, upon application therefor, make refunds and determine that moneys received by [*it*] **the department** are not due or are in excess of amounts due as fees or penalties relating to the issuance or renewal of licenses, permits, registrations[,] or certificates under its jurisdiction, whenever:

(a) The amount received is in excess of the prescribed fee or penalty;

(b) The applicant has not or will not engage in the activity requiring the license, permit, registration[,] or certificate or use the [*same*] **license, permit, registration or certificate** during the time period requiring the [*same*] **license, permit, registration or certificate**, and has:

(A) Died, or otherwise involuntarily become incapable of engaging in such activity; or

(B) Applied for a license**, permit, registration or certificate** under a mistake of fact as to the need therefor; or

(c) The applicant, as a condition to the issuance of a license, permit, registration[,] or certificate, is required to meet certain personal qualifications, submit a bond, insurance certificate or other indemnity document to the department, or submit to a departmental examination, and due to causes beyond the control of the applicant cannot do so.

(2) The department may refuse refunds and determine that moneys received by [*it*] **the department** are due as fees or penalties relating to the issuance or renewal of licenses, permits, registrations[,] or certificates under its jurisdiction whenever:

(a) The applicant, as a condition to the issuance of a license, permit, registration[,] or certificate, is required to submit to a departmental examination, analysis or inspection, and fails to voluntarily submit [*to the same, fails to complete the same, or fails to*]**, complete or** satisfactorily pass the [*same*] **examination, analysis or inspection**;

(b) The applicant voluntarily determines not to engage in the activity requiring the license, permit, registration[,] or certificate;

(c) The applicant has engaged in the activity requiring a license, permit, registration[,] or certificate without having obtained [*the same*] **a license, permit, registration or certificate**, whether or not the applicant thereafter qualified [*with*] **under** any of the provisions of subsection (1) of this section;

(d) Other than costs of clerical processing of the application, the department has incurred costs for services performed in connection with the license, permit, registration or certificate, or application therefor;

(e) The moneys subject to refund in accordance with the provisions of subsection (1) of this section are less than $5; or

(f) The application for refund is not submitted to the department during the time period of the license, permit, registration[,] or certificate.

NOTE: Updates word choice, strikes errant commas and supplies missing terminology.

SECTION 383. ORS 561.520 is amended to read:

561.520. (1) Before the Director of Agriculture declares a quarantine relating to any area or section within the state, the director shall, if the quarantine involves the control, eradication or destruction of any disease, infestation or weeds within [*such*] **the** area, file a copy of the proposed order of quarantine and a copy of any rules and regulations in connection with [*such*] **the** quarantine in the office of the county clerk of the county in which [*such*] **the** area is situated, or a copy thereof in the office of the county clerk of each of the several counties included in [*such*] **the** area or within which a part of [*such*] **the** area is located, and shall publish [*such*] **the** order as provided by ORS 561.585 in a newspaper of general circulation in the area sought to be quarantined. The director, in the publication, shall give notice that a hearing will be held by the State Department of Agriculture for the consideration of remonstrances against the proposed quarantine:

(a) At the courthouse in the county seat in the county in which the area is proposed to be created; or

(b) At a courthouse in one of the counties in each congressional district in which the area is proposed to be created, if [*such*] **the** area includes more than one county in [*such*] **the** congressional district.

(2) [*No time of hearing shall be*] **A hearing under subsection (1) of this section may not be held** less than 15 [*nor*] **days or** more than 30 days from the date of publication of the notice.

[*(2)*] **(3)** If no remonstrances are presented at [*such*] **the** hearing or hearings, or if the remonstrances presented are deemed by the director to be without merit or insufficient, the director shall make the order of quarantine as proposed[*; but*]**. However,** if the director is of the opinion that

any change or changes in the proposed quarantine order, or in the rules and regulations in connection therewith, should be made, the director may, in the discretion of the director, alter, amend or revoke the proposed order of quarantine or [*any such*] **the** rule or regulation.

[*(3) Such*] **(4) An** order of quarantine shall be filed and published as authorized by ORS 561.585. Proof of publication of the notice of hearing or hearings shall be filed with the county clerk of each county within which the quarantine area or a part thereof is situated.

[*(4)*] **(5)** Orders relating to the quarantine of areas located outside of Oregon or of the movement of animals, fowls, bees, fruits, vegetables, plants, parts of plants or seeds, or of the movement of any article [*which*] **that** may contain [*such*] weeds or seeds or other materials [*which*] **that** may be liable to spread disease or infestation into Oregon, as provided by ORS 561.510 or 561.560, [*shall*] **may** not be promulgated until at least one public hearing has been held within the state. If an emergency exists and postponement of the effective date would result in serious prejudice to the public interest, or the interest, health or economy of the parties directly or indirectly affected thereby, the quarantine may be made effective immediately as authorized by ORS 183.355 (2)(b).

NOTE: Restructures section to eliminate blank line; tweaks word choice.

SECTION 384. ORS 565.260 is amended to read:

565.260. [*Where*] **If** there existed on June 4, 1913, a county fair board, or an agricultural society in any county holding a county fair [*in such*] **within the** county, [*such*] **the** board shall be considered the county fair board of [*such*] **the** county by the provisions of ORS 565.210 to 565.310, and shall be governed under the rules and bylaws already in force of [*such*] **the** association[*;*]**,** provided[*,*] there [*shall be*] **is** only one county fair held in each county.

NOTE: Updates syntax a wee bit.

SECTION 385. ORS 565.610 is amended to read:

565.610. (1) No person shall set up any shop, booth, wagon or other vehicle for the sale of spirituous or other liquors, cigars, provisions or other articles of traffic, or shall sell or otherwise dispose of any liquors, cigars, goods, wares, merchandise, meals, lunch or any article of traffic whatever on any grounds owned or occupied by the Oregon State Fair and Exposition Center, a county fair board or any county or district society formed for the promotion and encouragement of agriculture, stock growing or horticulture, or within one-half mile of such grounds, without having paid the center, county fair board or such society the license for the privilege, or obtained the written consent of the center, county fair board or of the president and secretary of such society.

(2) Nothing in this section shall restrain any person except during the sessions of the annual fairs or exhibitions or other public events or meetings of the Oregon State Fair Commission, any county fair board or of such societies, and for two days prior and two days subsequent thereto[*; nor shall it*]**. This section does not** extend to any person regularly and continuously carrying on business within one-half mile of the premises mentioned.

NOTE: Updates punctuation and word choice in (2).

SECTION 386. ORS 568.550 is amended to read:

568.550. **(1)** The directors of a **soil and water conservation** district have the following powers subject to the written approval of the State Department of Agriculture:

[*(1)*] **(a)** To secure surveys and investigations and do research relating to:

[*(a)*] **(A)** The character of soil erosion;

[*(b)*] **(B)** The character of floodwater and sediment damage;

[*(c)*] **(C)** All phases of the conservation, development, utilization and disposal of water; and

[*(d)*] **(D)** The preventive measures, control measures and improvements needed.

[*In order to avoid duplication of activities, the department may call upon other state and federal agencies for assistance and cooperation in their fields in accordance with memoranda of understanding to be signed by all cooperating agencies.*]

[*(2)*] **(b)** To conduct demonstrational projects on lands within the district upon obtaining the consent of the owner and occupier of such lands.

[*(3)*] **(c)** To carry out preventive and control measures on lands within the district upon obtaining the consent of the owner and occupier of such lands.

[*(4)*] **(d)** To enter into written agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any owner or occupier, or both of them, of lands within the district, for the purpose of carrying on soil erosion control and prevention operations within the district.

[*(5)*] **(e)** To obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest or devise any property, real or personal or rights or interests therein[*;*]**,** to maintain, administer and improve any properties acquired[*;*]**,** to receive income from such properties and to expend such income in carrying out the purposes and provisions of ORS 568.210 to 568.808 and 568.900 to 568.933[*;*]**,** and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of ORS 568.210 to 568.808 and 568.900 to 568.933.

[*(6)*] **(f)** To borrow money and to mortgage personal property of the district as security therefor[*;*]**,** provided[*,*] **that** landowners are given **an** opportunity to be heard at a public hearing in the district, notice of which shall be given according to rules prescribed by the department.

[*(7)*] **(g)** To make available, on such terms as [*it*] **the directors** shall prescribe, to landowners or occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds, and seedlings and other material or equipment.

[*(8)*] **(h)** To construct, operate and maintain such structures as may be necessary or convenient for performance of any of the operations authorized in ORS 568.210 to 568.808 and 568.900 to 568.933.

[*(9)*] **(i)** To develop comprehensive plans and specifications for the conservation of soil resources and for the continued control and prevention of soil erosion within the district, and to publish such plans, specifications[*,*] and information and bring them to the attention of owners and occupiers of lands within the district.

[*(10)*] **(j)** To take over, by purchase, lease[*,*] or otherwise, and to administer, any soil conservation, erosion control[*,*] or erosion prevention project, or combination thereof, located within [*its*] **district** boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies.

[*(11)*] **(k)** To manage, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil conservation, erosion control[*,*] or erosion prevention project, or combination thereof, within [*its*] **district** boundaries.

[*(12)*] **(L)** To act as agent for the United States or any of its agencies, in connection with the acquisition, construction, operation[*,*] or administration of any soil conservation, erosion control[*,*] or erosion prevention project, or combination thereof, within [*its*] **district** boundaries.

[*(13)*] **(m)** To accept donations, gifts and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and to use or expend such moneys, services, materials or other contributions in carrying on its operations.

[*(14)*] **(n)** To sue and to be sued in the name of the district[*;*]**,** to have a seal, which shall be judicially noticed[*;*]**,** to have perpetual succession unless terminated as provided by law[*;*]**,** to make and execute contracts and other instruments necessary or convenient to the exercise of its powers[*;*]**, and** to make, and from time to time amend or repeal, rules not inconsistent with ORS 568.210 to 568.808 and 568.900 to 568.933 to carry into effect its purposes and powers.

[*(15) As a condition to the extending of any benefits under ORS 568.210 to 568.808 and 568.900 to 568.933 to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the directors may require contributions in money, services, materials or otherwise to any operations conferring such benefits, and may require landowners or occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon.*]

[*(16)*] **(o)** To purchase liability or indemnity insurance, in such amounts and containing such terms and conditions as they may deem necessary, for the protection of directors, officers and em-

ployees of the district against claims against them incurred by such directors, officers and employees in the performance of their official duties. The premiums for such insurance shall be paid out of moneys available for expenditure by the district.

(2) As a condition to the extending of any benefits under ORS 568.210 to 568.808 and 568.900 to 568.933 to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the directors may require contributions in money, services, materials or otherwise to any operations conferring such benefits, and may require landowners or occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon.

(3) In order to avoid duplication of activities under subsection (1)(a) of this section, the department may call upon other state and federal agencies for assistance and cooperation in their fields in accordance with memoranda of understanding to be signed by all cooperating agencies.

NOTE: Restructures section to eliminate blank line and correct read-in problem; conforms punctuation to legislative style in (1)(e), (f), (i), (j), (k), (L) and (n); clarifies pronouns in (1)(g), (j), (k) and (L).

SECTION 387. ORS 570.165 is amended to read:

570.165. Any notice required by ORS 570.140 to 570.165 [*shall*] **must** be delivered in person or sent by mail to the owner or person in charge of [*such*] **the** infested or infected articles at the last-known place of address of the owner or person in charge. [*Such*] **A** notice mailed to the shipper or shippers of [*such chattels*] **infested or infected articles** at the return address on any such shipment of infested or infected [*chattels shall be*] **articles is** considered sufficient notice to the owner or owners thereof within the requirements of ORS 570.140 to 570.165.

NOTE: Conforms terminology in plant quarantine statutes.

SECTION 388. ORS 570.345 is amended to read:

570.345. (1) Any person, firm or corporation owning or operating [*any*] **a** nursery, **a** fruit orchard, **a** hopyard, **a** flower garden or ornamental trees, and knowing [*it*] **the nursery, fruit orchard, hopyard, flower garden or ornamental trees** to be infested or infected with any kind of insect pest or disease that is or may become a menace to horticultural or farm crops, or on being served with a written notice by the State Department of Agriculture that such nursery, fruit orchard, hopyard, flower garden or ornamental trees are so infested or infected, shall immediately spray or destroy the [*same*] **nursery, fruit orchard, hopyard, flower garden or ornamental trees** in such manner as the department directs.

(2)(a) "Infested" means when the adult, egg[,] or larvae form of the insect is found in such numbers as, in the opinion of the department, to be a menace to horticultural or farm crops.

(b) "Infected" means any appearance of a disease on such trees or plants that may be a menace to horticultural or farm crops.

NOTE: Clarifies pronouns in (1); strikes serial comma in (2).

SECTION 389. ORS 571.515 is amended to read:

571.515. (1) In order that there may be the closest contact between the State Department of Agriculture and the problems of the Christmas tree industry, there hereby is created a State Christmas Tree Advisory Committee**,** which shall consist of six members appointed by the Director of Agriculture. The director, as far as practicable, shall make appointments so that all areas of the state are represented on the committee.

(2) [*The members first appointed shall determine by lot the length of their terms: Two to serve for one year, two to serve for two years and two to serve for three years, from the date of appointment. Thereafter*] The term of each member shall be for three years, from the date of appointment. A member shall continue to serve until a successor is appointed and qualifies. Vacancies in office shall be filled by appointment for the unexpired term. An individual is not eligible to serve more than two consecutive terms as a member.

(3) The members of the committee [*shall be*] **are** eligible for compensation and expenses as provided in ORS 292.495, to be paid from funds provided by ORS 571.580.

(4) The functions of the committee [*shall be*] **are** to advise and counsel with the department in the administration of ORS 571.505 to 571.580.

(5) The committee shall meet at the call of the chairperson or the director of the State Department of Agriculture. A majority of the members present at any meeting [*shall constitute*] **constitutes** a quorum, and a majority vote of the quorum at any meeting [*shall constitute*] **constitutes** an official act of the committee.

(6) At the first meeting in each year the committee shall select a chairperson. The Dean of the College of Agricultural Sciences, Oregon State University, and the director of the State Department of Agriculture, or their representatives, shall be ex officio members without the right to vote.

NOTE: Inserts missing comma in (1); deletes obsolete provisions in (2); updates word choice in (3), (4) and (5).

SECTION 390. ORS 576.245 is amended to read:

576.245. The Director of Agriculture shall immediately declare the office of any appointed producer or handler member of [*the*] **a** commodity commission vacant whenever the director finds that such member has ceased to be an active producer or handler in this state, has become a resident of another state or is unable to perform the duties of office.

NOTE: Corrects article.

SECTION 391. ORS 576.255 is amended to read:

576.255. (1) The Director of Agriculture may remove any member of [*the*] **a** commodity commission for inefficiency, neglect of duty or misconduct in office, after a public hearing [*thereon*] and after serving upon the member a copy of the charges against the member, together with a notice of the time and place of the hearing, at least 10 days prior to such hearing. At the hearing the member shall be given an opportunity to be heard in person or by counsel and shall be permitted to present evidence to answer the charges and explain the facts alleged against the member.

(2) In every case of removal, the director shall file in the office of the Secretary of State a complete statement of all charges against the member, [*and*] the findings of the director [*thereon, together with*] **and** a record of the entire proceedings [*had*] **held** in connection [*therewith*] **with the charges**.

NOTE: Corrects article; updates terminology.

SECTION 392. ORS 576.265 is amended to read:

576.265. Members, officers and employees of [*the*] **a** commodity commission shall receive their actual and necessary travel and other expenses incurred in the performance of their official duties. The commission shall adopt uniform and reasonable regulations governing the incurring and paying of such expenses.

NOTE: Corrects article.

SECTION 393. ORS 576.285 is amended to read:

576.285. [*The*] **A** commodity commission shall meet as soon as practicable for the purposes of organizing. It shall elect a chairperson and a secretary-treasurer from among its members. It shall adopt a general statement of policy for guidance, and shall transact such other business as is necessary to start the work of the commission. Thereafter, the commission shall meet regularly once each six months, and at such other times as called by the chairperson. The chairperson may call special meetings at any time, and shall call a special meeting when requested by two or more members of the commission.

NOTE: Corrects article.

SECTION 394. ORS 576.306 is amended to read:

576.306. (1) [*The*] **A** commodity commission may contract with an independent contractor for the performance of any services. However, the commission may not contract with an independent contractor to perform the discretionary functions of the commission. ORS chapters 240 and 279 do not apply to the commission in obtaining such services, except that no contract for such services shall take effect until approved by the State Department of Agriculture as provided in subsection (7) of this section.

(2) The commission may rent space or acquire supplies and equipment from any contractor as described in subsection (1) of this section. ORS chapters 276, 278, 279 and 283 and ORS 291.038 do not apply to such rentals or acquisitions.

(3) Except as provided in this section, a contractor described in subsection (1) of this section shall be considered an independent contractor and not an employee, eligible employee, public employee or employee of the state for purposes of Oregon law, including ORS chapters 236, 238, 238A, 240, 243, 291, 292, 316 and 652.

(4) Nothing in this section precludes the state or a commission from being considered the employer of the contractor described in subsection (1) of this section for purposes of unemployment compensation under ORS chapter 657 and ORS 670.600.

(5) A contractor described in subsection (1) of this section shall be considered an independent contractor and not a worker for purposes of ORS chapter 656 and ORS 670.600.

(6) A contractor described in subsection (1) of this section [*shall*] **may** not be considered a public official, public officer, state officer or executive official for purposes of Oregon law, including ORS chapters 236, 244, 292, 295 and 297 and ORS 171.725 to 171.785.

(7) The State Department of Agriculture shall review the contract described in subsection (1) of this section for the adequacy of the clauses pertaining to statement of work, starting and ending dates, consideration, subcontracts, funds authorized in the budget, amendments, termination, compliance with applicable law, assignment and waiver, access to records, indemnity, ownership of work product, nondiscrimination, successors in interest, attorney fees, tax certification or merger or any other clause the department deems necessary.

(8) The Oregon Department of Administrative Services, in consultation with the State Department of Agriculture, shall adopt rules necessary for the screening and selection of independent contractors under this section.

(9) Except as provided in subsection (8) of this section, the [*department*] **State Department of Agriculture** may promulgate any rules necessary for the administration and enforcement of this section.

NOTE: Corrects article in (1); adjusts word choice in (6); clarifies agency in (9).

SECTION 395. ORS 576.306, as amended by section 302, chapter 794, Oregon Laws 2003, is amended to read:

576.306. (1) [*The*] **A** commodity commission may contract with an independent contractor for the performance of any services. However, the commission may not contract with an independent contractor to perform the discretionary functions of the commission. ORS chapters 240, 279, 279A, 279B and 279C do not apply to the commission in obtaining such services, except that no contract for such services shall take effect until approved by the State Department of Agriculture as provided in subsection (7) of this section.

(2) The commission may rent space or acquire supplies and equipment from any contractor as described in subsection (1) of this section. ORS chapters 276, 278, 279, 279A, 279B, 279C and 283 and ORS 291.038 do not apply to such rentals or acquisitions.

(3) Except as provided in this section, a contractor described in subsection (1) of this section shall be considered an independent contractor and not an employee, eligible employee, public employee or employee of the state for purposes of Oregon law, including ORS chapters 236, 238, 238A, 240, 243, 291, 292, 316 and 652.

(4) Nothing in this section precludes the state or a commission from being considered the employer of the contractor described in subsection (1) of this section for purposes of unemployment compensation under ORS chapter 657 and ORS 670.600.

(5) A contractor described in subsection (1) of this section shall be considered an independent contractor and not a worker for purposes of ORS chapter 656 and ORS 670.600.

(6) A contractor described in subsection (1) of this section [*shall*] **may** not be considered a public official, public officer, state officer or executive official for purposes of Oregon law, including ORS chapters 236, 244, 292, 295 and 297 and ORS 171.725 to 171.785.

(7) The State Department of Agriculture shall review the contract described in subsection (1) of this section for the adequacy of the clauses pertaining to statement of work, starting and ending dates, consideration, subcontracts, funds authorized in the budget, amendments, termination, compliance with applicable law, assignment and waiver, access to records, indemnity, ownership of work product, nondiscrimination, successors in interest, attorney fees, tax certification or merger or any other clause the department deems necessary.

(8) The Oregon Department of Administrative Services, in consultation with the State Department of Agriculture, shall adopt rules necessary for the screening and selection of independent contractors under this section.

(9) Except as provided in subsection (8) of this section, the [*department*] **State Department of Agriculture** may promulgate any rules necessary for the administration and enforcement of this section.

NOTE: Corrects article in (1); adjusts word choice in (6); clarifies agency in (9).

SECTION 396. ORS 576.307 is amended to read:

576.307. (1) Upon request by [*the*] **a** commodity commission, the Oregon Department of Administrative Services may:

(a) Purchase or otherwise provide for the acquisition or furnishing of supplies, materials, equipment and services other than personal required by the commission and for the furnishing of professional services rendered by independent contractors with the state to the commission under ORS 279.545 to 279.748.

(b) Provide for the furnishing of printing and multiple duplication work to the commission under ORS 282.010 to 282.050, except that printing and binding [*which*] **that** advertises or promotes products, agricultural or manufactured, [*shall*] **may** not be considered state printing.

(c) Provide for the furnishing of services relating to the disposition of surplus, obsolete or unused supplies, materials and equipment to the commission under ORS 279.828.

(d) Provide for the furnishing of central telephone service and central mail or messenger services to the commission under ORS 283.140.

(e) Provide for the furnishing of central repair and maintenance services to the commission under ORS 283.150.

(f) Provide for the furnishing of clerical and stenographic pool services to the commission under ORS 283.160.

(g) Provide for the furnishing of motor vehicles for use by members, officers and employees of the commission under ORS 283.305 to 283.350.

(2) [*The*] **A** commission shall pay to the Oregon Department of Administrative Services such amount for services performed by the department under subsection (1) of this section as the department determines is adequate to reimburse it for the costs necessary to perform such services.

(3) Upon request by [*the*] **a** commission, the Oregon Department of Administrative Services may design and supervise the installation of an accounting system for the commission. The commission shall pay to the Oregon Department of Administrative Services such amount for services performed by the department under this subsection as the department determines is adequate to reimburse it for the costs necessary to perform such services.

NOTE: Corrects article in (1) lead-in, (2) and (3); adjusts word choice in (1)(b).

SECTION 397. ORS 576.307, as amended by section 303, chapter 794, Oregon Laws 2003, is amended to read:

576.307. (1) Upon request by [*the*] **a** commodity commission, the Oregon Department of Administrative Services may:

(a) Purchase or otherwise provide for the acquisition or furnishing of supplies, materials, equipment and services other than personal services required by the commission and for the furnishing of professional services rendered by independent contractors with the state to the commission.

(b) Provide for the furnishing of printing and multiple duplication work to the commission under ORS 282.010 to 282.050, except that printing and binding [*which*] **that** advertises or promotes products, agricultural or manufactured, [*shall*] **may** not be considered state printing.

(c) Provide for the furnishing of services relating to the disposition of surplus, obsolete or unused supplies, materials and equipment to the commission under ORS 279A.280.

(d) Provide for the furnishing of central telephone service and central mail or messenger services to the commission under ORS 283.140.

(e) Provide for the furnishing of central repair and maintenance services to the commission under ORS 283.150.

(f) Provide for the furnishing of clerical and stenographic pool services to the commission under ORS 283.160.

(g) Provide for the furnishing of motor vehicles for use by members, officers and employees of the commission under ORS 283.305 to 283.350.

(2) [*The*] **A** commission shall pay to the Oregon Department of Administrative Services such amount for services performed by the department under subsection (1) of this section as the department determines is adequate to reimburse it for the costs necessary to perform such services.

(3) Upon request by [*the*] **a** commission, the Oregon Department of Administrative Services may design and supervise the installation of an accounting system for the commission. The commission shall pay to the Oregon Department of Administrative Services such amount for services performed by the department under this subsection as the department determines is adequate to reimburse it for the costs necessary to perform such services.

NOTE: Corrects article in (1) lead-in, (2) and (3); adjusts word choice in (1)(b).

SECTION 398. ORS 576.311 is amended to read:

576.311. Except as otherwise provided in ORS 576.051 to 576.455, ORS 291.026, 291.201 to 291.222, 291.232 to 291.260, 291.322 to 291.336, 292.210 to 292.250, 293.260 to 293.280, 293.295 to 293.346 and 293.590 to 293.640 do not apply to [*the*] **a** commodity commission or to the administration and enforcement of ORS 576.051 to 576.455.

NOTE: Corrects article.

SECTION 399. ORS 576.315 is amended to read:

576.315. [*The*] **A** commodity commission may accept grants, donations or gifts, from any source for expenditures for any purposes consistent with the powers conferred on the commission.

NOTE: Corrects article.

SECTION 400. ORS 576.345 is amended to read:

576.345. (1) When a first purchaser lives or has an office in another state or is a federal or other governmental agency, the producer shall report all sales made to [*such*] **the** purchaser on forms provided by **the appropriate commodity commission** and pay the assessment moneys directly to the [*commodity*] commission, unless [*such*] **the** first purchaser voluntarily makes the proper deduction and remits the proceeds to the commission.

(2) [*Any*] **If a** producer [*who*] performs the handling or processing functions on all or a part of the production of the commodity[*, which*] **that** normally would be performed by another person as [*the*] first purchaser [*thereof*], **the producer** shall report sales of [*such*] **the** commodity [*of*] **from** the production of the producer on forms provided by **the appropriate commodity commission** and pay the assessment moneys directly to the commission, unless the first purchaser [*from such producer*] voluntarily makes the proper deduction and remits the proceeds to the commission.

NOTE: Adjusts syntax.

SECTION 401. ORS 576.370 is amended to read:

576.370. (1) A commodity producer may dispute the amount of a commodity assessment levied against the producer on a unit basis under ORS 576.325 if the total assessment levied against the producer during an assessment period established by **commodity** commission rule exceeds the total dollar value received by the producer for the raw commodity during that assessment period multiplied by the maximum lawful assessment percentage.

(2) A commodity producer who disputes the amount of a commodity assessment as provided under subsection (1) of this section must file any challenge to the assessment with the appropriate commodity commission no later than 60 days after the close of the assessment period. The challenge must be on a form provided by the State Department of Agriculture. A commodity commission shall process a challenge under this section as provided by rules [*described in*] **adopted under** subsection (4) of this section.

(3) A commodity producer filing a challenge under this section bears the burden of proving the total dollar value received by the producer during the assessment period. If the producer acts as a handler or processor for all or part of the producer's commodity production, the producer also bears the burden of proving that the prices paid to the producer are equivalent to prices paid in arm's-length transactions. A commodity commission shall refund the amount of the assessment that the producer proves is in excess of the total dollar value received by the producer for the raw commodity during the assessment period multiplied by the maximum lawful assessment percentage.

(4) The department shall adopt necessary and proper uniform rules for commodity commissions to carry out this section. The department rules shall include, but need not be limited to, procedures for the filing, processing and formal or informal resolution of challenges and for determining commodity prices paid in arm's-length transactions. A commodity commission shall adopt rules establishing assessment periods and may adopt supplemental rules that do not conflict with the rules of the department.

NOTE: Sets forth full title in (1); clarifies intent in (2).

