

CHAPTER 13

AN ACT

SB 355

Relating to correction of erroneous material in Oregon law; creating new provisions; and amending ORS 18.358, 18.600, 25.010, 25.011, 25.020, 25.080, 25.085, 25.089, 25.091, 25.166, 25.240, 25.280, 25.287, 25.399, 25.720, 30.136, 30.138, 40.210, 73.0417, 74.2080, 86.610, 86.620, 98.852, 98.858, 107.108, 107.835, 109.065, 133.807, 169.080, 173.025, 174.535, 181A.820, 184.619, 227.185, 238.445, 244.290, 255.012, 327.880, 413.574, 416.400, 416.407, 416.440, 418.310, 419B.806, 443.455, 459A.739, 461.250, 541.984, 543.170, 624.010, 634.306, 646.605, 646.608, 646.633, 656.005, 657.855, 676.220, 689.689, 734.810, 750.055 and 822.235 and section 1a, chapter 548, Oregon Laws 2015, and ORCP 69 C.

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, chapter 14, Oregon Laws 2003, chapter 22, Oregon Laws 2005, chapter 71, Oregon Laws 2007, chapter 11, Oregon Laws 2009, chapter 9, Oregon Laws 2011, chapter 1, Oregon Laws 2013, chapter 27, Oregon Laws 2015, [or] chapter 17, Oregon Laws 2017, **or this 2019 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, chapter 14, Oregon Laws 2003, chapter 22, Oregon Laws 2005, chapter 71, Oregon Laws 2007, chapter 11, Oregon Laws 2009, chapter 9, Oregon Laws 2011, chapter 1, Oregon Laws 2013, chapter 27, Oregon Laws 2015, [and] chapter 17, Oregon Laws 2017, **and this 2019 Act**, except insofar as the amendments thereto, or repeals thereof, specifically require.

NOTE: Sets forth Reviser’s Bill policy statement.

SECTION 2. ORCP 69 C is amended to read:

C Motion for order of default.

C(1) The party seeking default must file a motion for order of default. That motion must be accompanied by an affidavit or declaration to support that

default is appropriate and contain facts sufficient to establish the following:

C(1)(a) that the party to be defaulted has been served with summons pursuant to Rule 7 or is otherwise subject to the jurisdiction of the court;

C(1)(b) that the party against whom the order of default is sought has failed to appear by filing a motion or answer, or otherwise to defend as provided by these rules or applicable statute;

C(1)(c) whether written notice of intent to appear has been received by the movant and, if so, whether written notice of intent to apply for an order of default was filed and served at least 10 days, or any shortened period of time ordered by the court, prior to filing the motion;

C(1)(d) whether, to the best knowledge and belief of the party seeking an order of default, the party against whom judgment is sought is or is not incapacitated as defined in ORS 125.005, a minor, a protected person as defined in ORS 125.005, or a respondent as defined in ORS 125.005; and

C(1)(e) whether the party against whom the order is sought is or is not a person in the military service, or stating that the movant is unable to determine whether or not the party against whom the order is sought is in the military service as required by section 201(b)(1) of the Servicemembers Civil Relief Act, 50 U.S.C. [App. 521] **3931**, as amended.

C(2) If the party seeking default states in the affidavit or declaration that the party against whom the order is sought:

C(2)(a) is incapacitated as defined in ORS 125.005, a minor, a protected person as defined in ORS 125.005, or a respondent as defined in ORS 125.005, an order of default may be entered against the party against whom the order is sought only if a guardian ad litem has been appointed or the party is represented by another person as described in Rule 27; or

C(2)(b) is a person in the military service, an order of default may be entered against the party against whom the order is sought only in accordance with the Servicemembers Civil Relief Act.

C(3) The court may grant an order of default if it appears the motion and affidavit or declaration have been filed in good faith and good cause is shown that entry of such an order is proper.

NOTE: Adjusts reference in C(1)(e) to reflect federal code reorganization.

SECTION 3. ORS 18.358 is amended to read:

18.358. (1) As used in this section:

(a) “Beneficiary” means a person for whom retirement plan benefits are provided or their spouse.

(b) “Internal Revenue Code” means the federal Internal Revenue Code as amended and in effect on December 31, 1998.

(c) “Permitted contribution” means:

(A) A contribution that, at the time of the contribution, is not taxable income to the beneficiary and, if the sponsor is a taxable entity, is tax deductible to the sponsor;

(B) A nondeductible contribution by a beneficiary to a retirement plan to the extent that the contribution is permitted to be made under the Internal Revenue Code;

(C) A deductible or nondeductible contribution to an individual retirement account to the extent the contribution is not subject to federal excise tax as an excess contribution;

(D) A contribution, pursuant to a rollover or transfer, from one retirement plan to another, to the extent the federal tax deferred status is preserved at such time;

(E) A rollover from an individual retirement account described in section 408 of the Internal Revenue Code to an individual retirement account described in section 408A of the Internal Revenue Code; and

(F) Any earnings under a retirement plan [which] **that** are attributable to a contribution described in subparagraphs (A) to (E) of this paragraph.

(d) "Retirement plan" means:

(A) A pension plan and trust, including a profit sharing plan, that is described in sections 401(a), 401(c), 401(k), 403 and 457 of the Internal Revenue Code, including that portion attributable to contributions made by or attributable to a beneficiary;

(B) An individual retirement account or annuity, including one that is pursuant to a simplified employee pension, as described in section 408 or 408A of the Internal Revenue Code; and

(C) Any pension not described in subparagraphs (A) and (B) of this paragraph granted to any person in recognition or by reason of a period of employment by or service for the Government of the United States or any state or political subdivision of any state, or any municipality, person, partnership, association or corporation.

(e) "Sponsor" means an individual or entity [which] **that** establishes a retirement plan.

(2) Subject to the limitations set forth in subsection (3) of this section, a retirement plan shall be conclusively presumed to be a valid spendthrift trust under these statutes and the common law of this state, whether or not the retirement plan is self-settled, and a beneficiary's interest in a retirement plan shall be exempt, effective without necessity of claim thereof, from execution and all other process, mesne or final.

(3) Notwithstanding subsection (2) of this section:

(a) A contribution to a retirement plan, other than a permitted contribution, shall be subject to ORS 95.200 to 95.310 concerning fraudulent transfers; and

(b) Unless otherwise ordered by a court under ORS 25.387, 75 percent of a beneficiary's interest in a retirement plan, or 50 percent of a lump sum retirement plan disbursement or withdrawal, shall be exempt from execution or other process arising out of a support obligation or an order or notice entered or issued under **ORS 416.400 to 416.465** or ORS chapter 25, 107, 108, 109, 110, [416,] 419B or 419C.

NOTE: Updates word choice in (1)(c)(F) and (e); eliminates inappropriate chapter reference and substitutes appropriate series reference in (3)(b).

SECTION 4. ORS 18.600 is amended to read:

18.600. As used in ORS 18.600 to 18.850:

(1) "Account" means an account at a financial institution, including a master account or subaccount, to which an electronic payment may be directly routed.

(2) "Check" has the meaning given that term in ORS 73.0104.

(3) "Creditor" means a person to whom a debt is owed by a debtor.

(4) "Debt" means any monetary obligation for which a garnishment may be issued under ORS 18.605.

(5) "Debtor" means a person whose property is being garnished for the purpose of paying a debt owed to a creditor.

(6) "Federal benefit payment" means:

(a) A benefit payment from the United States Social Security Administration that is protected under 42 U.S.C. 407 and 1383(d)(1);

(b) A benefit payment from the United States Department of Veterans Affairs that is protected under 38 U.S.C. 5301(a);

(c) A benefit payment from the Railroad Retirement Board that is protected under 45 U.S.C. 231m(a) and 352(e); or

(d) A benefit payment from the United States Office of Personnel Management that is protected under 5 U.S.C. 8346 and 8470.

(7) "Financial institution" means a financial institution or trust company as those terms are defined in ORS 706.008.

(8) "Garnishable property" means all property described in ORS 18.615, but does not include:

(a) Any property that is not subject to garnishment under ORS 18.618; and

(b) Any property that is applied as a setoff under ORS 18.620 or 18.795.

(9) "Garnishee" means a person to whom a writ of garnishment has been delivered.

(10) "Garnishment account review" means the process of examining deposits to an account to determine whether benefit payments described in ORS 18.784 (3) have been deposited in the account during the lookback period.

(11) "Garnishor" means:

(a) The creditor, if the writ is issued by the court administrator on behalf of the creditor under ORS 18.635 (2); or

(b) The issuer, if the writ is issued under ORS 18.635 by any person other than the court administrator.

(12) "Past due support" means the amount of child or spousal support, or both, determined under a court or administrative order in a proceeding under **ORS 416.400 to 416.465** or ORS chapter 107, 108, 109, 110, [416,] 419B or 419C that has not been paid or is certified to be owed by another state under ORS 25.083.

(13) "Wages" includes all amounts paid for the services of an employee by an employer, including amounts paid as a commission or bonus.

(14) "Writ" means a writ of garnishment.

NOTE: Eliminates inappropriate chapter reference and substitutes appropriate series reference in (12).

SECTION 5. ORS 25.010 is amended to read:

25.010. As used in **ORS 416.400 to 416.465 and** ORS chapters 25, 107[,] **and** 109 [*and 416*] and any other statutes providing for support payments or support enforcement procedures, unless the context requires otherwise:

(1) "Administrator" means either the Administrator of the Division of Child Support of the Department of Justice or a district attorney, or the administrator's or a district attorney's authorized representative.

(2) "Child" has the meaning given that term in ORS 110.503.

(3) "Child support rights" means the right to establish or enforce an obligation imposed or imposable by law to provide support, including but not limited to medical support as defined in ORS 25.321 and an unsatisfied obligation to provide support.

(4) "Department" means the Department of Justice.

(5) "Disposable income" means that part of the income of an individual remaining after the deduction from the income of any amounts required to be withheld by law except laws enforcing spousal or child support and any amounts withheld to pay medical or dental insurance premiums.

(6) "Employer" means any entity or individual who engages an individual to perform work or services for which compensation is given in periodic payments or otherwise.

(7) "Income" is any monetary obligation in excess of \$4.99 after the fee described in ORS 25.414 (6) has been deducted that is in the possession of a third party owed to an obligor and includes but is not limited to:

(a) Compensation paid or payable for personal services whether denominated as wages, salary, commission, bonus or otherwise;

(b) Periodic payments pursuant to a pension or retirement program;

(c) Cash dividends arising from stocks, bonds or mutual funds;

(d) Interest payments;

(e) Periodic payments from a trust account;

(f) Any program or contract to provide substitute wages during times of unemployment or disability;

(g) Any payment pursuant to ORS chapter 657; or

(h) Amounts payable to independent contractors.

(8) "Obligee" has the meaning given that term in ORS 110.503.

(9) "Obligor" has the meaning given that term in ORS 110.503.

(10) "Order to withhold" means an order or other legal process that requires a withholder to withhold support from the income of an obligor.

(11) "Public assistance" has the meaning given that term in ORS 416.400.

(12) "Withholder" means any person who dis-burses income and includes but is not limited to an employer, conservator, trustee or insurer of the obligor.

NOTE: Eliminates inappropriate chapter reference and substitutes appropriate series reference in lead-in.

SECTION 6. ORS 25.011 is amended to read:

25.011. As used in **ORS 416.400 to 416.465 and** ORS chapters 25, 106, 107, 108, 109[,] **and** 110 [*and 416*], when a person is required to provide an address, "address" means a residence, mailing or contact address in the same state as the person's home.

NOTE: Eliminates inappropriate chapter reference and substitutes appropriate series reference.

SECTION 7. ORS 25.020 is amended to read:

25.020. (1) Support payments for or on behalf of any person that are ordered, registered or filed under **ORS 416.400 to 416.465** or this chapter or ORS chapter 107, 108, 109, 110, [*416,*] 419B or 419C, unless otherwise authorized by ORS 25.030, shall be made to the Department of Justice as the state disbursement unit:

(a) During periods for which support is assigned under ORS 412.024, 418.032, 419B.406 or 419C.597;

(b) As provided by rules adopted under ORS 180.345, when public assistance is provided to a person who receives or has a right to receive support payments on the person's own behalf or on behalf of another person;

(c) After the assignment of support terminates for as long as amounts assigned remain owing;

(d) For any period during which support enforcement services are provided under ORS 25.080;

(e) When ordered by the court under ORS 419B.400;

(f) When a support order that is entered or modified on or after January 1, 1994, includes a provision requiring the obligor to pay support by income withholding; or

(g) When ordered by the court under any other applicable provision of law.

(2)(a) The Department of Justice shall disburse payments, after lawful deduction of fees and in accordance with applicable statutes and rules, to those persons and entities that are lawfully entitled to receive such payments.

(b) During a period for which support is assigned under ORS 412.024, for an obligee described in subsection (1)(b) of this section, the department shall disburse to the obligee, from child support collected each month, \$50 for each child up to a maximum of \$200 per family.

(3)(a) When the administrator is providing support enforcement services under ORS 25.080, the obligee may enter into an agreement with a col-

lection agency, as defined in ORS 697.005, for assistance in collecting child support payments.

(b) The collection agency:

(A) May provide investigative and location services to the obligee and disclose relevant information from those services to the administrator for purposes of providing support enforcement services under ORS 25.080;

(B) May not charge interest or a fee for its services exceeding 29 percent of each support payment received unless the collection agency, if allowed by the terms of the agreement between the collection agency and the obligee, hires an attorney to perform legal services on behalf of the obligee;

(C) May not initiate, without written authorization from the administrator, any enforcement action relating to support payments on which support enforcement services are provided by the administrator under ORS 25.080; and

(D) Shall include in the agreement with the obligee a notice printed in type size equal to at least 12-point type that provides information on the fees, penalties, termination and duration of the agreement.

(c) The administrator may use information disclosed by the collection agency to provide support enforcement services under ORS 25.080.

(4) The Department of Justice may immediately transmit to the obligee payments received from any obligor without waiting for payment or clearance of the check or instrument received if the obligor has not previously tendered any payment by a check or instrument that was not paid or was dishonored.

(5) The Department of Justice shall notify each obligor and obligee by mail when support payments shall be made to the department and when the obligation to make payments in this manner shall cease.

(6)(a) The administrator shall provide information about a child support account directly to a party to the support order regardless of whether the party is represented by an attorney. As used in this subsection, "information about a child support account" means the:

(A) Date of issuance of the support order.

(B) Amount of the support order.

(C) Dates and amounts of payments.

(D) Dates and amounts of disbursements.

(E) Payee of any disbursements.

(F) Amount of any arrearage.

(G) Source of any collection, to the extent allowed by federal law.

(b) Nothing in this subsection limits the information the administrator may provide by law to a party who is not represented by an attorney.

(7) Any pleading for the entry or modification of a support order must contain a statement that payment of support under a new or modified order will be by income withholding unless an exception to payment by income withholding is granted under ORS 25.396.

(8)(a) Except as provided in paragraphs (d) and (e) of this subsection, a judgment or order establish-

ing parentage or including a provision concerning support must contain:

(A) The residence, mailing or contact address, final four digits of the Social Security number, telephone number and final four digits of the driver license number of each party;

(B) The name, address and telephone number of all employers of each party;

(C) The names and dates of birth of the joint children of the parties; and

(D) Any other information required by rule adopted by the Chief Justice of the Supreme Court under ORS 1.002.

(b) The judgment or order shall also include notice that the obligor and obligee:

(A) Must inform the court and the administrator in writing of any change in the information required by this subsection within 10 days after the change; and

(B) May request that the administrator review the amount of support ordered after three years, or such shorter cycle as determined by rule of the Department of Justice, or at any time upon a substantial change of circumstances.

(c) The administrator may require of the parties any additional information that is necessary for the provision of support enforcement services under ORS 25.080.

(d)(A) Upon a finding, which may be made ex parte, that the health, safety or liberty of a party or child would unreasonably be put at risk by the disclosure of information specified in this subsection or by the disclosure of other information concerning a child or party to a parentage or support proceeding or if an existing order so requires, a court or administrator or administrative law judge, when the proceeding is administrative, shall order that the information not be contained in any document provided to another party or otherwise disclosed to a party other than the state.

(B) The Department of Justice shall adopt rules providing for similar confidentiality for information described in subparagraph (A) of this paragraph that is maintained by an entity providing support enforcement services under ORS 25.080.

(e) The Chief Justice of the Supreme Court may, in consultation with the Department of Justice, adopt rules under ORS 1.002 to designate information specified in this subsection as confidential and require that the information be submitted through an alternate procedure to ensure that the information is exempt from public disclosure under ORS 192.355.

(9)(a) Except as otherwise provided in paragraph (b) of this subsection, in any subsequent child support enforcement action, the court or administrator, upon a showing of diligent effort made to locate the obligor or obligee, may deem due process requirements to be met by mailing notice to the last-known residential, mailing or employer address or contact address as provided in ORS 25.085.

(b) Service of an order directing an obligor to appear in a contempt proceeding is subject to ORS 33.015 to 33.155.

(10) Subject to ORS 25.030, this section, to the extent it imposes any duty or function upon the Department of Justice, shall be deemed to supersede any provisions of **ORS 416.400 to 416.465** and ORS chapters 107, 108, 109, 110, [416,] 419A, 419B and 419C that would otherwise impose the same duties or functions upon the county clerk or the Department of Human Services.

(11) Except as provided for in subsections (12), (13) and (14) of this section, credit may not be given for payments not made to the Department of Justice as required under subsection (1) of this section.

(12) The Department of Justice shall give credit for payments not made to the department:

(a) When payments are not assigned to this or another state and the obligee and obligor agree in writing that specific payments were made and should be credited, limited to the current balance owed to the obligee;

(b) When payments are assigned to another state and that state verifies that payments not paid to the department were received by the other state; or

(c) As provided by rule adopted under ORS 180.345.

(13) An obligor may apply to the Department of Justice for credit for payments made other than to the Department of Justice. If the obligee or other state does not provide the agreement or verification required by subsection (12) of this section, credit may be given pursuant to order of an administrative law judge assigned from the Office of Administrative Hearings after notice and opportunity to object and be heard are given to both obligor and obligee. Notice shall be served upon the obligee as provided by ORS 25.085. Notice to the obligor may be by regular mail at the address provided in the application for credit. A hearing conducted under this subsection is a contested case hearing and ORS 183.413 to 183.470 apply. Any party may seek a hearing de novo in the circuit court.

(14) Nothing in this section precludes the Department of Justice from giving credit for payments not made to the department when there has been a judicially determined credit or satisfaction or when there has been a satisfaction of support executed by the person to whom support is owed.

(15) The Department of Justice shall adopt rules that:

(a) Direct how support payments that are made through or credited by the department are to be applied and, if applicable, disbursed; and

(b) Are consistent with federal regulations.

NOTE: Eliminates inappropriate chapter reference and substitutes appropriate series reference in (1) and (10).

SECTION 8. ORS 25.080 is amended to read:

25.080. (1) The following entity is primarily responsible for providing the support enforcement services described in subsection (4) of this section when

an application as described in ORS 25.084 is made, or when an assignment of support rights is made to the state:

(a) The Division of Child Support of the Department of Justice:

(A) If support rights are, or were within the past five months, assigned to this or another state; or

(B) In any case where arrearage under a support order is assigned or owed to or the right to recover back support or state debt is held by this state or another state.

(b) Except as provided in subsection (6) of this section, the district attorney in cases other than those described in paragraph (a) of this subsection if an application as described in ORS 25.084 is made by the obligee, by the obligor, by a person having physical custody of a minor child or by a child attending school, as defined in ORS 107.108.

(2) The provisions of this section apply to support enforcement services for any order or judgment that is or could be entered under ORS **416.400 to 416.465**, 419B.400 or 419C.590 or ORS chapter 107, 108, 109,] **or** 110 [or 416]. The entity specified in subsection (1) of this section shall provide the support enforcement services on behalf of the State of Oregon and not on behalf of any other party or on behalf of a parent. The Department of Justice shall adopt rules addressing the provision of support enforcement services when the purposes of the state in providing those services may be contradictory in individual cases.