SECTION 402. ORS 576.385 is amended to read:

576.385. Any person authorized by [*the*] **a** commodity commission to receive or disburse moneys as provided in ORS 576.375 shall file with the commission a fidelity bond executed by a surety company authorized to do business in this state[*,*] or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008[*, in either case*]**. The bond or letter of credit must be** in favor of the commission and the State of Oregon, in [*such*] **an** amount equal to the maximum amount of moneys the commission determines [*such*] **the** person will have subject to control at any one time and upon such conditions as the commission shall prescribe. The **commission shall pay the** cost of the bond or letter of credit [*shall be paid by the commission*].

NOTE: Corrects article; monkeys with syntax.

SECTION 403. ORS 576.395 is amended to read:

576.395. [*The*] **Each** commodity commission shall keep accurate books, records and accounts of all its dealings**,** which shall be open to inspection and audit by the Secretary of State.

NOTE: Corrects syntax.

SECTION 404. ORS 576.750 is amended to read:

576.750. As used in ORS [*473.992 and*] 576.750 to 576.775, unless the context requires otherwise:

(1) "Grape product" means any juice, must, concentrate or extract made from vinifera grapes, true or hybrid, whether or not partially fermented. It does not include alcoholic liquor as defined in ORS 471.001.

(2) "Wine" has the meaning given that term in ORS 471.001.

(3) "Wine grape growing" means the cultivation in commercial quantities of vinifera grapes in this state.

(4) "Wine making" means the ownership and control of or the management of a licensed winery in this state.

NOTE: Corrects series reference in lead-in.

SECTION 405. ORS 576.759 is amended to read:

576.759. To carry out the purposes specified in ORS [*473.992 and*] 576.750 to 576.775, the Oregon Wine Board may:

(1) Appoint officers and enter into agreements with consultants, agents and advisers, and prescribe their duties;

(2) Appear on the board's own behalf before boards, commissions, departments or other agencies of municipal or county governments, the state government or the federal government;

(3) Procure insurance against any losses in connection with properties of the board in such amounts and from such insurers as may be necessary or desirable;

(4) Accept donations, grants, bequests and devises, conditional or otherwise, of money, property, services or other things of value, including the interest or earnings thereon but excluding corporate stock, that may be received from a government agency or a public or private institution or person, to be held, used or applied for any or all of the purposes specified in ORS [*473.992 and*] 576.750 to 576.775 in accordance with the terms and conditions of the donation, grant, bequest or devise;

(5) Organize, conduct, sponsor, cooperate with and assist the private sector and other state agencies in the conduct of conferences and tours relating to the wine grape growing and wine making industries;

(6) Provide and pay for advisory services and technical assistance that the board finds necessary or desirable; and

(7) Exercise any other powers necessary for the operation and functioning of the board under ORS [*473.992 and*] 576.750 to 576.775.

NOTE: Corrects series references in lead-in, (4) and (7).

SECTION 406. ORS 576.766 is amended to read:

576.766. (1) In accordance with applicable provisions of ORS chapter 183, the Oregon Wine Board may adopt rules necessary for the administration of ORS [*473.992 and*] 576.750 to 576.775.

(2) Notwithstanding ORS 182.460 and 576.753 (1), employees of the Oregon Wine Board are not eligible for inclusion within the Public Employees Retirement System.

NOTE: Corrects series reference (1).

SECTION 407. ORS 576.768 is amended to read:

576.768. (1) The report submitted by the Oregon Wine Board under ORS 182.472 must include a description of the long term strategic plan created by the board and a description of the progress made in implementing the statewide strategic objectives of the board during the most recent biennium.

(2) Notwithstanding ORS 182.462:

(a) The board shall prepare and submit annual plans and a budget recommended by the board for promotion and for research during the next fiscal year.

(b) The board shall adopt rules specifying the procedures, criteria and timelines for the preparation and approval of the annual plans and budget for promotion and for research.

(c) The Director of the Economic and Community Development Department shall review the budget and plans submitted under this section. In reviewing the annual plans and budget, the director shall consider whether the information supplied by the board is factual and consistent with ORS [*473.992 and*] 576.750 to 576.775 and the positive development of the Oregon wine grape growing and wine making industries. The director shall either approve the budget and plans prior to the commencement of the next fiscal year or disapprove and return the budget and plans to the board with conditions necessary for approval prior to the commencement of the next fiscal year. In reviewing the budget and plans, the director may consult with and receive coordinated support from:

(A) The State Department of Agriculture;

(B) The Oregon Tourism Commission;

(C) The Department of Higher Education;

(D) The Department of Community Colleges and Workforce Development; and

(E) The Oregon Liquor Control Commission.

NOTE: Corrects series reference in (2)(c).

SECTION 408. ORS 576.775 is amended to read:

576.775. Moneys received on behalf of the Oregon Wine Board pursuant to ORS 473.030 (4) and 473.045 shall be deposited into the account created by the board under ORS 182.470 and are continuously appropriated **to the board as provided in ORS 182.470,** exclusively for use by the board in carrying out the provisions of ORS [*473.992 and*] 576.750 to 576.775. The board shall allocate a portion of the moneys received from sources other than fees toward research in enology and

viticulture and toward promotion of the Oregon wine grape growing and wine making industries, including administrative costs associated with either category.

NOTE: Corrects series reference; clarifies destination of moneys.

SECTION 409. Section 1, chapter 797, Oregon Laws 2003, is amended to read:

Sec. 1. Sections 2 to **8, 10 and** 11**, chapter 797, Oregon Laws 2003,** [*of this 2003 Act*] are added to and made a part of ORS 576.750 to 576.765.

NOTE: Corrects inappropriate addition of 473.992 to series in ORS chapter 576.

SECTION 410. ORS 577.550 is amended to read:

577.550. Any person authorized by the Oregon Beef Council to receive or disburse moneys as provided in this chapter[,] shall file with the council a fidelity bond executed by a surety company authorized to do business in this state**. The bond must be** in [*such*] **an** amount equal to the maximum amount of moneys the council determines [*such*] **the** person will have subject to control at any one time and upon such conditions as the council shall prescribe. The **council shall pay the** cost of the bond [*shall be paid by the council*].

NOTE: Strikes errant comma and tweaks syntax.

SECTION 411. ORS 607.007 is amended to read:

607.007. As used in this chapter, unless the context requires otherwise:

[*(1) "Estray" means livestock of any unknown person which is unlawfully running at large or being permitted to do so, or which is found to be trespassing on land enclosed by an adequate fence.*]

[*(2)*] **(1)** "Adequate fence" means a continuous barrier consisting of natural barriers, structures, masonry, rails, poles, planks, wire or the combination thereof, installed and maintained in a condition so as to form a continuous guard and defense against the ingress or egress of livestock into or from the lands enclosed by [*said fence*] **the barrier**. Such natural barriers shall include hedges, ditches, rivers, streams, ponds or lakes.

(2) "Estray" means livestock of any unknown person that is unlawfully running at large or being permitted to do so, or that is found to be trespassing on land enclosed by an adequate fence.

(3) "Taking up" means the intentional exertion of control over livestock, including but not limited to the restriction of movement, holding under herd, feeding, pasturing or sheltering of such livestock.

NOTE: Alphabetizes definitions and tweaks word choice.

SECTION 412. ORS 616.245 is amended to read:

616.245. Any poisonous or deleterious substance, other than a pesticide, added to any food except [*where such*] **when the** substance is required in the production thereof or cannot be avoided by good manufacturing practice[,] shall be deemed to be unsafe for purposes of the application of ORS 616.235 (1)(b)[*; but*]**.** When [*such*] **the** substance is so required or cannot be so avoided, the State Department of Agriculture shall [*promulgate*] **adopt** rules limiting the quantity [*therein or thereon*] **of the substance** to [*such*] **the** extent [*as*] the department finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of ORS 616.235 (1)(b). While such a rule is in effect limiting the quantity of any such substance in the case of any food, [*such*] **the** food [*shall*] **is** not, by reason of bearing or containing any added amount of such substance, [*be*] considered to be adulterated within the meaning of ORS 616.235 (1)(a). In determining the quantity of [*such*] **the** added substance to be tolerated in or on different articles of food, the department shall take into account the extent to which the use of [*such substances*] **the substance** is required or cannot be avoided in the production of each [*such*] article and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

NOTE: Corrects wayward punctuation; modifies word choice.

SECTION 413. ORS 618.010 is amended to read:

618.010. As used in this chapter, unless the context requires otherwise:

(1) "Advertising" or "advertisement" means any public notice or announcement of commodities for sale, services to be performed, equipment or facilities for hire, or any other thing offered to the

public, via publishing or broadcasting media or by signs, banners, posters, handbills, labels or similar devices, for the purpose of inducing, directly or indirectly, the purchase or use of such commodities, services, equipment or facilities.

(2) "Commercial" or "commercially used" means any application or use in connection with or related to transactions in which, in exchange for commodities received or services rendered, consideration is given in terms of currency, negotiable instruments, credit, merchandise or any other thing of value.

(3) "Commodity" means any merchandise, product or substance produced or distributed for sale to, or use by, others.

(4) "Commodity in bulk form" means any quantity of a commodity that is not a commodity in package form.

(5) "Commodity in package form" means any quantity of a commodity put up or packaged in any manner in advance of sale, in units suitable for either wholesale or retail sale by weight, volume, measure or count, exclusive, however, of any auxiliary shipping container enclosing packages that individually conform to the requirements of ORS 618.010 to 618.246. An individual item or lot of any commodity not in package form as defined in this subsection, but on which there is marked a selling price based on an established price per unit of weight or of measure, is a commodity in package form.

(6) "Department" means the State Department of Agriculture.

(7) "Director" means the Director of Agriculture.

(8) "Inspector" means any state officer or employee designated by the director as a supervisor of, or an inspector of, weights and measures.

(9) "Intrastate commerce" means any and all commerce or trade begun, carried on and completed wholly within the limits of this state.

(10) "Introduced into intrastate commerce" means the time and place at which the first sale and delivery of a commodity is made within this state, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

(11) "Liquid-fuel measuring device" means any meter, pump, tank, gage or apparatus used for volumetrically determining the quantity of any internal combustion engine fuel, liquefied petroleum gas or low-viscosity heating oil.

(12) "National Institute of Standards and Technology" means the National Institute of Standards and Technology of the Department of Commerce of the United States.

[*(13) "Person" has the meaning for that term provided in ORS 174.100.*]

[*(14)*] **(13)** "Sale" and "sell" include barter and exchange.

[*(15)*] **(14)** "Security seal" means a lead-and-wire seal, or similar nonreusable closure, attached to a weighing or measuring instrument or device for protection against undetectable access, removal, adjustment or unauthorized use.

[*(16)*] **(15)** "Vehicle" means any wheeled conveyance in, upon or by which any property, livestock or commodity is or may be transported or drawn, but does not include railroad rolling stock.

[*(17)*] **(16)** "Weighing device" means any scale, balance or apparatus used for gravimetrically determining the quantity of any commodity on a discrete or continuous basis.

[*(18)*] **(17)** "Weights and measures" means all weights and measures, instruments and devices of every kind for weighing and measuring, and any appliances and accessories associated with any or all such instruments and devices. However, "weights and measures" does not include meters for the measurement of electricity, gas or water when operated in a system of a public utility, as that term is defined in ORS 757.005. None of the provisions of ORS 618.010 to 618.246 apply to such public utility meters or to any associated appliances or accessories.

NOTE: Deletes superfluous definition (see 174.100).

SECTION 414. ORS 618.016 is amended to read:

618.016. It is the express intent and purpose of ORS 618.010 to 618.246 and 618.991 to establish statutory authority for the administration, regulation and enforcement of weights and measures re-

quirements generally within this state. The objectives of state supervision of weights and measures under ORS 618.010 to 618.246 [*and 618.991*] include the following:

(1) [*Assuring*] **Ensuring** that weights and measures in commercial service within the state are suitable for their intended use, properly installed[,] **and** accurate and are so maintained by their owner or user.

(2) Preventing unfair dealing by weight or measure in any commodity or service advertised, packaged, sold or purchased within this state.

(3) Making available to all users of physical standards or weighing and measuring equipment the precision calibration and related metrological certification capabilities of the weights and measures facilities of the State Department of Agriculture.

(4) Promoting uniformity, to the extent such conformance is practicable and desirable, between weights and measures requirements of this state and those of other states and federal agencies.

(5) Encouraging desirable economic growth while protecting the consumer through the adoption by rule of weights and measures requirements as necessary to [*insure*] **ensure** equity among buyers and sellers.

NOTE: Deletes inappropriate reference to penalty section in lead-in; corrects word choice in (1) and (5).

SECTION 415. ORS 618.021 is amended to read:

618.021. The Director of Agriculture shall:

(1) Maintain custody of the state standards of weight and measure and of the other standards and equipment provided for by ORS 618.010 to 618.246 [*and 618.991*];

(2) Keep accurate records of all standards and equipment;

(3) Exercise general supervision over the weights and measures sold or offered for sale or in use in this state; and

(4) Report to the Governor annually, and at such other times as the Governor may require, on all of the activities of the director in carrying out ORS 618.010 to 618.246 [*and 618.991*].

NOTE: Deletes inappropriate references to penalty section in (1) and (4).

SECTION 416. ORS 618.026 is amended to read:

618.026. Except for rulemaking, the duties and powers of the State Department of Agriculture and the Director of Agriculture pursuant to ORS 618.010 to 618.246 [*and 618.991*] may be delegated at the discretion of the director.

NOTE: Deletes inappropriate reference to penalty section.

SECTION 417. ORS 618.046 is amended to read:

618.046. The state shall supply secondary standards and such other equipment as is necessary to carry out ORS 618.010 to 618.246 [*and 618.991*]. Such standards shall be verified, by comparison with the state primary standards prescribed in ORS 618.041, upon their initial receipt and thereafter as often as the State Department of Agriculture considers necessary.

NOTE: Deletes inappropriate reference to penalty section.

SECTION 418. ORS 618.051 is amended to read:

618.051. The State Department of Agriculture by rule shall prescribe the specifications, tolerances and other technical requirements applicable to commercial weights and measures within this state. In so doing the department shall take cognizance of those uniform requirements recommended by the National Institute of Standards and Technology and published in appropriate National Institute of Standards and Technology handbooks and supplements thereto. For the purposes of ORS 618.010 to 618.246 [*and 618.991*], weights and measures are correct when in conformance with all applicable sections of ORS 618.010 to 618.246 [*and 618.991*] and rules promulgated pursuant thereto. All other weights and measures are incorrect.

NOTE: Deletes inappropriate references to penalty section.

SECTION 419. ORS 618.056 is amended to read:

618.056. The State Department of Agriculture may inspect and test, to ascertain if they are correct, all weights and measures sold, offered or exposed for sale. The department may, as often

as it considers necessary, cause to be inspected and tested, to ascertain if they are correct, all weights and measures commercially used **for one or more of the following purposes**:

(1) [*In*] Determining the weight, measurement or count of commodities or things sold, offered or exposed for sale, on the basis of weight, measure or count[*; or*]**.**

(2) [*In*] Computing the basic charge or payment for services rendered on the basis of weight, measure or count. However, the department by rule may provide for tests to be made on representative samples of such devices. The lots of which samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspection and tests on such samples[*; or*]**.**

(3) [*In*] Determining quantities or amounts when a charge is made for such determination. However, in the case of single-service devices designed to be used commercially only once and to be then discarded, or devices uniformly mass-produced, as by means of a mold or die, and not susceptible of individual adjustment, the inspection and testing of each individual device is not required and the inspecting and testing requirements of this section will be satisfied when inspections and tests are made on representative samples of such devices. The lots of which samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on such samples.

NOTE: Restructures section to conform to legislative style.

SECTION 420. ORS 618.066 is amended to read:

618.066. The State Department of Agriculture shall investigate complaints made to it concerning violations of ORS 618.010 to 618.246 [*and 618.991*] and, upon its own initiative, shall conduct such investigations as it considers appropriate to develop information relating to prevailing procedures in commercial quantity determination and relating to possible violations of ORS 618.010 to 618.246 [*and 618.991*], and in order to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

NOTE: Deletes inappropriate references to penalty section.

SECTION 421. ORS 618.071 is amended to read:

618.071. When necessary for the enforcement of ORS 618.010 to 618.246 [*and 618.991*], or rules promulgated pursuant thereto, the State Department of Agriculture is:

(1) Authorized to enter during normal business hours any premises, including buildings or mobile facilities, where commercial transactions are conducted, commodities are located, or weights and measures are employed. If such premises are not open to the public, a department representative shall first present the credentials of the representative and obtain consent before making entry thereto. If such entry is denied, the department may apply for a search warrant from any person authorized to issue search warrants.

(2) Empowered to stop any commercial vehicle and, after presentment of credentials, require the person in charge to move the vehicle to a designated place for inspection on probable cause that a violation of ORS 618.010 to 618.246 [*and 618.991*] has occurred or is occurring.

(3) Authorized, in the public interest, to issue written notices or warnings to violators for minor infractions of ORS 618.010 to 618.246 [*and 618.991*] in lieu of referring the matter to the district attorney.

NOTE: Deletes inappropriate references to penalty section.

SECTION 422. ORS 618.086 is amended to read:

618.086. (1) The State Department of Agriculture is authorized to issue stop-use orders, hold orders[,] and removal orders with respect to weights and measures being, or susceptible of being, commercially used, and to issue hold orders and removal orders with respect to packages or amounts of commodities sold, offered or exposed for sale, or in process of delivery, whenever in the course of its enforcement of ORS 618.010 to 618.246 [*and 618.991*] it is considered necessary.

(2) No person shall use, remove from the premises or vehicles specified, or fail to remove from the premises or vehicles specified, any weight, measure or package or amount of commodity contrary to the terms of a stop-use order, hold order[,] or removal order issued under the authority of this section.

NOTE: Deletes inappropriate reference to penalty section in (1); strikes serial commas in (1) and (2).

SECTION 423. ORS 618.096 is amended to read:

618.096. No person shall:

(1) Use, or have in the possession of the person for the purpose of using for any commercial purpose specified in ORS 618.056, sell, offer or expose for sale or hire, or have in the possession of the person for the purpose of selling or hiring, an incorrect weight or measure or any device or instrument used or intended for use to falsify any weight or measure.

(2) Use, or have in the possession of the person for the purpose of current use for any commercial purpose specified in ORS 618.056, a weight or measure that does not bear a seal or mark such as is specified in ORS 618.076 unless such weight or measure has been exempted from testing by ORS 618.056 or by a rule of the State Department of Agriculture or unless the device has been placed in service as provided by rule of the department.

(3) Dispose of any rejected or condemned weight or measure in a manner contrary to ORS 618.010 to 618.246 [*and 618.991*] or rules promulgated pursuant thereto.

(4) Remove, alter or deface any security seal, tag, seal or mark placed on any weight or measure by the department.

(5) Sell, offer or expose for sale, less than the quantity the person represents of any commodity, thing or service.

(6) Take more than the quantity the person represents of any commodity, thing or service when, as buyer, the person furnishes the weight or measure by means of which the amount of the commodity, thing or service is determined.

(7) Keep for the purpose of sale, advertise, sell, offer or expose for sale, any commodity, thing or service in a condition or manner contrary to ORS 618.010 to 618.246 [*and 618.991*] or rules promulgated pursuant thereto.

(8) Use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from a reasonable customer position.

(9) Violate any other provision of ORS 618.010 to 618.246 [*and 618.991*] or rules promulgated pursuant thereto.

NOTE: Deletes inappropriate references to penalty section in (3), (7) and (9).

SECTION 424. ORS 618.101 is amended to read:

618.101. For the purposes of ORS 618.010 to 618.246 [*and 618.991*], proof of the existence of a weight or measure or a weighing or measuring instrument or device in or about any building, enclosure, stand or vehicle in which or from which it is shown that buying or selling is commonly carried on[,] is presumptive proof of the regular use of such weight or measure or weighing or measuring instrument or device for commercial purposes and of such use by the person in charge of such building, enclosure, stand or vehicle.

NOTE: Deletes inappropriate reference to penalty section and strikes errant comma.

SECTION 425. ORS 618.121 is amended to read:

618.121. No person shall operate or use for commercial purposes within the state any weighing or measuring instrument or device specified in ORS 618.141 that is not licensed in accordance with the requirements of ORS 618.010 to 618.246 [*and 618.991*] unless exempted as provided in ORS 618.126. Any license issued under ORS 618.010 to 618.246 [*and 618.991*] applies only to the instrument or device specified in the license. However, the State Department of Agriculture may permit such license to be applicable to a replacement for the original instrument or device.

NOTE: Deletes inappropriate references to penalty section.

SECTION 426. ORS 618.131 is amended to read:

618.131. (1) The licenses required by ORS 618.010 to 618.246 [*and 618.991*] are in addition to any other licenses required by law.

(2) If ORS 618.010 to 618.246 and 618.991 are in conflict with any other statutes, ordinances or regulations, the provisions of ORS 618.010 to 618.246 and 618.991 take precedence.

NOTE: Deletes inappropriate reference to penalty section in (1).

SECTION 427. ORS 618.146 is amended to read:

618.146. (1) All weighing and measuring instrument or device licenses issued under ORS 618.010 to 618.246 [*and 618.991*] expire on June 30 next after the date of issuance.

(2) In accordance with the provisions of ORS chapter 183, any license issued under ORS 618.010 to 618.246 [*and 618.991*] may be suspended or revoked by the State Department of Agriculture if the instrument or device is operated or used contrary to ORS 618.010 to 618.246 [*and 618.991*] or rules promulgated pursuant thereto.

NOTE: Deletes inappropriate references to penalty section.

SECTION 428. ORS 618.151 is amended to read:

618.151. The owner or person in possession of weighing or measuring instruments or devices for which the license fees have not been paid in the manner required by ORS 618.010 to 618.246 [*and 618.991 shall not use such*] **may not use the** weighing or measuring instruments or devices for commercial purposes.

NOTE: Deletes inappropriate reference to penalty section; tweaks syntax.

SECTION 429. ORS 618.156 is amended to read:

618.156. (1) The State Department of Agriculture shall prescribe such forms, certificates and identification tags as it considers necessary to carry out the licensing provisions of ORS 618.010 to 618.246 [*and 618.991*].

(2) The department shall provide a certificate or other evidence of device license compliance to each person fulfilling the weighing or measuring device licensing requirements of ORS 618.010 to 618.246 [*and 618.991*].

(3) Application for a weights and measures license shall be made upon a form prescribed and furnished by the department and shall contain such information as the department may require.

NOTE: Deletes inappropriate references to penalty section in (1) and (2).

SECTION 430. ORS 618.201 is amended to read:

618.201. (1) The State Department of Agriculture, as often as necessary to provide adequate protection, shall weigh or measure and inspect packages or amounts of commodities sold, offered or exposed for sale, or in the process of delivery, to determine whether they contain the amounts represented and whether they are sold, offered or exposed for sale in accordance with ORS 618.010 to 618.246 [*and 618.991*]. If such packages or amounts of commodities are found not to contain the amounts represented, or are found to be sold, offered or exposed for sale in violation of ORS 618.010 to 618.246 [*and 618.991*], the department may order them withheld from sale and may so mark or tag them.

(2) In carrying out the provisions of this section, the department may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a sample selected from and representative of such lot.

(3) No person shall:

(a) Sell, offer or expose for sale, in intrastate commerce, any package or amount of commodity that has been ordered withheld from sale and marked or tagged as provided in this section until such package or amount of commodity has been brought into full compliance with all the requirements of ORS 618.010 to 618.246 [*and 618.991*]; or

(b) Otherwise dispose of any package or amount of the commodity that has been ordered withheld from sale and marked or tagged as provided in this section and that has not been brought into compliance with the requirements of ORS 618.010 to 618.246 [*and 618.991*], in any manner, except with the specific approval of the department.

NOTE: Deletes inappropriate references to penalty section.

SECTION 431. ORS 618.206 is amended to read:

618.206. (1) Commodities in liquid form shall be sold only by liquid measure or weight and, except as otherwise provided in ORS 618.010 to 618.246 [*and 618.991*], commodities not in liquid form

shall be sold only by weight, measure of length or area, or count. However, liquid commodities may be sold by weight, and commodities not in liquid form may be sold by count only if such methods give accurate information as to the quantity of commodity sold.

(2) The provisions of subsection (1) of this section do not apply to:

(a) Commodities sold for immediate consumption on the premises where sold;

(b) Vegetables sold by the head or bunch;

(c) Commodities in containers standardized by the laws of this state or the United States;

(d) Commodities in package form when there exists a general consumer usage to express the quantity in some other manner;

(e) Concrete aggregates, concrete mixtures and loose solid materials such as earth, soil, gravel, crushed stone and like substances sold by cubic measure; or

(f) Unprocessed vegetable and animal fertilizer sold by cubic measure.

(3) The State Department of Agriculture may make such reasonable rules as are necessary to [*assure*] **ensure** that the amounts of commodity for sale reflect accurate and fair practices.

NOTE: Deletes inappropriate reference to penalty section in (1); updates word choice in (3).

SECTION 432. ORS 618.211 is amended to read:

618.211. (1) Except as otherwise provided in ORS 618.010 to 618.246 [*and 618.991*] and the rules promulgated pursuant thereto, any commodity in package form introduced, delivered for introduction into or received in intrastate commerce and sold, offered or exposed for sale in intrastate commerce[,] shall bear on the outside of the package definite, plain and conspicuous declarations of:

(a) The identity of the commodity in the package, unless it is visible through the wrapper;

(b) The net quantity of the contents in terms of weight, measure or count; and

(c) In the case of any package sold, offered or exposed for sale in any place other than on the premises where packed, the name and place of business of the manufacturer, packer or distributor, as may be prescribed by rule.

(2) In connection with the requirements of subsection (1)(b) of this section, neither the qualifying term "when packed" or any words of similar import, nor any term qualifying a unit of weight, measure or count such as "jumbo," "giant" or "full" that tends to exaggerate the amount of commodity in a package shall be used.

(3) In connection with the requirements of subsection (1)(b) of this section, the State Department of Agriculture by rule may establish:

(a) Reasonable variations to be allowed, including variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure. However, such variations [*shall*] **may** not be permitted to the extent that the average of the quantities in the packages comprising a shipment, display or other lot is below the quantity stated, and no unreasonable shortage in any package shall be permitted even though overages in other packages in the same shipment, display or lot compensate for such shortage;

(b) Exemptions for small packages; and

(c) Exemptions for commodities put up in variable weights or sizes for sale intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer.

NOTE: Deletes inappropriate reference to penalty section and strikes errant comma in (1) lead-in; alters word choice in (3)(a).

SECTION 433. ORS 618.401 is repealed.

NOTE: Moves definitions to relevant statute; see section 434 (amending 618.406).

SECTION 434. ORS 618.406 is amended to read:

618.406. **(1) As used in this section:**

(a) "Deputy state sealer" means the person appointed by the Director of Agriculture to supervise the weights and measures section.

(b) "Inspector" means a state employee designated by the director as a supervisor or inspector of weights and measures.

[*(1)*] **(2)** In enforcing violations subject to penalty under ORS 618.991, the director [*of Agriculture*] has authority to issue and serve citations to any person violating such laws.

[*(2)*] **(3)** The director may delegate the powers referred to in subsection [*(1)*] **(2)** of this section to the deputy state sealer and to inspectors. The deputy state sealer and inspectors with authority to serve citations under this section shall issue those citations in the manner provided by ORS chapter 153.

[*(3)*] **(4)** Upon issuance of a citation for a violation subject to penalty under ORS 618.991, the deputy state sealer or inspector issuing the citation shall retain a record copy for the State Department of Agriculture.

NOTE: Moves definitions to relevant statute; see section 433 (repealing 618.401).

SECTION 435. ORS 618.501 is amended to read:

618.501. As used in ORS 618.501 to 618.551 and 618.995, unless the context requires otherwise:

(1) "Appropriate court" means the circuit court of a county:

(a) Where one or more of the defendants reside;

(b) Where one or more of the defendants maintain a principal place of business;

(c) Where one or more of the defendants are alleged to have committed a security seal violation; or

(d) With the defendant's consent, where the prosecuting officer maintains an office.

[*(2) "Person" has the meaning given that term in ORS 174.100.*]

[*(3)*] **(2)** "Prosecuting attorney" means the Attorney General or the district attorney of any county in which a security seal violation is alleged to have been committed.

[*(4)*] **(3)** "Security seal" means a lead-and-wire seal or similar nonreusable closure, attached to a weighing or measuring instrument or device for protection against undetectable access, removal, adjustment or unauthorized use.

[*(5)*] **(4)** "Security seal violation" means the use, in violation of this chapter or any rule promulgated pursuant thereto, of any liquid or gaseous metering instrument or device to which a security seal is required to be affixed, when the security seal has been broken or removed.

[*(6)*] **(5)** A "willful violation" occurs when the person committing the violation knew or should have known that the conduct of the person was a violation.

NOTE: Deletes superfluous definition (see 174.100).

SECTION 436. ORS 622.220 is amended to read:

622.220. (1) The commercial cultivation of oysters, clams and mussels is declared to be an agricultural activity [*which should be*] subject to the regulatory authority of the State Department of Agriculture. [*However,*] The State Fish and Wildlife Commission has jurisdiction over all native oysters, clams and mussels in the waters of this state, but not cultivated oysters, clams and mussels in plats [*and*]**. The commission** shall prescribe such rules for the protection of native oysters, clams and mussels and for the taking of native oysters and oyster spat shells subject to [*their*] **the commission's** jurisdiction as in the judgment of the commission is for the best interests of the resource.

(2) It is unlawful for any person to take native oysters, clams and mussels in violation of the rules adopted by the commission.

NOTE: Modifies syntax in (1).

SECTION 437. ORS 622.230 is amended to read:

622.230. [*(1)*] All plats, rights, claims and plantations, and leases lawfully held for such plats, rights, claims and plantations [*which*] **that** exist upon the passage of this 1969 Act shall be converted to plats, shall be filed with the State Department of Agriculture by July 1, 1970, and shall:

[*(a)*] **(1)** Include a legal description of the area applied for, specifying its acreage.

[*(b)*] **(2)** Be accompanied by a map sufficient to permit the area applied for to be readily identified.

[*(c)*] **(3)** Be accompanied by an application fee of $25 per plat.

[*(2) All lands held at the time of the passage of this 1969 Act for artificial oyster production under any of the laws of this state shall be given first consideration by the commission in order to allow uninterrupted usage during the transition to the provisions of chapter 675, Oregon Laws 1969.*]

NOTE: Deletes obsolete transition provisions; corrects word choice in lead-in.

SECTION 438. ORS 622.250 is amended to read:

622.250. (1) Applicants for new oyster plats, in addition to submitting an application in compliance with ORS 622.230 [*(1)(a) and (b)*] **(1) and (2)** and the submission of a fee of $250 per plat, shall cause notice of the application to be published once a week for two consecutive weeks in a newspaper of general circulation in each county where any area applied for, or any part thereof, is located. The notice must state the name of the applicant and the type of operation the applicant proposes to conduct and must describe the area to be planted with oysters.

(2) Not later than the 90th day after publication of the notice referred to in subsection (1) of this section, and upon finding that the notice complied with the requirements of subsection (1) of this section, the State Department of Agriculture may grant to the applicant the area applied for if the area is known to be available and if the department has classified the area as suitable for oyster cultivation.

(3) If the application referred to in this section is denied, the department shall provide the applicant with a written statement explaining the reason for the denial.

(4) Any person who holds an oyster plantation claim or plat that was in effect on June 1, 1997, may submit to the department an application to cultivate clams or mussels on not more than 20 percent of the lands subject to the claim or plat, but not less than one acre. Any such application must be in compliance with ORS 622.230 [*(1)(a) and (b)*] **(1) and (2)** and be accompanied by a fee of $250 for each such claim or plantation.

NOTE: Adjusts for renumbering; see section 437 (amending 622.230).

SECTION 439. ORS 624.100 is amended to read:

624.100. The Department of Human Services shall make all rules necessary for the enforcement of ORS 624.010 to 624.120, including such rules concerning the construction and operation of restaurants, bed and breakfast facilities and temporary restaurants as are reasonably necessary to protect the public health of persons using these facilities. [*Particularly, these latter*] **The** rules shall provide for, but [*shall*] **need** not be restricted to**,** the following:

(1) A water supply adequate in quantity and safe for human consumption.

(2) Disposal of sewage, refuse and other wastes in a manner that will not create a nuisance or a health hazard.

(3) The cleanliness and accessibility of toilets and handwashing facilities.

(4) The cleanliness of the premises.

(5) The refrigeration of perishable foods.

(6) The storage of food for protection against dust, dirt and contamination.

(7) Equipment of proper construction and cleanliness of such equipment.

(8) The control of insects and rodents.

(9) The cleanliness and grooming of food workers.

(10) Exclusion of unauthorized persons from food preparation and storage areas.

(11) Review of proposed plans for the construction or remodeling of facilities subject to licensing under this chapter.

NOTE: Adjusts syntax in lead-in.

SECTION 440. ORS 624.510 is amended to read:

624.510. (1) The Director of Human Services [*and*] **shall enter into an intergovernmental agreement with** each local public health authority established under ORS 431.375**,** [*shall enter into an intergovernmental agreement*] delegating to the local authority the administration and enforcement within the jurisdiction of the authority of the powers, duties and functions of the Director of Human Services under ORS 624.010 to 624.120, 624.310 to 624.430, 624.650 and 624.992. The intergovernmental agreement must describe the powers, duties and functions of the local public health authority relating to fee collection, licensing, inspections, enforcement, civil penalties and issuance

and revocation of permits and certificates, standards for enforcement by the local authority and the monitoring to be performed by the Department of Human Services. The department shall establish the descriptions and standards in consultation with the local public health authority officials and in accordance with ORS 431.345. The intergovernmental agreement must be a part of the local annual plan submitted by the local public health authority under ORS 431.385. The department shall review the performance of the local public health authority under any expiring intergovernmental agreement. The review shall include criteria to determine if provisions of ORS 624.085 are uniformly applied to all licensees within the jurisdiction of the local public health authority. In accordance with ORS chapter 183, the director may suspend or rescind an intergovernmental agreement under this subsection. If the department suspends or rescinds an intergovernmental agreement, the unexpended portion of the fees collected under subsection (2) of this section shall be available to the department for carrying out the powers, duties and functions under this section.

(2) A local public health authority shall collect fees on behalf of the department that are adequate to cover the administration and enforcement costs incurred by the local public health authority under this section and the cost of oversight by the department. If the fee collected by a local public health authority for a license or service is more than 20 percent above or below the fee for that license or service charged by the department, the department shall analyze the local public health authority fee process and determine whether the local public health authority used the proper cost elements in determining the fee and whether the amount of the fee is justified. Cost elements may include, but need not be limited to, expenses related to administration, program costs, salaries, travel expenses and department consultation fees. If the department determines that the local public health authority did not use the proper cost elements in determining the fee or that the amount of the fee is not justified, the department may order the local public health authority to reduce any fee to a level supported by the department's analysis of the fee process.

(3) The department, after consultation with groups representing local health officials in the state, shall by rule assess a remittance from each local public health authority to which health enforcement powers, duties or functions have been delegated under subsection (1) of this section. The amount of the remittance must be specified in the intergovernmental agreement. The remittance shall supplement existing funds for consultation services and development and maintenance of the statewide food service program. The department shall consult with groups representing local health officials in the state and statewide restaurant associations in developing the statewide food service program.

(4) In any action, suit or proceeding arising out of local public health authority administration of functions pursuant to subsection (1) of this section and involving the validity of a rule adopted by the department, the department shall be made a party to the action, suit or proceeding.

NOTE: Clarifies parties to agreements in (1).

SECTION 441. ORS 625.040 is amended to read:

625.040. The State Department of Agriculture shall refuse to grant any application for a bakery license if [*it*] **the department** finds after proper investigation that **any of the following has occurred**:

(1) The applicant has made to the department any false statement of a material nature[*;*]**.**

(2) The premises or equipment of the bakery sought to be licensed are not of a sanitary construction, design or condition. However, this section [*shall*] **may** not be applied to prevent licensing and operation of a bakery solely because [*such establishment*] **the bakery** is in an area [*which*] **that** is part of and not separate from a domestic kitchen if the [*establishment*] **bakery** is upon investigation by the department found to be constructed and maintained in a clean, healthful and sanitary condition[*; or*]**.**

(3) The applicant has failed to comply with ORS 625.010 to 625.270 or any other applicable law of this state relative to bakeries or bakery products or any regulation in effect thereunder[*;*]**,** except that if it is determined that an applicant has not so complied the applicant shall be allowed a reasonable time, not exceeding 30 days, within which to comply, and the refusal or neglect of the applicant to comply within that period is cause for denial of the application.

NOTE: Modifies syntax to conform to legislative style.

SECTION 442. ORS 625.180 is amended to read:

625.180. (1) Every bakery or bakery distributor doing business in this state shall pay a license fee established by the State Department of Agriculture in accordance with ORS chapter 183[*, which shall*]**. The license fee may** not be less than $25 nor more than $750 for each establishment. The license fees may be established at a specified amount for each establishment acting as a bakery or bakery distributor, or may be established on the basis of the annual gross dollar volume of sales of each establishment in each of the two types of business. The license fee may be different for each type of business. In establishing the basis and amounts for the license fees**,** the department shall consider, among other things, the number of bakeries and bakery distributors, the various annual gross dollar volumes of business of the establishments, and the costs of administration and enforcement of this chapter.

(2) The payment of the bakery or distributor's license fee by any bakery or distributor entitles the bakery or distributor to the right to use one vehicle for the delivery or distribution of bakery products. For each additional vehicle so used**,** [*each*] **the** bakery shall pay an annual registration fee of $8**,** which shall be payable together with the bakery or distributor's license fee[*; except that whenever any*]**. If a** bakery, at any time during any license year, desires to use an additional vehicle required to be registered by this section, and not so registered, [*such*] **the** bakery or distributor shall, before using [*such*] **the** vehicle in the sale or distribution of bakery products, make application to the department and pay the required $8 registration fee. All such vehicle registrations shall, together with the bakery and distributors' licenses, expire on June 30 next following their date of issuance.

NOTE: Fiddles with word choice and punctuation.

SECTION 443. ORS 625.212 is amended to read:

625.212. As used in ORS 625.215 unless the context requires otherwise:

(1)(a) "Bread," "white bread," "milk bread" and "raisin bread" have the [*same meaning as they have*] **meanings given those terms** in the definitions and standards promulgated by the State Department of Agriculture pursuant to ORS 625.160.

(b) As used in this subsection, "bread" also includes [*those*] **breads** commonly known as Vienna, French and Italian.

(2)(a) "Rolls," "buns," "white rolls," "white buns," "raisin rolls" and "raisin buns" have the [*same meaning as they have*] **meanings given those terms** in the definitions and standards promulgated by the department pursuant to ORS 625.160.

(b) As used in this subsection, "rolls" or "buns" [*include*] **includes** doughnuts, sweet rolls or sweet buns made with fillings or coatings, such as cinnamon, the soft rolls, such as Parker House rolls, hamburger buns, hot dog buns and the hard rolls, such as Vienna rolls or Kaiser rolls. However, **"**rolls**"** or **"**buns**"** [*shall*] **does** not include foods made with specialty flours, such as cake flour.

(3) "Enriched**,**" as applied to any of the breads, rolls or buns defined in subsections (1) and (2) of this section**,** means the addition of the vitamins, minerals and other nutrients necessary to make that food conform to the definition and standards for enriched bread, enriched rolls or enriched buns promulgated by the department pursuant to ORS 625.160.

NOTE: Updates terminology and punctuation to conform to legislative style; whets appetite.

SECTION 444. ORS 632.590 is amended to read:

632.590. **(1)** All unshelled walnuts and unshelled filberts sold, displayed or offered for sale or shipment in this state[*, shall*] **must** have the containers, bins, display table or other bulk display labeled with a legible label containing **the**:

[*(1)*] **(a)** Name of the state in which such nuts were grown.

[*(2)*] **(b)** Grade or registered brand and size of nuts in the container.

[*(3)*] **(c)** Name and address of the grower, dealer or packer.

(2) [*However,*] **Notwithstanding subsection (1) of this section,** containers of five pounds or less capacity and bins and bulk tables [*shall be*] **are** required to be labeled only with the name of the state where grown and the grade and size of such nuts. Such labeling [*shall*] **is** not [*be*] required

when nuts are being sold at retail from a properly labeled container or bulk display and packaged in the presence of the purchaser for the immediate purpose of the sale.

NOTE: Restructures section to eliminate blank line; strikes errant comma in (1); tweaks word choice in (1) and (2).

SECTION 445. ORS 632.705 is amended to read:

632.705. As used in ORS 632.705 to 632.815:

(1) "Adulterated" has the [*same*] meaning [*as set forth*] **given that term** in ORS 616.235.

(2) "At retail" means a sale or transaction between a retailer and a consumer.

(3) "Bulk sale" means the sale of eggs in containers other than consumer containers.

(4) "Candling" means the examination of the interior of eggs by the use of transmitted light used in a partially dark room or place.

(5) "Consumer" means any person who purchases eggs at retail or any restaurant, hotel, boarding house, bakery, or institution or concern [*which*] **that** purchases eggs for serving to guests or patrons thereof, or for its own use in cooking or baking.

(6) "Consumer container" means a container in which eggs are packed for sale to consumers.

(7) "Container" means any box, case, basket, carton, sack, bag or other receptacle.

(8) "Department" means the State Department of Agriculture.

(9) "Egg handler" means any person who contracts for or obtains possession or control of any eggs for:

(a) Sale to another egg handler or a retailer; or

(b) Processing and sale to another egg handler, a retailer or a consumer.

(10) "Egg products" means the white, yolk, or any part of eggs, in liquid, frozen, dried, or any other form, used, intended or held for use, in the preparation of, or to be a part of or mixed with, food or food products, for human consumption, excepting products [*which*] **that** contain eggs only in a relatively small proportion or historically have not been in the judgment of the department considered by consumers as products of the egg industry.

(11) "Eggs" or "shell eggs" means eggs in the shell from chickens, turkeys, ducks, geese or any other species of fowl.

(12) "Federal Act" means the federal Egg Products Inspection Act, 21 U.S.C. 1031 et seq., 84 Stat. 1620 et seq.

(13) "Labeling" has the meaning given that term in ORS 616.205 (13).

(14) "Lot" means an identifiable and certain quantity, group or shipment of one grade or size of eggs of a particular producer, egg handler or retailer. Such identification and certainty may be determined by the department by container labeling of codes, numbers or dates, or invoices containing such data.

(15) "Misbranded" has the [*same*] meaning [*as set forth*] **given that term** in ORS 616.250.

(16) "Pasteurize" means the subjecting of each particle of egg products to heat or other treatments to destroy harmful viable microorganisms, by such processes as may be prescribed by the department.

(17) "Processing" means manufacturing egg products, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing, cooling, freezing, drying[,] or packaging egg products.

(18) "Retailer" means any person who sells eggs to a consumer.

(19) "Sell" or "sale" means to sell, offer for sale, expose for sale, or have in possession for sale.

NOTE: Updates terminology in (1) and (15), revises word choice in (5) and (10) and strikes serial comma in (17).

SECTION 446. ORS 634.212 is amended to read:

634.212. (1) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated within the territory proposed to be a protected area, the State Department of Agriculture may establish a protected area, in accordance with the provisions of ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines, except the consent of the Governor [*shall*] **is** not [*be*] required.

(2) The petition, referred to in subsection (1) of this section, shall include the following:

(a) The proposed name of the protected area.

(b) The description, including proposed boundaries, of the territory proposed to be a protected area.

(c) A concise statement of the need for the establishment of the protected area proposed.

(d) A concise statement of the pesticides and the times, methods or rates of pesticide applications to be restricted or prohibited and the extent such are to be restricted or prohibited.

(e) A request that a public hearing be held by the department.

(f) The name of the person authorized to act as attorney in fact for the petitioners in all matters relating to the establishment of a proposed protected area.

(g) A concise statement of any desired limitations of the powers and duties of the governing body of the proposed protected area.

(3) If more than one petition, referred to in subsection (1) of this section, is received by the department describing parts of the same territory, the department may consolidate all or any of such petitions.

(4) Each petition, described in subsection (1) of this section, shall be accompanied by a filing fee of $125. Upon receipt of such petition and payment of such fee, the department shall prepare and submit to the petitioners an estimated budget of the costs of establishing such proposed protected area, including cost of preparation of the estimated budget, of the hearing and of the preparation of required documents. Within 15 days of the receipt of the estimated budget, the petitioners shall remit to the department the difference between the filing fee and total estimated budget. Should the petitioners fail to remit such difference, the department shall retain the filing fee and terminate the procedure for establishment of a proposed protected area. If, upon completion of the procedure for establishment of a proposed protected area, there remains an unexpended and unencumbered balance of funds received by the department under this section, such balance shall be refunded to the petitioners through their designated attorney in fact.

(5) In making a determination pursuant to the authority granted under ORS 561.520 [*(2)*] **(3)**, the Director of Agriculture shall consider, among other factors, the following:

(a) The agricultural and horticultural crops, wildlife or forest industry to be affected and their locations.

(b) The topography and climate, including temperature, humidity and prevailing winds, of the territory in which the proposed protected area is situated.

(c) The characteristics and properties of pesticides used or applied and proposed to be restricted or prohibited.

NOTE: Alters word choice in (1). Adjusts for renumbering in (5); see section 383 (amending 561.520).

SECTION 447. ORS 635.027 is amended to read:

635.027. (1) Except as otherwise provided in this chapter, no person shall operate or engage in the business of a nonalcoholic beverage manufacturer without first obtaining and thereafter maintaining a license, or renewal thereof, from the State Department of Agriculture. No license is required of a person who:

(a) Sells nonalcoholic drink or beverage products in or from their original containers at wholesale or retail.

(b) Mixes or sells nonalcoholic products in the usual course of business at a soda fountain.

(c) Engages in the nonalcoholic beverage manufacturing business in a building and [*using*] **uses** machinery, equipment and all facilities [*which*] **that** have been approved and licensed by the department for use in the processing of fluid milk to be labeled with "grade 'A' " pursuant to ORS chapter 621.

(2) The provisions of subsection (1)[*(a), (b) and (c)*] of this section [*however*] do not exempt any person, or the business of the person, from the application of any other provisions of this chapter.

NOTE: Revises syntax in (1)(c) and (2); deletes superfluous references in (2).

SECTION 448. ORS 646.626 is amended to read:

646.626. (1) If any person**,** after being served with an investigative demand under ORS 646.622, fails or refuses to obey an investigative demand issued by the prosecuting attorney, the prosecuting attorney may, after notice, apply to an appropriate court and, after hearing thereon, request an order:

(a) Granting injunctive relief to restrain the person from engaging in conduct of any aspect of the trade or commerce that is involved in the alleged or suspected violation; **or**

(b) Granting such other relief as may be required, until the person obeys the investigative demand.

(2) Any disobedience of any final order of a court under this section shall be punished as a contempt of court.

NOTE: Inserts missing comma and conjunction in (1).

SECTION 449. ORS 646.636 is amended to read:

646.636. The court may make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, of which the person was deprived by means of any practice declared to be unlawful in ORS 646.607 or 646.608, or as may be necessary to [*insure*] **ensure** cessation of unlawful trade practices.

NOTE: Corrects word choice.

SECTION 450. ORS 647.035 is amended to read:

647.035. **(1)** The Secretary of State [*shall*] **may** not register as a mark any word, phrase, symbol, device or combination thereof if it:

[*(1)*] **(a)** Consists of or comprises immoral, deceptive or scandalous matter;

[*(2)*] **(b)** Consists of or comprises matter [*which*] **that** may disparage or falsely suggest a connection with persons living or dead, institutions, beliefs or national symbols, or bring them into contempt or disrepute;

[*(3)*] **(c)** Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof;

[*(4)*] **(d)** Consists of or comprises the name, signature or portrait of any living individual except with the individual's written consent;

[*(5)*] **(e)** Consists of or comprises a mark [*which*] **that** so resembles a mark registered in this state as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive; or

[*(6)*] **(f)** Consists of a word, phrase, symbol, device or combination thereof [*which*] **that:**

[*(a)*] **(A)** When applied to the goods or services of the applicant is merely descriptive or deceptively misdescriptive of them[*, or*]**;**

[*(b)*] **(B)** When applied to the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them[*,*]**;** or

[*(c)*] **(C)** Is primarily merely a surname.

(2) [*However,*] Nothing in [*this subsection*] **subsection (1)(f) of this section** shall prevent the registration of a mark used in this state by the applicant [*which*] **that** has become distinctive of the applicant's goods or services. The Secretary of State may accept as evidence that the mark has become distinctive, as applied to the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this state or elsewhere for the five years next preceding the date of the filing of the application for registration.

NOTE: Restructures section to conform to legislative style; modifies word choice.

SECTION 451. ORS 647.065 is amended to read:

647.065. Any mark and its registration under this chapter shall be assignable with the goodwill of the business in which the mark is used, or with that part of the goodwill of the business connected with the use of and symbolized by the mark. Assignment shall be by instruments in writing[*,*] **and** signed and may be submitted for filing to the Office of the Secretary of State. The Secretary of State, upon filing the assignment, shall notify the assignee of the filing of the assignment. An assignment of any registration under this chapter shall be void as against any subsequent purchaser for valuable consideration without notice unless it is submitted for filing to the Office of

the Secretary of State within three months after the date thereof or prior to such subsequent purchase.

NOTE: Replaces errant comma with conjunction.

SECTION 452. ORS 648.055 is amended to read:

648.055. (1) [*Where*] **If** the only registrant of an assumed business name is a domestic corporation [*which*] **that** has been dissolved, the Secretary of State may cancel the registration.

(2) [*Where*] **If** the only registrant of an assumed business name is a foreign corporation whose authority to transact business in this state has been withdrawn or revoked, the Secretary of State may cancel the registration.

NOTE: Corrects word choice in (1) and (2).

SECTION 453. ORS 650.153 is amended to read:

650.153. (1) If a new motor vehicle becomes inoperative prior to being sold to a consumer, the franchisor is liable for the repair of the motor vehicle if the motor vehicle is inoperative due to a mechanical failure that is not the result of negligence on the part of the [*dealer*] **franchisee**.

(2) Whenever a new motor vehicle becomes inoperative, the [*dealer*] **franchisee** shall notify the franchisor and request authorization from the franchisor to repair the vehicle.

(3) If the franchisor refuses or fails to authorize repair of the inoperative motor vehicle within 30 business days after receiving notice under subsection (2) of this section, ownership of the new motor vehicle shall revert back to the franchisor, and the franchisee shall have no obligation, financial or otherwise, with respect to the motor vehicle.

(4) If the franchisor is unable to deliver to the franchisee the parts needed to repair an inoperative new motor vehicle within 30 business days after receiving notice under subsection (2) of this section, ownership of the new motor vehicle shall revert to the franchisor, and the franchisee shall have no obligation, financial or otherwise, with respect to the motor vehicle.

NOTE: Corrects terminology in (1) and (2).

SECTION 454. ORS 651.060 is amended to read:

651.060. (1) The Commissioner of the Bureau of Labor and Industries may issue subpoenas[,] **and** subpoenas duces tecum, administer oaths, obtain evidence and take testimony in all matters relating to the duties required under ORS 279.348 to 279.380, 651.030, 651.050, 651.120, 651.170, 652.330, 653.055, 658.405 to 658.503 and 658.705 to 658.850 and wage claims arising under ORS 653.305 to 653.350 and in all contested cases scheduled for hearing by the Bureau of Labor and Industries pursuant to ORS chapter 183. Such testimony shall be taken in some suitable place in the vicinity to which testimony is applicable.

(2) Witnesses subpoenaed and testifying before any officer of the bureau shall be paid the fees and mileage provided for witnesses in ORS 44.415 (2)[*, which*]**. The** payment shall be made from the fund appropriated for the use of the bureau, and in the manner provided in ORS 651.170 for the payment of other expenses of the bureau.

(3) The Commissioner of the Bureau of Labor and Industries shall employ a deputy commissioner and such other assistants or personnel as may be necessary to carry into effect the powers and duties of the commissioner or of the Bureau of Labor and Industries and may prescribe the duties and responsibilities of such employees. The commissioner may delegate any of the powers of the commissioner or of the bureau to the deputy commissioner and to the other assistants employed under this subsection for the purpose of transacting the business of the commissioner's office or of the bureau. In the absence of the commissioner, the deputy commissioner and the other assistants whom the commissioner employs shall have full authority, under the commissioner's direction, to do and perform any duty [*which*] the law requires the commissioner to perform. However, the commissioner shall be responsible for all acts of the deputy commissioner and of the assistants employed under this subsection.

(4) In accordance with any applicable provisions of ORS chapter 183, the Commissioner of the Bureau of Labor and Industries may adopt such reasonable rules as may be necessary to administer and enforce any statutes over which the commissioner or the Bureau of Labor and Industries has jurisdiction.

(5) The Commissioner of the Bureau of Labor and Industries may conduct and charge and collect fees for public information programs pertaining to any of the statutes over which the commissioner or the Bureau of Labor and Industries has jurisdiction.

NOTE: Modifies syntax in (1), (2) and (3).

SECTION 455. ORS 651.060, as amended by section 305, chapter 794, Oregon Laws 2003, is amended to read:

651.060. (1) The Commissioner of the Bureau of Labor and Industries may issue subpoenas[,] **and** subpoenas duces tecum, administer oaths, obtain evidence and take testimony in all matters relating to the duties required under ORS 279C.800 to 279C.870, 651.030, 651.050, 651.120, 651.170, 652.330, 653.055, 658.405 to 658.503 and 658.705 to 658.850 and wage claims arising under ORS 653.305 to 653.350 and in all contested cases scheduled for hearing by the Bureau of Labor and Industries pursuant to ORS chapter 183. Such testimony shall be taken in some suitable place in the vicinity to which testimony is applicable.

(2) Witnesses subpoenaed and testifying before any officer of the bureau shall be paid the fees and mileage provided for witnesses in ORS 44.415 (2)[*, which*]**. The** payment shall be made from the fund appropriated for the use of the bureau, and in the manner provided in ORS 651.170 for the payment of other expenses of the bureau.

(3) The Commissioner of the Bureau of Labor and Industries shall employ a deputy commissioner and such other assistants or personnel as may be necessary to carry into effect the powers and duties of the commissioner or of the Bureau of Labor and Industries and may prescribe the duties and responsibilities of such employees. The commissioner may delegate any of the powers of the commissioner or of the bureau to the deputy commissioner and to the other assistants employed under this subsection for the purpose of transacting the business of the commissioner's office or of the bureau. In the absence of the commissioner, the deputy commissioner and the other assistants whom the commissioner employs shall have full authority, under the commissioner's direction, to do and perform any duty [*which*] the law requires the commissioner to perform. However, the commissioner shall be responsible for all acts of the deputy commissioner and of the assistants employed under this subsection.