(3) Notwithstanding the division of responsibility for providing support enforcement services between the Division of Child Support and the district attorney as described in subsection (1) of this section, provision of support enforcement services may not be challenged on the basis that the entity providing the services in a particular case is not the entity responsible for the case under subsection (1) of this section.

(4) When responsible for providing support enforcement services and there is sufficient evidence available to support the action to be taken, the entity described in subsection (1) of this section:

(a) Shall establish and enforce any child support obligation;

(b) Shall establish paternity;

(c) Shall enforce spousal support when the obligee is living with the obligor's child for whom support enforcement services are being provided and those services are funded in part by federal moneys;

(d) May enforce any other order or judgment for spousal support;

(e) Shall, on behalf of the state, initiate and respond to child support modification proceedings based upon a substantial change of circumstances;

(f) Shall, on behalf of the state, initiate and respond to child support modification proceedings based upon a modification conducted under ORS 25.287 concerning existing child support orders;

(g) Shall establish and enforce obligations to provide medical insurance coverage for dependent children;

(h) Shall ensure compliance with the provisions of 42 U.S.C. 651 to 669 and 45 C.F.R. Chapter III as authorized by state law;

(i) Shall carry out the policy of the State of Oregon regarding child support obligations as expressed in ORS 416.405; and

(j) Shall ensure that child support orders are in compliance with the formula established by this chapter.

(5) In any proceeding under subsection (4) of this section, the parties are those described in ORS 416.407.

(6) The district attorney of any county and the department may provide by agreement for assumption by the Division of Child Support of the functions of the district attorney under subsection (1) of this section or for redistribution between the district attorney and the Division of Child Support of all or any portion of the duties, responsibilities and functions set forth in subsections (1) and (4) of this section.

(7) All county governing bodies and all district attorneys shall enter into child support cooperative agreements with the department. The following apply to this subsection:

(a) The agreements shall contain appropriate terms and conditions sufficient for the state to comply with all child support enforcement service requirements under federal law; and

(b) If this state loses any federal funds due to the failure of a county governing body or district attorney to either enter into an agreement under this subsection or to provide sufficient support enforcement service, the county shall be liable to the department for, and the liability shall be limited to, the amount of money the state determines it lost because of the failure. The state shall offset the loss from any moneys the state is holding for or owes the county or from any moneys the state would pay to the county for any purpose.

(8) The Department of Justice shall enter into an agreement with the Oregon District Attorneys Association to establish a position or positions to act as a liaison between the Division of Child Support and those district attorneys who provide support enforcement services under this section. The department shall fund the position or positions. The Oregon District Attorneys Association shall administer the liaison position or positions under the agreement. The liaison shall work to:

(a) Enhance the participation and interaction of the district attorneys in the development and implementation of Child Support Program policies and services; and

(b) Increase the effectiveness of child support enforcement services provided by the district attorneys.

(9) The district attorney or the Division of Child Support, whichever is appropriate, shall provide the services specified in subsections (1) and (4) of this section to any applicant, but may in their discretion, upon a determination and notice to the applicant

that the prospect of successful recovery from the obligor of a portion of the delinquency or future payments is remote, require payment to the district attorney or the Division of Child Support of an application fee, in accordance with an application fee schedule established by rule by the department. If service performed results in the district attorney or the Division of Child Support recovering any support enforcement fees, the fees shall be paid to the applicant in an amount equal to the amount of the application fee.

(10) An obligee may request the Division of Child Support or a district attorney to cease all collection efforts if it is anticipated that physical or emotional harm will be caused to the parent or caretaker relative or the child for whom support was to have been paid. The department, by rule, shall set out the circumstances under which such requests shall be honored.

NOTE: Eliminates inappropriate chapter reference and substitutes appropriate series reference in (2).

SECTION 9. ORS 25.085 is amended to read:

25.085. (1) In any proceeding under ORS 25.080, service of legal documents upon an obligee may be by regular mail to the address at which the obligee receives public assistance, to an address provided by the obligee on the obligee's application for child support enforcement services or to any other address given by the obligee. When service is authorized by regular mail under this section, proof of service may be by notation upon the computerized case record made by the person making the mailing. The notation must set forth the address to which the documents were mailed, the date they were mailed, the description of the documents mailed and the name of the person making the notation. If the documents are returned by the postal service as undeliverable as addressed, that fact must be noted on the computerized case record. If no new address for service by regular mail can be obtained, service must be by certified mail, return receipt requested, by personal service upon the obligee, or by any other mail service with delivery confirmation.

(2) Notwithstanding any other provision of **ORS 416.400 to 416.465** or this chapter or ORS chapter 110 [or 416], when a case is referred to this state by a public child support agency of another state for action in this state, there is no requirement that an obligee, present in the initiating state and receiving child support enforcement services from that state, be served in any action taken in this state as a consequence of the interstate referral. In such cases the requirement to serve the obligee that would otherwise apply is satisfied by sending to the initiating agency in the other state, by regular mail, any documents that would otherwise be served upon the obligee.

(3) The appropriate child support agency of the state shall make any mailings to or service upon the obligee that is required by this section.

NOTE: Eliminates inappropriate chapter reference and substitutes appropriate series reference in (2).

SECTION 10. 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 child support, including medical support as defined in ORS 25.321. “Child support judgment” does not include any term of a judgment or order that deals with matters other than child support.

(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 administrative law judge entered, filed or registered the underlying order under ORS 416.400 to 416.465 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[,] or 110 or [416 or] ORS 125.025, **416.400 to 416.465**, 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 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 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 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 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 administrative law judge shall specify in the modification judgment the effects of the modification on the child support judgment being modified.

NOTE: Eliminates inappropriate chapter reference and substitutes appropriate series reference in (3).

SECTION 11. 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 child support, including medical support as defined in ORS 25.321, 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 two or more child support judgments exist 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 two or more child support judgments exist involving the same obligor and child and the same period, 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 two or more child support

judgments exist involving the same obligor and child and the same period, 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)(a) Except as provided in paragraph (b) of this subsection, when two or more child support judgments exist involving the same obligor and child and the same period, 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 terminate contrary terms of each earlier-issued child support judgment.

(b) If the earlier-issued child support judgment requires provision of a specific type of child support and the last-issued child support judgment is silent with respect to that type of child support, the requirement of the earlier-issued child support judgment continues in effect.

(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 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 two or more child support judgments exist involving the same obligor and child and the same period, 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 designate an auxiliary court under 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 child support, including medical support as defined in ORS 25.321, 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 child support, including medical support as defined

in ORS 25.321, are controlling and which child support judgment or judgments contain those terms;

(c) An affirmation, termination or modification of the terms regarding child support, including medical support as defined in ORS 25.321, in each of the child support judgments;

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

(e) The effective date of each controlling term and the termination date of each noncontrolling term in each of the child support judgments. In determining these dates, the court may apply the following:

(A) A controlling term is effective on the date specified in the child support judgment containing that term or, if no date is specified, on the date the child support judgment was entered as described in ORS 18.075.

(B) A noncontrolling term is terminated on the date the governing child support judgment is entered as described in ORS 18.075.

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

(10) When the governing child support judgment is entered as described in ORS 18.075, the noncontrolling terms of each earlier child support judgment are terminated. However, subject to subsection (11) of this section, the entry of the governing child support judgment does not affect any child support payment arrearage or any liability related to medical support, as defined in ORS 25.321, that has accrued under a child support judgment before the governing child support judgment is entered.

(11) For purposes of reconciling any child support arrears or credits under all of the child support judgments, amounts collected and credited for a particular period under one child support judgment must be credited against the amounts accruing or accrued for the same period under any other child support judgment.

(12) 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 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 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.

(13) This section applies to any judicial proceeding in which child support may be awarded or modified under this chapter or ORS chapter 107, 108[,] or 109 or [416 or] ORS 125.025, **416.400 to 416.465, 419B.400, 419B.923, 419C.590 or 419C.610.**

NOTE: Eliminates inappropriate chapter reference and substitutes appropriate series reference in (13).

SECTION 12. ORS 25.166 is amended to read:

25.166. (1) Any court order or administrative order issued or modified in a proceeding under **ORS 416.400 to 416.465** or ORS chapter 107, 108, 109, 110, [416,] 419B or 419C that contains an order for the payment of child support or spousal support must specify an initial due date and year for the payment of support that is on the first day of a calendar month, with subsequent payments due on the first day of each subsequent month for which the support is payable.

(2) For purposes of support enforcement, any support payment that becomes due and payable on a day other than the first day of the month in which the payment is due shall be enforceable by income withholding as of the first day of that month.

(3) Any court order or administrative order that contains an award of child, medical or spousal support that accrues on other than a monthly basis may, for income withholding and administrative support billing purposes only, be converted to a monthly amount.

(4) Support payments become delinquent only if not paid in full within one month of the payment due date. A monthly child support obligation that is to be paid in two or more installments does not become delinquent until the obligation is not paid in full by the due date for the first installment in the next month.

(5) Subsections (2) and (3) of this section do not apply to the determination or issuance of support arrearage liens, installment arrearage liens, judgment liens, writs of garnishment or any other action or proceeding that affects property rights under ORS chapter 18.

NOTE: Eliminates inappropriate chapter reference and substitutes appropriate series reference in (1).

SECTION 13. ORS 25.240 is amended to read:

25.240. Notwithstanding any other law, [where] **when** a court or the administrator has the authority under ORS chapter 107, 108, 109[,] **or** 110 or [416 or] **ORS 416.400 to 416.465**, 419B.400 to 419B.406 or 419C.590, 419C.592 and 419C.597 to require a parent without legal custody to pay support for a minor child, [then] **the** court or administrator may require a parent with legal custody to pay support for [such a] **the** child as long as that parent does not have physical custody of [such] **the** child or is not providing the child with the necessities of life, including but not limited to lodging, food and clothing.

NOTE: Updates syntax; eliminates inappropriate chapter reference and substitutes appropriate series reference.

SECTION 14. ORS 25.280 is amended to read:

25.280. In any judicial or administrative proceeding for the establishment or modification of a

child support obligation under ORS chapter 107, 108, 109[,] **or** 110 or [416 or] **ORS 416.400 to 416.465**, 419B.400, 419B.923, 419C.590 or 419C.610, the amount of support determined by the formula established under ORS 25.275 is presumed to be the correct amount of the obligation. This is a rebuttable presumption and a written finding or a specific finding on the record that the application of the formula would be unjust or inappropriate in a particular case is sufficient to rebut the presumption. The following criteria shall be considered in making the finding:

(1) Evidence of the other available resources of a parent;

(2) The reasonable necessities of a parent;

(3) The net income of a parent remaining after withholdings required by law or as a condition of employment;

(4) A parent's ability to borrow;

(5) The number and needs of other dependents of a parent;

(6) The special hardships of a parent including, but not limited to, any medical circumstances of a parent affecting the parent's ability to pay child support;

(7) The needs of the child;

(8) The desirability of the custodial parent remaining in the home as a full-time parent and homemaker;

(9) The tax consequences, if any, to both parents resulting from spousal support awarded and determination of which parent will name the child as a dependent; and

(10) The financial advantage afforded a parent's household by the income of a spouse or another person with whom the parent lives in a relationship similar to that of a spouse.

NOTE: Eliminates inappropriate chapter reference and substitutes appropriate series reference in lead-in.

SECTION 15. ORS 25.287 is amended to read:

25.287. (1)(a) The entity providing support enforcement services under ORS 25.080 may initiate proceedings to modify a support obligation to ensure that the support obligation is in accordance with the formula established under ORS 25.275.

(b) Proceedings under this subsection may occur only after three years have elapsed, or such shorter cycle as determined by rule of the Department of Justice, from the later of the following:

(A) The date the original support obligation took effect;

(B) The date any previous modification of the support obligation took effect; or

(C) The date of any previous review and determination under this subsection that resulted in no modification of the support obligation.

(c) For purposes of paragraph (b) of this subsection, a support obligation or modification takes effect on the first date on which the obligor is to pay the established or modified support amount.

(d) The only issues at proceedings under this subsection are whether three years have elapsed, or

such shorter cycle as determined by rule of the department, and whether the support obligation is in substantial compliance with the formula established under ORS 25.275.

(e) Upon review, if the administrator determines that a support obligation does not qualify for modification under this section, a party may object to the determination within 30 days after the date of the determination. A hearing on the objection shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings. Appeal of the order of the administrative law judge may be taken to the circuit court of the county in which the support obligation has been entered or registered for a hearing de novo. The appeal to the court shall be by petition for review filed within 60 days after entry of the order of the administrative law judge.

(f) If the court, the administrator or the administrative law judge finds that more than three years have elapsed, or such shorter cycle as determined by rule of the department, the court, the administrator or the administrative law judge shall modify the support order to bring the support obligation into substantial compliance with the formula established under ORS 25.275, regardless of whether there has been a substantial change in circumstances since the support obligation was last established, modified or reviewed. Proceedings by the administrator or administrative law judge under this subsection shall be conducted according to the provisions of ORS 416.425 and 416.427.

(g) The provisions of this subsection apply to any support obligation established by a support order under this chapter or ORS chapter 107, 108, 109[, or 110 or [416 or] ORS 416.400 to 416.465, 419B.400 or 419C.590.

(2) The entity providing support enforcement services shall state in the document initiating the proceeding, to the extent known:

(a) Whether there is pending in this state or any other jurisdiction any type of support proceeding involving the child, including a proceeding brought under ORS 107.085, 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 125.025, 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter 110; and

(b) Whether there exists in this state or any other jurisdiction a support order, as defined in ORS 110.503, involving the child, other than the support obligation the entity seeks to modify.

(3) The entity providing support enforcement services shall include with the document initiating the proceeding a certificate regarding any pending support proceeding and any existing support order other than the support obligation the entity seeks to modify. The entity providing support enforcement services shall use a certificate that is in a form prescribed by the administrator and shall include information required by the administrator and subsection (2) of this section.

(4) The administrator, court or administrative law judge may use the provisions of subsection (1)

of this section when a support order was entered in another state and registered in Oregon, the provisions of ORS chapter 110 apply and more than three years have elapsed, or such shorter cycle as determined by rule of the department.

(5) Notwithstanding the provisions of this section, proceedings may be initiated at any time to modify a support obligation based upon a substantial change of circumstances under any other provision of law.

(6) The obligee is a party to any action to modify a support obligation under this section.

NOTE: Eliminates inappropriate chapter reference and substitutes appropriate series reference in (1)(g).

SECTION 16. ORS 25.399 is amended to read:

25.399. (1) When an order to withhold is issued under ORS 25.378, the party or entity initiating the action shall send notice of the order to withhold to the obligor by regular mail to the last-known [addresses] address of the obligor. The notice must state:

(a) That withholding has commenced;

(b) The amount to be withheld and the amount of arrears, if any;

(c) That the order to withhold applies to any current or subsequent withholder or period of employment;

(d) The procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact, which means an error in the amount of current support or arrearages, or an error in the identity of the obligor;

(e) The availability of and requirements for exceptions to withholding;

(f) That the obligor has 30 days from the date that the income is first withheld pursuant to the order to withhold to contest the withholding; and

(g) The actions that will be taken if the obligor contests the withholding.

(2) The notice requirement of subsection (1) of this section may be met by mailing a copy of the order to withhold, by regular mail, to the obligor.

NOTE: Corrects word choice in (1).

SECTION 17. ORS 25.720 is amended to read:

25.720. (1) Except as provided in ORS 25.125, 412.024, 418.032, 419B.406 or 419C.597 or subsection (2) of this section, the right to receive child or spousal support payments under **ORS 416.400 to 416.465** and ORS chapters 107, 108, 109, 110, [416,] 419B and 419C is not assignable, and any transaction in violation of this section is void.

(2) Notwithstanding the provisions of subsection (1) of this section, the right to receive support payments is assignable as may be appropriate for the protection of a minor or other person for whom a fiduciary has been appointed under ORS chapter 125 or for whom a trust has been established.

(3) A person may not solicit or accept the assignment of support rights under subsection (1) of this section.

NOTE: Eliminates inappropriate chapter reference and substitutes appropriate series reference in (1).

SECTION 18. ORS 30.136 is amended to read:

30.136. (1) As used in this section and ORS 30.138, “servicemember” has the meaning given that term in 50 U.S.C. [App. 511] **3911** as in effect on May 8, 2009.

(2) An action brought by a servicemember to enforce a right or remedy under 50 U.S.C. [App. 501] **3901** et seq. is not subject to court-ordered arbitration under ORS 36.400 to 36.425 unless the parties to the action stipulate in writing to arbitration after the action is commenced.

(3) In addition to the counties specified in ORS 14.080, an action brought by a servicemember to enforce a right or remedy under 50 U.S.C. [App. 501] **3901** et seq. may be brought in the Oregon county where the servicemember resides or where the servicemember was a resident at the time of bringing the action.

(4) Any contract term or provision providing for a choice of forum other than Oregon in an agreement entered into by a servicemember who resides in Oregon or is a resident of Oregon is voidable at the election of the servicemember.

NOTE: Adjusts references to reflect federal code reorganization in (1), (2) and (3).

SECTION 19. ORS 30.138 is amended to read:

30.138. (1) In addition to any other remedy payable to a servicemember for the enforcement of a right under 50 U.S.C. [App. 501] **3901** et seq., a court shall award a servicemember reasonable attorney fees and the amounts specified in subsection (2) of this section if the court finds that written demand as described in subsection (3) of this section was mailed to the opposing party demanding relief under 50 U.S.C. [App. 501] **3901** et seq., and the opposing party failed to remedy the violation of 50 U.S.C. [App. 501] **3901** et seq. within 30 days after the mailing of the demand.

(2) If a court finds that notice was mailed as required by this section, and the opposing party failed to remedy the violation of 50 U.S.C. [App. 501] **3901** et seq. within the time allowed, the court shall award the servicemember:

(a) The greater of \$1,000 or actual damages, including damages for emotional distress; or

(b) If the court finds that the opposing party’s conduct was willful, as described in ORS 646.605, the court shall award the servicemember the greater of \$5,000[,] or three times the amount of actual damages, including damages for emotional distress.

(3) A written demand under subsection (1) of this section must be sent by certified mail, return receipt requested. The demand must include the servicemember’s name and address, the date on which the servicemember went on active duty and a description of the alleged violation of 50 U.S.C. [App. 501] **3901** et seq.

NOTE: Adjusts references to reflect federal code reorganization in (1), (2) and (3); corrects punctuation in (2)(b).

SECTION 20. ORS 40.210 is amended to read:

40.210. (1) Notwithstanding any other provision of law, in a prosecution for a crime described in ORS 163.266 (1)(b) or (c), 163.355 to 163.427, 163.670 or 167.017, in a prosecution for an attempt to commit one of those crimes or in a proceeding conducted under ORS 163.760 to 163.777, the following evidence is not admissible:

(a) Reputation or opinion evidence of the past sexual behavior of an alleged victim or a corroborating witness; or

(b) Reputation or opinion evidence presented for the purpose of showing that the manner of dress of an alleged victim incited the crime or, in a proceeding under ORS 163.760 to 163.777, incited the sexual abuse, or indicated consent to the sexual acts that are alleged.

(2) Notwithstanding any other provision of law, in a prosecution for a crime or an attempt to commit a crime listed in subsection (1) of this section or in a proceeding conducted under ORS 163.760 to 163.777, evidence of an alleged victim’s past sexual behavior other than reputation or opinion evidence is also not admissible, unless the evidence other than reputation or opinion evidence:

(a) Is admitted in accordance with subsection (4) of this section; and

(b) Is evidence that:

(A) Relates to the motive or bias of the alleged victim;

(B) Is necessary to rebut or explain scientific or medical evidence offered by the state; or

(C) Is otherwise constitutionally required to be admitted.