(4) In accordance with any applicable provisions of ORS chapter 183, the Commissioner of the Bureau of Labor and Industries may adopt such reasonable rules as may be necessary to administer and enforce any statutes over which the commissioner or the Bureau of Labor and Industries has jurisdiction.

(5) The Commissioner of the Bureau of Labor and Industries may conduct and charge and collect fees for public information programs pertaining to any of the statutes over which the commissioner or the Bureau of Labor and Industries has jurisdiction.

NOTE: Modifies syntax in (1), (2) and (3).

SECTION 456. ORS 651.110 is amended to read:

651.110. The Bureau of Labor and Industries may assist and cooperate with the [*Wage and Hour and Public Contracts Division of the*] United States Department of Labor [*and the Children's Bureau of the Federal Security Agency*] in the enforcement within this state of the Fair Labor Standards Act of 1938[*, approved June 25, 1938*]. Subject to the regulations of the [*administrator of the Wage and Hour and Public Contracts Division or the chief of the Children's Bureau*] **United States Department of Labor** and the laws of [*the*] **this** state applicable to the receipt and expenditure of moneys, the bureau [*of Labor and Industries*] may be reimbursed by [*said division of*] the United States Department of Labor [*or said bureau of the Federal Security Agency*] for the reasonable cost of such assistance and cooperation. Records of the bureau [*of Labor and Industries*] acquired under this section shall be kept in confidence to the same extent the records of [*said federal agencies*] **the United States Department of Labor** are confidential, except that [*they*] **the records** shall at all times be available to the proper agencies of the United States Government.

NOTE: Corrects references to federal agency; updates word usage to reflect current legislative style.

SECTION 457. ORS 652.210 is amended to read:

652.210. As used in ORS 652.210 to 652.230, unless the context requires otherwise:

[*(1) "Employer" means any person employing one or more employees, including the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter but does not include the federal government.*]

[*(2)*] **(1)** "Employee" means any individual who, otherwise than as a copartner of the employer, as an independent contractor or as a participant in a work training program administered under the state or federal assistance laws, renders personal services wholly or partly in this state to an employer who pays or agrees to pay such individual at a fixed rate. However, [*where*] **when** services are rendered only partly in this state, an individual is not an employee unless the contract of employment of the employee has been entered into, or payments thereunder are ordinarily made or to be made, within this state.

(2) "Employer" means any person employing one or more employees, including the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter. "Employer" does not include the federal government.

[*(3) "Wages" means all compensation for performance of service by an employee for an employer whether paid by the employer or another person, including cash value of all compensation paid in any medium other than cash.*]

[*(4)*] **(3)** "Rate" with reference to wages means the basis of compensation for services by an employee for an employer and includes compensation based on the time spent in the performance of [*such*] **the** services, [*or*] on the number of operations accomplished[,] or on the quantity produced or handled.

[*(5)*] **(4)** "Unpaid wages" means the difference between the wages actually paid to an employee and the wages required under ORS 652.220[,] to be paid to [*such*] **the** employee.

(5) "Wages" means all compensation for performance of service by an employee for an employer, whether paid by the employer or another person, including cash value of all compensation paid in any medium other than cash.

NOTE: Alphabetizes definitions; tweaks word choice and punctuation.

SECTION 458. ORS 653.040 is amended to read:

653.040. The Commissioner of the Bureau of Labor and Industries, in addition to the commissioner's other powers, may:

(1) Investigate and ascertain the wages of persons employed in any occupation or place of employment in the state.

(2) Require from an employer statements, including sworn statements, with respect to wages, hours, names and addresses and such other information pertaining to the employer's employees or their employment as the commissioner considers necessary to carry out ORS 653.010 to 653.261.

(3) Make such rules as the commissioner considers appropriate to carry out the purposes of ORS 653.010 to 653.261, or necessary to prevent the circumvention or evasion of ORS 653.010 to 653.261 and to establish and safeguard the minimum wage rates provided for under ORS 653.010 to 653.261.

[*If any part of this statute is held to be unconstitutional under the state or federal constitution, the remaining parts shall not be affected, and shall remain in full force and effect.*]

NOTE: Deletes unnecessary provision (see 174.040).

SECTION 459. ORS 653.295 is amended to read:

653.295. (1) A noncompetition agreement entered into between an employer and employee is void and [*shall*] **may** not be enforced by any court in this state unless the agreement is entered into upon the:

(a) Initial employment of the employee with the employer; or

(b) Subsequent bona fide advancement of the employee with the employer.

(2) Subsection (1) of this section applies only to noncompetition agreements made in the context of an employment relationship or contract and not otherwise.

(3)(a) Subsection (1)(a) of this section applies only to noncompetition agreements entered into after July 22, 1977.

(b) Subsection (1)(b), subsections (4) and (5) and subsection (6)(a) of this section apply to employment relationships and bonus restriction agreements in effect or entered into after October 15, 1983.

(4) Subsection (1) of this section does not apply to bonus restriction agreements, which are lawful agreements that may be enforced by the courts in this state.

(5) Nothing in this section restricts the right of any person to protect trade secrets or other proprietary information by injunction or any other lawful means under other applicable laws.

(6) As used in this section:

(a) "Bonus restriction agreement" means an agreement, written or oral, express or implied, between an employer and employee under which:

(A) Competition by the employee with the employer is limited or restrained after termination of employment, but the restraint is limited to a period of time, a geographic area and specified activities, all of which are reasonable in relation to the services described in subparagraph (B) of this paragraph;

(B) The services performed by the employee pursuant to the agreement include substantial involvement in management of the employer's business, personal contact with customers, knowledge of customer requirements related to the employer's business or knowledge of trade secrets or other proprietary information of the employer; and

(C) The penalty imposed on the employee for competition against the employer is limited to forfeiture of profit sharing or other bonus compensation that has not yet been paid to the employee.

(b) "Employee" and "employer" have the [*meaning provided for*] **meanings given** those terms in ORS 652.310[*; and*]**.**

(c) "Noncompetition agreement" means an agreement, written or oral, express or implied, between an employer and employee under which the employee agrees that the employee, either alone or as an employee of another person, [*shall*] **will** not compete with the employer in providing products, processes or services[,] that are similar to the employer's products, processes or services for a period of time or within a specified geographic area after termination of employment.

NOTE: Adjusts word choice in (1) lead-in and (6)(b) and (c); corrects punctuation in (6)(b) and (c).

SECTION 460. ORS 654.770 is amended to read:

654.770. [*No later than March 1, 1988,*] The Department of Consumer and Business Services shall develop and make available basic information for agriculture employers to use in informing and training employees. The information shall include, but **need** not be limited to, proper personal hygiene, protective safety equipment, general safety rules, proper work clothing, employee rights with respect to this chapter and common symptoms of hazardous chemical exposure. The basic information shall be developed in a variety of languages including but not limited to English, Spanish, Russian, Thai, Japanese, Chinese, Laotian, Vietnamese, Korean and Cambodian.

NOTE: Deletes obsolete date reference; tweaks syntax.

SECTION 461. ORS 654.780 is amended to read:

654.780. Agriculture employers shall give all employees a copy of the basic information developed by the Department of Consumer and Business Services for the purpose of informing employees pursuant to ORS 654.770. The information shall be provided in the employee's own language if the department has produced it in that language. [*The information shall be provided to persons employed on July 18, 1987, within a reasonable time after the information is made available by the department.*] The information shall be provided to persons [*hired after July 18, 1987,*] at the time of hire [*or, if it has not yet been made available by the department, within a reasonable time thereafter*].

NOTE: Deletes obsolete provisions.

SECTION 462. ORS 657.459 is amended to read:

657.459. (1) For the purpose of computing employer tax rates [*for calendar year 1978 and each year thereafter*]**,** the Director of the Employment Department, or the director's authorized represen-

tative, shall compute a "Fund Adequacy Percentage Ratio." This computation shall be made in September of each year and shall be the ratio of the amount in the Unemployment Compensation Trust Fund, as of August 31 preceding the computation, to a calculated amount of benefits [*which*] **that** would be paid during the following calendar year if high unemployment were to occur. The calculated amount of benefits shall be determined as follows:

(a) Average monthly employment in the calendar year preceding the calculation shall be divided by the average monthly employment in the high benefit cost period with the resulting quotient carried to the fourth decimal [*point*] **place**.

(b) The adjusted average weekly check amount for the calendar year preceding the calculation shall be divided by the average weekly check amount in the high benefit cost period with the resulting quotient carried to the fourth decimal [*point*] **place**.

(c) The amount of benefits paid during the high benefit cost period and attributable to employers subject to the tax shall be multiplied by the quotient determined in paragraph (a) of this subsection. The resulting product shall be multiplied by the quotient determined in paragraph (b) of this subsection. All benefits paid from the Unemployment Compensation Trust Fund attributable to employers subject to the tax, including but not limited to the Oregon share of extended benefits and any special state additional benefits, shall be included in the amount of benefits under this subsection.

(2) The amount in the Unemployment Compensation Trust Fund, as of August 31 preceding the computation, shall be divided by the final product determined in subsection (1)(c) of this section. The quotient obtained shall be expressed as a percentage and is the "Fund Adequacy Percentage Ratio" used to determine the applicable schedule of Table A of ORS 657.462 to be in effect for the succeeding calendar year.

(3) Notwithstanding the provisions of subsection (2) of this section, if the product obtained by multiplying 3.3 times the average monthly employment in the calendar year preceding the calculation times the adjusted average weekly check amount for the calendar year preceding the computation exceeds the amount determined in subsection (1)(c) of this section, such product shall be used in lieu of the amount determined in subsection (1)(c) of this section in the Trust Fund Adequacy Ratio calculation in subsection (2) of this section.

(4) Products obtained in subsections (1) and (3) of this section shall be rounded to the nearest dollar.

NOTE: Deletes obsolete date reference in (1) lead-in; corrects word choice in (1) lead-in, (1)(a) and (1)(b).

SECTION 463. ORS 657.770 is amended to read:

657.770. (1) The Director of the Employment Department may enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both, whereby wages, upon the basis of which an individual may become entitled to benefits under an employment security law of another state or of the federal government, shall be deemed to be wages for insured work for the purpose of determining benefits under this chapter[*; and*]**.** Wages for insured work, on the basis of which an individual may become entitled to benefits under this chapter**,** shall be deemed to be wages on the basis of which unemployment insurance is payable under such law of another state or of the federal government.

(2) No such arrangement shall be entered into unless it contains provision for reimbursement to the fund for such of the benefits paid under this chapter on the basis of such wages and provision for reimbursement from the fund for such benefits paid under such other law on the basis of wages for insured work, as the director finds will be fair and reasonable to all affected interests.

(3) Reimbursements paid from the fund pursuant to this section are deemed to be benefits for the purposes of this chapter[*; except that*]**. However,** no charge shall be made to an employer's account under ORS 657.471 in excess of the maximum benefits payable under ORS 657.150 or when no benefits would have been payable to an individual but for this section, because of the lack of wages for insured work necessary to qualify for benefits.

(4) Notwithstanding the provisions of subsections (1) and (2) of this section, the director shall participate in any arrangements for the payment of compensation on the basis of combining an in-

dividual's wages and employment covered under this chapter with wages and employment covered under the unemployment insurance laws of other states [*which*] **that** are approved by the United States Secretary of Labor in consultation with the state unemployment insurance agencies as reasonably calculated to [*assure*] **ensure** the prompt and full payment of compensation in such situations and [*which*] **that** include provisions for:

(a) Applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment insurance laws[,]**;** and

(b) Avoiding the duplicate use of wages and employment by reason of such combining.

NOTE: Corrects punctuation and word choice in (1), (3) and (4).

SECTION 464. ORS 657.822 is amended to read:

657.822. (1) There is established in the State Treasury, separate and distinct from the General Fund, the Employment Department Special Administrative Fund. [*Such*] **The Employment Department Special Administrative** Fund shall consist of moneys collected or received by the Employment Department [*subsequent to July 1, 1965,*] as follows:

(a) All interest collected under ORS 657.515.

(b) All fines and penalties collected pursuant to this chapter.

(c) All gifts to or interest on or profits earned by the [*said*] **Employment Department** Special Administrative Fund.

(2) The moneys in the Employment Department Special Administrative Fund are continuously appropriated [*only*] to the Employment Department, and may not be transferred or otherwise made available to any other state agency, to pay the expenses of the Secretary of State incurred in performing the audit of the Employment Department and such other expenses as may be included in the biennial budget of the Employment Department and approved by the Legislative Assembly for payment from the Employment Department Special Administrative Fund. On July 1 of every odd-numbered year, any amounts in the [*fund which*] **Employment Department Special Administrative Fund that** have not been appropriated in the biennial budget of the Employment Department approved by the Legislative Assembly shall be transferred to the State Unemployment Compensation Benefit Reserve Fund created by ORS 657.845.

NOTE: Clarifies fund in (1) and (2); deletes obsolete date reference in (1) lead-in; corrects word choice in (2).

SECTION 465. ORS 658.415 is amended to read:

658.415. (1) [*No*] **A** person [*shall*] **may not** act as a farm labor contractor unless the person has first been licensed by the Commissioner of the Bureau of Labor and Industries under ORS 658.405 to 658.503. Any person may file an application for a license to act as a farm labor contractor at any office of the Bureau of Labor and Industries. The application shall be sworn to by the applicant and shall be written on a form prescribed by the commissioner. The form shall include, but not be limited to, questions asking:

(a) The applicant's name, Oregon address and all other temporary and permanent addresses the applicant uses or knows will be used in the future.

(b) Information on all motor vehicles to be used by the applicant in operations as a farm labor contractor including license number and state of licensure, vehicle number and the name and address of vehicle owner for all vehicles used.

(c) Whether or not the applicant was ever denied a license under ORS 658.405 to 658.503 within the preceding three years, or in this or any other jurisdiction had such a license denied, revoked or suspended within the preceding three years.

(d) The names and addresses of all persons financially interested, whether as partners, shareholders, associates or profit-sharers, in the applicant's proposed operations as a farm labor contractor, together with the amount of their respective interests, and whether or not, to the best of the applicant's knowledge, any of these persons was ever denied a license under ORS 658.405 to 658.503 within the preceding three years, or had such a license denied, revoked or suspended within the preceding three years in this or any other jurisdiction.

(2) Each applicant shall furnish satisfactory proof with the application of the existence of a policy of insurance in an amount adequate under rules issued by the commissioner for vehicles to be used to transport workers. For the purpose of this subsection**,** the certificate of an insurance producer licensed in Oregon is satisfactory evidence of adequate insurance.

(3) Each applicant shall submit with the application and shall continually maintain thereafter, until excused, proof of financial ability to promptly pay the wages of employees and other obligations specified in this section. The proof required in this subsection shall be in the form of a corporate surety bond of a company licensed to do such business in Oregon, a cash deposit or a deposit the equivalent of cash. For the purposes of this subsection**,** it shall be deemed sufficient compliance if the farm labor contractor procures a savings account at a bank or savings and loan institution in the name of the commissioner as trustee for the employees of the farm labor contractor and others as their interests may appear and delivers the evidence of the account and the ability to withdraw the funds to the commissioner under the terms of a bond approved by the commissioner. The amount of the bond and the security behind the bond, or the cash deposit, shall be based on the maximum number of employees the contractor employs at any time during the year. The bond or cash deposit shall be:

(a) $10,000 if the contractor employs no more than 20 employees; or

(b) $30,000, or such lesser sum as may be authorized by the commissioner under ORS 658.416, if the contractor employs 21 or more employees.

(4) In the event that a single business entity licensed as a farm labor contractor has more than one natural person who, as an owner or employee of the business entity, engages in activities that require the persons to be licensed individually as farm labor contractors, and each such person engages in such activities solely for that business entity, the commissioner may provide by rule for lower aggregate bonding requirements for the business entity and its owners and employees. If there is an unsatisfied judgment of a court or final decision of an administrative agency against a license applicant, the subject of which is any matter that would be covered by the bond or deposit referred to in subsection (3) of this section, the commissioner [*shall*] **may** not issue a license to the applicant until the judgment or decision is satisfied. As a condition of licensing any such applicant, the commissioner may require the applicant to submit proof of financial ability required by subsection (3) of this section in an amount up to three times that ordinarily required of a license applicant.

(5) All corporate surety bonds filed under this section or ORS 658.419 shall be executed to cover liability for the period for which the license is issued. During the period for which it is executed, no bond may be canceled or otherwise terminated.

(6) Each application must be accompanied by the fee established under ORS 658.413.

(7) Any person who uses the services of a farm labor contractor who has failed to comply with any of the provisions of this section or ORS 658.419 shall:

(a) Be personally and jointly and severally liable to any employee [*so*] **as** far as [*such*] **the** employee has not been paid wages in full for the work done for that person.

(b) Be personally liable for all penalty wages that have occurred under ORS 652.150 for the wages due under this section.

(8) Any person who suffers any loss of wages from the employer of the person or any other loss specified in subsection (16) of this section shall have a right of action in the name of the person against the surety upon the bond or against the deposit with the commissioner. The right of action:

(a) Is assignable and must be included with an assignment of a wage claim, of any other appropriate claim[,] or of a judgment thereon.

(b) [*Shall*] **May** not be included in any suit or action against the farm labor contractor but must be exercised independently after first procuring a judgment or other form of adequate proof of liability established by rule and procedure under subsection (14) of this section establishing the farm labor contractor's liability for the claim.

(9)**(a)** The surety company or the commissioner shall make prompt and periodic payments on the farm labor contractor's liability up to the extent of the total sum of the bond or deposit. [*Payments shall be made in the following manner:*]

[*(a)*] **(b)** Payment shall be made based upon priority of wage claims over advances made by the grower or producer of agricultural commodities or the owner or lessee of land intended to be used for the production of timber, for advances made to or on behalf of the farm labor contractor.

[*(b)*] **(c)** Payment **shall be made** in full of all sums due to each person who presents adequate proof of the claim.

[*(c)*] **(d) Payment shall be made in part** if there are insufficient funds to pay in full the person next entitled to payment in full[*, such person shall be paid in part*].

(10) A person may not bring any suit or action against the surety company or the commissioner on the bond or against the commissioner as the trustee for the beneficiaries of the farm labor contractor under any deposit made pursuant to this section or ORS 658.419 unless the person has first exhausted the procedures contained in subsections (8) and (12) of this section or in ORS 658.419 and contends that the surety company or the commissioner still has funds that are applicable to the person's judgment or acknowledgment.

(11) The commissioner may not be prevented from accepting assignments of wage claims and enforcing liability against the surety on the bond or from applying the deposit to just wage claims filed with the commissioner.

(12) All claims against the bond or deposit shall be unenforceable unless request for payment of a judgment or other form of adequate proof of liability or a notice of the claim has been made by certified mail to the surety or the commissioner within six months from the end of the period for which the bond or deposit was executed and made.

(13) If the commissioner has received no notice as provided in subsection (12) of this section within six months after a farm labor contractor is no longer required to provide and maintain a surety bond or deposit, the commissioner shall terminate and surrender any bond or any deposit under the control of the commissioner to the person who is entitled thereto upon receiving appropriate proof of such entitlement.

(14) The commissioner shall adopt rules reasonably necessary for administration and enforcement of the provisions of this section and ORS 658.419.

(15) Every farm labor contractor required by this section or ORS 658.419 to furnish a surety bond or make a deposit in lieu thereof shall keep conspicuously posted upon the premises where employees working under the contractor are employed a notice, in both English and any other language used by the farm labor contractor to communicate with workers, specifying the contractor's compliance with the requirements of this section and ORS 658.419 and specifying the name and Oregon address of the surety on the bond or a notice that a deposit in lieu of the bond has been made with the commissioner together with the address of the commissioner.

(16) The bond or deposit referred to in subsection (3) of this section shall be payable to the commissioner and shall be conditioned upon:

(a) Payment in full of all sums due on wage claims of employees.

(b) Payment by the farm labor contractor of all sums due to the grower or producer of agricultural commodities or the owner or lessee of land intended to be used for the production of timber for advances made to or on behalf of the farm labor contractor.

(17) No license shall be issued until the applicant executes a written statement that shall be subscribed and sworn to and that shall contain the following declaration:

With regards to any action filed against me concerning my activities as a farm labor contractor, I appoint the Commissioner of the Bureau of Labor and Industries as my lawful agent to accept service of summons when I am not present in the jurisdiction in which such action is commenced or have in any other way become unavailable to accept service.

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(18) A person who cosigns with a farm labor contractor for a bond required by subsection (3) of this section or by ORS 658.419 is not personally or jointly and severally liable for unpaid wages above the amount of the bond solely because the person cosigned for the bond.

(19) The court may award reasonable attorney fees to the prevailing party in any action to enforce the provisions of this section or ORS 658.419.

NOTE: Modifies word choice in (1), (4), (7)(a) and (8)(b); adds punctuation in (2) and (3); eliminates serial comma in (8)(a); restructures (9) to correct read-in problem.

SECTION 466. ORS 658.705 is added to and made a part of ORS 658.715 to 658.850.

NOTE: Adds definition section to pertinent series.

SECTION 467. ORS 659A.003 is amended to read:

659A.003. The purpose of this chapter is to encourage the fullest utilization of **the** available [*manpower*] **workforce** by removing arbitrary standards of race, religion, color, sex, marital status, national origin or age as a barrier to employment of the inhabitants of this state, and to ensure the human dignity of all people within this state and protect their health, safety and morals from the consequences of intergroup hostility, tensions and practices of discrimination of any kind based on race, religion, color, sex, marital status or national origin. To accomplish this purpose, the Legislative Assembly intends by this chapter to provide:

(1) A program of public education calculated to eliminate attitudes upon which practices of discrimination because of race, religion, color, sex, marital status or national origin are based.

(2) An adequate remedy for persons aggrieved by certain acts of discrimination because of race, religion, color, sex, marital status or national origin or unreasonable acts of discrimination in employment based upon age.

(3) An adequate administrative machinery for the orderly resolution of complaints of discrimination through a procedure involving investigation, conference, conciliation and persuasion[*;*]**,** to encourage the use in good faith of such machinery by all parties to a complaint of discrimination[*;*] and to discourage unilateral action [*which*] **that** makes moot the outcome of final administrative or judicial determination on the merits of such a complaint.

NOTE: Eliminates gender-specific term in lead-in; conforms punctuation to legislative style and alters word choice in (3).

SECTION 468. ORS 659A.009 is amended to read:

659A.009. It is declared to be the public policy of Oregon that **the** available [*manpower*] **workforce** should be utilized to the fullest extent possible. To this end**,** the abilities of an individual, and not any arbitrary standards [*which*] **that** discriminate against an individual solely because of age, should be the measure of the individual's fitness and qualification for employment.

NOTE: Eliminates gender-specific term; fiddles with punctuation and word choice.

SECTION 469. ORS 659A.043 is amended to read:

659A.043. (1) A worker who has sustained a compensable injury shall be reinstated by the worker's employer to the worker's former position of employment upon demand for such reinstatement, if the position exists and is available and the worker is not disabled from performing the duties of such position. A worker's former position is ["]available["] even if that position has been filled by a replacement while the injured worker was absent. If the former position is not available, the worker shall be reinstated in any other existing position [*which*] **that** is vacant and suitable. A certificate by the attending physician or a nurse practitioner authorized to provide compensable medical services under ORS 656.245 that the physician or nurse practitioner approves the worker's return to the worker's regular employment or other suitable employment shall be prima facie evidence that the worker is able to perform such duties.

(2) Such right of reemployment shall be subject to the provisions for seniority rights and other employment restrictions contained in a valid collective bargaining agreement between the employer and a representative of the employer's employees.

(3) Notwithstanding subsection (1) of this section:

(a) The right to reinstatement to the worker's former position under this section terminates when whichever of the following events first occurs:

(A) A medical determination by the attending physician or, after an appeal of such determination to a medical arbiter or panel of medical arbiters pursuant to ORS chapter 656, has been made that the worker cannot return to the former position of employment.

(B) The worker is eligible and participates in vocational assistance under ORS 656.340.

(C) The worker accepts suitable employment with another employer after becoming medically stationary.

(D) The worker refuses a bona fide offer from the employer of light duty or modified employment [*which*] **that** is suitable prior to becoming medically stationary.

(E) Seven days **elapse** from the date that the worker is notified by the insurer or self-insured employer by certified mail that the worker's attending physician or a nurse practitioner authorized to provide compensable medical services under ORS 656.245 has released the worker for employment unless the worker requests reinstatement within that time period.

(F) Three years **elapse** from the date of injury.

(b) The right to reinstatement under this section does not apply to:

(A) A worker hired on a temporary basis as a replacement for an injured worker.

(B) A seasonal worker employed to perform less than six months' work in a calendar year.

(C) A worker whose employment at the time of injury resulted from referral from a hiring hall operating pursuant to a collective bargaining agreement.

(D) A worker whose employer employs 20 or fewer workers at the time of the worker's injury and at the time of the worker's demand for reinstatement.

(4) Any violation of this section is an unlawful employment practice.

NOTE: Modifies word choice and strikes errant quote marks in (1) and (3)(a)(D); corrects read-in woes in (3)(a)(E) and (F).

SECTION 470. ORS 659A.043, as amended by section 22, chapter 811, Oregon Laws 2003, is amended to read:

659A.043. (1) A worker who has sustained a compensable injury shall be reinstated by the worker's employer to the worker's former position of employment upon demand for such reinstatement, if the position exists and is available and the worker is not disabled from performing the duties of such position. A worker's former position is ["]available["] even if that position has been filled by a replacement while the injured worker was absent. If the former position is not available, the worker shall be reinstated in any other existing position [*which*] **that** is vacant and suitable. A certificate by the attending physician that the physician approves the worker's return to the worker's regular employment or other suitable employment shall be prima facie evidence that the worker is able to perform such duties.

(2) Such right of reemployment shall be subject to the provisions for seniority rights and other employment restrictions contained in a valid collective bargaining agreement between the employer and a representative of the employer's employees.

(3) Notwithstanding subsection (1) of this section:

(a) The right to reinstatement to the worker's former position under this section terminates when whichever of the following events first occurs:

(A) A medical determination by the attending physician or, after an appeal of such determination to a medical arbiter or panel of medical arbiters pursuant to ORS chapter 656, has been made that the worker cannot return to the former position of employment.

(B) The worker is eligible and participates in vocational assistance under ORS 656.340.

(C) The worker accepts suitable employment with another employer after becoming medically stationary.

(D) The worker refuses a bona fide offer from the employer of light duty or modified employment [*which*] **that** is suitable prior to becoming medically stationary.

(E) Seven days **elapse** from the date that the worker is notified by the insurer or self-insured employer by certified mail that the worker's attending physician has released the worker for employment unless the worker requests reinstatement within that time period.

(F) Three years **elapse** from the date of injury.

(b) The right to reinstatement under this section does not apply to:

(A) A worker hired on a temporary basis as a replacement for an injured worker.

(B) A seasonal worker employed to perform less than six months' work in a calendar year.

(C) A worker whose employment at the time of injury resulted from referral from a hiring hall operating pursuant to a collective bargaining agreement.

(D) A worker whose employer employs 20 or fewer workers at the time of the worker's injury and at the time of the worker's demand for reinstatement.

(4) Any violation of this section is an unlawful employment practice.

NOTE: Modifies word choice and strikes errant quote marks in (1) and (3)(a)(D); corrects read-in woes in (3)(a)(E) and (F).

SECTION 471. ORS 659A.052 is amended to read:

659A.052. (1) For the purpose of administration of ORS 659A.043 and 659A.046:

(a) An injured worker employed at the time of injury by any agency in the legislative department of the government of this state shall have the right to reinstatement or reemployment at any available and suitable position in any agency in the legislative department.

(b) An injured worker employed at the time of injury by any agency in the judicial department of the government of this state shall have the right to reinstatement or reemployment at any available and suitable position in any agency in the judicial department.

(c) An injured worker employed at the time of injury by any agency of the executive or administrative department of the government of this state shall have the right to reinstatement [*as*] **or** reemployment at any available and suitable position in any agency of the executive or administrative department.

(2) Notwithstanding ORS 659A.043 and 659A.046, an injured worker referred to in subsection (1) of this section has preference for entry level and light duty assignments with agencies described in subsection (1) of this section. In accordance with the provisions of ORS chapter 183, any agency referred to in subsection (1) of this section may adopt rules to define entry level and light duty assignments. However, the rulemaking power for all agencies referred to in subsection (1)(c) of this section shall be exercised by the Administrator of the Personnel Division.

(3) In accordance with any applicable provision of ORS chapter 240, the Administrator of the Personnel Division may compel compliance with this section[,] **and** ORS 659A.043 and 659A.046 by any agency referred to in subsection (1)(c) of this section.

NOTE: Corrects word choice in (1)(c) (see (1)(a) and (b)); swaps conjunction for comma in (3).

SECTION 472. ORS 660.126 is amended to read:

660.126. (1) Apprenticeship standards shall contain statements of:

(a) The apprenticeable occupation to be taught and a designation of the geographical area or areas in which the standards shall be applicable;

(b) The qualifications required of apprentice applicants and the minimum eligible starting age, which shall be at least 16 years unless a higher age is required by law;

(c) The outline of work processes in which the apprentice will receive supervised work experience and training on the job, and the allocation of the approximate time to be spent in each major process;

(d) The term required for completion of apprenticeship, which shall be consistent with requirements established by industry practice for the development of requisite skills, but in no event shall be less than 2,000 hours of reasonably continuous work experience;

(e) The approximate number of hours to be spent by the apprentice at work and the approximate number of hours to be spent in related and supplemental instruction;

(f) The minimum numeric ratio of journeymen to apprentices consistent with proper supervision, training, safety and continuity of employment, which shall be specifically and clearly stated as to application in terms of job site, workforce, department or plant;

(g) A probationary period reasonable in relation to the full apprenticeship term, with full credit given for such period toward completion of apprenticeship and with provision that during the probationary period, the apprenticeship agreement may be terminated without cause;

(h) A progressively increasing schedule, showing the percentages of the journeyman hourly wage to be paid the apprentice at each level of apprenticeship achieved;

(i) Such additional provisions as the State Apprenticeship and Training Council may, by rule, deem necessary or advisable to effectuate the policies and duties prescribed and imposed by this chapter; and

(j) The content of related training with training objectives.

(2) Notwithstanding subsection (1) of this section, the council may approve the inclusion of standards of additional provisions, or of provisions [*which*] **that** depart from the requirements of subsection (1) of this section, [*where*] **when** such standards or provisions have been submitted by joint employer and employee groups, or may be part of legitimate bargaining agreements between an employer and employees. The council, in making its decision, shall take into consideration the following factors:

(a) The possibility that the provision might result in curtailment of opportunities for apprentices to receive training or continuity of employment;

(b) The possibility that the provision might result in the diversion of needed qualified applicants for apprenticeship, and particularly of qualified applicants of protected classes, into unskilled or semiskilled jobs for which an adequate supply of labor already exists;

(c) The possibility that the provision might result in disputes among the participants in the programs such as might curtail the cooperation necessary to build an adequate, skilled labor force in the State of Oregon;

(d) The need to safeguard the health, safety, continuity of employment and welfare of the apprentices and to [*insure*] **ensure** the public welfare;

(e) The need to raise the level of skill in each apprenticeable occupation to provide to the public quality goods and services at a fair price and **an** adequate and skilled [*manpower*] **workforce** for the defense of the nation; and

(f) The need for providing training in the licensed occupations for the protection of the apprentices and of the general public.

(3) The council shall adopt rules to allow a local committee to determine the circumstances under which an apprentice, working under ORS 479.510 to 479.945 who has completed 6,500 hours of apprenticeship training, may work without direct supervision during the remainder of the apprenticeship.

NOTE: Fiddles with word choice in (2) lead-in and (2)(d); eliminates gender-specific term in (2)(e).

SECTION 473. ORS 663.140 is amended to read:

663.140. It is an unfair labor practice for a labor organization or its agents to engage in, or to induce or encourage any individual employed by any person to engage in, a strike or a refusal in the course of employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities or to perform any services; or to threaten, coerce or restrain any person, where in either case an object thereof is forcing or requiring:

(1) An employer or self-employed person to join a labor or employer organization or to enter into an agreement [*which*] **that** is prohibited by ORS 663.155; [*or*]

(2) A person to cease using, selling, handling, transporting or otherwise dealing in the products of any other producer, processor or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of employees of the employer unless such labor organization has been certified as the elected representative of such employees. However, nothing in this subsection makes unlawful, where not otherwise unlawful, any primary strike or primary picketing; [*or*]

(3) An employer to recognize or bargain with a particular labor organization as the representative of employees of the employer if another labor organization has been certified as the elected representative of such employees; or

(4) An employer to assign particular work to employees in a particular labor organization or in a particular trade, craft or class rather than to employees in another labor organization or in an-

other trade, craft or class, unless the employer is failing to conform to an order of the Employment Relations Board or certification of the conciliator determining the bargaining representative for employees performing the work.

NOTE: Removes superfluous disjunctives; modifies word choice in (1).

SECTION 474. ORS 671.404 is amended to read:

671.404. Subject to ORS chapter 183, the State Landscape Architect Board may refuse to register any applicant, may refuse to renew the registration of any registered landscape architect or landscape architect in training, or may suspend for a period not exceeding one year or revoke the registration of any registered landscape architect or landscape architect in training if the board finds that the applicant or registrant is a person who:

(1) Has used dishonesty, fraud or deceit in obtaining or attempting to obtain registration under ORS 671.310 to 671.459, including but not limited to dishonesty, fraud or deceit in applying for registration, applying to sit for an examination or passing an examination.

(2) Is impersonating or has attempted to impersonate a registered landscape architect or a former registered landscape architect, or is practicing under an assumed or fictitious name.

(3) [*Is found by the board to have*] **Has** used dishonesty, fraud or deceit or [*to have*] **has** been negligent, in the practice of landscape architecture.

(4) Has affixed the person's signature to plans, reports or other professional documents that have not been prepared by the person or under the person's immediate and responsible direction or has permitted the use of the person's name for the purpose of assisting any individual, not a registered landscape architect, to evade the provisions of ORS 671.310 to 671.459, 671.950 and 671.992.

(5) Has been found to have violated ethical or professional standards by a court or administrative body in another state for committing or omitting acts that, if committed or omitted in this state, would be a violation of ethical or professional standards established pursuant to ORS 671.310 to 671.459. A certified copy of the record of suspension or revocation of the state making the suspension or revocation is conclusive evidence thereof.

(6) Has willfully evaded or attempted to evade a local or state law, ordinance, code or rule, governing the construction of landscapes or other site features.

NOTE: Corrects read-in problem and punctuation in (3).

SECTION 475. ORS 672.002 is amended to read:

672.002. As used in ORS 672.002 to 672.325, unless the context requires otherwise:

(1) "Board" means the State Board of Examiners for Engineering and Land Surveying [*provided by ORS 672.240*].

(2) "Engineer," "licensed engineer," "professional engineer," "registered engineer" or "registered professional engineer" means a person who is registered in this state and holds a valid certificate to practice engineering in this state as provided under ORS 672.002 to 672.325.

(3) "Engineering intern" means a person enrolled by the board as having passed an examination in the fundamental engineering subjects.

(4) "Land surveyor," "surveyor," "licensed surveyor," "professional surveyor," "professional land surveyor," "registered land surveyor" or "registered professional land surveyor" means a person who is registered in this state and holds a valid certificate to practice surveying in this state as provided by ORS 672.002 to 672.325.

(5) "Land surveying intern" means a person enrolled by the board as having passed an examination in the fundamental land surveying subjects.

(6) "Responsible charge" means to have supervision and control of:

(a) The engineering design of works with responsibility for design decisions; or

(b) Land surveying work for the purpose of ensuring conformance to the relevant requirements of law and sound surveying practice.

(7) "Supervision and control" means establishing the nature of, directing and guiding the preparation of, and approving the work product and accepting responsibility that the work product is in conformance with standards of professional practice.

NOTE: Deletes unnecessary verbiage in (1).

SECTION 476. ORS 672.505 is amended to read:

672.505. As used in ORS 672.505 to 672.705, unless the context requires otherwise:

(1) "Administrator" means the office as established by ORS 672.505 to 672.705.

(2) "Board" means State Board of Geologist Examiners.

(3) "Engineering geologist" means a person who applies geologic data, principles[,] and interpretation to naturally occurring materials so that geologic factors affecting planning, design, construction and maintenance of civil engineering works are properly recognized and utilized.

(4) "Geologist" means a person engaged in the practice of geology.

(5) "Geologist in training" means a person certified by the board as having passed an examination in the geologic subjects and having adequate academic training.

(6) "Geology" refers to**:**

(a) That science [*which*] **that** treats of the earth in general;

(b) Investigation of the earth's crust and the rocks and other materials [*which*] **that** compose it; and

(c) The applied science of utilizing knowledge of the earth and its constituent rocks, minerals, liquids, gases[,] and other materials for the benefit of humanity.

(7) "Public practice of geology" means the performance for another of geological service or work, such as consultation, investigation, surveys, evaluation, planning, mapping and inspection of geological work, that is related to public welfare or safeguarding of life, health, property and the environment, except as specifically exempted by ORS 672.505 to 672.705.

(8) "Qualified nonregistered geologist" means a person who possesses all the qualifications specified in ORS 672.505 to 672.705 for registration except that the person is not registered in this state.

(9) "Registered certified specialty geologist" means a person who is certified as a specialty geologist under the provisions of ORS 672.505 to 672.705.

(10) "Registered geologist" means a person who is registered as a geologist under the provisions of ORS 672.505 to 672.705.

(11) "Responsible charge of work" means the independent control and direction of geological work by the use of initiative, skill[,] and independent judgment, or the supervision of such work.

(12) "Subordinate" means any person who assists a registered geologist in the practice of geology without assuming the responsible charge of work.

NOTE: Strikes serial commas in (3), (6)(c) and (11); restructures (6) to conform to legislative style; tinkers with word choice in (6).

SECTION 477. ORS 675.571 is amended to read:

675.571. (1) The State Board of Clinical Social Workers shall collect fees for application for certification, annual renewal of certification, examination, reexamination, licensure[,] **and** annual renewal of licensure and delinquent renewal fees.

(2) Such fees are to be used to defray the expenses of the board and are continuously appropriated for that purpose.

(3) Subject to prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fees and charges, the fees and charges established under this section [*shall*] **may** not exceed the cost of administering the regulatory program [*of the board*] pertaining to the purpose for which the fee or charge is established, as authorized by the Legislative Assembly within the budget of the State Board of Clinical Social Workers, as the budget may be modified by the Emergency Board.

(4) The **State** Board **of Clinical Social Workers** may impose a delinquent renewal fee for certificates and licenses renewed after January 1 but before February 1. Applications received on or after February 1 are subject to an additional delinquent fee. However, the board [*shall*] **may** not treat any certificate or license as lapsed unless it is not renewed by March 31.

(5) All fees collected under this section are nonrefundable.

NOTE: Tweaks syntax in (1), (3) and (4); clarifies agency in (4).

SECTION 478. ORS 700.053 is amended to read:

700.053. (1) An applicant for registration as a waste water specialist shall submit an application to the Health Licensing Office in the manner required by the Environmental Health Registration Board. The application shall be on a form approved by the agency, include proof satisfactory to the board that the applicant meets the education and experience requirements under subsection (3) of this section and include payment of required fees.

(2) [*Upon receipt of an application for registration complying*] **The agency shall issue a registration as a waste water specialist to an applicant whose application complies** with subsection (1) of this section[,] **and who** successfully [*completing*] **completes** the examination required under subsection (5) of this section and [*passing*] **passes** the examination required under subsection (6) of this section[*, the agency shall issue the applicant registration as a waste water specialist*].

(3) An applicant for registration as a waste water specialist is required to have:

(a) A bachelor's degree from an accredited college or university, including at least 45 quarter hours or the equivalent in soil science courses and two years of experience in waste water treatment, disposal and reuse within this state supervised by a registered waste water specialist or by an equally qualified person as determined by the board;

(b) A graduate degree in soil science from an accredited college or university and one year of experience in waste water treatment, disposal and reuse within this state supervised by a registered waste water specialist or by an equally qualified person as determined by the board; or

(c) A graduate degree in soil science from an accredited college or university and **to** currently **be** certified as a professional soil scientist.

(4) Soil science schooling obtained while serving in the United States Public Health Service or a branch of the Armed Forces of the United States may be credited toward the soil science course requirement under subsection (3)(a) of this section. The board may use any system it considers reliable in assigning credit for relevant schooling under this subsection, including but not limited to assigning credit in conformance with the "Guide to Evaluation of Educational Experience in the Armed Services" published by the American Council on Education.

(5) The board may, at its discretion, conduct an examination of candidates for registration as waste water specialists. The examination may be on any matter pertaining to the fitness of the applicant to be registered as a waste water specialist, but [*shall*] **may** not duplicate matters covered on the examination required under subsection (6) of this section.

(6) Every applicant for registration as a waste water specialist[,] shall be given a written or practical examination prepared by the board and designed to test the technical competence of the applicant in all major areas of waste water sanitation.

NOTE: Corrects syntax in (2), (3)(c), (5) and (6).

SECTION 479. ORS 701.240 is amended to read:

701.240. (1) The Construction Contractors Board shall supply the Department of Revenue and the Employment Department with a partial or complete list of licensees as deemed necessary by the board.

(2) The lists required by subsection (1) of this section shall contain the name, address, Social Security or federal employer identification number of each licensee or such other information as the [*department or division*] **departments** may by rule require.

NOTE: Reflects statutory name change from 1993.

SECTION 480. ORS 701.410 is amended to read:

701.410. As used in ORS 279.400, 279.435, 701.410, 701.420, 701.430, 701.435 and 701.440, unless the context otherwise requires:

(1) "Construction" includes:

(a) Excavating, landscaping, [*demolition and detachment of*] **demolishing and detaching** existing structures, leveling, filling in and **doing** other preparation of land for the making and placement of **a** building, structure or superstructure;

(b) [*Creation*] **Creating** or making [*of*] a building, structure or superstructure; and

(c) [*Alteration, partial construction and repairs done*] **Altering, partially constructing and doing repairs** in and upon a building, structure or superstructure.

(2) "Contractor" includes a person who contracts with an owner on predetermined terms to be responsible for the performance of all or part of a job of construction in accordance with established specifications or plans, retaining control of means, method and manner of accomplishing the desired result.

(3) "Owner" includes a person who is or claims to be the owner in fee or a lesser estate of the land, building, structure or superstructure on which construction is performed and who enters into an agreement with a contractor for the construction.

(4) "Retainage" means the difference between the amount earned by a contractor or subcontractor under a construction contract and the amount paid on the contract by the owner or, in the case of a subcontractor, by a contractor or another subcontractor.

(5) "Subcontractor" includes a person who contracts with a contractor or another subcontractor on predetermined terms to be responsible for the performance of all or part of a job of construction in accordance with established specifications or plans.

NOTE: Tweaks syntax in (1).

SECTION 481. ORS 701.410, as amended by section 319, chapter 794, Oregon Laws 2003, is amended to read:

701.410. (1) As used in ORS 279C.555, 279C.570, 701.410, 701.420, 701.430, 701.435 and 701.440, unless the context otherwise requires:

(a) "Construction" includes:

(A) Excavating, landscaping, [*demolition and detachment of*] **demolishing and detaching** existing structures, leveling, filling in and **doing** other preparation of land for the making and placement of **a** building, structure or superstructure;

(B) [*Creation*] **Creating** or making [*of*] a building, structure or superstructure; and

(C) [*Alteration, partial construction and repairs done*] **Altering, partially constructing and doing repairs** in and upon a building, structure or superstructure.

(b) "Contractor" includes a person who contracts with an owner on predetermined terms to be responsible for the performance of all or part of a job of construction in accordance with established specifications or plans, retaining control of means, method and manner of accomplishing the desired result.

(c) "Owner" includes a person who is or claims to be the owner in fee or a lesser estate of the land, building, structure or superstructure on which construction is performed and who enters into an agreement with a contractor for the construction.

(d) "Subcontractor" includes a person who contracts with a contractor or another subcontractor on predetermined terms to be responsible for the performance of all or part of a job of construction in accordance with established specifications or plans.

(2) As used in ORS 701.410, 701.420, 701.430, 701.435 and 701.440, "retainage" means the difference between the amount earned by a contractor or subcontractor under a construction contract and the amount paid on the contract by the owner or, in the case of a subcontractor, by a contractor or another subcontractor.

NOTE: Tweaks syntax in (1)(a).

SECTION 482. ORS 703.411 is amended to read:

703.411. ORS 703.401 to 703.490, 703.993 and 703.995 do not apply to:

(1) A person employed exclusively by one employer in connection with the affairs of that employer only;

(2) An officer or employee of the United States, or of this state, or a political subdivision of either, while the officer or employee is engaged in the performance of official duties;

(3) A person acting as a private security officer as defined in ORS 181.870;

(4) A person who is employed full-time as a peace officer, as defined in ORS 161.015, who receives compensation for private employment as an investigator, provided that services are performed for no more than one person or one client;

(5) A person that provides secured transportation and protection, from one place or point to another place or point, of money, currency, coins, bullion, securities, bonds, jewelry or other valuables;

(6) A person that places, leases, rents or sells an animal for the purpose of protecting property, or any person that is contracted to train an animal for the purpose of protecting property;

(7) A person engaged in the business of obtaining and furnishing information regarding the financial rating of persons;

(8) An attorney admitted to practice law in this state performing [*his or her*] **the attorney's** duties as an attorney;

(9) A legal assistant or paralegal engaged in activity for which the person is employed by an attorney admitted to practice law in this state;

(10) Insurers, insurance adjusters and insurance producers licensed in this state and performing duties in connection with insurance transacted by them;

(11) Any secured creditor engaged in the repossession of the creditor's collateral and any lessor engaged in the repossession of leased property in which it claims an interest;

(12) An employee of a cattle association who is engaged in inspection of brands of livestock under the authority granted to that cattle association by the Packers and Stockyards Division of the United States Department of Agriculture;

(13) Common carriers by rail engaged in interstate commerce and regulated by state and federal authorities and transporting commodities essential to the national defense or to the general welfare and safety of the community;

(14) Any news media and the employees thereof when engaged in obtaining information for the purpose of disseminating news to the public;

(15) A legal process service company attempting to serve legal process;

(16) A landlord or an agent of a landlord performing duties in connection with rental property transactions; or

(17) An engineer or employee of an engineer while the engineer or employee is performing duties as an engineer or on behalf of an engineer. As used in this subsection, "engineer" has the meaning given that term in ORS 672.002.

NOTE: Adjusts syntax to conform to legislative style in (8).

SECTION 483. ORS 704.040 is amended to read:

704.040. (1) The Legislative Assembly finds that violation of fire prevention, wildlife, hunting, angling, trapping or commercial fishing laws is directly related to the fitness required for registration as an outfitter and guide.

(2) When any person is convicted of any violation of ORS 704.020 or 704.030 or any rule promulgated pursuant to ORS 704.500, [*or pleads nolo contendere to any such offense,*] the court having jurisdiction of the offense may order the State Marine Board to revoke the certificate of registration issued to that person pursuant to ORS 704.020.

(3) When a court orders revocation of a certificate of registration pursuant to this section, the court shall take up the certificate of registration and forward it with a copy of the revocation order to the board. Upon receipt thereof, the board shall cause revocation of the certificate of registration in accordance with the court order.

(4) A person who has had a certificate of registration revoked pursuant to this section is ineligible to register under ORS 704.020 for a period of 24 months from the date the court ordered the revocation.

(5) The board may reprimand an outfitter and guide or suspend, revoke or deny for a period of up to 24 months the registration of an outfitter and guide for **any of the following**:

(a) Any serious or repeated violation of this chapter or ORS chapter 477, 496, 497, 498, 501, 506, 508, 509 or 511 or any rule adopted pursuant thereto[*;*]**.**

(b) Any serious or repeated violation of the fish and wildlife laws or regulations of the federal government or of another state for committing or omitting acts [*which*] **that**, if committed or omitted in this state, would be a violation of ethical or professional standards established pursuant to this

chapter. A certified copy of the record of suspension or revocation of the state making such suspension or revocation is conclusive evidence thereof[*;*]**.**

(c) Having an outfitter and guide registration, license, permit or certificate suspended, revoked, canceled or denied by another state or by an agency of the United States for committing or omitting acts [*which*] **that**, if committed or omitted in this state, would be a violation of ethical or professional standards established pursuant to this chapter. A certified copy of the record of suspension or revocation of the state making such suspension or revocation is conclusive evidence thereof[*;*]**.**

(d) Having a United States Coast Guard vessel operator license revoked, suspended or canceled by the United States Coast Guard for committing or omitting acts that if committed or omitted in this state would be a violation of standards established pursuant to this chapter. A certified copy of the record of revocation, suspension or cancellation from the United States Coast Guard is conclusive evidence thereof[*; or*]**.**

(e) Engaging in fraudulent, untruthful or seriously misleading advertising in the conduct of the outfitting and guiding services.

(6) The board shall adopt rules to implement subsection (5) of this section, including rules that describe conduct that is a serious or repeated violation of a law, rule or regulation.

NOTE: Eliminates superfluous thought in (2); tweaks punctuation and word usage in (5).

SECTION 484. ORS 711.145 is amended to read:

711.145. (1) In a merger involving an Oregon stock bank:

(a) If the resulting insured stock institution is an Oregon stock bank, the merger shall, unless a later date is specified in the plan of merger, become effective upon the filing with the Director of the Department of Consumer and Business Services of the approved plan of merger, copies of the resolutions of the stockholders of each party to the merger**,** [*(*]if shareholder approval is required under law applicable to such merging insured stock institution[*)*]**,** and evidence satisfactory to the director that all federal regulatory requirements, if any, have been satisfied. The charters of each Oregon stock bank that is a party to a merger, unless it is the resulting insured stock institution, shall terminate when the merger becomes effective.

(b) If the insured stock institution from a merger is an insured stock institution other than an Oregon stock bank, the effective date and time of the merger shall be determined under the laws governing the resulting insured stock institution. The merger will be effective as to each Oregon stock bank that is a party to the merger if copies of the resolutions of the directors and shareholders of the Oregon stock bank approving the plan of merger and evidence of the effective date and time of the merger are filed with the director.

(c) If the resulting insured stock institution is an Oregon stock bank, the director shall promptly issue to the Oregon stock bank a certificate of merger specifying the names of the parties to the merger, the name of the resulting Oregon stock bank and the date on which the merger became effective as prescribed in this section. The certificate shall be prima facie evidence of the merger and of the correctness of all proceedings and may be recorded in any office for the recording of deeds to evidence the new name in which the property of the merging insured stock institutions is held.

(2) In a share exchange involving an Oregon stock bank:

(a) If the stock of an Oregon stock bank is to be acquired by a company organized under the laws of this state, the share exchange shall, unless a later date is specified in the plan of share exchange, become effective upon the filing with the director **of** the approved plan of share exchange, copies of the resolutions of the stockholders of the acquired Oregon stock bank, and evidence satisfactory to the director that all federal regulatory requirements, if any, have been satisfied.

(b) If the stock of the Oregon stock bank is to be acquired by a company organized under the laws of a state other than Oregon, the effective date and time of the share exchange shall be determined under the laws governing such company. The share exchange will be effective as to the acquired Oregon stock bank if copies of the resolutions of the directors and shareholders of the Oregon stock bank approving the share exchange and evidence of the effective date and time of the share exchange are filed with the director.

NOTE: Conforms punctuation in (1)(a) to legislative style; supplies missing preposition in (2)(a).

SECTION 485. ORS 731.042 is amended to read:

731.042. (1) An exempt insurer who holds a certificate of exemption issued by the Director of the Department of Consumer and Business Services before January 1, 2003, may continue transacting insurance.

(2) In order to continue a certificate of exemption, [*a person*] **an exempt insurer** to whom subsection (1) of this section applies must file its annual statement and pay the fees established by the director by March 1 of each year.

(3) An exempt insurer shall be subject to ORS 731.296 to 731.316, 731.414, 731.418, 731.574, 731.988, 731.992, 733.010 to 733.115, 733.140 to 733.210, 743.703, 746.075 and 746.110.

NOTE: Modifies word choice for consistency.

SECTION 486. ORS 731.486 is amended to read:

731.486. (1) The exemption in ORS 731.146 (2)(b) does not apply to an insurer that offers coverage under a group health insurance policy or a group life insurance policy in this state unless the Director of the Department of Consumer and Business Services determines that the exemption applies.

(2) The insurer shall submit evidence to the director that the exemption applies. When a master policy is delivered or issued for delivery outside this state to trustees of a fund for two or more employers, for one or more labor unions, for one or more employers and one or more labor unions or for an association, the insurer shall also submit evidence showing compliance with:

(a) ORS 743.526, for a policy of group health insurance; or

(b) ORS 743.354, for a policy of group life insurance.

(3) The director shall review the evidence submitted and may request additional evidence as needed.

(4) An insurer shall submit to the director any changes in the evidence submitted under subsection (2) of this section.

(5) The director may order an insurer to cease offering a policy or coverage under a policy if the director determines that the exemption under ORS 731.146 (2)(b) is no longer satisfied.

(6) Coverage under a master group life or health insurance policy delivered or issued for delivery outside this state that does not qualify for the exemption in ORS 731.146 (2)(b) may be offered in this state if the director determines that the state in which the policy was delivered or issued for delivery has requirements that are substantially similar to those established under ORS 743.360 or 743.522 [*(5)*] **(2)** and that the policy satisfies those requirements.

(7) This section does not apply to any master policy issued to a multistate employer or labor union.

(8) The director may adopt rules to carry out this section.

NOTE: Adjusts for renumbering in (6); see section 492 (amending 743.522).

SECTION 487. ORS 733.140 is amended to read:

733.140. (1) The Director of the Department of Consumer and Business Services shall disallow as an asset or as a credit against liabilities any reinsurance found by the director after a hearing thereon to have been arranged for the purpose principally of deception as to the ceding insurer's financial condition as of the date of any financial statement of the insurer. Without limiting the general purport of the foregoing provision, reinsurance of any substantial part of the insurer's outstanding risks contracted for in fact within four months prior to the date of any such financial statement and canceled in fact within four months after the date of such statement, or reinsurance under which the reinsurer bears no substantial insurance risk or substantial risk of net loss to itself, shall prima facie be deemed to have been arranged for the purpose principally of deception.