(3) Notwithstanding any other provision of law, in a prosecution for a crime or an attempt to commit a crime listed in subsection (1) of this section or in a proceeding conducted under ORS 163.760 to 163.777, evidence, other than reputation or opinion evidence, of the manner of dress of the alleged victim or a corroborating witness, presented by a person accused of committing the crime or, in a proceeding conducted under ORS 163.760 to 163.777, by the respondent, is also not admissible, unless the evidence [is]:

(a) Is admitted in accordance with subsection (4) of this section; and

(b) Is evidence that:

(A) Relates to the motive or bias of the alleged victim;

(B) Is necessary to rebut or explain scientific, medical or testimonial evidence offered by the state;

(C) Is necessary to establish the identity of the alleged victim; or

(D) Is otherwise constitutionally required to be admitted.

(4)(a) If the person accused of a crime or an attempt to commit a crime listed in subsection (1) of this section, or the respondent in a proceeding con-

ducted under ORS 163.760 to 163.777, intends to offer evidence under subsection (2) or (3) of this section, the accused or the respondent shall make a written motion to offer the evidence not later than 15 days before the date on which the trial in which the evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which the evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties and, in a criminal proceeding, on the alleged victim through the office of the prosecutor.

(b) The motion described in paragraph (a) of this subsection shall be accompanied by a written offer of proof. If the court determines that the offer of proof contains evidence described in subsection (2) or (3) of this section, the court shall order a hearing in camera to determine if the evidence is admissible. At the hearing the parties may call witnesses, including the alleged victim, and offer relevant evidence. Notwithstanding ORS 40.030 (2), if the relevancy of the evidence that the accused or the respondent seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in camera or at a subsequent hearing in camera scheduled for the same purpose, shall accept evidence on the issue of whether the condition of fact is fulfilled and shall determine the issue.

(c) If the court determines on the basis of the hearing described in paragraph (b) of this subsection that the evidence the accused or the respondent seeks to offer is relevant and that the probative value of the evidence outweighs the danger of unfair prejudice, the evidence shall be admissible in the trial to the extent an order made by the court specifies evidence that may be offered and areas with respect to which a witness may be examined or cross-examined.

(d) An order admitting evidence under this subsection in a criminal prosecution may be appealed by the state before trial.

(5) For purposes of this section:

(a) "Alleged victim" includes the petitioner in a proceeding conducted under ORS 163.760 to 163.777.

(b) "In camera" means out of the presence of the public and the jury.

(c) "Past sexual behavior" means sexual behavior other than:

(A) The sexual behavior with respect to which the crime or attempt to commit the crime listed in subsection (1) of this section is alleged; or

(B) In a proceeding conducted under ORS 163.760 to 163.777, the alleged sexual abuse.

(d) "Trial" includes a hearing conducted under ORS 163.760 to 163.777.

NOTE: Corrects read-in in (3).

SECTION 20a. ORS 73.0417 is amended to read:

73.0417. (1) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

(a) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(b) The draft has not been altered;

(c) The warrantor has no knowledge that the signature of the drawer of the draft is unauthorized; and

(d) If the draft is a demand draft, creation of the draft according to the terms on its face was authorized by the person identified as drawer.

(2) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(3) If a drawee asserts a claim for breach of warranty under subsection (1) of this section based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under ORS 73.0404 or 73.0405 or the drawer is precluded under ORS [73.0405] **73.0406** or 74.4060 from asserting against the drawee the unauthorized indorsement or alteration.

(4) If a dishonored draft is presented for payment to the drawer or an indorser or any other instrument is presented for payment to a party obliged to pay the instrument, and payment is received, the following rules apply:

(a) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred in the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

(b) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(5) The warranties stated in subsections (1) and (4) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of

warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (2) or (4) of this section is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(6) A claim for relief for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(7) A demand draft is a check, as defined in ORS 73.0104 (6).

(8) If the warranty in subsection (1)(d) of this section is not given by a transferor under applicable conflict of law rules, then the warranty is not given to that transferor when that transferor is a transferee.

NOTE: Corrects statutory reference in (3).

SECTION 20b. ORS 74.2080 is amended to read: 74.2080. (1) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(a) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(b) The draft has not been altered;

(c) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized; and

(d) If the draft is a demand draft, creation of the draft according to the terms on its face was authorized by the person identified as drawer.

(2) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft:

(a) Breach of warranty is a defense to the obligation of the acceptor; and

(b) If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(3) If a drawee asserts a claim for breach of warranty under subsection (1) of this section based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under ORS 73.0404 or 73.0405 or the drawer is precluded under

ORS [73.0405] **73.0406** or 74.4060 from asserting against the drawee the unauthorized indorsement or alteration.

(4) If a dishonored draft is presented for payment to the drawer or an indorser or any item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(5) The warranties stated in subsections (1) and (4) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(6) A claim for relief for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(7) A demand draft is a check, as defined in ORS 73.0104 (6).

(8) If the warranty in subsection (1)(d) of this section is not given by a transferor under applicable conflict of law rules, then the warranty is not given to that transferor when that transferor is a transferee.

NOTE: Corrects statutory reference in (3).

SECTION 21. ORS 86.610 is amended to read:

86.610. Financial institutions as defined in ORS 706.008, trustees, guardians, conservators, executors, administrators, other fiduciaries and all other persons, associations and corporations, subject to the laws of this state, may make such loans, secured by real property or leasehold, as the Federal Housing [Administrator] **Administration** insures or makes a commitment to insure, and may obtain such insurance.

NOTE: Corrects name of federal agency.

SECTION 22. ORS 86.620 is amended to read:

86.620. Financial institutions as defined in ORS 706.008, trustees, guardians, conservators, executors, administrators, other fiduciaries and all other persons, associations and corporations, subject to the laws of this state, may invest their funds, and the money in their custody or possession, eligible for investment, in bonds and mortgages on real property insured by the Federal Housing [Administrator] **Administration**, in debentures issued by the Federal Housing [Administrator] **Administration**, and in obligations of national mortgage associations.

NOTE: Corrects name of federal agency.

SECTION 23. ORS 92.104 is added to and made a part of ORS chapter 92.

NOTE: Adds statute to appropriate chapter.

SECTION 24. ORS 98.852 is amended to read: 98.852. As used in ORS 98.853 to 98.862:

- (1) "Business day" means Mondays through Friday, excluding legal holidays.
- (2) "Consideration" has the meaning given that term in ORS 171.725.
- (3) "Law enforcement agency" has the meaning given that term in ORS 131.915.
- (4) "Motor vehicle" has the meaning given that term in ORS 801.360.
- (5) "Parking facility" has the meaning given that term in ORS 98.805.
- (6) "Personal property of an emergency nature" includes, but is not limited to, prescription medication, eyeglasses, **hearing aids**, clothing, identification, a wallet, a purse, a credit card, a checkbook, cash and child safety car and booster seats.
- (7) "Tower" means a person that:
 - (a) Owns or operates a tow vehicle for profit; or
 - (b) Is employed by a person that owns or operates a tow vehicle for profit.
- (8) "Tow vehicle" has the meaning given that term in ORS 801.530.

NOTE: Conforms definition in (6) with amendments to ORS 98.858 by section 8, chapter 523, Oregon Laws 2017.

SECTION 25. ORS 98.858 is amended to read:

98.858. (1) A tower in physical possession of a motor vehicle shall permit the owner or person in lawful possession of a motor vehicle the tower has towed to:

- (a) Redeem or inspect the motor vehicle:
 - (A) Between 8 a.m. and 6 p.m. on business days;
 - (B) At all other hours, within 60 minutes after asking the tower to release or allow for the inspection of the motor vehicle; and
- (C) Within 30 minutes of a time mutually agreed upon between the tower and the owner or person in lawful possession of the motor vehicle;
 - (b) Contact the tower at any time to receive information about the location of the motor vehicle and instructions for obtaining release of the motor vehicle; and
 - (c) Obtain all personal property of an emergency nature in the motor vehicle within the time allowed under paragraph (a) of this subsection.
- (2) A tower may not charge the owner or person in lawful possession of the motor vehicle a fee in any amount to obtain personal property of an emergency nature except for a gate fee between the hours of 6 p.m. and 8 a.m. on business days, or on a Saturday, a Sunday or a legal holiday.

[(3) As used in this section, "personal property of an emergency nature" includes but is not limited to prescription medication, eyeglasses, hearing aids, clothing, identification, a wallet, a purse, a credit

card, a checkbook, cash and child safety car and booster seats.]

NOTE: Removes duplicative definition in (3) (see section 24, amending ORS 98.852).

SECTION 26. ORS 107.108 is amended to read: 107.108. (1) As used in this section:

- (a) "Child attending school" means a child of the parties who:
 - (A) Is unmarried;
 - (B) Is 18 years of age or older and under 21 years of age;
 - (C) Is making satisfactory academic progress as defined by the school that the child attends; and
 - (D) Has a course load that is no less than one-half of the load that is determined by the school to constitute full-time enrollment.
- (b) "Regularly scheduled break" means:
 - (A) A summer semester or term;
 - (B) A period of time not exceeding four months between graduation from or completion of school and the beginning of the next regularly scheduled term, semester or course of study at school;
 - (C) A period of time between the end and beginning of regularly scheduled consecutive school semesters, terms or courses of study; or
 - (D) Any other scheduled break between courses of study that is defined by the school as a regularly scheduled break.

(c) "School" means:

- (A) An educational facility such as a high school, community college, four-year college or university;
- (B) A course of professional, vocational or technical training, including the Job Corps, designed to fit the child for gainful employment; or
- (C) A high school equivalency course, including but not limited to a General Educational Development (GED) program, an educational program for grade 12 or below and home schooling.

(2) A support order entered or modified under **ORS 416.400 to 416.465** or this chapter or [under] ORS chapter 25, 108, 109, 110, 125, [416.] 419B or 419C may require either parent, or both of them, to provide for the support or maintenance of a child attending school.

(3) Notwithstanding ORS 416.407, a child attending school is a party to any legal proceeding related to the support order. A child attending school may:

- (a) Apply for services under ORS 25.080:
 - (A) If a support order provides for the support or maintenance of the child attending school; or
 - (B) In accordance with rules adopted by the Department of Justice;
- (b) Request a judicial or administrative modification of the child support amount or may receive notice of and participate in any modification proceeding; and

(c) Agree, in the same manner as an obligee under ORS 25.020 (12), that payments not made to the Department of Justice should be credited for amounts that would have been paid to the child at-

tending school if the payments had been made to the department.

(4) Regardless of whether the child is a child attending school, an unmarried child who is 18 years of age or older and under 21 years of age:

(a) Is a necessary party to a judicial proceeding under ORS 107.085, 107.135, 107.431, 108.110, 109.103 or 109.165 in which the child's parents are parties and the court has authority to order or modify support for a child attending school; and

(b) May request notice of any proceeding initiated by the administrator to modify a support order that may affect the child's rights as a child attending school. To receive notice, the child shall provide an address to the administrator, and the administrator shall notify the child of any modification proceeding by first class mail. To be a party to a proceeding, the child must send a written request to the administrator within 30 days after the date of the notice of the proceeding.

(5)(a) If a support order provides for the support or maintenance of a child attending school and the child qualifies as a child attending school, unless good cause is found for the distribution of the payment to be made in some other manner, support shall be distributed to the child if services are being provided under ORS 25.080 or shall be paid directly to the child if those services are not being provided.

(b) Unless otherwise ordered by the court, administrator or administrative law judge, when there are multiple children for whom support is ordered, the amount distributed or paid directly to a child attending school is a prorated share based on the number of children for whom support is ordered. However, if, due to a parenting time or split custody arrangement, support was not paid to the parent having primary physical custody of the child before the child turned 18 years of age, support may not be distributed or paid directly to the child attending school unless the support order is modified.

(c) The Department of Justice shall adopt rules to define good cause and circumstances under which the administrator or administrative law judge may allocate support by other than a prorated share and to determine how support is to be allocated in those circumstances.

(6)(a) For support payments to continue to be distributed or paid directly to the child attending school, the child shall provide to each parent ordered to pay support and, if services are being provided under ORS 25.080, to the department:

(A) Written notice of the child's intent to attend or continue to attend school. The child shall provide the notice before reaching 18 years of age. The notice must include the name of the school and the expected graduation date or date when the child will stop attending classes. If the child changes schools, the child shall provide the information required by this subsection concerning the subsequent school before the expected graduation date or date when the child will stop attending classes at the previous school.

(B) Written consent that:

(i) Is directed to the child's school and is in a form consistent with state and federal requirements that restrict disclosure of student records;

(ii) Gives the school authority to disclose to each parent ordered to pay support the child's enrollment status, whether the child is maintaining satisfactory academic progress, a list of courses in which the child is enrolled and the child's grades; and

(iii) States that the disclosure is for the purpose of permitting each parent to verify the child's compliance with the requirements of this section.

(b) The child shall provide the written consent form described in paragraph (a)(B) of this subsection within 30 days after the beginning of the first term or semester after the child reaches 18 years of age, at the beginning of each academic year thereafter and as otherwise required by the school to disclose the information under this section.

(c) If an order of nondisclosure of information has been entered concerning the child under ORS 25.020, the child may provide the information described in paragraph (a)(B) of this subsection in the manner established by the department by rule.

(7) Each parent ordered to pay support shall continue to make support payments, to be distributed or paid directly, to the child during regularly scheduled breaks as long as the child intends to continue attending school the next scheduled term or semester.

(8) A parent's obligation to pay support to a child attending school is suspended when:

(a) The child has reached 18 years of age and has not provided written notice of the child's intent to attend or continue to attend school, or the child has graduated or reached the date to stop attending classes, as provided under subsection (6)(a)(A) of this section;

(b)(A) Services are not being provided under ORS 25.080;

(B) The parent has provided the child with a written notice of the parent's intent to stop paying support directly to the child because the child is no longer a child attending school or the child has not provided the written consent required by subsection (6)(a)(B) of this section; and

(C) Thirty days have passed since the parent provided the notice to the child and the parent has not received:

(i) Written confirmation from the school that the child is enrolled in the school and is a child attending school; or

(ii) The written consent from the child as required by subsection (6)(a)(B) of this section;

(c)(A) Services are being provided under ORS 25.080;

(B) A parent ordered to pay support has provided the department with written notice that the child is no longer a child attending school or that the child has not provided the written consent required by subsection (6)(a)(B) of this section;

(C) The department has provided written notice to the child requiring:

(i) Written confirmation, on a form developed by the department, from the school that the child is enrolled in the school and is a child attending school; and

(ii) Proof that the written consent required by subsection (6)(a)(B) of this section has been provided to the parent ordered to pay support; and

(D) Thirty days have passed since the department provided the notice to the child and the department has not received:

(i) Written confirmation from the school that the child is enrolled in the school and is a child attending school; or

(ii) Proof that the written consent required by subsection (6)(a)(B) of this section has been provided to the parent ordered to pay support.

(9) When a parent's support obligation has been suspended under subsection (8) of this section, the obligation is reinstated:

(a) If services are not being provided under ORS 25.080, effective on the date the parent receives written confirmation from the school that the child is enrolled in the school and is a child attending school and receives the written consent from the child as required by subsection (6)(a)(B) of this section; or

(b) If services are being provided under ORS 25.080, effective on the date the department receives written confirmation from the school that the child is enrolled in the school and is a child attending school and receives proof that the written consent required by subsection (6)(a)(B) of this section has been provided to the parent ordered to pay support.

(10) If a parent ordered to pay support is paying a prorated share under subsection (5) of this section and that obligation is suspended under subsection (8) of this section, the parent shall pay to the obligee the amount previously paid to the child attending school until such time as the support order is modified. The suspension of a parent's obligation to pay support to a child attending school is a substantial change of circumstances for purposes of modifying a support order. In a proceeding to modify a support order, the court, administrator or administrative law judge may order a modified amount of support and may order an amount of support to be paid in the event that a support obligation is reinstated under subsection (9) of this section.

(11)(a) If services are being provided under ORS 25.080 and the department has suspended a support obligation under subsection (8) of this section or reinstated a support obligation under subsection (9) of this section, a party may request administrative review of the action within 30 days after the date of the notice that the department has suspended or reinstated the support obligation.

(b) The department may adopt rules specifying the issues that may be considered on review.

(c) A party may appeal the department's decision on review under ORS 183.484.

(12)(a) Notwithstanding any other provision of this section, if a parent who is required to provide

for the support or maintenance of a child attending school has established a higher education savings plan for the child's continued education, the court may order payment in accordance with the plan instead of ordering support that would otherwise be distributed or paid directly to the child under this section.

(b) If the court orders payment in accordance with the plan, the court may not order compliance with or payment of that provision of the order through the department.

(c) As used in this subsection, "higher education savings plan" means a tax-advantaged account established by a parent on behalf of a child for the purpose of paying qualified higher education expenses of the child at eligible educational institutions.

(13) A support order that provides for the support or maintenance of a child attending school is subject to this section regardless of when the support order was entered.

(14) A support order that provides for the support or maintenance of a child attending school is intended to recognize the importance of continuing education for a child over 18 years of age who does not benefit from an intact family or who has been removed from the household. While support may serve to supplement the resources available to the child attending school, it is not intended to replace other resources or meet all of the financial needs of a child attending school.

NOTE: Eliminates inappropriate chapter reference and substitutes appropriate series reference in (2).

SECTION 27. ORS 107.835 is amended to read:

107.835. (1) When a court enters a judgment, order or modification of a judgment or order under ORS 163.760 to 163.777 **or 416.400 to 416.465** or ORS chapter 25, 107, 108, 109[,] **or 110 [or 416]**, the court shall allow any party to the judgment or order to include in the judgment or order a waiver of personal service in a subsequent contempt proceeding in order to maintain the confidentiality of the party's residential address. In the waiver, the party shall give a contact address for service of process and select one of the following methods of substituted service:

- (a) Mailing address;
- (b) Business address; or
- (c) Specified agent.

(2) Any time after a party has waived personal service under subsection (1) of this section, the party may file an amended waiver designating a different method of substituted service or a different address for substituted service. The party shall give notice of the amendment to all other parties.

(3) The State Court Administrator shall prescribe the content and form of the waiver and amended waiver described in this section.

NOTE: Eliminates inappropriate chapter reference and substitutes appropriate series reference in (1).

SECTION 28. ORS 109.065 is amended to read: 109.065. (1) Parentage may be established between a person and a child by:

- (a) The person having given birth to the child;
- (b) An un rebutted presumption of parentage under ORS 109.070;
- (c) An adjudication of the person's maternity or paternity;
- (d) Adoption of the child by the person;
- (e) An effective acknowledgement of paternity by the man under ORS 109.070 or pursuant to the laws of another state, unless the acknowledgement has been rescinded or successfully challenged;
- (f) Establishment of paternity by an administrative order issued pursuant to ORS [chapter 416] **416.400 to 416.465**;
- (g) Filiation proceedings; or
- (h) Parentage being established or declared by another provision of law.

(2) A person is the mother of a child to whom the person gives birth.

NOTE: Eliminates inappropriate chapter reference and substitutes appropriate series reference in (1)(f).

SECTION 29. ORS 133.807 is amended to read: 133.807. If from the initial examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged, the judge or magistrate must commit the person to jail by a warrant reciting the accusation for a period of at least 45 days to enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the [defense] **offense**, unless the accused is released as provided in ORS 133.809, or until the accused shall be legally discharged. The period of time may be extended upon good cause shown demonstrating the need for additional time to allow the executive authority of the state having jurisdiction of the [defense] **offense** to comply with procedural requirements of the Uniform Criminal Extradition Act, 18 U.S.C. 3182, or [section 2,] Article IV, **section 2**, of the United States Constitution.

NOTE: Corrects clerical errors; conforms citation to legislative style.

SECTION 30. ORS 169.080 is amended to read: 169.080. (1) If the condition or treatment of prisoners in a local correctional facility, lockup or temporary hold or juvenile detention facility is not in accordance with the standards established in ORS 169.076 to 169.078, 169.740, 419A.059 or 419B.180, the staff of the Department of Corrections may notify in writing the appropriate local governmental agency of the standards which are not being met and specific recommendations for the agency to comply with the standards. Corrective measures shall be taken by the local governmental agency to [insure] **ensure** compliance with all standards within a reasonable length of time jointly agreed upon by the agency and the Department of Corrections.

(2) The provisions of ORS 169.076 to 169.078, 169.740, 419A.059, 419B.160, 419B.180 and 419C.130 shall be enforceable by the Attorney General of the State of Oregon. The Attorney General, at the request of the Department of Corrections, may bring suit or action and may seek declaratory judgment as provided in ORS chapter 28 as well as pursue any other form of suit or action provided under Oregon law. Nothing in this section [shall preclude] **precludes** a private right of suit or action.

NOTE: Updates word choice in (1); improves syntax in (2).

SECTION 31. ORS 173.025 is amended to read: 173.025. (1) The Legislative Fiscal Officer, with the aid of the Legislative Revenue Officer, state agencies and affected local governmental units, including school districts, shall prepare a fiscal impact statement for each measure reported out of a committee of the Legislative Assembly that could have an effect on expenditures of the state or on **expenditures** of local governmental units, including school districts.

(2) The Legislative Revenue Officer, with aid of the Legislative Fiscal Officer, the Department of Revenue, state agencies and affected local governmental units, including school districts, shall prepare a revenue impact statement for each measure reported out of a committee of the Legislative Assembly that could have any effect on revenues of the state or on **revenues** of local governmental units, including school districts.

(3)(a) As used in this subsection, "tax expenditure" has the meaning given that term in ORS 291.201.

(b) If a revenue impact statement is prepared pursuant to subsection (2) of this section on a measure that creates a tax expenditure, the revenue impact statement must include the revenue impact of the measure for at least three consecutive biennia, beginning with the current biennium.

(c) If a revenue impact statement is prepared pursuant to subsection (2) of this section on a measure that creates or extends a tax expenditure, the revenue impact statement must include a statement describing the public policy purpose of the tax expenditure. The public policy purpose statement is subject to review by the committee recommending passage of the measure.

NOTE: Corrects syntax in (1) and (2).

SECTION 32. ORS 181A.820 is amended to read: 181A.820. (1) No law enforcement agency of the State of Oregon or of any political subdivision of the state shall use agency moneys, equipment or personnel for the purpose of detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship present in the United States in violation of federal immigration laws.

(2) Notwithstanding subsection (1) of this section, a law enforcement agency may exchange information with [the] United States [Bureau of] Immigration and Customs Enforcement, [the] United

States [*Bureau of*] Citizenship and Immigration Services and [*the*] United States [*Bureau of*] Customs and Border Protection in order to:

(a) Verify the immigration status of a person if the person is arrested for any criminal offense; or

(b) Request criminal investigation information with reference to persons named in records of [*the*] United States [*Bureau of*] Immigration and Customs Enforcement, [*the*] United States [*Bureau of*] Citizenship and Immigration Services or [*the*] United States [*Bureau of*] Customs and Border Protection.

(3) Notwithstanding subsection (1) of this section, a law enforcement agency may arrest any person who:

(a) Is charged by the United States with a criminal violation of federal immigration laws under Title II of the Immigration and Nationality Act or 18 U.S.C. 1015, 1422 to 1429 or 1505; and

(b) Is subject to arrest for the crime pursuant to a warrant of arrest issued by a federal magistrate.

(4) For purposes of subsection (1) of this section, the Bureau of Labor and Industries is not a law enforcement agency.

(5) As used in this section, "warrant of arrest" has the meaning given that term in ORS 131.005.

NOTE: Corrects references to federal agencies in (2) lead-in and (2)(b).

SECTION 33. ORS 184.619 is amended to read: 184.619. In accordance with the applicable provisions of ORS chapter 183, the Oregon Transportation Commission:

(1) Shall adopt any rules and orders as [*it*] **the commission** considers necessary and proper in performing the functions vested by law in the commission.

(2) Notwithstanding any other provisions of law, [*the commission*] has the power to adopt any rules, establish any policy or exercise any other duty, function or power if a statute gives such power to the Department of Transportation.

NOTE: Improves syntax in (1); corrects read-in in (2).

SECTION 34. (1) **Notwithstanding any other provision of law, ORS 192.173 shall not be considered to have been added to or made a part of ORS 192.210 to 192.478 for the purpose of statutory compilation or for the application of definitions, penalties or administrative provisions applicable to statute sections in that series.**

(2) **ORS 192.173 is added to and made a part of ORS chapter 192.**

NOTE: Removes statute from inappropriate series and adds to appropriate chapter.

SECTION 35. ORS 227.185 is amended to read: 227.185. The governing body of a city or its [*designate*] **designee** may allow the establishment of a transmission tower over 200 feet in height in any zone subject to reasonable conditions imposed by the governing body or its [*designate*] **designee**.

NOTE: Corrects word choice.

SECTION 36. ORS 238.445 is amended to read:

238.445. (1) Except as provided in this section, the right of a person to a pension, an annuity or a retirement allowance, to the return of contribution, the pension, annuity or retirement allowance itself, any optional benefit or death benefit, or any other right accrued or accruing to any person under the provisions of this chapter or ORS chapter 238A, and the money in the various funds created by ORS 238.660 and 238.670, shall be exempt from garnishment and all state, county and municipal taxes heretofore or hereafter imposed, except as provided under ORS chapter 118, shall not be subject to execution, garnishment, attachment or any other process or to the operation of any bankruptcy or insolvency law heretofore or hereafter existing or enacted, and shall be unassignable.

(2) Subsection (1) of this section does not apply to state personal income taxation of amounts paid under this chapter and ORS chapter 238A.

(3) Unless otherwise ordered by a court under ORS 25.387, the exemption from execution or other process granted under this section applies to 50 percent of amounts paid under this chapter and ORS chapter 238A if the execution or other process is issued for a support obligation or an order or notice entered or issued under **ORS 416.400 to 416.465** or ORS chapter 25, 107, 108, 109, 110, [*416,*] 419B or 419C.

NOTE: Eliminates inappropriate chapter reference and substitutes appropriate series reference in (3).

SECTION 37. ORS 244.290 is amended to read:

244.290. (1) The Oregon Government Ethics Commission shall:

(a) Prescribe forms for statements required by this chapter and provide the forms to persons required to file the statements under this chapter or pursuant to a resolution adopted under ORS 244.160.

(b) Develop a filing, coding and cross-indexing system consistent with the purposes of this chapter.

(c) Prepare and publish reports the commission finds are necessary.

(d) Accept and file any information voluntarily supplied that exceeds the requirements of this chapter.

(e) Make statements and other information filed with the commission available for public inspection and copying during regular office hours, and make copying facilities available at a charge not to exceed actual cost.

(f) Not later than February 1 of each odd-numbered year, report to the Legislative Assembly any recommended changes to provisions of ORS 171.725 to 171.785 or this chapter.

(2) The commission shall adopt rules necessary to carry out its duties under ORS 171.725 to 171.785, [*and*] 171.992, **192.660 and 192.685** and this chapter, including rules to:

(a) Create a procedure under which items before the commission may be treated under a consent calendar and voted on as a single item;

(b) Exempt a public official who is otherwise required to file a statement pursuant to ORS 244.050 from filing the statement if the regularity, number and frequency of the meetings and actions of the body over which the public official has jurisdiction are so few or infrequent as not to warrant the public disclosure;

(c) Establish an administrative process whereby a person subpoenaed by the commission may obtain a protective order;

(d) List criteria and establish a process for the commission to use prosecutorial discretion to decide whether to proceed with an inquiry or investigation;

(e) Establish a procedure under which the commission shall conduct accuracy audits of a sample of reports or statements filed with the commission under this chapter or ORS 171.725 to 171.785;

(f) Describe the application of provisions exempting items from the definition of "gift" in ORS 244.020;

(g) Specify when a continuing violation is considered a single violation or a separate and distinct violation for each day the violation occurs; and

(h) Set criteria for determining the amount of civil penalties that the commission may impose.

(3) The commission may adopt rules that:

(a) Limit the minimum size of, or otherwise establish criteria for or identify, the smaller classes that qualify under the class exception from the definition of "potential conflict of interest" under ORS 244.020;

(b) Require the disclosure and reporting of gifts or other compensation made to or received by a public official or candidate;

(c) Establish criteria for cases in which information relating to notices of actual or potential conflicts of interest shall, may not or may be provided to the commission under ORS 244.130; or

(d) Allow the commission to accept the filing of a statement containing less than all of the information required under ORS 244.060 and 244.070 if the public official or candidate certifies on the statement that the information contained on the statement previously filed is unchanged or certifies only as to any changed material.

(4) Not less frequently than once each calendar year, the commission shall:

(a) Consider adoption of rules the commission deems necessary to implement or interpret provisions of this chapter relating to issues the commission determines are of general interest to public officials or candidates or that are addressed by the commission or by commission staff on a recurring basis; and

(b) Review rules previously adopted by the commission to determine whether the rules have continuing applicability or whether the rules should be amended or repealed.

(5) The commission shall adopt by rule an electronic filing system under which statements required

to be filed under ORS 244.050 and 244.217 must be filed, without a fee, with the commission in an electronic format.

(6) The commission shall make available in a searchable format for review by the public using the Internet:

(a) Statements filed under ORS 244.050 and 244.217;

(b) Advisory opinions issued by the commission or the executive director of the commission;

(c) Findings issued by the commission under ORS 244.260 in instances where the commission determines that there has been a violation of a provision of this chapter or of any rule adopted by the commission under this chapter. Nothing in this paragraph requires the commission to make publicly available materials that are otherwise exempt from public disclosure or that are required to be kept confidential by the commission; and

(d) Lobbyist registration statements and revisions and updates to lobbyist registration statements filed under ORS 171.740. The information required under this paragraph must be available in a searchable format for review by the public using the Internet not later than one calendar day after the lobbyist files the information with the commission.

NOTE: Corrects compilation error in (2).

SECTION 38. ORS 255.012 is amended to read: 255.012. As used in this chapter, "district" means:

(1) A domestic water supply district organized under ORS chapter 264.

(2) A cemetery maintenance district organized under ORS chapter 265.

(3) A park and recreation district organized under ORS chapter 266.

(4) A mass transit district organized under ORS 267.010 to 267.390.

(5) A transportation district organized under ORS 267.510 to 267.650.

(6) A metropolitan service district organized under ORS chapter 268.

(7) A translator district organized under ORS 354.605 to 354.715.

(8) A library district organized under ORS 357.216 to 357.286.

(9) A county road district organized under ORS 371.055 to 371.110.

(10) A special road district organized under ORS 371.305 to 371.360.

(11) A road assessment district organized under ORS 371.405 to 371.535.

(12) A highway lighting district organized under ORS chapter 372.

(13) A health district organized under ORS 440.305 to 440.410.

(14) A sanitary district organized under ORS 450.005 to 450.245.

(15) A sanitary authority, water authority or joint water and sanitary authority organized under ORS 450.600 to 450.989.

(16) A county service district organized under ORS chapter 451.

(17) A vector control district organized under ORS 452.020 to 452.170.

(18) A rural fire protection district organized under ORS chapter 478.

(19) An airport district organized under ORS chapter 838.

(20) A geothermal heating district organized under ORS chapter 523.

(21) A water improvement district organized under ORS chapter 552.

(22) A water control district organized under ORS chapter 553.

(23) A weather modification district organized under ORS 558.200 to 558.440.

(24) A livestock district organized under ORS 607.005 to 607.051.

(25) A port organized under ORS 777.005 to 777.725 and 777.915 to 777.953.

(26) The Port of Portland established by ORS 778.010.

(27) A school district.

(28) Territory, other than territory within a city, proposed to be created, formed or incorporated into a district or to be annexed or otherwise added to a district.

(29) A soil and water conservation district organized under ORS 568.210 to [568.810] ~~568.808~~ and 568.900 to 568.933.

(30) A heritage district organized under ORS 358.442 to 358.474.

(31) A radio and data district organized under ORS 403.500 to 403.542.

(32) A sand control district organized under ORS 555.500 to 555.535.

NOTE: Corrects series reference in (29).

SECTION 39. Notwithstanding any other provision of law, ORS 276A.203 and 276A.206 shall not be considered to have been added to or made a part of ORS chapter 291 for the purpose of statutory compilation or for the application of definitions, penalties or administrative provisions applicable to statute sections in that chapter.

NOTE: Removes statutes from inappropriate chapter.

SECTION 40. Section 1a, chapter 548, Oregon Laws 2015, as amended by section 16, chapter 88, Oregon Laws 2016, is amended to read:

Sec. 1a. The removal of the words “or structures” from the phrase “structure or structures” by the amendments to ORS 289.005 by section 1, chapter 548, Oregon Laws 2015:

(1) Does not prohibit the financing of more than one structure;

(2) Does not limit the effect of, and is subject to construction under, ORS 174.127, under which the singular may include the plural and the plural may include the singular; and

(3) Conforms the language to the form and style requirements of the [Legislative Counsel Committee] **Legislative Assembly.**

NOTE: Specifies correct entity in (3).

SECTION 41. ORS 327.880 is amended to read: 327.880. (1) If a school district applies, but does not qualify for, an apportionment under ORS 327.859 and 327.877, the Department of Education shall:

(a) Retain the amount of the apportionment the school district would have received if the school district had qualified for the apportionment; and

(b) Prepare a corrective action plan for the school district;

(2) The department may use a portion of an amount retained under subsection (1)(a) of this section to prepare and assist a school district to implement a corrective action plan;

(3) If a school district that does not qualify for an apportionment qualifies for an apportionment in the next year, the department shall apportion to the school district the amount of the retained apportionment that the department did not use under [section (2) of this 2016 Act] **subsection (2) of this section;** and

(4) If a school district that does not qualify for an apportionment in one year does not qualify for an apportionment in the next year, or if a school district does not apply for an apportionment in any year, the department shall, using the process described in ORS 327.859, apportion the amount of the retained apportionment to school districts that have qualified for apportionments.

NOTE: Corrects internal reference in (3).

SECTION 42. ORS 413.574 is amended to read: 413.574. (1) The Pain Management Commission shall consist of 19 members as follows:

(a) Seventeen members shall be appointed by the Director of the Oregon Health Authority. Prior to making appointments, the director shall request and consider recommendations from individuals and public and private agencies and organizations with experience or a demonstrated interest in pain management issues, including but not limited to:

(A) Physicians licensed under ORS chapter 677 or organizations representing physicians;

(B) Nurses licensed under ORS chapter 678 or organizations representing nurses;

(C) Psychologists licensed under ORS 675.010 to 675.150 or organizations representing psychologists;

(D) Physician assistants licensed under ORS chapter 677 or organizations representing physician assistants;

(E) Chiropractic physicians licensed under ORS chapter 684 or organizations representing chiropractic physicians;

(F) Naturopaths licensed under ORS chapter 685 or organizations representing naturopaths;

(G) Clinical social workers licensed under ORS 675.530 or organizations representing clinical social workers;

(H) Acupuncturists licensed under ORS 677.759;

- (I) Pharmacists licensed under ORS chapter 689;
 - (J) Palliative care professionals or organizations representing palliative care professionals;
 - (K) Mental health professionals or organizations representing mental health professionals;
 - (L) Health care consumers or organizations representing health care consumers;
 - (M) Hospitals and health plans or organizations representing hospitals and health plans;
 - (N) Patients or advocacy groups representing patients;
 - (O) Dentists licensed under ORS chapter 679;
 - (P) Occupational therapists licensed under ORS 675.210 to 675.340;
 - (Q) Physical therapists licensed under ORS 688.010 to 688.201; and
 - (R) Members of the public.
- (b) Two members shall be members of a legislative committee with jurisdiction over human services issues, one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives. Both members shall be nonvoting[, *ex officio*] members of the commission.
- (2) The term of office of each member is four years, but a member serves at the pleasure of the appointing authority. Before the expiration of the term of a member, the appointing authority shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective for the unexpired term.
- (3) Members of the commission are not entitled to compensation or reimbursement for expenses and serve as volunteers on the commission.

NOTE: Corrects terminology in (1)(b).

SECTION 43. ORS 416.400 is amended to read: 416.400. As used in ORS 416.400 to 416.465, unless the context requires otherwise:

- [(1) "*Administrator*" has the meaning given that term in ORS 25.010.]
- [(2)] (1) "Court" means any circuit court of this state and any court in another state having jurisdiction to determine the liability of persons for the support of another person.
- [(3)] (2) "Court order" means any judgment or order of any Oregon court that orders payment of a set or determinable amount of support money by the subject parent and does not include an order or judgment in any proceeding in which the court did not order support.
- [(4)] (3) "Department" means the Department of Justice of this state or its equivalent in any other state from which a written request for establishment or enforcement of a support obligation is received under ORS 416.415.
- [(5)] (4) "Dependent child" means any person under the age of 18 who is not otherwise emancipated, self-supporting, married or a member of the Armed Forces of the United States. "Dependent child" also means a child attending school as defined in ORS 107.108.

[(6)] (5) "Office" means the office of the Division of Child Support or the office of the district attorney.

- [(7)] (6) "Parent" means:
 - (a) The natural or adoptive father or mother of a dependent child or youth offender;
 - (b) A person whose parentage has been established under ORS 109.065; or
 - (c) A stepparent when the person has an obligation to support a dependent child under ORS 108.045.

[(8)] (7) "Past support" means the amount of child support that could have been ordered and accumulated as arrears against a parent for the benefit of a child for any period of time during which the child was not supported by the parent and for which period no support order was in effect.

[(9)] (8) "Public assistance" means any money payments made by the state that are paid to or for the benefit of any dependent child or youth offender, including but not limited to payments made so that food, shelter, medical care, clothing, transportation or other necessary goods, services or items may be provided, and payments made in compensation for the provision of the necessities. "Public assistance" does not include money payments made by the state to or for the benefit of a dependent child as the result of the child's removal from the parent's home against the wishes of the parent, if the Department of Human Services determines after completion of a child protective services assessment that the report of abuse is unfounded according to rules adopted by the Department of Human Services.

[(10)] (9) "Youth offender" has the meaning given that term in ORS 419A.004.

NOTE: Deletes redundant definition in (1) (see section 5, amending ORS 25.010).

SECTION 44. ORS 416.407 is amended to read: 416.407. (1) In any proceeding under ORS 416.400 to 416.465, the following are parties and shall be given notice of any such proceeding by the administrator:

- (a) The State of Oregon.
 - (b) An obligee who has physical custody of a child for whose benefit a support order or an order establishing paternity is sought, is being modified or is being enforced under [*this chapter*] **ORS 416.400 to 416.465**.
 - (c) A noncustodial parent or a male who is alleged to be the father of a child when an action is initiated under [*this chapter*] **ORS 416.400 to 416.465** to establish, modify or enforce a support or paternity order.
 - (d) A person joined as a party under subsection (2) of this section.
- (2) Pursuant to administrative rule, a party may join a person who has physical custody of a child to a proceeding under ORS 416.400 to 416.465.

NOTE: Eliminates inappropriate chapter reference and substitutes appropriate series reference in (1)(b) and (c).

SECTION 45. ORS 416.440 is amended to read:
416.440. (1) The documents required to be filed for purposes of subsection (2) of this section include all the following:

(a) A true copy of any order entered, filed or registered by the administrator or administrative law judge pursuant to ORS 416.400 to 416.465 or ORS chapter 110.

(b) A true copy of the return of service, if applicable.

(c) A separate statement containing the information required to be contained in a judgment under ORS 18.042 (2).