(2) The director shall disallow as an asset any deposit, funds or other assets of the insurer found by the director after a hearing thereon:

(a) Not to be in good faith the property of the insurer[*, and*]**;**

(b) Not freely subject to withdrawal or liquidation by the insurer at any time for the payment or discharge of claims or other obligations arising under its policies[*,*]**;** and

(c) To be resulting from arrangements made principally for the purpose of deception as to the insurer's financial condition as of the date of any financial statement of the insurer.

NOTE: Updates format in (2) to conform to current legislative style.

SECTION 488. ORS 733.740 is amended to read:

733.740. As to each investment, an insurer shall make a written record in permanent form, signed by a person authorized by the board of directors or by a committee thereof charged with the duty of investing the funds. The record shall show the authorization and approval of the investment and in addition shall contain:

(1) In the case of mortgage loans:

(a) The name of the borrower;

(b) The location and legal description of the property;

(c) A physical description and the appraised value of the security as determined by a competent and qualified appraiser; **and**

(d) The amount of the loan, rate of interest and terms of repayment.

(2) In the case of obligations:

(a) The name of the obligor;

(b) A description of the security and record of earnings;

(c) The amount invested and the rate of interest or dividend; **and**

(d) The maturity and yield based upon the purchase price.

(3) In the case of corporate stocks:

(a) The name of the issuing corporation;

(b) The record of earnings and of dividends paid for the preceding three years for preferred stock and for the preceding five years for common stock;

(c) A summary of the financial statement of the corporation as of the end of the preceding fiscal year;

(d) The exchange, if any, on which the stock is listed; **and**

(e) The amount invested and the number of shares acquired and held.

(4) In the case of real estate, leaseholds or vendors' interests under contracts of sale therein:

(a) The location and legal description of the property;

(b) A physical description and the appraised value of the property and interest therein;

(c) The purchase price and terms;

(d) The amount of any lien known to be against the property;

(e) If of a leasehold, the terms of the outstanding lease; **and**

(f) If a vendor's interest under a contract of sale, the terms and status of payments under the contract.

(5) In the case of all investments:

(a) The amount of any expenses and commissions incurred on account of the investment or loan and by whom and to whom payable if not covered by contracts with mortgage loan representatives or correspondents [*which*] **that** are part of the insurer's records; **and**

(b) The name of any director, trustee or officer of the insurer, having a direct, indirect[,] or contingent interest in the loan, security or property, or who would derive, directly or indirectly, any benefit therefrom, and the nature of such interest or benefit.

NOTE: Updates format to conform to current legislative style; tweaks word choice and punctuation in (5)(a) and (b).

SECTION 489. ORS 735.645 is amended to read:

735.645. [*On and after the date the pool becomes operational,*] Every insurer shall include a notice of the existence of the Oregon Medical Insurance Pool in any adverse underwriting decision on individual medical insurance, as defined in ORS 735.615 (1)(a), for reasons of the health of the applicant.

NOTE: Deletes obsolete date reference.

SECTION 490. ORS 742.504 is amended to read:

742.504. Every policy required to provide the coverage specified in ORS 742.502 shall provide uninsured motorist coverage which in each instance is no less favorable in any respect to the insured or the beneficiary than if the following provisions were set forth in the policy. However, nothing contained in this section shall require the insurer to reproduce in such policy the particular language of any of the following provisions:

(1)(a) The insurer will pay all sums which the insured, the heirs or the legal representative of the insured shall be legally entitled to recover as general and special damages from the owner or operator of an uninsured vehicle because of bodily injury sustained by the insured caused by accident and arising out of the ownership, maintenance or use of such uninsured vehicle. Determination as to whether the insured, the insured's heirs or the insured's legal representative is legally entitled to recover such damages, and if so, the amount thereof, shall be made by agreement between the insured and the insurer, or, in the event of disagreement, may be determined by arbitration as provided in subsection (10) of this section.

(b) No judgment against any person or organization alleged to be legally responsible for bodily injury, except for proceedings instituted against the insurer as provided in this policy, shall be conclusive, as between the insured and the insurer, on the issues of liability of such person or organization or of the amount of damages to which the insured is legally entitled.

(2) As used in this policy:

(a) "Insured," when unqualified, means when applied to uninsured motorist coverage:

(A) The named insured as stated in the policy and any person designated as named insured in the schedule and, while residents of the same household, the spouse of any such named insured and relatives of either; provided, neither such relative nor spouse is the owner of a vehicle not described in the policy; and provided further, if the named insured as stated in the policy is other than an individual or husband and wife who are residents of the same household, the named insured shall be only a person so designated in the schedule;

(B) Any child residing in the household of the named insured if the insured has performed the duties of a parent to the child by rearing the child as the insured's own although the child is not related to the insured by blood, marriage or adoption; and

(C) Any other person while occupying an insured vehicle provided the actual use thereof is with the permission of the named insured.

(b) "Insured vehicle," except as provided in paragraph (c) of this provision, means:

(A) The vehicle described in the policy or a newly acquired or substitute vehicle, as each of those terms is defined in the public liability coverage of the policy, insured under the public liability provisions of the policy; or

(B) A nonowned vehicle operated by the named insured or spouse if a resident of the same household; provided the actual use thereof is with the permission of the owner of such vehicle and such vehicle is not owned by nor furnished for the regular or frequent use of the insured or any member of the same household.

(c) "Insured vehicle" does not include a trailer of any type unless such trailer is a described vehicle in the policy.

(d) "Uninsured vehicle," except as provided in paragraph (e) of this provision, means:

(A) A vehicle with respect to the ownership, maintenance or use of which there is no collectible automobile bodily injury liability insurance, in at least the amounts or limits prescribed for bodily injury or death under ORS 806.070 applicable at the time of the accident with respect to any person or organization legally responsible for the use of such vehicle, or with respect to which there is such collectible bodily injury liability insurance applicable at the time of the accident but the insurance company writing the same denies coverage thereunder or, within two years of the date of the accident, such company writing the same becomes voluntarily or involuntarily declared bankrupt or for which a receiver is appointed or becomes insolvent. It shall be a disputable presumption that a vehicle is uninsured in the event the insured and the insurer, after reasonable efforts, fail to discover within 90 days from the date of the accident, the existence of a valid and collectible automobile bodily injury liability insurance applicable at the time of the accident.

(B) A hit-and-run vehicle as defined in paragraph (f) of this provision.

(C) A phantom vehicle as defined in paragraph (g) of this provision.

(e) "Uninsured vehicle" does not include:

(A) An insured vehicle;

(B) A vehicle which is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;

(C) A vehicle which is owned by the United States of America, Canada, a state, a political subdivision of any such government or an agency of any of the foregoing;

(D) A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle;

(E) A farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads; or

(F) A vehicle owned by or furnished for the regular or frequent use of the insured or any member of the household of the insured.

(f) "Hit-and-run vehicle" means a vehicle which causes bodily injury to an insured arising out of physical contact of such vehicle with the insured or with a vehicle which the insured is occupying at the time of the accident, provided:

(A) There cannot be ascertained the identity of either the operator or the owner of such hit-and-run vehicle;

(B) The insured or someone on behalf of the insured shall have reported the accident within 72 hours to a police, peace or judicial officer, to the Department of Transportation of the State of Oregon or to the equivalent department in the state where the accident occurred, and shall have filed with the insurer within 30 days thereafter a statement under oath that the insured or the legal representative of the insured has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof; and

(C) At the insurer's request, the insured or the legal representative of the insured makes available for inspection the vehicle which the insured was occupying at the time of the accident.

(g) "Phantom vehicle" means a vehicle which causes bodily injury to an insured arising out of a motor vehicle accident which is caused by an automobile which has no physical contact with the insured or the vehicle which the insured is occupying at the time of the accident, provided:

(A) There cannot be ascertained the identity of either the operator or the owner of such phantom vehicle;

(B) The facts of such accident can be corroborated by competent evidence other than the testimony of the insured or any person having an uninsured motorist claim resulting from the accident; and

(C) The insured or someone on behalf of the insured shall have reported the accident within 72 hours to a police, peace or judicial officer, to the Department of Transportation of the State of Oregon or to the equivalent department in the state where the accident occurred, and shall have filed with the insurer within 30 days thereafter a statement under oath that the insured or the legal representative of the insured has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof.

(h) "Bodily injury" means bodily injury, sickness or disease, including death resulting therefrom.

(i) "Occupying" means in or upon or entering into or alighting from.

(j) "State" includes the District of Columbia, a territory or possession of the United States and a province of Canada.

(k) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, but does not include devices moved by human power or used exclusively upon stationary rails or tracks.

(3) This coverage applies only to accidents which occur on and after the effective date of the policy, during the policy period and within the United States of America, its territories or possessions, or Canada.

(4)(a) This coverage does not apply to bodily injury of an insured with respect to which such insured or the legal representative of the insured shall, without the written consent of the insurer, make any settlement with or prosecute to judgment any action against any person or organization who may be legally liable therefor.

(b) This coverage does not apply to bodily injury to an insured while occupying a vehicle (other than an insured vehicle) owned by, or furnished for the regular use of, the named insured or any relative resident in the same household, or through being struck by such a vehicle.

(c) This coverage does not apply so as to inure directly or indirectly to the benefit of any workers′ compensation carrier, any person or organization qualifying as a self-insurer under any workers′ compensation or disability benefits law or any similar law or the State Accident Insurance Fund Corporation.

(d) This coverage does not apply with respect to underinsured motorist benefits unless:

(A) The limits of liability under any bodily injury liability [*bonds or policies*] **insurance** applicable at the time of the accident regarding the injured person have been exhausted by payment of judgments or settlements to the injured person or other injured persons;

(B) The described limits have been offered in settlement, the insurer has refused consent under paragraph (a) of this subsection and the insured protects the insurer′s right of subrogation to the claim against the tortfeasor;

(C) The insured gives credit to the insurer for the unrealized portion of the described liability limits as if the full limits had been received if less than the described limits have been offered in settlement, and the insurer has consented under paragraph (a) of this subsection; or

(D) The insured gives credit to the insurer for the unrealized portion of the described liability limits as if the full limits had been received if less than the described limits have been offered in settlement and, if the insurer has refused consent under paragraph (a) of this subsection, the insured protects the insurer′s right of subrogation to the claim against the tortfeasor.

(e) When seeking consent under paragraph (a) or (d) of this subsection, the insured shall allow the insurer a reasonable time in which to collect and evaluate information related to consent to the proposed offer of settlement. The insured shall provide promptly to the insurer any information that is reasonably requested by the insurer and that is within the custody and control of the insured. Consent will be presumed to be given if the insurer does not respond within a reasonable time. For purposes of this paragraph, a "reasonable time" is no more than 30 days from the insurer′s receipt of a written request for consent, unless the insured and the insurer agree otherwise.

(5)(a) As soon as practicable, the insured or other person making claim shall give to the insurer written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment and other details entering into the determination of the amount payable hereunder. The insured and every other person making claim hereunder shall submit to examinations under oath by any person named by the insurer and subscribe the same, as often as may reasonably be required. Proof of claim shall be made upon forms furnished by the insurer unless the insurer shall have failed to furnish such forms within 15 days after receiving notice of claim.

(b) Upon reasonable request of and at the expense of the insurer, the injured person shall submit to physical examinations by physicians selected by the insurer and shall, upon each request from the insurer, execute authorization to enable the insurer to obtain medical reports and copies of records.

(6) If, before the insurer makes payment of loss hereunder, the insured or the legal representative of the insured shall institute any legal action for bodily injury against any person or organization legally responsible for the use of a vehicle involved in the accident, a copy of the summons and complaint or other process served in connection with such legal action shall be forwarded immediately to the insurer by the insured or the legal representative of the insured.

(7)(a) The limit of liability stated in the declarations as applicable to "each person" is the limit of the insurer′s liability for all damages because of bodily injury sustained by one person as the

result of any one accident and, subject to the above provision respecting each person, the limit of liability stated in the declarations as applicable to "each accident" is the total limit of the company's liability for all damages because of bodily injury sustained by two or more persons as the result of any one accident.

(b) Any payment made under this coverage to or for an insured shall be applied in reduction of any amount which the insured may be entitled to recover from any person who is an insured under the bodily injury liability coverage of this policy.

(c) Any amount payable under the terms of this coverage because of bodily injury sustained in an accident by a person who is an insured under this coverage shall be reduced by:

(A) All sums paid on account of such bodily injury by or on behalf of the owner or operator of the uninsured vehicle and by or on behalf of any other person or organization jointly or severally liable together with such owner or operator for such bodily injury including all sums paid under the bodily injury liability coverage of the policy; and

(B) The amount paid and the present value of all amounts payable on account of such bodily injury under any workers' compensation law, disability benefits law or any similar law.

(d) Any amount payable under the terms of this coverage because of bodily injury sustained in an accident by a person who is an insured under this coverage shall be reduced by the credit given to the insurer pursuant to subsection (4)(d)(C) or (D) of this section.

(e) The amount payable under the terms of this coverage shall not be reduced by the amount of liability proceeds offered, described in subsection (4)(d)(B) or (D) of this section, that has not been paid to the injured person. If liability proceeds have been offered and not paid, the amount payable under the terms of the coverage shall include the amount of liability limits offered but not accepted due to the insurer's refusal to consent. The insured shall cooperate so as to permit the insurer to proceed by subrogation or assignment to prosecute the claim against the uninsured motorist.

(8) No action shall lie against the insurer unless, as a condition precedent thereto, the insured or the legal representative of the insured has fully complied with all the terms of this policy.

(9)(a) Except as provided in paragraph (c) of this subsection, with respect to bodily injury to an insured while occupying a vehicle not owned by a named insured under this coverage, the insurance under this coverage shall apply only as excess insurance over any other insurance available to such occupant which is similar to this coverage, and this insurance shall then apply only in the amount by which the applicable limit of liability of this coverage exceeds the sum of the applicable limits of liability of all such other insurance.

(b) With respect to bodily injury to an insured while occupying or through being struck by an uninsured vehicle, if such insured is an insured under other insurance available to the insured which is similar to this coverage, then the damages shall be deemed not to exceed the higher of the applicable limits of liability of this insurance or such other insurance, and the insurer shall not be liable under this coverage for a greater proportion of the damages than the applicable limit of liability of this coverage bears to the sum of the applicable limits of liability of this insurance and such other insurance.

(c) With respect to bodily injury to an insured while occupying any motor vehicle used as a public or livery conveyance, the insurance under this coverage shall apply only as excess insurance over any other insurance available to the insured which is similar to this coverage, and this insurance shall then apply only in the amount by which the applicable limit of liability of this coverage exceeds the sum of the applicable limits of liability of all such other insurance.

(10) If any person making claim hereunder and the insurer do not agree that such person is legally entitled to recover damages from the owner or operator of an uninsured vehicle because of bodily injury to the insured, or do not agree as to the amount of payment which may be owing under this coverage, then, in the event the insured and the insurer elect by mutual agreement at the time of the dispute to settle the matter by arbitration, the arbitration shall take place under the arbitration laws of the State of Oregon or, if the parties agree, according to any other procedure. Any judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof provided, however, the costs to the insured of the arbitration proceeding shall not ex-

ceed $100 and that all other costs of arbitration shall be borne by the insurer. "Costs" as used in this provision shall not include attorney fees or expenses incurred in the production of evidence or witnesses or the making of transcripts of the arbitration proceedings. Such person and the insurer each agree to consider themselves bound and to be bound by any award made by the arbitrators pursuant to this coverage in the event of such election. At the election of the insured, such arbitration shall be held:

(a) In the county and state of residence of the insured;

(b) In the county and state where the insured's cause of action against the uninsured motorist arose; or

(c) At any other place mutually agreed upon by the insured and the insurer.

(11) In the event of payment to any person under this coverage:

(a) The insurer shall be entitled to the extent of such payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of such person against any uninsured motorist legally responsible for the bodily injury because of which such payment is made;

(b) Such person shall hold in trust for the benefit of the insurer all rights of recovery which the person shall have against such other uninsured person or organization because of the damages which are the subject of claim made under this coverage, but only to the extent that such claim is made or paid herein;

(c) If the insured is injured by the joint or concurrent act or acts of two or more persons, one or more of whom is uninsured, the insured shall have the election to receive from the insurer any payment to which the insured would be entitled under this coverage by reason of the act or acts of the uninsured motorist, or the insured may, with the written consent of the insurer, proceed with legal action against any or all persons claimed to be liable to the insured for such injuries. If the insured elects to receive payment from the insurer under this coverage, then the insured shall hold in trust for the benefit of the insurer all rights of recovery the insured shall have against any other person, firm or organization because of the damages which are the subject of claim made under this coverage, but only to the extent of the actual payment made by the insurer;

(d) Such person shall do whatever is proper to secure and shall do nothing after loss to prejudice such rights;

(e) If requested in writing by the insurer, such person shall take, through any representative not in conflict in interest with such person, designated by the insurer, such action as may be necessary or appropriate to recover such payment as damages from such other uninsured person or organization, such action to be taken in the name of such person, but only to the extent of the payment made hereunder. In the event of a recovery, the insurer shall be reimbursed out of such recovery for expenses, costs and attorney fees incurred by it in connection therewith; and

(f) Such person shall execute and deliver to the insurer such instruments and papers as may be appropriate to secure the rights and obligations of such person and the insurer established by this provision.

(12)(a) The parties to this coverage agree that no cause of action shall accrue to the insured under this coverage unless within two years from the date of the accident:

(A) Agreement as to the amount due under the policy has been concluded;

(B) The insured or the insurer has formally instituted arbitration proceedings;

(C) The insured has filed an action against the insurer in a court of competent jurisdiction; or

(D) Suit for bodily injury has been filed against the uninsured motorist in a court of competent jurisdiction and, within two years from the date of settlement or final judgment against the uninsured motorist, the insured has formally instituted arbitration proceedings or filed an action against the insurer in a court of competent jurisdiction.

(b) For purposes of this subsection:

(A) "Date of settlement" means the date on which a written settlement agreement or release is signed by an insured or, in the absence of such documents, the date on which the insured or the attorney for the insured receives payment of any sum required by the settlement agreement. An

advance payment as defined in ORS 31.550 shall not be deemed a payment of a settlement for purposes of the time limitation in this subsection.

(B) "Final judgment" means a judgment that has become final by lapse of time for appeal or by entry in an appellate court of an appellate judgment.

NOTE: Corrects terminology in (4)(d)(A) (see chapter 175, Oregon Laws 2003).

SECTION 491. ORS 743.345 is amended to read:

743.345. Nothing in the Insurance Code or in any other law shall be construed to prohibit any person insured under a group life insurance policy from making an assignment of all or any part of the incidents of ownership under such policy, including but not limited to the privilege to have issued an individual policy of life insurance pursuant to the provisions of ORS 743.333 to 743.339 and the right to name a beneficiary. Subject to the terms of the policy or an agreement between the insured, the group policyholder and the insurer relating to assignment of incidents of ownership under the policy, such an assignment by an insured[*, made either before or after September 9, 1971,*] is valid for the purpose of vesting in the assignee, in accordance with any provisions included in the assignment as to the time at which it is to be effective, all of such incidents of ownership so assigned, but without prejudice to the insurer on account of any payment it may make, or individual policy it may issue in accordance with ORS 743.333 to 743.339, prior to receipt of notice of the assignment.

NOTE: Deletes obsolete date reference.

SECTION 492. ORS 743.522 is amended to read:

743.522. **(1)** "Group health insurance" means that form of health insurance covering groups of persons described in this section, with or without one or more members of their families or one or more of their dependents, or covering one or more members of the families or one or more dependents of such groups of persons, and issued upon one of the following bases:

[*(1)(a)*] **(a)** Under a policy issued to an employer or trustees of a fund established by an employer, who shall be deemed the policyholder, insuring employees of such employer for the benefit of persons other than the employer. As used in this paragraph, [*"employee"*] **"employees"** includes:

(A) The officers, managers[,] and employees of the employer;

(B) The individual proprietor or partners if the employer is an individual proprietor or partnership;

(C) The officers, managers[,] and employees of subsidiary or affiliated corporations;

(D) The individual proprietors, partners and employees of individuals and firms, if the business of the employer and such individual or firm is under common control through stock ownership, contract[,] or otherwise;

(E) The trustees or their employees, or both, if their duties are principally connected with such trusteeship; [*and*]

(F) The leased workers of a client employer[.]**; and**

[*(b)*] **(G) Elected or appointed officials if** a policy issued to insure employees of a public body [*may provide*] **provides** that the term "employees" [*shall include*] **includes** elected or appointed officials.

[*(2)*] **(b)** Under a policy issued to an association, including a labor union, that has an active existence for at least one year, that has a constitution and bylaws and that has been organized and is maintained in good faith primarily for purposes other than that of obtaining insurance, which shall be deemed the policyholder, insuring members, employees[,] or employees of members of the association for the benefit of persons other than the association or its officers or trustees.

[*(3)*] **(c)** Under a policy issued to the trustees of a fund established by two or more employers in the same or related industry or by one or more labor unions or by one or more employers and one or more labor unions or by an association as [*defined in subsection (2) of this section*] **described in paragraph (b) of this subsection**, insuring employees of the employers or members of the unions or of such association, or employees of members of such association for the benefit of persons other than the employers or the unions or such association. [*The term*] **As used in this paragraph,** "employees" [*as used in this subsection*] may include the officers, managers and employees of the em-

ployer, and the individual proprietor or partners if the employer is an individual proprietor or partnership. The policy may provide that the term "employees" [*shall include*] **includes** the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

[*(4)*] **(d)** Under a policy issued to any person or organization to which a policy of group life insurance may be issued or delivered in this state, to insure any class or classes of individuals that could be insured under such group life policy.

[*(5)*] **(2)** Group health insurance offered to a resident of this state under a group health insurance policy issued to a group other than one described in [*subsections (1) to (4)*] **subsection (1)** of this section may be delivered if:

(a) The Director of the Department of Consumer and Business Services finds that:

(A) The issuance of the policy is in the best interest of the public;

(B) The issuance of the policy would result in economies of acquisition or administration; and

(C) The benefits are reasonable in relation to the premiums charged; and

(b) The premium for the policy is paid either from funds of a policyholder, from funds contributed by a covered person or from both.

[*(6)*] **(3)** As used in this section and ORS 743.533:

(a) "Client employer" means an employer to whom workers are provided under contract and for a fee on a leased basis by a worker leasing company licensed under ORS 656.850.

(b) "Employee" may include a retired employee.

[*(b)*] **(c)** "Leased worker" means a worker provided by a worker leasing company licensed under ORS 656.850.

[*(c) "Employee" may include a retired employee.*]

NOTE: Restructures section to correct read-in woes; strikes serial commas and modifies word choice in (1)(a), (b) and (c) to reflect legislative style; alphabetizes definitions in (3).

SECTION 493. ORS 743.524 is amended to read:

743.524. (1) An insurer [*shall*] **may** not offer a policy of group health insurance to an association as the policyholder or offer coverage under such a policy, whether issued in this or another state, unless the Director of the Department of Consumer and Business Services determines that the association satisfies the requirements of an association under ORS 743.522 [*(2)*] **(1)(b)**.

(2) An insurer shall submit evidence to the director that the association satisfies the requirements under ORS 743.522 [*(2)*] **(1)(b)**. The director shall review the evidence and may request additional evidence as needed.

(3) An insurer shall submit to the director any changes in the evidence submitted under subsection (2) of this section.

(4) The director may order an insurer to cease offering health insurance to an association if the director determines that the association does not meet the standards under ORS 743.522 [*(2)*] **(1)(b)**.

(5) The director may adopt rules to carry out this section.

NOTE: Tweaks word choice in (1). Adjusts for renumbering in (1), (2) and (4); see section 492 (amending 743.522).

SECTION 494. ORS 743.526 is amended to read:

743.526. (1) An insurer [*shall*] **may** not offer a policy of group health insurance described in ORS 743.522 [*(3)*] **(1)(c)** that insures persons in this state or offer coverage under such a policy, whether the policy is to be issued in this or another state, unless the Director of the Department of Consumer and Business Services determines that the requirements of this section and ORS 743.522 [*(3)*] **(1)(c)** are satisfied.

(2) The director shall determine with respect to a policy whether the trustees are the policyholder. If the director determines that the trustees are the policyholder and if the policy is issued or proposed to be issued in this state, the policy is subject to the Insurance Code. If the director determines that the trustees are not the policyholder, the evidence of coverage that is issued or proposed to be issued in this state to a participating employer, labor union or association shall

be deemed to be a group health insurance policy subject to the provisions of the Insurance Code. The director may determine that the trustees are not the policyholder if:

(a) The evidence of coverage issued or proposed to be issued to a participating employer, labor union or association is in fact the primary statement of coverage for the employer, labor union or association; and

(b) The trust arrangement is under the actual control of the insurer.

(3) An insurer shall submit evidence to the director showing that the requirements of subsection (2) of this section and ORS 743.522 [*(3)*] **(1)(c)** are satisfied. The director shall review the evidence and may request additional evidence as needed.

(4) An insurer shall submit to the director any changes in the evidence submitted under subsection (3) of this section.

(5) The director may adopt rules to carry out this section.

NOTE: Tweaks word choice in (1). Adjusts for renumbering in (1) and (3); see section 492 (amending 743.522).

SECTION 495. ORS 743.555 is repealed.

NOTE: Repeals obsolete provisions.

SECTION 496. ORS 743.713 is amended to read:

743.713. Notwithstanding any provisions of any policy of insurance covering dental health, whenever such policy provides for reimbursement for any service [*which*] **that** is within the lawful scope of practice of a denturist, the insured under such policy shall be entitled to reimbursement for such service, whether the service is performed by a licensed dentist or a licensed denturist as defined in ORS 680.500. [*This section shall apply to any policy covering dental insurance which is issued after July 1, 1980. Policies which are in existence on July 1, 1980, shall be brought into compliance on the next anniversary date, renewal date, or the expiration date of the applicable collective bargaining contract, if any, whichever date is latest.*]

NOTE: Corrects word choice; deletes obsolete provisions.

SECTION 497. ORS 746.215 is amended to read:

746.215. (1) A depository institution or an affiliate of a depository institution that lends money or extends credit may not:

(a) As a condition precedent to the lending of money or extension of credit, or any renewal thereof, require that the person to whom the money or credit is extended, or whose obligation a creditor is to acquire or finance, negotiate any policy or renewal thereof through a particular insurer or group of insurers or [*agent or group of agents*] **insurance producer or group of insurance producers**.

(b) Reject an insurance policy solely because the policy has been issued or underwritten by a person who is not associated with the depository institution or affiliate when insurance is required in connection with a loan or the extension of credit.

(c) As a condition for extending credit or offering any product or service that is equivalent to an extension of credit, require that a customer obtain insurance from a depository institution or an affiliate of a depository institution, or from a particular insurer or [*agent*] **insurance producer**. This paragraph does not prohibit a depository institution or an affiliate of a depository institution from informing a customer or prospective customer that insurance is required in order to obtain a loan or credit, that loan or credit approval is contingent upon the procurement by the customer of acceptable insurance or that insurance is available from the depository institution or an affiliate of the depository institution.

(d) Unreasonably reject an insurance policy furnished by the customer or borrower for the protection of the property securing the credit or loan. A rejection is not considered unreasonable if it is based on reasonable standards that are uniformly applied and that relate to the extent of coverage required and to the financial soundness and the services of an insurer. The standards may not discriminate against any particular type of insurer or call for rejection of an insurance policy because the policy contains coverage in addition to that required in the credit transaction.