(2) The documents described under subsection (1) of this section shall be filed in the office of the clerk of the circuit court in the county in which either the parent or the dependent child resides or in the county where the court order was entered if the administrative order is an order modifying a court order. Upon receipt of the documents, the clerk shall enter the order in the register of the circuit court, shall note in the register that the order creates a lien and shall make the notations required by ORS 18.075 in the judgment lien record maintained under ORS 18.075.

(3) Upon entry in the register under subsection (2) of this section, the order shall have all the force, effect and attributes of a judgment of the circuit court, including but not limited to:

(a) Creation of a judgment lien under ORS chapter 18; and

(b) Ability to be enforced by contempt proceedings and pursuant to ORS 18.252 to 18.993.

(4) Notwithstanding subsections (2) and (3) of this section, the entry in the register of an order of the administrator or administrative law judge does not preclude any subsequent proceeding or remedy available under ORS 416.400 to 416.465.

(5) An order filed under this section that modifies a previously filed order or a previously entered judgment may contain provisions that were included in the order or judgment.

(6) A court or administrative order of another state may be filed, or if appropriate, registered, pursuant to this section for the purposes of ORS chapter 110. Notwithstanding any other provision of [this chapter] **ORS 416.400 to 416.465**, an order of another state registered pursuant to ORS 110.605 to 110.611 may not be modified unless the requirements of ORS 110.626 to 110.637 are met.

NOTE: Eliminates inappropriate chapter reference and substitutes appropriate series reference in (6).

SECTION 46. ORS 418.310 is amended to read:
418.310. ORS 418.205 to [418.310] **418.327** and 418.992 to 418.998 apply to private agencies and institutions for the combined care of adults and children where the care for children includes day or residential treatment or care.

NOTE: Corrects series reference.

SECTION 47. ORS 419B.806 is amended to read:

419B.806. (1) As used in this section, “consolidated” means that actions are heard before one judge of the circuit court to determine issues regarding a child or ward.

(2) In any action filed in the juvenile court in which the legal or physical custody of a child or ward is at issue and there is also a child custody, parenting time, visitation, restraining order, filiation or Family Abuse Prevention Act action involving the child or ward in a domestic relations, filiation or guardianship proceeding, the matters shall be consolidated. Actions must be consolidated under this subsection regardless of whether the actions to be consolidated were filed or initiated before or after the filing of the petition under ORS 419B.100.

(3) Consolidation does not merge the procedural or substantive law of the individual actions. Parties to the individual consolidated actions do not have standing, solely by virtue of the consolidation, in every action subject to the order of consolidation. Parties must comply with provisions for intervention or participation in a particular action under the provisions of law applicable to that action.

(4) Upon entry of an order of consolidation, all pending issues pertaining to the actions subject to the order shall be heard together in juvenile court. The court shall hear the juvenile matters first unless the court finds that it is in the best interest of the child or ward to proceed otherwise.

(5) A judge shall make and modify orders and findings in actions subject to the order of consolidation upon the filing of proper motions and notice as provided by law applicable to the actions. Any findings, orders or modifications must be consistent with the juvenile court orders, and persons who were parties to the juvenile court action may not relitigate issues in consolidated actions.

(6) The judge shall set out separately from orders entered under this chapter or ORS chapter 419C any orders or judgments made in other actions subject to the consolidation order. The trial court administrator shall file the orders and judgments in the appropriate actions subject to the consolidation order. An order or judgment in an individual juvenile court action is final if it finally disposes of the rights and duties of the parties to that action, without reference to whether the order or judgment disposes of the rights and duties of the parties to another action with which the action has been consolidated.

(7)(a) When the actions described in subsection (2) of this section exist in two or more circuit courts, the judges assigned to the actions shall confer to determine the appropriate court in which to consolidate and hear the actions. The judges shall confer not later than 10 judicial days after a court has received notice of the existence of an action in another circuit court.

(b) If the judges agree on the circuit court in which the actions should be consolidated, the judges shall take such action as is necessary to consolidate the actions in the circuit court.

(c) If the judges do not agree on the circuit court in which the actions should be consolidated, the

actions must be consolidated in the court in which the juvenile action is filed or, if more than one juvenile action is pending, in the court in which the first juvenile action was filed.

(8) Nothing in this section requires the consolidation of any administrative proceeding under **ORS 416.400 to 416.465** or ORS chapter 25 [or 416] with a juvenile court or other action.

NOTE: Eliminates inappropriate chapter reference and substitutes appropriate series reference in (8).

SECTION 48. ORS 443.455 is amended to read:

443.455. (1) Except as provided in subsection (5) of this section, for purposes of imposing civil penalties, residential facilities approved under ORS 443.400 to 443.455 are subject to ORS 441.705 to 441.745.

(2)(a) The Director of Human Services shall impose penalties on residential care facilities pursuant to ORS 441.731.

(b) The director shall by rule prescribe a schedule of penalties for residential training facilities and residential training homes that are not in compliance with ORS 443.400 to 443.455.

(3) The Director of the Oregon Health Authority shall by rule prescribe a schedule of penalties for residential treatment facilities and residential treatment homes that are not in compliance with ORS 443.400 to 443.455.

(4) If the Department of Human Services or the Oregon Health Authority investigates and makes a finding of abuse arising from deliberate or other than accidental action or inaction that is likely to cause a negative outcome by a person with a duty of care toward a resident of a residential facility, other than a residential care facility, and if the abuse resulted in the death, serious injury, rape or sexual abuse of a resident, the department or authority shall impose a civil penalty of not less than \$2,500 for each occurrence of substantiated abuse, not to exceed \$15,000 in any 90-day period. As used in this subsection:

(a) "Negative outcome" includes serious injury, rape, sexual abuse or death.

(b) "Rape" means rape in the first degree as defined in ORS 163.375, rape in the second degree as defined in ORS 163.365 and rape in the third degree as defined in ORS 163.355.

(c) "Serious injury" means physical injury that creates a substantial risk of death or that causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

(d) "Sexual abuse" means any form of sexual contact between an employee of a residential facility or a person providing services in the residential facility and a resident of that facility, including but not limited to sodomy, sexual coercion, sexually explicit photographing and sexual harassment.

(5) Civil penalties recovered from a residential training facility, residential training home, residential treatment facility or residential treatment home

shall be deposited in the Long Term Care Ombudsman Account established in ORS 441.419.

NOTE: Sets out full agency names in first reference in (4).

SECTION 49. Notwithstanding any other provision of law, **ORS 456.594 to 456.599** shall not be considered to have been added to or made a part of ORS chapter 469 for the purpose of statutory compilation or for the application of definitions, penalties or administrative provisions applicable to statute sections in that chapter.

NOTE: Removes series from inappropriate chapter.

SECTION 50. **ORS 459A.738 and 459A.739** are added to and made a part of **ORS 459A.700 to 459A.740**.

NOTE: Adds statutes to appropriate series.

SECTION 51. ORS 459A.739 is amended to read:

459A.739. In addition to the authority granted under ORS 459.992, inspectors and investigators employed by the Oregon Liquor Control Commission have authority to inspect any space occupied by a dealer[, as defined in ORS 459A.700,] for compliance with ORS 459A.738.

NOTE: Deletes redundant definition citation (see section 50).

SECTION 52. ORS 461.250 is amended to read:

461.250. Upon recommendation of the Director of the Oregon State Lottery, the Oregon State Lottery Commission shall adopt rules to establish a system of verifying the validity of tickets or shares claimed to win prizes and to effect payment of such prizes, provided:

(1) For the convenience of the public, lottery game retailers may be authorized by the commission to pay winners of up to \$5,000 after performing validation procedures on their premises appropriate to the lottery game involved.

(2) A prize may not be paid to a person under 18 years of age.

(3) A video lottery game prize may not be paid to a person under 21 years of age.

(4) A prize may not be paid arising from claimed tickets or shares that are stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received or not recorded by the Oregon State Lottery by applicable deadlines, lacking in captions that confirm and agree with the lottery play symbols as appropriate to the lottery game involved or not in compliance with such additional specific rules or with public or confidential validation and security tests of the lottery appropriate to the particular lottery game involved. However, the commission may adopt rules to establish a system of verifying the validity of claims to prizes greater than \$600 that are otherwise not payable under this subsection due to a lottery game retailer's losing, damaging or destroying the winning ticket or share while performing validation procedures

thereon, and to effect payment of verified claims. A verification system established by the commission shall include appropriate public or confidential validation and security tests.

(5) A particular prize in any lottery game may not be paid more than once, and in the event of a binding determination that more than one claimant is entitled to a particular prize, the sole remedy of such claimants is the award to each of them of an equal share in the prize.

(6) The commission may specify that winners of less than \$25 claim such prizes from either the same lottery game retailer who sold the winning ticket or share or from the lottery itself and may also specify that the lottery game retailer who sold the winning ticket or share be responsible for directly paying that prize.

(7) Holders of tickets or shares shall have the right to claim prizes for one year after the drawing or the end of the lottery game or play in which the prize was won. The commission may define shorter time periods to claim prizes and for eligibility for entry into drawings involving entries or finalists. If a valid claim is not made for a prize payable directly by the lottery commission within the applicable period, the unclaimed prize shall remain the property of the commission and shall be allocated to the benefit of the public purpose.

(8)(a) The right of any person to a prize shall not be assignable, except that:

(A) Payment of any prize may be made according to the terms of a deceased prize winner's signed beneficiary designation form filed with the commission or, if no such form has been filed, to the estate of the deceased prize winner.

(B) Payment of any prize shall be made to a person designated pursuant to an appropriate judicial order or pursuant to a judicial order approving the assignment of the prize in accordance with ORS 461.253.

(b) The director, commission and state shall be discharged of all further liability with respect to a specific prize payment upon making that prize payment in accordance with this subsection or ORS 461.253.

(9) A ticket or share may not be purchased by, and a prize may not be paid to, a member of the commission, the director, the assistant directors or any employee of the state lottery or to any spouse, child, brother, sister or parent of such person.

(10) Payments made according to the terms of a deceased prize winner's signed beneficiary designation form filed with the commission are effective by reason of the contract involved and this statute and are not to be considered as testamentary devices or subject to ORS chapter 112. The director, commission and state shall be discharged of all liability upon payment of a prize.

(11) In accordance with the provisions of the [*Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C.A. app. 525)*] **Servicemembers Civil Relief Act, 50 U.S.C. 3935**, a person while in active military service may claim exemption from the one-year

ticket redemption requirement under subsection (7) of this section. However, the person must notify the commission by providing satisfactory evidence of possession of the winning ticket within the one-year period, and must claim the prize or share no later than one year after discharge from active military service.

NOTE: Adjusts reference in (11) to update title of federal Act and to reflect federal code reorganization.

SECTION 53. ORS 541.984 is amended to read: 541.984. (1) The Oregon Watershed Enhancement Board shall establish programs to provide grants from the Oregon Agricultural Heritage Fund for the purposes of:

(a) Assisting owners of working land with succession planning for those lands;

(b) Funding the purchasing, implementing, carrying out or monitoring of conservation management plans, working land conservation covenants or working land conservation easements described in ORS 541.981 and 541.982; and

(c) Providing development funding or technical assistance to organizations that enter into or propose to enter into agreements resulting in conservation management plans, or that accept or propose to accept working land conservation covenants or working land conservation easements.

(2) The board, after consultation with the Oregon Agricultural Heritage Commission established in ORS 541.986, shall adopt rules that establish a process for submitting and processing applications for grants under ORS 541.981 and 541.982. To the extent practicable, the board shall design the process to:

(a) Allow flexibility and responsiveness to program participant needs; and

(b) Ensure compatibility with federal working land conservation easement programs and other programs for the conservation of working land.

(3) The board and the commission[,] shall jointly appoint one or more technical committees to evaluate and rank conservation management plans, working land conservation covenants and working land conservation easements described in applications filed under ORS 541.981 and 541.982. The system used by the technical committee or committees shall provide for the ranking of conservation management plans to be separate from the ranking of working land conservation covenants and working land conservation easements. The ranking for a plan, covenant or easement shall be based on criteria that include, but need not be limited to:

(a) The extent to which the plan, covenant or easement would protect, maintain or enhance farming or ranching on working land;

(b) The extent to which the plan, covenant or easement would protect, maintain or enhance fish or wildlife habitat, improve water quality or support other natural resource values;

(c) The extent to which the plan, covenant or easement would protect agricultural outcomes, benefits or other investment gains;

(d) The capacity of the organization that filed the application to enter into a conservation management plan[,] or accept a working land conservation covenant or working land conservation easement, and the competence of the organization;

(e) The extent to which the benefit to the state from the investment may be maximized, based on the ability to leverage grant moneys with other funding sources and on the duration and extent of the conservation management plan, working land conservation covenant or working land conservation easement; and

(f) The extent and nature of plan, covenant or easement impacts on owners or operators of neighboring lands.

(4) The criteria for ranking conservation management plans, working land conservation covenants or working land conservation easements under subsection (3) of this section may not include a consideration of the type of agricultural operation conducted on the working land.

(5) An applicant must demonstrate to the satisfaction of the board that the participants in a conservation management plan, working land conservation covenant or working land conservation easement to be benefitted by a grant under this section understand and agree to their roles and responsibilities under the plan, covenant or easement.

(6) The board may issue a grant to fund a conservation management plan, working land conservation covenant or working land conservation easement described in ORS 541.981 and 541.982 only if:

(a) There is a contribution of cash for the plan, covenant or easement, a contribution of in-kind services or another form of investment in the plan, covenant or easement from a funding source other than the Oregon Agricultural Heritage Fund;

(b) The plan, covenant or easement is reviewed by a technical committee that has expertise relevant to the described plan, covenant or easement; and

(c) The commission reviews and recommends funding of the plan, covenant or easement.

(7) Except as provided in this subsection, an organization that receives a grant from the board for a conservation management plan, or an agricultural owner or operator receiving payments of moneys from an organization grant regarding a conservation management plan, may receive cash contributions, other financial assistance, in-kind services or investments, rental or easement payments, tax benefits or other benefits from a federal, state or private entity in return for practices related to the purchasing, implementing, carrying out or monitoring of the conservation management plan. The board or an organization grant may not, however, provide payments that duplicate any federal, state or private payments for the same measures directed to maintaining or enhancing fish or wildlife habitat, improving water quality or supporting other natural resource values within the plan.

(8) An organization that receives a grant from the board for a working land conservation covenant

or working land conservation easement, or an owner of working land that enters into a working land conservation covenant or grants a working land conservation easement, may receive cash contributions, other financial assistance, in-kind services or other forms of investment from any public or private sources for purposes of purchasing, implementing, carrying out or monitoring of the covenant or easement.

NOTE: Corrects punctuation in (3) lead-in and (3)(d).

SECTION 54. ORS 543.170 is amended to read: 543.170. No person, state agency, local government, district or municipal corporation shall construct or maintain, and no officer or agency of the state shall issue any permit for the construction or maintenance of any hydroelectric facility or structure on [*Squaw*] **Isqúultpe** Creek.

NOTE: Updates statute to conform with official name change.

SECTION 55. ORS 624.010 is amended to read: 624.010. As used in ORS 624.010 to 624.121, unless the context requires otherwise:

(1) "Authority" means the Oregon Health Authority.

(2) "Bed and breakfast facility" means any establishment located in a structure designed for a single family residence and structures appurtenant thereto, regardless of whether the owner or operator of the establishment resides in any of the structures, that:

(a) Has more than two rooms for rent on a daily basis to the public; and

(b) Offers meal service as provided in ORS 624.046 as part of the cost of the room.

(3) "Director" means the Director of the Oregon Health Authority.

(4) "Intermittent temporary restaurant" means an establishment:

(a) That operates temporarily at a specific location in connection with multiple public gatherings, entertainment events, food product promotions or other events, at least two of which are arranged for by different oversight organizations; and

(b) Where food is prepared or served for consumption by the public.

(5) "Limited service restaurant" means a restaurant serving only individually portioned prepackaged foods prepared from an approved source by a commercial processor and nonperishable beverages.

(6) "Operational review" means the examination of a plan of operation for an establishment in order to ensure that the proposed operation conforms with applicable sanitation standards.

(7) "Oversight organization" means an entity responsible for organizing, managing or otherwise arranging for a public gathering, entertainment event, food product promotion or other event, including but not limited to ensuring the availability of water, sewer and sanitation services.

(8) "Person" means a person as defined in ORS 174.100, a public body as defined in ORS 174.109, the Oregon Health and Science University or the Oregon State Bar.

(9) "Restaurant," except as provided in subsection [(9)] (10) of this section, means an establishment:

(a) Where food or drink is prepared for consumption by the public;

(b) Where the public obtains food or drink so prepared in form or quantity consumable then and there, whether or not it is consumed within the confines of the premises where prepared; or

(c) That prepares food or drink in consumable form for service outside the premises where prepared.

(10) "Restaurant" does not mean a railroad dining car, bed and breakfast facility, intermittent temporary restaurant, seasonal temporary restaurant or single-event temporary restaurant.

(11) "Seasonal temporary restaurant" means an establishment:

(a) That operates at a specific location in connection with multiple public gatherings, entertainment events, food product promotions or other events that are arranged for by the same oversight organization; and

(b) Where food is prepared or served for consumption by the public.

(12) "Single-event temporary restaurant" means an establishment:

(a) That operates in connection with a single public gathering, entertainment event, food product promotion or other event; and

(b) Where food is prepared or served for consumption by the public.

NOTE: Corrects internal reference in (9).

SECTION 56. ORS 634.306 is amended to read:

634.306. In accordance with the provisions of ORS chapter 183, the State Department of Agriculture may adopt rules to carry out the purposes and intent of this chapter, including but not limited to rules that:

(1) Establish and maintain a program required for an individual to work or engage in the application or spraying of pesticides as a pesticide trainee. In this regard, the department may take into consideration:

(a) Requirements for submission of applications by pesticide trainees.

(b) Minimum and maximum periods of work or experience required for pesticide trainees.

(c) Work performance records or reports to be maintained by pesticide trainees or their employers.

(d) Acceptance of educational qualifications, applicable work or experience in similar or other fields in lieu of, or as a part of, periods of employment or work by pesticide trainees.

(e) Forms and types of pesticide trainee certificates to be issued by the department, authorizing trainees to apply pesticides in all or part of the

classes of operations or businesses set forth in subsection (2) of this section.

(f) Laws and requirements relating to other professional, trade or industry trainee or apprenticeship programs in this or other states.

(g) Special requirements if the pesticide trainee is to assist a pesticide applicator in the spraying or other application of pesticides by aircraft, and the advisability of allowing participation in federal flight training programs to be substituted, all or in part, for training requirements under this chapter.

(2) Establish and maintain classifications of the various pesticides and of the various pest control or pesticide application businesses in order to facilitate the licensing or certification and regulation of pesticide consultants, operators, applicators, private applicators and trainees. In this regard the department may take into consideration:

(a) Various types, formulations and characteristics of pesticides used and their purposes.

(b) Various methods of application of [such] **the** pesticides.

(c) Precautions required for safe and effective application of [such] **the** pesticides.

(3) Designate pesticides authorized to be used or applied, or prohibited from use or application, by persons in order to qualify for an exemption under ORS 634.106.

(4) Establish and maintain classifications of pesticides and devices that are deemed to be highly toxic or restricted-use pesticides or devices. In this regard, the department shall take into consideration:

(a) Laws and regulations of the federal government, including the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, **7 U.S.C. 136 et seq.**, as amended, and the Federal Environmental Pesticide Control Act of **1972, 86 Stat. 973.**

(b) Laws and regulations of other states.

(c) Advice and counsel of experts in pesticides from industry, universities and colleges and other governmental agencies or bodies.

(5) Establish and maintain types of pesticide consultant or applicator examinations and reexaminations, schedules for required reexaminations and other measures deemed necessary for fair and reasonable testing of applicants as provided in ORS 634.122 (5).

(6) Designate the conditions under which pesticide operators that are or that employ pesticide applicators to spray or otherwise apply pesticides by aircraft may reduce, suspend or terminate the liability insurance required by ORS 634.116, and the periods of time for a reduction, suspension or termination. In this regard, the department may take into consideration:

(a) Changes in climate or seasons.

(b) Periods when certain crops are or have been harvested.

(c) Restricted or limited use of various types or classes of pesticides.

(d) Possibilities of injury or death to humans and loss or damage to real or personal property.

(7) Establish the conditions and amounts allowed for deductible classes in the liability insurance required by ORS 634.116.

(8) Establish and maintain programs of instruction or educational courses for pesticide consultants, operators, applicators and private applicators in cooperation with Oregon State University or others, wherein, as far as is practicable, provisions are made so as to allow *[such]* **the** pesticide operators and applicators to participate only in the instruction or courses directly or indirectly related to their particular activities. Attendance of licensees may be required.

(9) Prepare and distribute a manual, or other form of publication, containing information helpful and beneficial to individuals engaged in pesticide application or use or to persons preparing to qualify for licensing as a pesticide operator, consultant or applicator and establish charges therefor.

(10) Establish, from time to time, advisory groups or committees to assist the department in formulation of policies, plans or regulations under this chapter. Each member of any such group or committee so established shall be entitled to compensation and expenses as provided in ORS 292.495, to be charged to the department.

(11) Establish registration fees for pesticide brands and formulae or formulations under those pesticide brands.

(12) Establish restrictions or prohibitions as to the form of pesticides allowed to be mixed, applied or added to fertilizers, seed or grains.

(13) Establish restrictions, methods and procedures in the storage, transportation, use or application of restricted-use pesticides or highly toxic pesticides in order to protect humans, pollinating insects, bees, animals, crops, wildlife, land or environment.

(14) Establish and maintain a system for certification of private applicators. In this regard, the department shall take into consideration:

(a) Laws and regulations of the federal government, including the provisions of the Federal Environmental Pesticide Control Act of 1972, 86 Stat. 973, and the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 et seq., as amended thereby, and regulations thereunder.

(b) Minimum periods of experience required and types of experience, education or work acceptable.

(c) Forms and types of private applicator certificates to be issued by the department, authorizing private applicators to apply pesticides in all or part of the classifications of pesticides set forth in subsection (4) of this section.

(15) Establish requirements for the reporting of pesticide sales, distribution or use by any person.

NOTE: Updates syntax in (2)(b) and (c) and (8); provides full federal citations in (4)(a).

SECTION 57. ORS 634.306, as amended by section 17, chapter 1059, Oregon Laws 1999, section 8, chapter 833, Oregon Laws 2015, and section 47, chapter 17, Oregon Laws 2017, is amended to read:

634.306. In accordance with the provisions of ORS chapter 183, the State Department of Agriculture may adopt rules to carry out the purposes and intent of this chapter, including but not limited to rules that:

(1) Establish and maintain a program required for an individual to work or engage in the application or spraying of pesticides as a pesticide trainee. In this regard, the department may take into consideration:

(a) Requirements for submission of applications by pesticide trainees.

(b) Minimum and maximum periods of work or experience required for pesticide trainees.

(c) Work performance records or reports to be maintained by pesticide trainees or their employers.

(d) Acceptance of educational qualifications, applicable work or experience in similar or other fields in lieu of, or as a part of, periods of employment or work by pesticide trainees.

(e) Forms and types of pesticide trainee certificates to be issued by the department, authorizing trainees to apply pesticides in all or part of the classes of operations or businesses set forth in subsection (2) of this section.

(f) Laws and requirements relating to other professional, trade or industry trainee or apprenticeship programs in this or other states.

(g) Special requirements if the pesticide trainee is to assist a pesticide applicator in the spraying or other application of pesticides by aircraft, and the advisability of allowing participation in federal flight training programs to be substituted, all or in part, for training requirements under this chapter.

(2) Establish and maintain classifications of the various pesticides and of the various pest control or pesticide application businesses in order to facilitate the licensing or certification and regulation of pesticide consultants, operators, applicators, private applicators and trainees. In this regard the department may take into consideration:

(a) Various types, formulations and characteristics of pesticides used and their purposes.

(b) Various methods of application of *[such]* **the** pesticides.

(c) Precautions required for safe and effective application of *[such]* **the** pesticides.

(3) Designate pesticides authorized to be used or applied, or prohibited from use or application, by persons in order to qualify for an exemption under ORS 634.106.

(4) Establish and maintain classifications of pesticides and devices that are deemed to be highly toxic or restricted-use pesticides or devices. In this regard, the department shall take into consideration:

(a) Laws and regulations of the federal government, including the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, **7 U.S.C. 136 et seq.**, as amended, and the Federal Environmental Pesticide Control Act of **1972, 86 Stat. 973.**

(b) Laws and regulations of other states.

(c) Advice and counsel of experts in pesticides from industry, universities and colleges and other governmental agencies or bodies.

(5) Establish and maintain types of pesticide consultant or applicator examinations and reexaminations, schedules for required reexaminations and other measures deemed necessary for fair and reasonable testing of applicants as provided in ORS 634.122 (5).

(6) Designate the conditions under which pesticide operators that are or that employ pesticide applicators to spray or otherwise apply pesticides by aircraft may reduce, suspend or terminate the liability insurance required by ORS 634.116, and the periods of time for a reduction, suspension or termination. In this regard, the department may take into consideration:

(a) Changes in climate or seasons.

(b) Periods when certain crops are or have been harvested.

(c) Restricted or limited use of various types or classes of pesticides.

(d) Possibilities of injury or death to humans and loss or damage to real or personal property.

(7) Establish the conditions and amounts allowed for deductible classes in the liability insurance required by ORS 634.116.

(8) Establish and maintain programs of instruction or educational courses for pesticide consultants, operators, applicators and private applicators in cooperation with Oregon State University or others, wherein, as far as is practicable, provisions are made so as to allow *[such]* the pesticide operators and applicators to participate only in the instruction or courses directly or indirectly related to their particular activities. Attendance of licensees may be required.

(9) Prepare and distribute a manual, or other form of publication, containing information helpful and beneficial to individuals engaged in pesticide application or use or to persons preparing to qualify for licensing as a pesticide operator, consultant or applicator and establish charges therefor.

(10) Establish, from time to time, advisory groups or committees to assist the department in formulation of policies, plans or regulations under this chapter. Each member of any such group or committee so established shall be entitled to compensation and expenses as provided in ORS 292.495, to be charged to the department.

(11) Establish registration fees for pesticide brands and formulae or formulations under those pesticide brands.

(12) Establish restrictions or prohibitions as to the form of pesticides allowed to be mixed, applied or added to fertilizers, seed or grains.

(13) Establish restrictions, methods and procedures in the storage, transportation, use or application of restricted-use pesticides or highly toxic pesticides in order to protect humans, pollinating insects, bees, animals, crops, wildlife, land or environment.

(14) Establish and maintain a system for certification of private applicators. In this regard, the department shall take into consideration:

(a) Laws and regulations of the federal government, including the provisions of the Federal Environmental Pesticide Control Act of 1972, 86 Stat. 973, and the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 et seq., as amended thereby, and regulations thereunder.

(b) Minimum periods of experience required and types of experience, education or work acceptable.

(c) Forms and types of private applicator certificates to be issued by the department, authorizing private applicators to apply pesticides in all or part of the classifications of pesticides set forth in subsection (4) of this section.

NOTE: Updates syntax in (2)(b) and (c) and (8); provides full federal citations in (4)(a).

SECTION 58. ORS 646.605 is amended to read: 646.605. As used in ORS 336.184 and 646.605 to 646.652:

(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 an act prohibited by ORS 336.184 and 646.605 to 646.652; or

(d) With the defendant's consent, where the prosecuting attorney maintains an office.

(2) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever *[situate]* **situated**.

(3) "Examination" of documentary material includes inspection, study or copying of any *[such]* **documentary** material, and taking testimony under oath or acknowledgment regarding any documentary material or copy thereof.

(4) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations and any other legal entity except bodies or officers acting under statutory authority of this state or the United States.

(5) "Prosecuting attorney" means the Attorney General or the district attorney of any county in which a violation of ORS 336.184 and 646.605 to 646.652 is alleged to have occurred.

(6)(a) "Real estate, goods or services" means those that are or may be obtained primarily for personal, family or household purposes, or that are or may be obtained for any purposes as a result of a telephone solicitation, and includes loans and extensions of credit, and franchises, distributorships and other similar business opportunities, but does not include insurance.

(b) Notwithstanding paragraph (a) of this subsection:

(A) "Real estate" does not cover conduct covered by ORS chapter 90.

(B) “Loans and extensions of credit” does not include transactions involving a pawnbroker, as defined in ORS 726.010, that is required to be licensed under ORS chapter 726.

(7) “Telephone solicitation” means a solicitation where a person, in the course of the person’s business, vocation or occupation, uses a telephone or an automatic dialing-announcing device to initiate telephonic contact with a potential customer and the person is not one of the following:

(a) A person who is a broker-dealer or salesperson licensed under ORS 59.175, or a mortgage banker or mortgage broker licensed under ORS 86A.106, when the solicitation is for a security qualified for sale pursuant to ORS 59.055.

(b) A real estate licensee or a person who is otherwise authorized to engage in professional real estate activity pursuant to ORS chapter 696, when the solicitation involves professional real estate activity.

(c) A person licensed or exempt from licensure as a builder pursuant to ORS chapter 701, when the solicitation involves the construction, alteration, repair, improvement or demolition of a structure.

(d) A person licensed or otherwise authorized to sell insurance as an insurance producer pursuant to ORS chapter 744, when the solicitation involves insurance.

(e) A person soliciting the sale of a newspaper of general circulation, a magazine or membership in a book or record club who complies with ORS 646.611, when the solicitation involves newspapers, magazines or membership in a book or record club.

(f) A person soliciting without the intent to complete and who does not complete the sales presentation during the telephone solicitation and who only completes the sales presentation at a later face-to-face meeting between the solicitor and the prospective purchaser.

(g) A supervised financial institution or parent, subsidiary or affiliate thereof. As used in this paragraph, “supervised financial institution” means any financial institution or trust company, as those terms are defined in ORS 706.008, or any personal property broker, consumer finance lender, commercial finance lender or insurer that is subject to regulation by an official or agency of this state or of the United States.

(h) A person who is authorized to conduct prearrangement or preconstruction funeral or cemetery sales, pursuant to ORS chapter 692, when the solicitation involves prearrangement or preconstruction funeral or cemetery plans.

(i) A person who solicits the services provided by a cable television system licensed or franchised pursuant to state, local or federal law, when the solicitation involves cable television services.

(j) A person or affiliate of a person whose business is regulated by the Public Utility Commission of Oregon.

(k) A person who sells farm products as defined by ORS 576.006 if the solicitation neither intends to

nor actually results in a sale that costs the purchaser in excess of \$100.

(L) An issuer or subsidiary of an issuer that has a class of securities that is subject to section 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section.

(m) A person soliciting exclusively the sale of telephone answering services to be provided by that person or that person’s employer when the solicitation involves answering services.

(n) A telecommunications utility with access lines of 15,000 or less or a cooperative telephone association when the solicitation involves regulated goods or services.

(8) “Trade” and “commerce” mean advertising, offering or distributing, whether by sale, rental or otherwise, any real estate, goods or services, and include any trade or commerce directly or indirectly affecting the people of this state.

(9) “Unconscionable tactics” include, but are not limited to, actions by which a person:

(a) Knowingly takes advantage of a customer’s physical infirmity, ignorance, illiteracy or inability to understand the language of the agreement;

(b) Knowingly permits a customer to enter into a transaction from which the customer will derive no material benefit;

(c) Permits a customer to enter into a transaction with knowledge that there is no reasonable probability of payment of the attendant financial obligation in full by the customer when due; or

(d) Knowingly takes advantage of a customer who is a disabled veteran, a disabled servicemember or a servicemember in active service, or the spouse of a disabled veteran, disabled servicemember or servicemember in active service. For purposes of this paragraph:

(A) “Disabled veteran” has the meaning given that term in ORS 408.225.

(B) “Disabled servicemember” means a servicemember, as defined in 50 U.S.C. [App. 511] 3911 as in effect on January 1, 2010, who may be entitled to disability compensation under laws administered by the United States Department of Veterans Affairs.

(C) “Servicemember in active service” means:

(i) A servicemember called into active service under Title 10 or Title 32 of the United States Code as in effect on January 1, 2010; or

(ii) A servicemember on state active duty, as defined in the Oregon Code of Military Justice.

(10) A willful violation occurs when the person committing the violation knew or should have known that the conduct of the person was a violation.

(11) A loan is made “in close connection with the sale of a manufactured dwelling” if:

(a) The lender directly or indirectly controls, is controlled by or is under common control with the seller, unless the relationship is remote and is not a factor in the transaction;

(b) The lender gives a commission, rebate or credit in any form to a seller who refers the borrower to the lender, other than payment of the proceeds of the loan jointly to the seller and the borrower;

(c) The lender is related to the seller by blood or marriage;

(d) The seller directly and materially assists the borrower in obtaining the loan;

(e) The seller prepares documents that are given to the lender and used in connection with the loan; or

(f) The lender supplies documents to the seller used by the borrower in obtaining the loan.

NOTE: Updates word choice in (2); supplies defined term in (3); adjusts reference in (9)(d)(B) to reflect federal code reorganization.

SECTION 59. ORS 646.608 is amended to read: 646.608. (1) A person engages in an unlawful practice if in the course of the person's business, vocation or occupation the person does any of the following:

(a) Passes off real estate, goods or services as the real estate, goods or services of another.

(b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of real estate, goods or services.

(c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another.

(d) Uses deceptive representations or designations of geographic origin in connection with real estate, goods or services.

(e) Represents that real estate, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

(f) Represents that real estate or goods are original or new if the real estate or goods are deteriorated, altered, reconditioned, reclaimed, used or secondhand.

(g) Represents that real estate, goods or services are of a particular standard, quality, or grade, or that real estate or goods are of a particular style or model, if the real estate, goods or services are of another.

(h) Disparages the real estate, goods, services, property or business of a customer or another by false or misleading representations of fact.

(i) Advertises real estate, goods or services with intent not to provide the real estate, goods or services as advertised, or with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.

(j) Makes false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions.

(k) Makes false or misleading representations concerning credit availability or the nature of the transaction or obligation incurred.

(L) Makes false or misleading representations relating to commissions or other compensation to be paid in exchange for permitting real estate, goods or services to be used for model or demonstration purposes or in exchange for submitting names of potential customers.

(m) Performs service on or dismantles any goods or real estate if the owner or apparent owner of the goods or real estate does not authorize the service or dismantling.

(n) Solicits potential customers by telephone or door to door as a seller unless the person provides the information required under ORS 646.611.

(o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate, discount or other value is contingent upon an event occurring after the time the customer enters into the transaction.

(p) Makes any false or misleading statement about a prize, contest or promotion used to publicize a product, business or service.

(q) Promises to deliver real estate, goods or services within a certain period of time with intent not to deliver the real estate, goods or services as promised.

(r) Organizes or induces or attempts to induce membership in a pyramid club.

(s) Makes false or misleading representations of fact concerning the offering price of, or the person's cost for real estate, goods or services.

(t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any known material defect or material nonconformity.

(u) Engages in any other unfair or deceptive conduct in trade or commerce.

(v) Violates any of the provisions relating to auction sales, consignment sales, auctioneers, consignees or auction marts under ORS 698.640, whether in a commercial or noncommercial situation.

(w) Manufactures mercury fever thermometers.

(x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal law, or is:

(A) Prescribed by a person licensed under ORS chapter 677; and

(B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and on the proper cleanup of mercury should breakage occur.

(y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to inform the purchaser that mercury is present in the thermostat and that the thermostat may not be disposed

of until the mercury is removed, reused, recycled or otherwise managed to ensure that the mercury does not become part of the solid waste stream or wastewater. For purposes of this paragraph, “thermostat” means a device commonly used to sense and, through electrical communication with heating, cooling or ventilation equipment, control room temperature.

(z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains mercury light switches.

(aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

(bb) Violates ORS 646A.070 (1).

(cc) Violates any requirement of ORS 646A.030 to 646A.040.

(dd) Violates the provisions of ORS 128.801 to 128.898.

(ee) Violates ORS 646.883 or 646.885.

(ff) Violates ORS 646.569.

(gg) Violates the provisions of ORS 646A.142.

(hh) Violates ORS 646A.360.

(ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

(jj) Violates ORS 646.563.

(kk) Violates ORS 759.680 or any rule adopted pursuant thereto.

(LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant thereto.

(mm) Violates ORS 646A.210 or 646A.214.

(nn) Violates any provision of ORS 646A.124 to 646A.134.

(oo) Violates ORS 646A.095.

(pp) Violates ORS 822.046.

(qq) Violates ORS 128.001.

(rr) Violates ORS 646A.800 (2) to (4).

(ss) Violates ORS 646A.090 (2) to (5).

(tt) Violates ORS 87.686.

(uu) Violates ORS 646A.803.

(vv) Violates ORS 646A.362.

(ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.

(xx) Violates ORS 180.440 (1) or 180.486 (1).

(yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.

(zz) Violates ORS 87.007 (2) or (3).

(aaa) Violates ORS 92.405 (1), (2) or (3).

(bbb) Engages in an unlawful practice under ORS 646.648.

(ccc) Violates ORS 646A.365.

(ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858 or a rule adopted under ORS 98.864.

(eee) Sells a gift card in violation of ORS 646A.276.

(fff) Violates ORS 646A.102, 646A.106 or 646A.108.

(ggg) Violates ORS 646A.430 to 646A.450.

(hhh) Violates a provision of ORS 744.318 to 744.384.

(iii) Violates a provision of ORS 646A.702 to 646A.720.

(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration described in ORS 646A.530 is issued for the children’s product, as defined in ORS 646A.525, that is the subject of the violation.

(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.

(LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50 U.S.C. [App. 501] 3901 et seq., as in effect on January 1, 2010.

(mmm) Violates a provision of ORS 646A.480 to 646A.495.

(nnn) Violates ORS 646A.082.

(ooo) Violates ORS 646.647.

(ppp) Violates ORS 646A.115.

(qqq) Violates a provision of ORS 646A.405.

(rrr) Violates ORS 646A.092.

(sss) Violates a provision of ORS 646.644.

(ttt) Violates a provision of ORS 646A.295.

(uuu) Violates ORS 646A.564.

(vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as defined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to do so or unless the person is an active member of the Oregon State Bar.

(www) Violates ORS 702.012, 702.029 or 702.054.

(xxx) Violates ORS 646A.806.

(yyy) Violates ORS 646A.810 (2).

(zzz) Violates a provision of sections 1 to 7, chapter 523, Oregon Laws 2015.

(aaaa) Violates ORS 443.376.

(2) A representation under subsection (1) of this section or ORS 646.607 may be any manifestation of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

(3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prosecuting attorney need not prove competition between the parties or actual confusion or misunderstanding.

(4) An action or suit may not be brought under subsection (1)(u) of this section unless the Attorney General has first established a rule in accordance with the provisions of ORS chapter 183 declaring the conduct to be unfair or deceptive in trade or commerce.

(5) Notwithstanding any other provision of ORS 336.184 and 646.605 to 646.652, if an action or suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

NOTE: Adjusts reference in (1)(LLL) to reflect federal code reorganization.

SECTION 60. ORS 646.608, as amended by section 10, chapter 523, Oregon Laws 2015, section 15, chapter 113, Oregon Laws 2017, section 3, chapter 241, Oregon Laws 2017, section 16, chapter 480, Oregon Laws 2017, and section 6, chapter 656, Oregon Laws 2017, is amended to read:

646.608. (1) A person engages in an unlawful practice if in the course of the person's business, vocation or occupation the person does any of the following:

(a) Passes off real estate, goods or services as the real estate, goods or services of another.

(b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of real estate, goods or services.

(c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another.