(e) Require that any customer, borrower, mortgagor, purchaser, insurer or [*agent*] **insurance producer** pay a separate charge in connection with the handling of any insurance policy required as security for a loan on real estate, or pay a separate charge to substitute the insurance policy of one insurer for that of another. A charge prohibited in this paragraph does not include the interest that may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document. This paragraph does not apply to charges that would be required when the depository institution or an affiliate of a depository institution is the licensed [*agent*] **insurance producer** providing the insurance.

(f) Require any procedures or conditions of an insurer or [*agent*] **insurance producer** not customarily required of insurers or [*agents*] **insurance producers** affiliated or in any way connected with the depository institution.

(g) Use an advertisement or other insurance promotional material that would cause a reasonable person to mistakenly believe that the federal government or the state is responsible for the insurance sales activity of, or stands behind the credit of, the depository institution or its affiliate.

(h) Use an advertisement or other insurance promotional material that would cause a reasonable person to mistakenly believe that the federal government or the state guarantees any returns on insurance products or is a source of payment on any insurance obligation of or sold by the depository institution or its affiliate.

(i) Act as an [*agent*] **insurance producer** unless properly licensed in accordance with ORS 744.062, 744.063 or 744.064.

(j) Pay or receive any commission, brokerage fee or other compensation as an [*agent*] **insurance producer**, unless the depository institution or affiliate holds a valid [*agent*] **insurance producer** license for the applicable class of insurance. However, an unlicensed depository institution or affiliate may make a referral to a licensed [*agent*] **insurance producer** if the depository institution or affiliate does not negotiate, sell or solicit insurance. In the case of a referral of a customer, however, the unlicensed depository institution or affiliate may be compensated for the referral only if the compensation is a fixed dollar amount for each referral that does not depend on whether the customer purchases the insurance product from the licensed [*agent*] **insurance producer**. Any depository institution or affiliate that accepts deposits from the public in an area in which such transactions are routinely conducted in the depository institution may receive for each customer referral no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

(k) Solicit or sell insurance, other than credit insurance or flood insurance, unless the solicitation or sale is completed through documents separate from any credit transactions.

(L) Except as provided in ORS 746.201, include the expense of insurance premiums, other than credit insurance premiums or flood insurance premiums, in the primary credit transaction without the express written consent of the customer.

(m) Solicit or sell insurance unless the insurance sales activities of the depository institution or affiliate are, to the extent practicable, physically separated from areas where retail deposits are routinely accepted by depository institutions.

(n) Solicit or sell insurance unless the depository institution or affiliate maintains separate and distinct books and records relating to the insurance transactions, including all files relating to and reflecting consumer complaints.

(2) A depository institution or an affiliate of a depository institution that lends money or extends credit and that solicits insurance primarily for personal, family or household purposes shall disclose to the customer in writing that the insurance related to the credit extension may be purchased from an insurer or [*agent*] **insurance producer** of the customer′s choice, subject only to the depository institution′s right to reject a given insurer or [*agent*] **insurance producer** as provided in subsection (1)(d) of this section. The disclosure shall inform the customer that the customer′s choice of insurer or [*agent*] **insurance producer** will not affect the credit decision or credit terms in any way, except that the depository institution may impose reasonable requirements concerning the creditworthiness of the insurer and the extent of coverage chosen as provided in subsection (1)(d) of this section.

NOTE: Corrects terminology in conformance with amendments by chapter 364, Oregon Laws 2003.

SECTION 498. ORS 748.401 is amended to read:

748.401. (1) For certificates issued prior to [*one year after*] January 1, [*1988*] **1989**, the value of every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan or other option granted shall comply with the provisions of law applicable immediately prior to January 1, 1988.

(2) For certificates issued on or after [*one year from*] January 1, [*1988*] **1989**, for which reserves are computed on the Commissioner's 1941 Standard Ordinary Mortality Table, the Commissioner's 1941 Standard Industrial Table, the Commissioner's 1958 Standard Ordinary Mortality Table, the Commissioner's 1980 Standard Mortality Table or any more recent table made applicable to life insurers, every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan or other option granted [*shall*] **may** not be less than the corresponding amount ascertained in accordance with the laws of this state applicable to life insurers issuing policies containing like benefits based upon the tables.

NOTE: Simplifies date references; tweaks word choice.

SECTION 499. ORS 748.403 is amended to read:

748.403. (1) Standards of valuation for certificates issued prior to [*one year after*] January 1, [*1988*] **1989**, shall be those provided by the laws applicable immediately prior to January 1, 1988.

(2) The minimum standards of valuation for certificates issued on or after [*one year from*] January 1, [*1988*] **1989**, shall be based on the following tables:

(a) For certificates of life insurance, the Commissioner's 1941 Standard Ordinary Mortality Table, the Commissioner's 1941 Standard Industrial Mortality Table, the Commissioner's 1958 Standard Ordinary Mortality Table, the Commissioner's 1980 Standard Ordinary Mortality Table or any more recent table made applicable to life insurers; or

(b) For annuity and pure endowment certificates, for total and permanent disability benefits, for accidental death benefits and for noncancelable accident and health benefits, the tables that are authorized for use by life insurers in this state.

(3) The [*table*] **tables** referred to in subsection (2) of this section shall be under valuation methods and standards, including interest assumptions, in accordance with the laws of this state applicable to life insurers issuing policies containing like benefits.

(4) The Director of the Department of Consumer and Business Services may accept other standards for valuation if the director finds that the reserves produced will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard prescribed in subsection (2) of this section. The director may vary the standards of mortality applicable to all benefit contracts on substandard lives or other extra hazardous lives by any society authorized to do business in this state.

(5) Any society, with the consent of the director of insurance of the state of domicile of the society and under conditions [*which*] the director may impose, may establish and maintain reserves on its certificates in excess of the reserves required, but the contractual rights of any benefit member shall not be affected.

NOTE: Simplifies date references in (1) and (2) lead-in; corrects term in (3); tweaks syntax in (5).

SECTION 500. ORS 750.055 is amended to read:

750.055. (1) The following provisions of the Insurance Code [*shall*] apply to health care service contractors to the extent [*so applicable and*] not inconsistent with the express provisions of ORS 750.005 to 750.095:

(a) ORS 705.137, 705.139, 731.004 to 731.150, 731.162, 731.216 to 731.362, 731.382, 731.385, 731.386, 731.390, 731.398 to 731.430, 731.428, 731.450, 731.454, 731.488, 731.504, 731.508, 731.509, 731.510, 731.511, 731.512, 731.574 to 731.620, 731.592, 731.594, 731.640 to 731.652, 731.730, 731.731, 731.735, 731.737, 731.750, 731.752, 731.804 and 731.844 to 731.992.

(b) ORS 732.215, 732.220, 732.230, 732.245, 732.250, 732.320, 732.325 and 732.517 to 732.592, not including ORS 732.582.

(c)(A) ORS 733.010 to 733.050, 733.080, 733.140 to 733.170, 733.210, 733.510 to 733.620, 733.635 to 733.680 and 733.695 to 733.780 apply to not-for-profit health care service contractors.

(B) ORS chapter 733, not including ORS 733.630, applies to for-profit health care service contractors.

(d) ORS chapter 734.

(e) ORS 742.001 to 742.009, 742.013, 742.061, 742.065, 742.150 to 742.162, 742.400, 742.520 to 742.540, 743.010, 743.013, 743.018 to 743.030, 743.050, 743.100 to 743.109, 743.402, 743.412, 743.472, 743.492, 743.495, 743.498, 743.522, 743.523, 743.524, 743.526, 743.527, 743.528, 743.529, 743.549 to 743.555, 743.556, 743.560, 743.600 to 743.610, 743.650 to 743.656, 743.691, 743.693, 743.694, 743.697, 743.699, 743.701, 743.706 to 743.712, 743.721, 743.722, 743.726, 743.727, 743.728, 743.729, 743.793, 743.804, 743.807, 743.808, 743.814 to 743.839, 743.842, 743.845, 743.847, 743.854, 743.856, 743.857, 743.858, 743.859, 743.861, 743.862, 743.863, 743.864, 743.866 and 743.868.

(f) The provisions of ORS chapter 744 relating to the regulation of insurance producers.

(g) ORS 746.005 to 746.140, 746.160, 746.220 to 746.370, 746.600, 746.605, 746.607, 746.608, 746.610, 746.615, 746.625, 746.635, 746.650, 746.655, 746.660, 746.668, 746.670, 746.675, 746.680 and 746.690.

(h) ORS 743.714, except in the case of group practice health maintenance organizations that are federally qualified pursuant to Title XIII of the Public Health Service Act unless the patient is referred by a physician associated with a group practice health maintenance organization.

(i) ORS 735.600 to 735.650.

(j) ORS 743.680 to 743.689.

(k) ORS 744.700 to 744.740.

(L) ORS 743.730 to 743.773.

(m) ORS 731.485, except in the case of a group practice health maintenance organization that is federally qualified pursuant to Title XIII of the Public Health Service Act and that wholly owns and operates an in-house drug outlet.

(2) For the purposes of this section only, health care service contractors shall be deemed insurers.

(3) Any for-profit health care service contractor organized under the laws of any other state [*which*] **that** is not governed by the insurance laws of [*such*] **the other** state[*, will be*] **is** subject to all requirements of ORS chapter 732.

(4) The Director of the Department of Consumer and Business Services may, after notice and hearing, adopt reasonable rules not inconsistent with this section and ORS 750.003, 750.005, 750.025 and 750.045 that are deemed necessary for the proper administration of these provisions.

NOTE: Eliminates extra verbiage in (1) lead-in; corrects syntax in (3).

SECTION 501. ORS 750.055, as amended by section 3, chapter 263, Oregon Laws 2003, is amended to read:

750.055. (1) The following provisions of the Insurance Code [*shall*] apply to health care service contractors to the extent [*so applicable and*] not inconsistent with the express provisions of ORS 750.005 to 750.095:

(a) ORS 705.137, 705.139, 731.004 to 731.150, 731.162, 731.216 to 731.362, 731.382, 731.385, 731.386, 731.390, 731.398 to 731.430, 731.428, 731.450, 731.454, 731.488, 731.504, 731.508, 731.509, 731.510, 731.511, 731.512, 731.574 to 731.620, 731.592, 731.594, 731.640 to 731.652, 731.730, 731.731, 731.735, 731.737, 731.750, 731.752, 731.804 and 731.844 to 731.992.

(b) ORS 732.215, 732.220, 732.230, 732.245, 732.250, 732.320, 732.325 and 732.517 to 732.592, not including ORS 732.582.

(c)(A) ORS 733.010 to 733.050, 733.080, 733.140 to 733.170, 733.210, 733.510 to 733.620, 733.635 to 733.680 and 733.695 to 733.780 apply to not-for-profit health care service contractors.

(B) ORS chapter 733, not including ORS 733.630, applies to for-profit health care service contractors.

(d) ORS chapter 734.

(e) ORS 742.001 to 742.009, 742.013, 742.061, 742.065, 742.150 to 742.162, 742.400, 742.520 to 742.540, 743.010, 743.013, 743.018 to 743.030, 743.050, 743.100 to 743.109, 743.402, 743.412, 743.472,

743.492, 743.495, 743.498, 743.522, 743.523, 743.524, 743.526, 743.527, 743.528, 743.529, 743.549 to 743.555, 743.556, 743.560, 743.600 to 743.610, 743.650 to 743.656, 743.691, 743.693, 743.694, 743.697, 743.699, 743.701, 743.706 to 743.712, 743.721, 743.722, 743.727, 743.728, 743.729, 743.793, 743.804, 743.807, 743.808, 743.814 to 743.839, 743.842, 743.845, 743.847, 743.854, 743.856, 743.857, 743.858, 743.859, 743.861, 743.862, 743.863, 743.864, 743.866 and 743.868.

(f) The provisions of ORS chapter 744 relating to the regulation of insurance producers.

(g) ORS 746.005 to 746.140, 746.160, 746.220 to 746.370, 746.600, 746.605, 746.607, 746.608, 746.610, 746.615, 746.625, 746.635, 746.650, 746.655, 746.660, 746.668, 746.670, 746.675, 746.680 and 746.690.

(h) ORS 743.714, except in the case of group practice health maintenance organizations that are federally qualified pursuant to Title XIII of the Public Health Service Act unless the patient is referred by a physician associated with a group practice health maintenance organization.

(i) ORS 735.600 to 735.650.

(j) ORS 743.680 to 743.689.

(k) ORS 744.700 to 744.740.

(L) ORS 743.730 to 743.773.

(m) ORS 731.485, except in the case of a group practice health maintenance organization that is federally qualified pursuant to Title XIII of the Public Health Service Act and that wholly owns and operates an in-house drug outlet.

(2) For the purposes of this section only, health care service contractors shall be deemed insurers.

(3) Any for-profit health care service contractor organized under the laws of any other state [*which*] **that** is not governed by the insurance laws of [*such*] **the other** state[*, will be*] **is** subject to all requirements of ORS chapter 732.

(4) The Director of the Department of Consumer and Business Services may, after notice and hearing, adopt reasonable rules not inconsistent with this section and ORS 750.003, 750.005, 750.025 and 750.045 that are deemed necessary for the proper administration of these provisions.

NOTE: Eliminates extra verbiage in (1) lead-in; corrects syntax in (3).

SECTION 502. ORS 750.055, as amended by section 7, chapter 137, Oregon Laws 2003, and section 3, chapter 263, Oregon Laws 2003, is amended to read:

750.055. (1) The following provisions of the Insurance Code [*shall*] apply to health care service contractors to the extent [*so applicable and*] not inconsistent with the express provisions of ORS 750.005 to 750.095:

(a) ORS 705.137, 705.139, 731.004 to 731.150, 731.162, 731.216 to 731.362, 731.382, 731.385, 731.386, 731.390, 731.398 to 731.430, 731.428, 731.450, 731.454, 731.488, 731.504, 731.508, 731.509, 731.510, 731.511, 731.512, 731.574 to 731.620, 731.592, 731.594, 731.640 to 731.652, 731.730, 731.731, 731.735, 731.737, 731.750, 731.752, 731.804 and 731.844 to 731.992.

(b) ORS 732.215, 732.220, 732.230, 732.245, 732.250, 732.320, 732.325 and 732.517 to 732.592, not including ORS 732.582.

(c)(A) ORS 733.010 to 733.050, 733.080, 733.140 to 733.170, 733.210, 733.510 to 733.620, 733.635 to 733.680 and 733.695 to 733.780 apply to not-for-profit health care service contractors.

(B) ORS chapter 733, not including ORS 733.630, applies to for-profit health care service contractors.

(d) ORS chapter 734.

(e) ORS 742.001 to 742.009, 742.013, 742.061, 742.065, 742.150 to 742.162, 742.400, 742.520 to 742.540, 743.010, 743.013, 743.018 to 743.030, 743.050, 743.100 to 743.109, 743.402, 743.412, 743.472, 743.492, 743.495, 743.498, 743.522, 743.523, 743.524, 743.526, 743.527, 743.528, 743.529, 743.549 to 743.555, 743.556, 743.560, 743.600 to 743.610, 743.650 to 743.656, 743.691, 743.693, 743.694, 743.697, 743.701, 743.706 to 743.712, 743.721, 743.722, 743.727, 743.728, 743.729, 743.793, 743.804, 743.807, 743.808, 743.814 to 743.839, 743.842, 743.845, 743.847, 743.854, 743.856, 743.857, 743.858, 743.859, 743.861, 743.862, 743.863, 743.864, 743.866 and 743.868.

(f) The provisions of ORS chapter 744 relating to the regulation of insurance producers.

(g) ORS 746.005 to 746.140, 746.160, 746.220 to 746.370, 746.600, 746.605, 746.607, 746.608, 746.610, 746.615, 746.625, 746.635, 746.650, 746.655, 746.660, 746.668, 746.670, 746.675, 746.680 and 746.690.

(h) ORS 743.714, except in the case of group practice health maintenance organizations that are federally qualified pursuant to Title XIII of the Public Health Service Act unless the patient is referred by a physician associated with a group practice health maintenance organization.

(i) ORS 735.600 to 735.650.

(j) ORS 743.680 to 743.689.

(k) ORS 744.700 to 744.740.

(L) ORS 743.730 to 743.773.

(m) ORS 731.485, except in the case of a group practice health maintenance organization that is federally qualified pursuant to Title XIII of the Public Health Service Act and that wholly owns and operates an in-house drug outlet.

(2) For the purposes of this section only, health care service contractors shall be deemed insurers.

(3) Any for-profit health care service contractor organized under the laws of any other state [*which*] **that** is not governed by the insurance laws of [*such*] **the other** state[*, will be*] **is** subject to all requirements of ORS chapter 732.

(4) The Director of the Department of Consumer and Business Services may, after notice and hearing, adopt reasonable rules not inconsistent with this section and ORS 750.003, 750.005, 750.025 and 750.045 that are deemed necessary for the proper administration of these provisions.

NOTE: Eliminates extra verbiage in (1) lead-in; corrects syntax in (3).

SECTION 503. ORS 750.705 is amended to read:

750.705. (1) The following provisions of the Insurance Code apply to legal expense organizations to the extent [*so applicable and*] not inconsistent with the express provisions of ORS 750.505 to 750.715:

(a) ORS 731.004 to 731.026, 731.036 to 731.150, 731.158, 731.216 to 731.362, 731.385, 731.386, 731.398 to 731.430, 731.450, 731.454, 731.504, 731.508, 731.509, 731.510, 731.511, 731.512, 731.640 to 731.652, 731.730, 731.731, 731.735, 731.737, 731.804 and 731.844 to 731.992.

(b) ORS 732.230, 732.245, 732.250, 732.320, 732.325 and 732.517 to 732.546.

(c) ORS 733.010 to 733.050, 733.140 to 733.170, 733.210, 733.510 to 733.680 and 733.710 to 733.780.

(d) ORS 737.205, 737.215, 737.225, 737.235 to 737.340 and 737.505.

(e) ORS 742.001 to 742.009, 742.013 to 742.056 and 742.061.

(f) ORS 746.005 to 746.045, 746.065, 746.075, 746.100 to 746.130, 746.160 and 746.230 to 746.370.

(2) For the purposes of this section only, legal expense organizations shall be considered insurers.

NOTE: Eliminates extra verbiage in (1) lead-in.

SECTION 504. ORS 757.415 is amended to read:

757.415. (1) **Except as otherwise permitted by subsection (4) of this section,** a public utility may issue stocks and bonds, notes and other evidences of indebtedness, certificates of beneficial interests in a trust and securities for the following purposes and no others[*, except as otherwise permitted by subsection (4) of this section*]:

(a) The acquisition of property, or the construction, completion, extension or improvement of its facilities.

(b) The improvement or maintenance of its service.

(c) The discharge or lawful refunding of its obligations.

(d) The reimbursement of money actually expended from income or from any other money in the treasury of the public utility not secured by or obtained from the issue of stocks or bonds, notes or other evidences of indebtedness, or securities of such public utility, for any of the purposes listed in paragraphs (a) to (c) of this subsection except the maintenance of service and replacements, in cases where the applicant has kept its accounts and vouchers for such expenditures in such manner as to enable the Public Utility Commission of Oregon to ascertain the amount of money so expended and the purposes for which such expenditures were made.

(e) The compliance with terms and conditions of options granted to its employees to purchase its stock, if the commission first finds that such terms and conditions are reasonable and in the public interest.

(f) The finance or refinance of bondable conservation investment as described in ORS 757.455. Bonds, notes, certificates of beneficial interests in a trust and other evidences of indebtedness or ownership, issued for this purpose are [“]conservation bonds[”] for the purposes of ORS 757.460. Conservation bonds may rely partly or wholly for repayment on conservation investment assets and revenues arising with respect to conservation investment assets.

(2) Before issuing such securities a public utility, in addition to the other requirements of law, shall secure from the commission upon application an order authorizing such issue, stating:

(a) The amount of the issue and the purposes to which the issue or the proceeds thereof are to be applied; [*and*]

(b) In the opinion of the commission, the money, property or labor to be procured or paid for by such issue reasonably is required for the purposes specified in the order and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility, and will not impair its ability to perform that service; and

(c) Except as otherwise permitted in the order in the case of bonds, notes or other evidences of indebtedness, such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

(3) This section and ORS 757.410 apply to demand notes but do not apply to the issuance or renewal of a note or evidence of indebtedness maturing not more than one year after date of such issue or renewal.

(4) Nothing in ORS 757.400 to 757.460 shall prevent issuance of stock to stockholders as a stock dividend if there has been secured from the commission an order:

(a) Finding that the stock dividend is compatible with the public interest;

(b) Authorizing such issue and a transfer of surplus to capital in an amount equal to the par or stated value of the stock so authorized; and

(c) Finding that a sum equal to the amount to be so transferred was expended for the purposes enumerated in subsection (1) of this section.

(5) Conservation bonds authorized pursuant to subsection (1) of this section may be issued directly by a public utility or through a finance subsidiary. A “finance subsidiary” means any corporation, limited liability company, company, association, trust or other entity that is:

(a) Beneficially owned, directly or indirectly, by a public utility or, in the case of a trust, for which a public utility or subsidiary thereof is the grantor; or

(b) Unaffiliated with a public utility and acquires bondable conservation investment directly or indirectly from a public utility in a transaction approved by the commission.

NOTE: Restructures (1) lead-in; strikes errant quotation marks in (1)(f); removes extraneous conjunction in (2).

SECTION 505. ORS 757.495 is amended to read:

757.495. (1) When any public utility doing business in this state enters into any contract to make any payment, directly or indirectly, to any person or corporation having an affiliated interest, for service, advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, legal or other services, or enter any charges therefor on its books, which shall be recognized as an operating expense or capital expenditure in any rate valuation or any other hearing or proceeding, the contract shall be filed with the Public Utility Commission within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier.

(2) When any public utility doing business in this state [*shall enter*] **enters** into any contract, oral or written, with any person or corporation having an affiliated interest relating to the construction, operation, maintenance, leasing or use of the property of such public utility in Oregon, or the purchase of property, materials or supplies, which shall be recognized as the basis of an op-

erating expense or capital expenditure in any rate valuation or any other hearing or proceeding, the contract shall be filed with the commission within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier.

(3) When any such contract has been submitted to the commission, the commission promptly shall examine and investigate [*it*] **the contract**. If, after such investigation, the commission determines that [*it*] **the contract** is fair and reasonable and not contrary to the public interest, the commission shall enter findings and **an** order to this effect and serve a copy thereof upon the public utility, whereupon any expenses and capital expenditures incurred by the public utility under the contract may be recognized in any rate valuation or other hearing or proceeding. If, after such investigation, the commission determines that the contract is not fair and reasonable in all its terms and is contrary to the public interest, the commission shall enter findings and **an** order accordingly and serve a copy thereof upon the public utility, and, except as provided in subsection (4) of this section, it shall be unlawful to recognize the contract for the purposes specified in this section.

(4) When any such contract has been filed with the commission within 90 days of execution and the commission has not entered an order disapproving the contract under subsection (3) of this section, the commission [*shall*] **may** not base its refusal to recognize any expenses or capital expenditures incurred under the contract in any rate valuation or other hearing or proceeding solely on the basis that such contract has not been approved under subsection (3) of this section.

(5) No public utility shall issue notes or [*loan*] **lend** its funds or give credit on its books or otherwise to any person or corporation having an affiliated interest, either directly or indirectly, without the approval of the commission.

(6) The action of the commission with respect to all the matters described in this section when submitted to the commission[,] shall be by findings and **an** order to be entered within 90 days after the matter has been submitted to the commission for consideration, and the findings and order of the commission with respect to any of such matters shall be and remain in full force and effect, unless and until set aside by suit brought and prosecuted, as provided in ORS 756.580 to 756.610, and the public utility, or any other person or corporation affected by any such findings and order, may bring and prosecute such suit.

NOTE: Fiddles with word choice and punctuation; supplies missing articles.

SECTION 506. ORS 757.612 is amended to read:

757.612. (1) There is established an annual public purpose expenditure standard for electric companies to fund new cost-effective local energy conservation, new market transformation efforts, the above-market costs of new renewable energy resources[,] and new low-income weatherization. The public purpose expenditure standard shall be funded by the public purpose charge described in subsection (2) of this section.

(2)(a) Beginning on the date an electric company offers direct access to its retail electricity consumers, except residential electricity consumers, the electric company shall collect a public purpose charge from all of the retail electricity consumers located within its service area for a period of 10 years. Except as provided in paragraph (b) of this subsection, the public purpose charge shall be equal to three percent of the total revenues collected by the electric company or electricity service supplier from its retail electricity consumers for electricity services, distribution, ancillary services, metering and billing, transition charges and other types of costs included in electric rates on July 23, 1999.

(b) For an aluminum plant that averages more than 100 average megawatts of electricity use per year, beginning on March 1, 2002, the electric company whose territory abuts the greatest percentage of the site of the aluminum plant shall collect from the aluminum company a public purpose charge equal to one percent of the total revenue from the sale of electricity services to the aluminum plant from any source.

(3)(a) The Public Utility Commission shall establish rules implementing the provisions of this section relating to electric companies.

(b) Subject to paragraph (e) of this subsection, funds collected by an electric company through public purpose charges shall be allocated as follows:

(A) Sixty-three percent for new cost-effective conservation and new market transformation.

(B) Nineteen percent for the above-market costs of new renewable energy resources.

(C) Thirteen percent for new low-income weatherization.

(D) Five percent shall be transferred to the Housing and Community Services Department Revolving Account created under ORS 456.574 and used for the purpose of providing grants as described in ORS 458.625 (2). Moneys deposited in the account under this subparagraph are continuously appropriated to the Housing and Community Services Department for the purposes of ORS 458.625 (2). Interest on moneys deposited in the account under this subparagraph shall accrue to the account.

(c) The costs of administering subsections (1) to (6) of this section for an electric company shall be paid out of the funds collected through public purpose charges. The commission may require that an electric company direct funds collected through public purpose charges to the state agencies responsible for implementing subsections (1) to (6) of this section in order to pay the costs of administering such responsibilities.

(d) The commission shall direct the manner in which public purpose charges are collected and spent by an electric company and may require an electric company to expend funds through competitive bids or other means designed to encourage competition, except that funds dedicated for low-income weatherization shall be directed to the Housing and Community Services Department as provided in subsection (7) of this section. The commission may also direct that funds collected by an electric company through public purpose charges be paid to a nongovernmental entity for investment in public purposes described in subsection (1) of this section. Notwithstanding any other provision of this subsection, at least 80 percent of the funds allocated for conservation shall be spent within the service area of the electric company that collected the funds.

(e)(A) The first 10 percent of the funds collected annually by an electric company under subsection (2) of this section shall be distributed to education service districts, as described in ORS 334.010, that are located in the service territory of the electric company. The funds shall be distributed to individual education service districts according to the weighted average daily membership (ADMw) of the component school districts of the education service district for the prior fiscal year as calculated under ORS 327.013. The commission shall establish by rule a methodology for distributing a proportionate share of funds under this paragraph to education service districts that are only partially located in the service territory of the electric company.

(B) An education service district that receives funds under this paragraph shall use the funds first to pay for energy audits for school districts located within the education service district. An education service district [*shall*] **may** not expend additional funds received under this paragraph on a school district facility until an energy audit has been completed for that school district. To the extent practicable, an education service district shall coordinate with the State Department of Energy and incorporate federal funding in complying with this paragraph. Following completion of an energy audit for an individual school district, the education service district may expend funds received under this paragraph to implement the energy audit. Once an energy audit has been conducted and completely implemented for each school district within the education service district, the education service district may expend funds received under this paragraph for any of the following purposes:

(i) Conducting energy audits. A school district shall conduct an energy audit prior to expending funds on any other purpose authorized under this paragraph unless the school district has performed an energy audit within the three years immediately prior to receiving the funds.