(d) Uses deceptive representations or designations of geographic origin in connection with real estate, goods or services.

(e) Represents that real estate, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

(f) Represents that real estate or goods are original or new if the real estate or goods are deteriorated, altered, reconditioned, reclaimed, used or secondhand.

(g) Represents that real estate, goods or services are of a particular standard, quality, or grade, or that real estate or goods are of a particular style or model, if the real estate, goods or services are of another.

(h) Disparages the real estate, goods, services, property or business of a customer or another by false or misleading representations of fact.

(i) Advertises real estate, goods or services with intent not to provide the real estate, goods or services as advertised, or with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.

(j) Makes false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions.

(k) Makes false or misleading representations concerning credit availability or the nature of the transaction or obligation incurred.

(L) Makes false or misleading representations relating to commissions or other compensation to be paid in exchange for permitting real estate, goods or services to be used for model or demonstration purposes or in exchange for submitting names of potential customers.

(m) Performs service on or dismantles any goods or real estate if the owner or apparent owner of the goods or real estate does not authorize the service or dismantling.

(n) Solicits potential customers by telephone or door to door as a seller unless the person provides the information required under ORS 646.611.

(o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of the customer giving to the person the names of prospective

purchasers, lessees, or borrowers, or otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate, discount or other value is contingent upon an event occurring after the time the customer enters into the transaction.

(p) Makes any false or misleading statement about a prize, contest or promotion used to publicize a product, business or service.

(q) Promises to deliver real estate, goods or services within a certain period of time with intent not to deliver the real estate, goods or services as promised.

(r) Organizes or induces or attempts to induce membership in a pyramid club.

(s) Makes false or misleading representations of fact concerning the offering price of, or the person's cost for real estate, goods or services.

(t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any known material defect or material nonconformity.

(u) Engages in any other unfair or deceptive conduct in trade or commerce.

(v) Violates any of the provisions relating to auction sales, consignment sales, auctioneers, consignees or auction marts under ORS 698.640, whether in a commercial or noncommercial situation.

(w) Manufactures mercury fever thermometers.

(x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal law, or is:

(A) Prescribed by a person licensed under ORS chapter 677; and

(B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and on the proper cleanup of mercury should breakage occur.

(y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to inform the purchaser that mercury is present in the thermostat and that the thermostat may not be disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the mercury does not become part of the solid waste stream or wastewater. For purposes of this paragraph, "thermostat" means a device commonly used to sense and, through electrical communication with heating, cooling or ventilation equipment, control room temperature.

(z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains mercury light switches.

(aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

(bb) Violates ORS 646A.070 (1).

(cc) Violates any requirement of ORS 646A.030 to 646A.040.

(dd) Violates the provisions of ORS 128.801 to 128.898.

(ee) Violates ORS 646.883 or 646.885.

(ff) Violates ORS 646.569.

(gg) Violates the provisions of ORS 646A.142.

(hh) Violates ORS 646A.360.
(ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
(jj) Violates ORS 646.563.
(kk) Violates ORS 759.680 or any rule adopted pursuant thereto.
(LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant thereto.
(mm) Violates ORS 646A.210 or 646A.214.
(nn) Violates any provision of ORS 646A.124 to 646A.134.
(oo) Violates ORS 646A.095.
(pp) Violates ORS 822.046.
(qq) Violates ORS 128.001.
(rr) Violates ORS 646A.800 (2) to (4).
(ss) Violates ORS 646A.090 (2) to (5).
(tt) Violates ORS 87.686.
(uu) Violates ORS 646A.803.
(vv) Violates ORS 646A.362.
(ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
(xx) Violates ORS 180.440 (1) or 180.486 (1).
(yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
(zz) Violates ORS 87.007 (2) or (3).
(aaa) Violates ORS 92.405 (1), (2) or (3).
(bbb) Engages in an unlawful practice under ORS 646.648.
(ccc) Violates ORS 646A.365.
(ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858 or a rule adopted under ORS 98.864.
(eee) Sells a gift card in violation of ORS 646A.276.
(fff) Violates ORS 646A.102, 646A.106 or 646A.108.
(ggg) Violates ORS 646A.430 to 646A.450.
(hhh) Violates a provision of ORS 744.318 to 744.384.
(iii) Violates a provision of ORS 646A.702 to 646A.720.
(ijj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration described in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the subject of the violation.
(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
(LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50 U.S.C. [App. 501] 3901 et seq., as in effect on January 1, 2010.
(mmm) Violates a provision of ORS 646A.480 to 646A.495.
(nnn) Violates ORS 646A.082.
(ooo) Violates ORS 646.647.
(ppp) Violates ORS 646A.115.
(qqq) Violates a provision of ORS 646A.405.
(rrr) Violates ORS 646A.092.
(sss) Violates a provision of ORS 646.644.
(ttt) Violates a provision of ORS 646A.295.
(uuu) Violates ORS 646A.564.

(vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as defined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to do so or unless the person is an active member of the Oregon State Bar.

(www) Violates ORS 702.012, 702.029 or 702.054.

(xxx) Violates ORS 646A.806.

(yyy) Violates ORS 646A.810 (2).

(zzz) Violates ORS 443.376.

(2) A representation under subsection (1) of this section or ORS 646.607 may be any manifestation of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

(3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prosecuting attorney need not prove competition between the parties or actual confusion or misunderstanding.

(4) An action or suit may not be brought under subsection (1)(u) of this section unless the Attorney General has first established a rule in accordance with the provisions of ORS chapter 183 declaring the conduct to be unfair or deceptive in trade or commerce.

(5) Notwithstanding any other provision of ORS 336.184 and 646.605 to 646.652, if an action or suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

NOTE: Adjusts reference in (1)(LLL) to reflect federal code reorganization.

SECTION 61. ORS 646.633 is amended to read: 646.633. (1) For purposes of this section, "state regulated lender" means:

(a) A banking institution as defined in ORS 706.008;

(b) A credit union as defined in ORS 723.006;

(c) A person that is required to be licensed under ORS 725.045;

(d) A pawnbroker, as defined in ORS 726.010, that is required to be licensed under ORS chapter 726; [or]

(e) A mortgage banker[,] **or** mortgage broker [or *loan originator*], as those terms are defined in ORS 86A.100, that is required to be licensed under ORS 86A.095 to 86A.198[.]; **or**

(f) A mortgage loan originator that is required to be licensed under ORS 86A.200 to 86A.239.

(2) A prosecuting attorney may not take action under ORS 646.618 or 646.632 with respect to an alleged unlawful practice under ORS 646.607 or 646.608 when the conduct involves loans or extensions of credit and was engaged in by a state regulated lender unless requested to do so by the Director of the Department of Consumer and Business Services. In any action requested to be taken by the director under this subsection, the director may elect to be named as a party to the proceeding or suit.

(3) The Attorney General may not adopt rules under ORS 646.608 (4) with respect to conduct involving loans or extensions of credit that is engaged in by a state regulated lender except with the prior review and approval of the proposed rules by the director. The Attorney General may not adopt rules under ORS 646.608 (4) with respect to conduct involving loans or extensions of credit that is engaged in by a state regulated lender except as provided in this subsection.

(4) As soon as practicable upon receipt, the Attorney General shall provide the director with copies of any complaint or other initial pleading or any judgment received under ORS 646.638 when the action involves the conduct of a state regulated lender.

NOTE: Removes term from (1)(e) and creates (1)(f) to reflect correct term and licensing statutes.

SECTION 62. ORS 656.005 is amended to read:

656.005. (1) “Average weekly wage” means the Oregon average weekly wage in covered employment, as determined by the Employment Department, for the last quarter of the calendar year preceding the fiscal year in which the injury occurred.

(2)(a) “Beneficiary” means an injured worker, and the spouse in a marriage, child or dependent of a worker, who is entitled to receive payments under this chapter.

(b) “Beneficiary” does not include:

(A) A spouse of an injured worker living in a state of abandonment for more than one year at the time of the injury or subsequently. A spouse who has lived separate and apart from the worker for a period of two years and who has not during that time received or attempted by process of law to collect funds for support or maintenance is considered living in a state of abandonment.

(B) A person who intentionally causes the compensable injury to or death of an injured worker.

(3) “Board” means the Workers’ Compensation Board.

(4) “Carrier-insured employer” means an employer who provides workers’ compensation coverage with the State Accident Insurance Fund Corporation or an insurer authorized under ORS chapter 731 to transact workers’ compensation insurance in this state.

(5) “Child” means a child of an injured worker, including:

(a) A posthumous child;

(b) A child legally adopted before the injury;

(c) A child toward whom the worker stands in loco parentis;

(d) A child born out of wedlock;

(e) A stepchild, if the stepchild was, at the time of the injury, a member of the worker’s family and substantially dependent upon the worker for support; and

(f) A child of any age who was an invalid at the time of the accident and thereafter remains an in-

valid substantially dependent on the worker for support.

(6) “Claim” means a written request for compensation from a subject worker or someone on the worker’s behalf, or any compensable injury of which a subject employer has notice or knowledge.

(7)(a) A “compensable injury” is an accidental injury, or accidental injury to prosthetic appliances, arising out of and in the course of employment requiring medical services or resulting in disability or death[.]. An injury is accidental if the result is an accident, whether or not due to accidental means, if it is established by medical evidence supported by objective findings, subject to the following limitations:

(A) [No] An injury or disease is **not** compensable as a consequence of a compensable injury unless the compensable injury is the major contributing cause of the consequential condition.

(B) If an otherwise compensable injury combines at any time with a preexisting condition to cause or prolong disability or a need for treatment, the combined condition is compensable only if, so long as and to the extent that the otherwise compensable injury is the major contributing cause of the disability of the combined condition or the major contributing cause of the need for treatment of the combined condition.

(b) “Compensable injury” does not include:

(A) Injury to any active participant in assaults or combats [which] **that** are not connected to the job assignment and [which] **that** amount to a deviation from customary duties;

(B) Injury incurred while engaging in or performing, or as the result of engaging in or performing, any recreational or social activities primarily for the worker’s personal pleasure; or

(C) Injury the major contributing cause of which is demonstrated to be by a preponderance of the evidence the injured worker’s consumption of alcoholic beverages or cannabis or the unlawful consumption of any controlled substance, unless the employer permitted, encouraged or had actual knowledge of such consumption.

(c) A “disabling compensable injury” is an injury [which] **that** entitles the worker to compensation for disability or death. An injury is not disabling if no temporary benefits are due and payable, unless there is a reasonable expectation that permanent disability will result from the injury.

(d) A “nondisabling compensable injury” is any injury [which] **that** requires medical services only.

(8) “Compensation” includes all benefits, including medical services, provided for a compensable injury to a subject worker or the worker’s beneficiaries by an insurer or self-insured employer pursuant to this chapter.

(9) “Department” means the Department of Consumer and Business Services.

(10)(a) “Dependent” means any of the following relatives of the worker who, at the time of an accident, depended in whole or in part for the relative’s

support on the earnings of a worker who dies as a result of an injury:

- (A) A parent, grandparent or stepparent;
- (B) A grandson or granddaughter;
- (C) A brother or sister or half-brother or half-sister; and
- (D) A niece or nephew.

(b) "Dependent" does not include an alien who does not reside within the United States at the time of the accident, other than a parent, a spouse or children, unless a treaty provides otherwise.

(11) "Director" means the Director of the Department of Consumer and Business Services.

(12)(a) "Doctor" or "physician" means a person duly licensed to practice one or more of the healing arts in any country or in any state, territory or possession of the United States within the limits of the license of the [*licentiate*] **licensee**.

(b) Except as otherwise provided for workers subject to a managed care contract, "attending physician" means a doctor, physician or physician assistant who is primarily responsible for the treatment of a worker's compensable injury and who is:

(A) A physician licensed under ORS 677.100 to 677.228 by the Oregon Medical Board, or a podiatric physician and surgeon licensed under ORS 677.805 to 677.840 by the Oregon Medical Board, an oral and maxillofacial surgeon licensed by the Oregon Board of Dentistry or a similarly licensed doctor in any country or in any state, territory or possession of the United States; or

(B) For a cumulative total of 60 days from the first visit on the initial claim or for a cumulative total of 18 visits, whichever occurs first, to any of the medical service providers listed in this subparagraph, a:

(i) Doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon under ORS chapter 684 or a similarly licensed doctor or physician in any country or in any state, territory or possession of the United States;

(ii) Physician assistant licensed by the Oregon Medical Board in accordance with ORS 677.505 to 677.525 or a similarly licensed physician assistant in any country or in any state, territory or possession of the United States; or

(iii) Doctor of naturopathy or naturopathic physician licensed by the Oregon Board of Naturopathic Medicine under ORS chapter 685 or a similarly licensed doctor or physician in any country or in any state, territory or possession of the United States.

(c) Except as otherwise provided for workers subject to a managed care contract, "attending physician" does not include a physician who provides care in a hospital emergency room and refers the injured worker to a primary care physician for follow-up care and treatment.

(d) "Consulting physician" means a doctor or physician who examines a worker or the worker's medical record to advise the attending physician or nurse practitioner authorized to provide compensa-

ble medical services under ORS 656.245 regarding treatment of a worker's compensable injury.

(13)(a) "Employer" means any person, including receiver, administrator, executor or trustee, and the state, state agencies, counties, municipal corporations, school districts and other public corporations or political subdivisions, [*who*] **that** contracts to pay a remuneration for and secures the right to direct and control the services of any person.

(b) Notwithstanding paragraph (a) of this subsection, for purposes of this chapter, the client of a temporary service provider is not the employer of temporary workers provided by the temporary service provider.

(c) As used in paragraph (b) of this subsection, "temporary service provider" has the meaning for that term provided in ORS 656.850.

(14) "Insurer" means the State Accident Insurance Fund Corporation or an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in this state or an assigned claims agent selected by the director under ORS 656.054.

(15) "Consumer and Business Services Fund" means the fund created by ORS 705.145.

(16) "Invalid" means one who is physically or mentally incapacitated from earning a livelihood.

(17) "Medically stationary" means that no further material improvement would reasonably be expected from medical treatment[,] or the passage of time.

(18) "Noncomplying employer" means a subject employer [*who*] **that** has failed to comply with ORS 656.017.

(19) "Objective findings" in support of medical evidence are verifiable indications of injury or disease that may include, but are not limited to, range of motion, atrophy, muscle strength and palpable muscle spasm. "Objective findings" does not include physical findings or subjective responses to physical examinations that are not reproducible, measurable or observable.

(20) "Palliative care" means medical service rendered to reduce or moderate temporarily the intensity of an otherwise stable medical condition, but does not include those medical services rendered to diagnose, heal or permanently alleviate or eliminate a medical condition.

(21) "Party" means a claimant for compensation, the employer of the injured worker at the time of injury and the insurer, if any, of [*such*] **the** employer.

(22) "Payroll" means a record of wages payable to workers for their services and includes commissions, value of exchange labor and the reasonable value of board, rent, housing, lodging or similar advantage received from the employer. However, "payroll" does not include overtime pay, vacation pay, bonus pay, tips, amounts payable under profit-sharing agreements or bonus payments to reward workers for safe working practices. Bonus pay is limited to payments [*which*] **that** are not anticipated

under the contract of employment and [which] **that** are paid at the sole discretion of the employer. The exclusion from payroll of bonus payments to reward workers for safe working practices is only for the purpose of calculations based on payroll to determine premium for workers' compensation insurance, and does not affect any other calculation or determination based on payroll for the purposes of this chapter.

(23) "Person" includes a partnership, joint venture, association, limited liability company and corporation.

(24)(a) "Preexisting condition" means, for all industrial injury claims, any injury, disease, congenital abnormality, personality disorder or similar condition that contributes to disability or need for treatment, provided that:

(A) Except for claims in which a preexisting condition is arthritis or an arthritic condition, the worker has been diagnosed with [such] **the** condition, or has obtained medical services for the symptoms of the condition regardless of diagnosis; and

(B)(i) In claims for an initial injury or omitted condition, the diagnosis or treatment precedes the initial injury;

(ii) In claims for a new medical condition, the diagnosis or treatment precedes the onset of the new medical condition; or

(iii) In claims for a worsening pursuant to ORS 656.273 or 656.278, the diagnosis or treatment precedes the onset of the worsened condition.

(b) "Preexisting condition" means, for all occupational disease claims, any injury, disease, congenital abnormality, personality disorder or similar condition that contributes to disability or need for treatment and that precedes the onset of the claimed occupational disease, or precedes a claim for worsening in such claims pursuant to ORS 656.273 or 656.278.

(c) For the purposes of industrial injury claims, a condition does not contribute to disability or need for treatment if the condition merely renders the worker more susceptible to the injury.

(25) "Self-insured employer" means an employer or group of employers certified under ORS 656.430 as meeting the qualifications set out by ORS 656.407.

(26) "State Accident Insurance Fund Corporation" and "corporation" mean the State Accident Insurance Fund Corporation created under ORS 656.752.

(27) "Subject employer" means an employer [who] **that** is subject to this chapter as provided by ORS 656.023.

(28) "Subject worker" means a worker who is subject to this chapter as provided by ORS 656.027.

(29) "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, including reasonable value of board, rent, housing, lodging or similar advantage received from the employer, and includes the amount of tips required to be reported by the employer pursuant to section 6053

of the Internal Revenue Code of 1954, as amended, and the regulations promulgated pursuant thereto, or the amount of actual tips reported, whichever amount is greater. The State Accident Insurance Fund Corporation may establish assumed minimum and maximum wages, in conformity with recognized insurance principles, at which any worker shall be carried upon the payroll of the employer for the purpose of determining the premium of the employer.

(30) "Worker" means any person, including a minor whether lawfully or unlawfully employed, who engages to furnish services for a remuneration, subject to the direction and control of an employer and includes salaried, elected and appointed officials of the state, state agencies, counties, cities, school districts and other public corporations, but does not include any person whose services are performed as an inmate or ward of a state institution or as part of the eligibility requirements for a general or public assistance grant. For the purpose of determining entitlement to temporary disability benefits or permanent total disability benefits under this chapter, "worker" does not include a person who has withdrawn from the workforce during the period for which such benefits are sought.

(31) "Independent contractor" has the meaning for that term provided in ORS 670.600.

NOTE: Corrects punctuation in (7)(a) and (17); improves syntax in (7)(a)(A) and (23); updates word choice in (7)(b)(A), (c) and (d), (12)(a), (13)(a), (18), (21), (22), (24)(a)(A) and (27).

SECTION 63. ORS 657.855 is amended to read:

657.855. (1) Except as provided in this section, benefits due under this chapter may not be assigned, pledged, encumbered, released or commuted. [and] **Benefits due under this chapter** shall, except as otherwise provided in this chapter, be exempt from all claims of creditors and from levy, execution and attachment or remedy for recovery or collection of a debt, [which] **and the** exemption may not be waived. No agreement by an individual to waive the individual's rights under this chapter is valid.

(2) The exemption from execution or other process granted under this section applies to only 50 percent of benefits payable under this chapter if the execution or other process is issued for a child support obligation or an order or notice entered pursuant to **ORS 416.400 to 416.465** or ORS chapter 25, 107, 108, 109, 110, [416,] 419B or 419C and the child support obligation or the order or notice is being enforced pursuant to a plan approved under Title IV-D of the Social Security Act.

NOTE: Improves sentence structure in (1); eliminates inappropriate chapter reference and substitutes appropriate series reference in (2).

SECTION 64. ORS 676.220 is amended to read:

676.220. (1) If at any time the board suspending or revoking the license of any [licentiate] **licensee** of a health care profession determines that [such licentiate] **the licensee** is continuing to practice the health care profession notwithstanding, the board

shall in its own name bring an action to enjoin [*such licentiate*] **the licensee**.

(2) If the court [*shall find*] **finds** that the [*licentiate*] **licensee** has been or is continuing the practice of the health care profession for which the license has been revoked or suspended, **the court** [*it*] shall issue an injunction restraining the [*licentiate*] **licensee**. The commission of a single act constituting the practice of the respective health care profession shall be prima facie evidence warranting the issuance of [*such*] **an** injunction.