(ii) Weatherization and upgrading the energy efficiency of school district facilities.

(iii) Energy conservation education programs.

(iv) Purchasing electricity from environmentally focused sources and investing in renewable energy resources.

(f) The commission may establish a different public purpose charge than the public purpose charge otherwise described in subsection (2) of this section for an individual retail electricity consumer or any class of retail electricity consumers located within the service area of an electric company, provided that a retail electricity consumer with a load greater than one average megawatt [*shall not be*] **is not** required to pay a public purpose charge in excess of three percent of its total cost of electricity services.

(g) The commission shall remove from the rates of each electric company any costs for public purposes described in subsection (1) of this section that are included in rates. A rate adjustment under this paragraph shall be effective on the date that the electric company begins collecting public purpose charges.

(4) An electric company that satisfies its obligations under this section shall have no further obligation to invest in conservation, new market transformation, new renewable energy resources or new low-income weatherization or to provide a commercial energy conservation services program and is not subject to ORS 469.631 to 469.645, 469.860 to 469.900 and 758.505 to 758.555.

(5)(a) A retail electricity consumer that uses more than one average megawatt of electricity at any site in the prior year shall receive a credit against public purpose charges billed by an electric company for that site. The amount of the credit shall be equal to the total amount of qualifying expenditures for new energy conservation, not to exceed 68 percent of the annual public purpose charges, and the above-market costs of purchases of new renewable energy resources incurred by the retail electricity consumer, not to exceed 19 percent of the annual public purpose charges, less administration costs incurred under this subsection. The credit [*shall*] **may** not exceed, on an annual basis, the lesser of:

(A) The amount of the retail electricity consumer's qualifying expenditures; or

(B) The portion of the public purpose charge billed to the retail electricity consumer that is dedicated to new energy conservation, new market transformation or the above-market costs of new renewable energy resources.

(b) To obtain a credit under this subsection, a retail electricity consumer shall file with the State Department of Energy a description of the proposed conservation project or new renewable energy resource and a declaration that the retail electricity consumer plans to incur the qualifying expenditure. The State Department of Energy shall issue a notice of precertification within 30 days of receipt of the filing, if such filing is consistent with this subsection. The credit may be taken after a retail electricity consumer provides a letter from a certified public accountant to the State Department of Energy verifying that the precertified qualifying expenditure has been made.

(c) Credits earned by a retail electricity consumer as a result of qualifying expenditures that are not used in one year may be carried forward for use in subsequent years.

(d)(A) A retail electricity consumer that uses more than one average megawatt of electricity at any site in the prior year may request that the State Department of Energy hire an independent auditor to assess the potential for conservation investments at the site. If the independent auditor determines there is no available conservation measure at the site that would have a simple payback of one to 10 years, the retail electricity consumer shall be relieved of 54 percent of its payment obligation for public purpose charges related to the site. If the independent auditor determines that there are potential conservation measures available at the site, the retail electricity consumer shall be entitled to a credit against public purpose charges related to the site equal to 54 percent of the public purpose charges less the estimated cost of available conservation measures.

(B) A retail electricity consumer shall be entitled each year to the credit described in this subsection unless a subsequent independent audit determines that new conservation investment opportunities are available. The State Department of Energy may require that a new independent audit be performed on the site to determine whether new conservation measures are available, provided that the independent audits shall occur no more than once every two years.

(C) The retail electricity consumer shall pay the cost of the independent audits described in this subsection.

(6) Electric utilities and retail electricity consumers shall receive a fair and reasonable credit for the public purpose expenditures of their energy suppliers. The State Department of Energy shall adopt rules to determine eligible expenditures and the methodology by which such credits are accounted for and used. The rules also shall adopt methods to account for eligible public purpose expenditures made through consortia or collaborative projects.

(7)(a) In addition to the public purpose charge provided under subsection (2) of this section, beginning on October 1, 2001, an electric company shall collect funds for low-income electric bill payment assistance in an amount determined under paragraph (b) of this subsection.

(b) The total amount collected for low-income electric bill payment assistance under this section shall be $10 million per year. The commission shall determine each electric company's proportionate share of the total amount. The commission shall determine the amount to be collected from a retail electricity consumer, except that a retail electricity consumer [*shall not be*] **is not** required to pay more than $500 per month per site for low-income electric bill payment assistance.

(c) Funds collected by the low-income electric bill payment assistance charge shall be paid into the Housing and Community Services Department Revolving Account created under ORS 456.574. Moneys deposited in the account under this paragraph are continuously appropriated to the Housing and Community Services Department for the purpose of funding low-income electric bill payment assistance. Interest earned on moneys deposited in the account under this paragraph shall accrue to the account. The department's cost of administering this subsection shall be paid out of funds collected by the low-income electric bill payment assistance charge. Moneys deposited in the account under this paragraph shall be expended solely for low-income electric bill payment assistance. Funds collected from an electric company shall be expended in the service area of the electric company from which the funds are collected.

(d) The Housing and Community Services Department, in consultation with the federal Advisory Committee on Energy, shall determine the manner in which funds collected under this subsection will be allocated by the department to energy assistance program providers for the purpose of providing low-income bill payment and crisis assistance, including programs that effectively reduce service disconnections and related costs to retail electricity consumers and electric utilities. Priority assistance shall be directed to low-income electricity consumers who are in danger of having their electricity service disconnected.

(e) Notwithstanding ORS 293.140, interest on moneys deposited in the Housing and Community Services Department Revolving Account under this subsection shall accrue to the account and may be used to provide heating bill payment and crisis assistance to electricity consumers whose primary source of heat is not electricity.

(f) Notwithstanding ORS 757.310, the commission may allow an electric company to provide reduced rates or other payment or crisis assistance or low-income program assistance to a low-income household eligible for assistance under the federal Low Income Home Energy Assistance Act of 1981, as amended and in effect on July 23, 1999.

[*(8) In addition to all other charges provided in this section, for the period from January 1, 2000, to October 1, 2001, an electric company shall collect from its retail electricity consumers an electric bill payment assistance charge. A retail electricity consumer shall not be required to pay more than $500 per month per site for low-income electric bill payment assistance under this subsection. The statewide total amount collected under this subsection shall equal $5 million per year, prorated for any fraction of a year. The commission shall determine each electric company's proportionate share of the statewide total amount. Moneys collected under this subsection shall be deposited in the Housing and Community Services Department Revolving Account created under ORS 456.574 and expended for low-income electric bill payment assistance in the manner provided in subsection (7)(d) of this section.*]

[*(9)*] **(8)** For purposes of this section, "retail electricity consumers" includes any direct service industrial consumer that purchases electricity without purchasing distribution services from the electric utility.

NOTE: Strikes serial comma in (1); tweaks syntax in (3)(e)(B) and (f), (5)(a) lead-in and (7)(b); deletes obsolete provisions.

SECTION 507. ORS 757.660 is amended to read:

757.660. (1) In adopting market valuation methodologies under ORS 757.659 (4), the Public Utility Commission may provide for use of arbitration to resolve disputes relating to valuation of electric company investments.

(2) The commission shall adopt rules for the following purposes:

(a) Establishing the process for selecting an arbitrator under this section.

(b) Establishing the type, scope and subject matter of arbitrations under this section, and the procedure for conducting those arbitrations.

(c) Establishing standards for the decision of an arbitrator under this section.

(d) Governing who may be a party to an arbitration under this section.

(3)(a) An arbitrator selected under rules adopted pursuant to subsection (2) of this section must be experienced in valuing generating resources and may not have any material conflict of interest in the result of the arbitration.

(b) Any party to the arbitration may challenge the selection of an arbitrator by direct petition to the commission. The commission's review of the selection shall be limited to allegations of bias and lack of qualifications. The commission shall hold a hearing within 10 days after the filing of a petition, and the commission shall issue a final decision within 10 days after the hearing. The commission may require selection of a different arbitrator.

(4) The arbitrator shall control the time, manner and place of the arbitration, subject to any limitations established by commission rule.

(5) An arbitrator acts on behalf of the commission in performing duties and powers under this section and under rules adopted by the commission pursuant to this section. Nothing in this section shall be construed to grant any rights or privileges to an arbitrator that are otherwise afforded to persons employed by the state.

(6) The commission shall enforce an arbitration decision made pursuant to this section, unless any party to the arbitration files written exceptions with the commission for any of the following causes:

(a) The decision was procured by corruption, fraud or undue means;

(b) There was evident partiality or corruption on the part of the arbitrator;

(c) The arbitrator exceeded [*his or her*] **the arbitrator's** powers, or so imperfectly executed [*them*] **the arbitrator's powers** that the rights of the party were substantially prejudiced;

(d) There was an evident material miscalculation of figures or an evident material mistake in the description of any thing or property referred to in the decision; or

(e) The decision was based on an erroneous interpretation of a statute, rule or other law.

(7) If, after a hearing on the exceptions filed as provided in subsection (6) of this section, it appears to the commission that the decision should be vacated or modified, the commission may by order refer the decision back to the arbitrator with proper instructions for correction or rehearing.

(8)(a) Notwithstanding ORS 756.580, any appeal of a commission decision under subsection (3)(b) of this section shall be to the Court of Appeals under ORS 183.482. The court shall review the commission's decision in the manner provided by ORS 183.482 (8).

(b) Notwithstanding ORS 756.580, any appeal of a commission order incorporating an arbitration decision shall be to the Court of Appeals under ORS 183.482. Notwithstanding ORS 183.482 (8), review of a commission order incorporating an arbitration decision is limited to the grounds set forth under subsection (6) of this section.

(c) A commission order or decision may not be appealed under the provisions of this subsection until after the commission issues a final order adopting the arbitration decision.

NOTE: Modifies syntax in (6)(c) to conform to legislative style.

SECTION 508. ORS 757.720 is amended to read:

757.720. (1) Approval of utility plans for the curtailment of load shall be based on the following factors:

(a) The consistency of the plan with the public health, safety and welfare;

(b) The technical feasibility of implementation of the plan;

(c) The effectiveness with which the plan minimizes the impact of any curtailment; and

(d) Consistency with Oregon energy policies formulated under ORS [*176.820, 192.501 to 192.505, 192.690,*] 469.010 to 469.225, 469.300 to 469.563[*, 469.533, 469.990,*] **and** 757.710 and this section.

(2) In the event of an emergency threatening the health, safety and welfare of the general public, the Public Utility Commission may on the commission's own motion and without hearing establish a plan for the curtailment of load by any person referred to in ORS 757.710. [*Where*] **If** an emergency is not present, the commission shall prior to approval hold public hearings with respect to any proposed plan and give reasonable notice of such hearings.

(3) The commission shall consult with the Director of the State Department of Energy before approving a plan.

NOTE: Eliminates unnecessary statute references in (1)(d); corrects word choice in (2).

SECTION 509. ORS 759.525 is amended to read:

759.525. (1) On the basis of the applicant's filing or, if there is a hearing, on the record made at the hearing held pursuant to ORS 759.520, the Public Utility Commission shall enter an order either approving or disapproving the contract as filed, together with any appropriate findings of the facts supporting such order.

(2) Any party to such contract may commence a suit to vacate and set aside the commission's order on the ground that such order is unlawful, and so far as applicable and not inconsistent herewith, the provisions of ORS 756.580 to 756.610 shall govern such suit.

(3) If the commission approves a contract and no suit is filed to vacate or set aside the commission's order as [*above*] provided **in subsection (2) of this section**, the contract shall be deemed to be valid and enforceable for all purposes from the date on which the right to file such suit expires. If a suit to vacate or set aside the commission's order is filed, the validity of the contract shall be as determined by the final judgment therein rendered.

NOTE: Swaps in more precise reference in (3) in conformance with legislative style.

SECTION 510. ORS 780.030 is amended to read:

780.030. All channels of rivers and watercourses made navigable or the navigation of which is improved, as contemplated by ORS 780.010, shall be public highways, and shall be free to all [*steamboats and other*] crafts navigating them.

NOTE: Eliminates anachronism.

SECTION 511. ORS 783.010 is amended to read:

783.010. Every boat or vessel used in navigating the water of this state or constructed in this state is liable and subject to a lien:

(1) For wages due to persons employed, for work done or services rendered on board such boat or vessel.

(2) For all debts due to persons by virtue of a contract, expressed or implied, with the owners of a boat or vessel, or with the agents, contractors or subcontractors of such owner, or with any person having them employed to construct, repair or launch such boat or vessel, on account of**:**

(a) Labor done or materials furnished by mechanics, tradesmen or others in the building, repairing, fitting and furnishing or equipping **of** such boat or vessel[*, or on account of*]**;**

(b) Stores and supplies furnished for the use thereof[*, or on account of*]**;**

(c) Premiums for insurance placed on or with respect to such boat or vessel[*, or on account of*]**; or**

(d) Launchways constructed for the launching of such boat or vessel.

(3) For all sums for wharfage, anchorage or towage of such boat or vessel within this state.

(4) For all demands or damages accruing from the nonperformance or malperformance of any contract of affreightment, or of any contract touching the transportation of persons or property, entered into by the master, owner, agent or consignee of the boat or vessel on which such contract is to be performed, and for damages or injuries done to persons or property, by such boat or vessel, and for damages or injuries by such boat or vessel resulting in the death of any person.

NOTE: Restructures (2) to conform to legislative style.

SECTION 512. ORS 783.310 is amended to read:

783.310. If any person in [*the*] control of any [*steamboat or other*] watercraft conducts or navigates the [*same*] **watercraft** intentionally or negligently so as to destroy or injure the property of another, [*such*] **the** person and the person's employer each shall be liable in damages for the property so injured or destroyed, and the damages shall be a lien on [*such boat*] **the watercraft**.

NOTE: Eliminates anachronism; modifies word choice.

SECTION 513. ORS 802.250 is amended to read:

802.250. (1) A police officer or eligible public employee may request that any driver or vehicle record kept by the Department of Transportation that contains or is required to contain the officer's or eligible employee's residence address contain instead the address of the public agency employing the officer or eligible employee. A request under this section shall:

(a) Be in a form specified by the department that provides for verification of the officer's or eligible employee's employment.

(b) Contain verification by the employing public agency of the officer's or eligible employee's employment with the public agency.

(2) Upon receipt of a request and verification under subsection (1) or (6) of this section, the department shall remove the police officer, corrections officer or eligible employee's residence address from its records, if necessary, and substitute therefor the address of the public agency employing the officer or eligible employee. The department shall indicate on the records that the address shown is an employment address. While the request is in effect, the eligible employee or officer may enter the address of the public agency employing the officer or eligible employee on any driver or vehicle form issued by the department that requires an address.

(3) A public agency that verifies an officer's or eligible employee's employment under subsection (1) of this section shall notify the department within 30 days if the officer or eligible employee ceases to be employed by the public agency. The officer or eligible employee shall notify the department of a change of address as provided in ORS 803.220 or 807.560.

(4) As used in this section, "eligible employee" means:

(a) A member of the State Board of Parole and Post-Prison Supervision.

(b) The Director of the Department of Corrections and an employee of an institution defined in ORS 421.005 as Department of Corrections institutions, whose duties, as assigned by the superintendent, include the custody of persons committed to the custody of or transferred to the institution.

(c) A parole and probation officer employed by the Department of Corrections and an employee of the Department of Corrections Release Center whose duties, as assigned by the Chief of the Release Center, include the custody of persons committed to the custody of or transferred to the Release Center.

(d) A police officer appointed under ORS 276.021 or 276.023.

(e) An employee of the State Department of Agriculture who is classified as a brand inspector by the Director of Agriculture.

(f) An investigator of the Criminal Justice Division of the Department of Justice.

(g) A corrections officer as defined in ORS 181.610.

(h) A federal officer. As used in this paragraph, "federal officer" means a special agent or law enforcement officer employed by:

(A) The Federal Bureau of Investigation;

(B) The United States Secret Service;

[*(C) The Immigration and Naturalization Service;*]

(C) The United States Citizenship and Immigration Services;

(D) The United States Marshals Service;

(E) The Drug Enforcement Administration;

(F) The United States Postal Service;

(G) The United States Customs [*Service*] **and Border Protection**;

(H) The United States General Services Administration;

(I) The United States Department of Agriculture;

(J) The Bureau of Alcohol, Tobacco and Firearms;

(K) The Internal Revenue Service;

(L) The United States Department of the Interior; or

(M) Any federal agency if the person is empowered to effect an arrest with or without warrant for violations of the United States Code and is authorized to carry firearms in the performance of duty.

(i) An employee of the Department of Human Services whose duties include personal contact with clients or patients of the department.

(j) Any judge of a court of this state.

(k) An employee of the Oregon Youth Authority whose duties include personal contact with persons committed to the legal or physical custody of the authority.

(L) A district attorney or deputy district attorney.

(5) As used in subsections (6) and (7) of this section:

(a) "Correctional facility" means an institution used for the confinement of persons convicted of a criminal offense or held by court order.

[*(a)*] **(b)** "Corrections officer" means a person employed in a correctional facility, wherever it may be located, who primarily performs the duty of custody, control or supervision of individuals convicted of a criminal offense.

[*(b) "Correctional facility" means an institution used for the confinement of persons convicted of a criminal offense or held by court order.*]

(6) A corrections officer, who is a resident of Oregon but is employed in a correctional facility located in a state other than Oregon, may request that any driver or vehicle record kept by the department that contains or is required to contain the officer's residence address contain instead the address of the correctional facility employing the officer. A request under this subsection shall:

(a) Be in a form specified by the department that includes designation of the Oregon county of residence.

(b) Contain verification of employment as determined adequate by the department to establish eligibility for this service.

(7) If the officer qualifying under subsection (6) of this section ceases to be employed in the correctional facility, the officer shall notify the department of a change of address as provided in ORS 803.220 or 807.560.

NOTE: Updates names of federal agencies in (4)(h); alphabetizes definitions in (5).

SECTION 514. ORS 802.331 is amended to read:

802.331. The Highway Safety Trust Account is established separate and distinct from the General Fund. All [*money*] **moneys** received by the Department of Transportation under ORS 802.315 shall be paid into the State Treasury and credited to the account established under this section. All [*money*] **moneys** in the account established under this section [*is*] **are** continuously appropriated for and shall be used by the department in carrying out the purposes for which the funds were received.

NOTE: Modifies word choice to reflect legislative style.

SECTION 515. ORS 807.040 is amended to read:

807.040. **(1)** The Department of Transportation shall issue a driver license to any person who complies with all of the following requirements:

[*(1)*] **(a)** The person must complete **an** application for a license under ORS 807.050.

[*(2)*] **(b)** The person must not be ineligible for the license under ORS 807.060 and must be eligible for the license under ORS 807.062.

[*(3)*] **(c)** The person must successfully pass all examination requirements under ORS 807.070 for the class of license sought.

[*(4)*] **(d)** The appropriate license fee under ORS 807.370 for the class of license sought must be paid.

[*(5)*] **(e)** The Student Driver Training Fund eligibility fee must be paid.

[*(6)*] **(f)** If the application is for a commercial driver license, the applicant must be the holder of a Class C license or any higher class of license.

[*(7)*] **(g)** If the application is for a commercial driver license, the applicant must submit to the department, in a form approved by the department, the report of a medical examination that establishes, to the satisfaction of the department, that the applicant meets the medical requirements for the particular class of license. The department, by rule, shall establish medical requirements for purposes of this [*subsection*] **paragraph**. The medical requirements established under this [*subsection*] **paragraph** may include any requirements the department determines are necessary for the safe operation of vehicles permitted to be operated under the class of license for which the requirements are established.

[*(8)*] **(h)** If the application is for a commercial driver license, the applicant must have at least one year's driving experience.

[*(9)*] **(2)** The department shall work with other agencies and organizations to attempt to improve the issuance system for driver licenses.

NOTE: Supplies missing article in (1)(a); fixes bad read-in.

SECTION 516. ORS 810.439 is amended to read:

810.439. (1) Notwithstanding any other provision of law, in the jurisdictions using photo radar:

(a) A citation for speeding may be issued on the basis of photo radar if the following conditions are met:

(A) The photo radar equipment is operated by a uniformed police officer.

(B) The photo radar equipment is operated out of a marked police vehicle.

(C) An indication of the actual speed of the vehicle is displayed within 150 feet of the location of the photo radar unit.

(D) Signs indicating that speeds are enforced by photo radar are posted, so far as is practicable, on all major routes entering the jurisdiction.

(E) The citation is mailed to the registered owner of the vehicle within six business days of the alleged violation.

(F) The registered owner is given 30 days from the date the citation is mailed to respond to the citation.

[*(G) If the person named as the registered owner of a vehicle in the current records of the Department of Transportation fails to respond to a citation issued under this subsection, a default judgment under ORS 153.102 may be entered for failure to appear after notice has been given that the judgment will be entered.*]

(b) A rebuttable presumption exists that the registered owner of the vehicle was the driver of the vehicle when the citation is issued and delivered as provided in this section.

(c) A person issued a citation under this subsection may respond to the citation by submitting a certificate of innocence or a certificate of nonliability under subsection (3) of this section or may make any other response allowed by law.

(2) A citation issued on the basis of photo radar may be delivered by mail or otherwise to the registered owner of the vehicle or to the driver.

(3)(a) If a registered owner of a vehicle responds to a citation issued under subsection (1) of this section by submitting a certificate of innocence within 30 days from the mailing of the citation swearing or affirming that the owner was not the driver of the vehicle and a photocopy of the owner's driver license, the citation shall be dismissed. The citation may be reissued if the jurisdiction verifies that the registered owner appears to have been the driver at the time of the violation.

(b) If a business or public agency responds to a citation issued under subsection (1) of this section by submitting a certificate of nonliability within 30 days from the mailing of the citation stating that at the time of the alleged speeding violation the vehicle was in the custody and control of an employee or was in the custody and control of a renter or lessee under the terms of a rental agreement or lease, and if the business or public agency provides the driver license number, name and address of the employee, renter or lessee, the citation shall be dismissed with respect to the

business or public agency. The citation may then be issued and delivered by mail or otherwise to the employee, renter or lessee identified in the certificate of nonliability.

(4) If the person named as the registered owner of a vehicle in the current records of the Department of Transportation fails to respond to a citation issued under subsection (1) of this section, a default judgment under ORS 153.102 may be entered for failure to appear after notice has been given that the judgment will be entered.

[*(4)*] **(5)** The penalties for and all consequences of a speeding violation initiated by the use of photo radar are the same as for a speeding violation initiated by any other means.

[*(5)*] **(6)** A registered owner, employee, renter or lessee against whom a judgment for failure to appear is entered may move the court to relieve the owner, employee, renter or lessee from the judgment as provided in ORS 153.105 if the failure to appear was due to mistake, inadvertence, surprise or excusable neglect.

NOTE: Relocates (1)(a)(G) as (4) to correct read-in problem.

SECTION 517. ORS 824.200 is amended to read:

824.200. As used in ORS 824.200 to 824.256, unless the context requires otherwise:

(1) "High speed rail system" means a fixed guideway passenger transportation system capable of transporting passengers at speeds exceeding 79 miles per hour and connecting two or more urban areas, including but not limited to any such system that utilizes or incorporates, in whole or in part, existing rail transportation facilities and any necessary upgrades of or modifications to existing rail transportation facilities.

(2) "Highway" includes all roads, streets, alleys, avenues, boulevards, parkways and other places in this state actually open and in use, or to be opened and used for travel by the public.

(3) "Installation costs," when used in the context of protective devices, includes costs of acquiring, assembling and rendering operational the device and its attendant controls, circuitry and fail-safe mechanisms.

(4) "Maintenance costs," when used in the context of protective devices, includes preventive maintenance, repair and replacement of the device and its attendant controls, circuitry and fail-safe mechanisms.

(5) "Protective device" means a sign, signal, gate or other device to warn or protect the public, installed at or in advance of a railroad-highway crossing.

[*(6) "Unauthorized railroad-highway crossing" means a crossing at grade which is actually open and in use, or to be opened and used for travel by the public, and which has not been authorized under ORS 824.204.*]

[*(7)*] **(6)** Except in proceedings under ORS 824.236, "public authority in interest" means the state, county, municipal or other governmental body with jurisdiction over the highway crossing the railroad track. In proceedings under ORS 824.236, "public authority in interest" means [*that*] **the** county, municipal or other governmental body [*which*] **that** has primary zoning authority over the lands served by the crossing.

[*(8)*] **(7)** "Railroad" has the meaning given that term in ORS 824.020, and includes logging and other private railroads.

[*(9)*] **(8)** "Railroad company" includes every corporation, company, association, joint stock association, partnership or person, and their lessees, trustees or receivers, appointed by any court whatsoever, owning, operating, controlling or managing any railroad.

(9) "Unauthorized railroad-highway crossing" means a crossing at grade that is actually open and in use, or to be opened and used for travel by the public, and that has not been authorized under ORS 824.204.

NOTE: Alphabetizes definitions; modifies word choice.

SECTION 518. ORS 830.605 is amended to read:

830.605. **(1)** The State Marine Board and the Oregon Department of Aviation shall cooperate to publish and distribute information concerning laws, rules and regulations that govern seaplane safety and operations in Oregon.

(2) As used in this section, "seaplane" has the meaning given that term in ORS 835.200.

NOTE: Moves definition closer to home; see section 519 (amending 835.200).

SECTION 519. ORS 835.200 is amended to read:

835.200. (1) The State Aviation Board, pursuant to ORS 835.035 and utilizing the definitions contained in ORS 830.005:

(a) Shall adopt rules governing seaplane safety and operations on state waters, as defined in ORS 830.005, that shall be applicable to all seaplanes except when inconsistent with any applicable laws or regulations of an agency of the United States.

(b) May adopt rules governing seaplane safety and operations on waters of this state, as defined in ORS 830.005, that shall be applicable to all seaplanes except when inconsistent with any applicable laws or regulations of an agency of the United States.

(2) The State Aviation Board shall adopt the rules in subsection (1) of this section in consultation with the State Marine Board and the State Parks and Recreation Department.

(3) The rules in subsection (1) of this section shall include identification of zones and bodies of water on which seaplanes may not land, take off or operate.

(4) As used in this section [*and ORS 830.605*] and **ORS** 835.210, "seaplane" means an aircraft equipped to land on water.

NOTE: Eliminates unnecessary statute reference in (4); see section 518 (amending 830.605).

SECTION 520. ORS 837.005 is amended to read:

837.005. ORS 837.015 and 837.040 to 837.070 do not apply to:

(1) Aircraft owned by any person, firm or corporation and certificated by the appropriate federal agency for domestic or foreign scheduled air commerce[*;*]**.**

(2) Military aircraft of the United States of America, and aircraft licensed by a foreign country with which the United States has reciprocal relations exempting aircraft registered by the United States, or any political subdivision thereof, from registration within such foreign country[*;*]**.**

(3) Such classes of aircraft as may be designated by rules and regulations of the Oregon Department of Aviation.

[*(2)*] **(4)** Aircraft owned by a nonresident of this state until such aircraft has been within Oregon for a period of 60 days and, during such period, has not engaged in repeated air transportation of persons, or property or for providing services for compensation within the state.

NOTE: Restructures section to conform to legislative style.

Passed by House February 16, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate March 22, 2005

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President of Senate

Received by Governor:

.....M.,....., 2005

Approved:

.....M.,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2005

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Secretary of State