NOTE: Updates terminology in (1) and (2); improves syntax and punctuation in (2).

SECTION 65. ORS 689.689 is amended to read:

689.689. (1) In accordance with rules adopted by the State Board of Pharmacy under ORS 689.205, a pharmacist may prescribe and administer injectable hormonal contraceptives and prescribe and dispense self-administered hormonal contraceptives to a person who is:

(a) At least 18 years of age, regardless of whether the person has evidence of a previous prescription from a primary care practitioner or women's health care practitioner for an injectable hormonal contraceptive or a self-administered hormonal contraceptive; or

(b) Under 18 years of age, only if the person has evidence of a previous prescription from a primary care practitioner or women's health care practitioner for an injectable hormonal contraceptive or a self-administered hormonal contraceptive.

(2)(a) The board shall adopt rules to establish, in consultation with the Oregon Medical Board, the Oregon State Board of Nursing and the Oregon Health Authority, and in consideration of guidelines established by the American [*Congress*] **College of Obstetricians and Gynecologists or its successor organization**, standard procedures for the prescribing of injectable hormonal contraceptives and self-administered hormonal contraceptives by pharmacists.

(b) The rules adopted under this subsection must require a pharmacist to:

(A) Complete a training program approved by the State Board of Pharmacy that is related to prescribing injectable hormonal contraceptives and self-administered hormonal contraceptives;

(B) Provide a self-screening risk assessment tool that the patient must use prior to the pharmacist's prescribing the injectable hormonal contraceptive or self-administered hormonal contraceptive;

(C) Refer the patient to the patient's primary care practitioner or women's health care practitioner upon prescribing and administering the injectable hormonal contraceptive or prescribing and dispensing the self-administered hormonal contraceptive;

(D) Provide the patient with a written record of the injectable hormonal contraceptive prescribed and administered or the self-administered hormonal contraceptive prescribed and dispensed and advise

the patient to consult with a primary care practitioner or women's health care practitioner; and

(E) Administer the injectable hormonal contraceptive or dispense the self-administered hormonal contraceptive to the patient as soon as practicable after the pharmacist issues the prescription.

(c) The rules adopted under this subsection must prohibit a pharmacist from:

(A) Requiring a patient to schedule an appointment with the pharmacist for the prescribing or administering of an injectable hormonal contraceptive or the prescribing or dispensing of a self-administered hormonal contraceptive; and

(B) Prescribing and administering an injectable hormonal contraceptive or prescribing and dispensing a self-administered hormonal contraceptive to a patient who does not have evidence of a clinical visit for women's health within the three years immediately following the initial prescription and administration of an injectable hormonal contraceptive or the initial prescription and dispensation of a self-administered hormonal contraceptive by a pharmacist to the patient.

(3) All state and federal laws governing insurance coverage of contraceptive drugs, devices, products and services [*shall*] apply to injectable hormonal contraceptives and self-administered hormonal contraceptives prescribed by a pharmacist under this section.

NOTE: Updates organization title and provides for future name changes in (2)(a); improves syntax in (3).

SECTION 66. ORS 689.689, as amended by section 3, chapter 649, Oregon Laws 2015, and section 3, chapter 289, Oregon Laws 2017, is amended to read:

689.689. (1) In accordance with rules adopted by the State Board of Pharmacy under ORS 689.205, a pharmacist may prescribe and administer injectable hormonal contraceptives and prescribe and dispense self-administered hormonal contraceptives.

(2)(a) The board shall adopt rules to establish, in consultation with the Oregon Medical Board, the Oregon State Board of Nursing and the Oregon Health Authority, and in consideration of guidelines established by the American [*Congress*] **College of Obstetricians and Gynecologists or its successor organization**, standard procedures for the prescribing of injectable hormonal contraceptives and self-administered hormonal contraceptives by pharmacists.

(b) The rules adopted under this subsection must require a pharmacist to:

(A) Complete a training program approved by the State Board of Pharmacy that is related to prescribing injectable hormonal contraceptives and self-administered hormonal contraceptives;

(B) Provide a self-screening risk assessment tool that the patient must use prior to the pharmacist's prescribing the injectable hormonal contraceptive or self-administered hormonal contraceptive;

(C) Refer the patient to the patient's primary care practitioner or women's health care practitioner upon prescribing and administering the injectable hormonal contraceptive or prescribing and dispensing the self-administered hormonal contraceptive;

(D) Provide the patient with a written record of the injectable hormonal contraceptive prescribed and administered or the self-administered hormonal contraceptive prescribed and dispensed and advise the patient to consult with a primary care practitioner or women's health care practitioner; and

(E) Administer the injectable hormonal contraceptive or dispense the self-administered hormonal contraceptive to the patient as soon as practicable after the pharmacist issues the prescription.

(c) The rules adopted under this subsection must prohibit a pharmacist from:

(A) Requiring a patient to schedule an appointment with the pharmacist for the prescribing or administering of an injectable hormonal contraceptive or the prescribing or dispensing of a self-administered hormonal contraceptive; and

(B) Prescribing and administering an injectable hormonal contraceptive or prescribing and dispensing a self-administered hormonal contraceptive to a patient who does not have evidence of a clinical visit for women's health within the three years immediately following the initial prescription and administration of an injectable hormonal contraceptive or the initial prescription and dispensation of a self-administered hormonal contraceptive by a pharmacist to the patient.

(3) All state and federal laws governing insurance coverage of contraceptive drugs, devices, products and services [shall] apply to injectable hormonal contraceptives and self-administered hormonal contraceptives prescribed by a pharmacist under this section.

NOTE: Updates organization title and provides for future name changes in (2)(a); improves syntax in (3).

SECTION 67. ORS 734.810 is amended to read:

734.810. (1) If a member insurer is an impaired insurer, the Oregon Life and Health Insurance Guaranty Association, in its discretion and subject to any conditions imposed by the association and approved by the Director of the Department of Consumer and Business Services, other than those [which] **that** impair the contractual obligations of the impaired insurer, may:

(a) Guarantee, assume or reinsure, or cause to be guaranteed, assumed or reinsured, any or all of the covered policies of the impaired insurer.

(b) Provide such moneys, pledges, notes, loans, guarantees or other means as are proper to implement paragraph (a) of this subsection and ensure payment of the contractual obligations of the impaired insurer pending action under paragraph (a) of this subsection.

(2) If a member insurer is an insolvent insurer, the association, in its discretion and subject to the approval of the director, shall take either of the following steps:

(a)(A) Guarantee, assume or reinsure, or cause to be guaranteed, assumed or reinsured, the covered policies of the insolvent insurer;

(B) Ensure payment of the contractual obligations of the insolvent insurer; and

(C) Provide such moneys, pledges, notes, loans, guarantees or other means as are reasonably necessary to discharge such duties.

(b) Provide benefits and coverages in accordance with the following provisions:

(A) For life and health insurance policies and annuity contracts, the association shall ensure that the payment of benefits for premiums, except for terms of conversion and renewability, under the replacement coverage provided by the association is identical to the payment of benefits for premiums that would have been payable under the policies or contracts of the insolvent insurer, for claims incurred:

(i) With respect to group policies and contracts, not later than the earlier of the next renewal date under those policies or contracts or 45 days, but in no event less than 30 days, after the date on which the association becomes obligated with respect to the policies or contracts.

(ii) With respect to nongroup policies and contracts, if any, not later than the earlier of the next renewal date under those policies or contracts or one year, but in no event less than 30 days, after the date on which the association becomes obligated with respect to the policies or contracts.

(B) The association shall make diligent efforts to provide a 30-day notice of the termination of the benefits provided under subparagraph (A) of this paragraph to all known insureds or annuitants for nongroup policies and contracts, or to group policyholders or contract owners with respect to group policies and contracts.

(C) For nongroup life and health insurance policies and annuities covered by the association, the association shall make substitute coverage available to each known insured or annuitant, or owner if other than the insured or annuitant. For an individual formerly insured or formerly an annuitant under a group policy who is not eligible for replacement group coverage, the association shall make available substitute coverage on an individual basis in accordance with the provisions of subparagraph (D) of this paragraph, if the insureds or annuitants had a right under law or under the terminated policy or annuity to convert coverage to individual coverage or to continue an individual policy or annuity that was already in force until a specified age or for a specified time, during which the insurer had no right to make changes unilaterally in any provision of the policy or annuity or had a right to make changes only to premiums or to classes of risk.

(D) In providing the substitute coverage required under subparagraph (C) of this paragraph, the association:

(i) May offer either to reissue the terminated coverage or to issue an alternative policy.

(ii) Shall offer alternative or reissued policies without requiring evidence of insurability.

(iii) May not impose any waiting period or exclusion that would not have applied under the terminated policy.

(iv) May reinsure any alternative or reissued policy.

(E) Any alternative policy adopted by the association must:

(i) Be approved by the Director of the Department of Consumer and Business Services and the court. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.

(ii) Contain at least the minimum statutory provisions required in this state and provide benefits that are not unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates adopted by the association. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but may not reflect any changes in the health of the insured after the original policy was last underwritten.

(iii) Provide coverage of a type similar to that of the policy issued by the insolvent insurer, as determined by the association.

(F) If the association elects to reissue terminated coverage at a premium rate that is different from the premium rate that was charged under the terminated policy, the premium rate shall be set by the association, in accordance with the amount of insurance provided and the age and class of risk, and be subject to approval by the Director of the Department of Consumer and Business Services and the court.

(G) The association's obligations with respect to coverage under any policy of the insolvent insurer or under any reissued or alternative policy shall cease on the date on which the coverage or policy is replaced by another similar policy by the policyholder, the insured or the association.

(H) When proceeding under this subsection with respect to a policy or contract that carries a guaranteed minimum interest rate, the association shall ensure the payment or crediting of a rate of interest consistent with the provisions of ORS 734.790 (3).

(3) Nonpayment of premiums within 31 days after the date required under the terms of any guaranteed, assumed, alternative or reissued policy or contract or substitute coverage shall terminate the association's obligations under the policy, contract or substitute coverage under ORS 734.750 to 734.890 with respect to the policy, contract or substitute coverage, except with respect to any claims incurred or any net cash surrender value or net cash withdrawal value that may be due in accordance with the provisions of ORS 734.750 to 734.890.

(4) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the association. At the request of the liquidator of an insolvent insurer, the association shall provide a report to the liquidator regarding any premium collected by the association. The association is liable for unearned premiums due to policyholders or contract owners arising after the entry of the order.

(5) The protection provided by ORS 734.750 to 734.890 does not apply where any guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state.

(6)(a) In carrying out its duties under subsection (2) of this section, the association may impose permanent policy liens or contract liens in connection with any guaranteed, assumption or reinsurance agreement, if the court considering the lien finds that the amounts that can be assessed under ORS 734.750 to 734.890 are less than the amounts needed to ensure full and prompt performance of the insolvent insurer's contractual obligations or that the economic or financial conditions affecting member insurers are sufficiently adverse to render the imposition of policy or contract liens to be in the public interest, and approves the specific policy liens or contract liens to be used.

(b) In carrying out its duties under subsection (2) of this section, the association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans or temporary moratoriums on the right to withdraw funds held in conjunction with the policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan values, and such temporary moratoriums and liens may be imposed if they are approved by the court. In addition, in the event of a temporary moratorium or moratorium charge imposed by the court on payment of cash values or policy loan values, or on any other right to withdraw funds held in conjunction with policies or contracts, out of the assets of the impaired or insolvent insurer, the association may defer the payment of cash values, policy loan values and other rights by the association for the period of the temporary moratorium or moratorium charge that is imposed by the court, except for claims that are covered by the association to be paid in accordance with a hardship procedure that is established by the liquidator or rehabilitator and approved by the court.

(7) If the association fails to act as required in subsection (2) of this section within a reasonable time, the director shall have the powers and duties of the association under ORS 734.750 to 734.890 with respect to insolvent insurers.

(8) The association may render assistance and advice to the director, upon request of the director, concerning rehabilitation, payment of claims, continuance of coverage or the performance of other contractual obligations of any impaired or insolvent insurer.

(9) The association shall have standing to intervene or appear before any court or agency in this state having jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under ORS 734.750 to 734.890 or with jurisdiction over any person or property against which the association has rights through subrogation or otherwise. Such standing shall extend to all matters germane to the powers and duties of the association including, but not limited to, proposals for reinsuring, modifying or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations. The association may also appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise.

(10)(a) Any person receiving benefits under ORS 734.750 to 734.890 shall be considered to have assigned the rights under, and any causes of action against any person for losses arising under, resulting from or otherwise relating to, the covered policy to the association to the extent of the benefits received because of ORS 734.750 to 734.890, whether the benefits are payments of or on account of contractual obligations or continuation of coverage. The association may require an assignment to the association of such rights by any payee, policyholder, contract owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any rights or benefits conferred by ORS 734.750 to 734.890 upon such person. The association shall be subrogated to these rights against the assets of any impaired or insolvent insurer.

(b) The subrogation rights of the association under this subsection shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under ORS 734.750 to 734.890.

(c) In addition to the rights set forth in paragraphs (a) and (b) of this subsection, the association may exercise any common law rights of subrogation or any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or to the policyholder or contract owner, beneficiary or payee of a policy or contract with respect to the policy or contract. In the case of a structured settlement annuity, these rights include but are not limited to any rights of the policyholder or contract owner, beneficiary or payee of the annuity, to the extent of benefits received under ORS 734.750 to 734.890, against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment therefor, with the exception of a person responsible solely by reason of serving as an assignee in respect of a qualified assignment under section 130 of the federal Internal Revenue Code.

(d) If the provisions of this subsection are determined by a court to be invalid or ineffective with

respect to any person or claim for any reason, the association shall reduce the amount payable by the association with respect to the related covered obligations by the amount realized by any other person with respect to the person or claim that is attributable to the policies or contracts covered by the association.

(e) If the association provides benefits with respect to a covered obligation and a person recovers amounts to which the association has rights as described in this subsection, the person shall pay to the association the portion of the recovery attributable to the policies or contracts covered by the association.

(11) The contractual obligations of the impaired or insolvent insurer for which the association becomes or may become liable may not exceed the [lesser] **least** of:

(a) The contractual obligations for which the impaired or insolvent insurer is liable or would have been liable if it were not an impaired or insolvent insurer, unless such obligations are reduced as permitted by subsection (6) of this section;

(b) With respect to any one life, regardless of the number of policies or contracts:

(A) \$300,000 in life insurance death benefits, but not more than \$100,000 in net cash surrender and net cash withdrawal values for life insurance.

(B) \$100,000 in health insurance benefits other than basic hospital, medical and surgical insurance, major medical insurance, disability insurance or long term care insurance, including any net cash surrender and net cash withdrawal values.

(C) \$300,000 in disability insurance benefits.

(D) \$300,000 in long term care insurance benefits.

(E) \$500,000 in basic hospital, medical and surgical insurance or major medical insurance.

(F) \$250,000 in the present value of annuity benefits, including any net cash surrender and net cash withdrawal values;

(c) With respect to each payee of a structured settlement annuity or the beneficiary of the payee if deceased, \$250,000 in the present value of annuity benefits, in the aggregate, including any net cash surrender and net cash withdrawal values; or

(d) \$250,000 in the present value of annuity benefits, in the aggregate, including any net cash surrender and net cash withdrawal values, with respect to each individual participating in a governmental retirement plan established under section 401, 403(b) or 457 of the United States Internal Revenue Code covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased.

(12) The association may not be liable for more than:

(a) \$300,000 in benefits, in the aggregate, with respect to any one life under subsection (11)(b), (c) and (d) of this section, with the exception of benefits under subsection (11)(b)(E) of this section, in which case the aggregate liability of the association may not exceed \$500,000 with respect to any one life.

(b) With respect to one policyholder of multiple nongroup policies of life insurance, regardless of whether the policyholder is an individual, firm, corporation or other person, and whether the persons insured are officers, managers, employees or other persons, \$5 million in benefits, regardless of the number of policies and contracts held by the policyholder.

(13) The limitations set forth in subsections (11) and (12) of this section are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's obligations under ORS 734.750 to 734.890 may be met by the use of assets attributable to covered policies or reimbursed to the association under its subrogation and assignment rights.

(14) In performing its obligations to provide coverage under ORS 734.750 to 734.890, the association is not required to guarantee, assume, reinsure or perform, or cause to be guaranteed, assumed, reinsured or performed, any contractual obligation of the impaired or insolvent insurer or contract owner under a covered policy that does not materially affect the economic values or economic benefits of the covered policy or contract.

(15) The association may:

(a) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of ORS 734.750 to 734.890.

(b) Sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under ORS 734.815 and to settle claims or potential claims against the association.

(c) Borrow money to effect the purposes of ORS 734.750 to 734.890. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for member insurers and may be carried as admitted assets.

(d) Employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under ORS 734.750 to 734.890.

(e) Negotiate and contract with any liquidator, rehabilitator, conservator or ancillary receiver to carry out the powers and duties of the association.

(f) Take such legal action as may be necessary to avoid payment of improper claims.

(g) Exercise, for the purposes of ORS 734.750 to 734.890 and to the extent approved by the director, the powers of a member life or health insurer, but in no case may the association issue policies other than those issued to perform the contractual obligations of the impaired or insolvent insurer.

(h) Organize itself as a corporation or other legal form permitted by the laws of this state.

(i) Request information from a person seeking coverage from the association to aid the association

in determining its obligations under ORS 734.750 to 734.890 with respect to that person.

(j) Take any other necessary or appropriate action to discharge its duties and obligations and to exercise its powers under ORS 734.750 to 734.890.

(16) The duties and powers of the association described in this section are in addition to any other duties and powers of the association described in ORS 734.750 to 734.890.

(17)(a) Within 180 days after the date of the order of liquidation, the association may succeed to the rights and obligations of the ceding member insurer that relate to policies or annuities covered, in whole or in part, by the association, in each case under any one or more reinsurance contracts entered into by the insolvent insurer and its reinsurers and selected by the association. Any such assumption shall be effective as of the date of the order of liquidation. The election shall be effected by the association sending written notice, return receipt requested, to the affected reinsurers.

(b) To facilitate the earliest practicable decision about whether to assume any of the contracts of reinsurance, and in order to protect the financial position of the estate, the receiver and each reinsurer of the ceding member insurer shall make available upon request to the association as soon as possible after commencement of formal delinquency proceedings copies of in-force contracts of reinsurance and all related files and records relevant to the determination of whether such contracts should be assumed, and notices of any defaults under the reinsurance contracts or any known event or condition which with the passage of time could become a default under the reinsurance contracts.

(c) For any reinsurance contracts assumed by the association under paragraphs (a) and (b) of this subsection:

(A) The association is responsible for all unpaid premiums due under the reinsurance contracts for periods both before and after the date of the order of liquidation, and shall be responsible for the performance of all other obligations to be performed after the date of the order of liquidation, related to policies or annuities covered by the reinsurance contract, in whole or in part, by the association. The association may charge policies or annuities covered in part by the association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the association and shall provide notice and an accounting of those charges to the liquidator.

(B) The association is entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods after the date of the order of liquidation and that relate to policies or annuities covered, in whole or in part, by the association. Upon receipt of any such amounts, the association shall pay the beneficiary under the policy or annuity on account of which the amounts were paid a portion of the amount equal to the lesser of:

(i) The amount received by the association; or

(ii) The amount received by the association that is in excess of the amount equal to the benefits paid by the association on account of the policy or annuity minus the amount retained by the insurer applicable to the loss or event.

(C) Within 30 days following the association's election, the association and each reinsurer shall calculate the net balance due to or from the association under each reinsurance contract as of the election date with respect to policies or annuities covered, in whole or in part, by the association. The calculation shall give full credit to all items paid by the insurer or its receiver or by the reinsurer prior to the election date. The reinsurer shall pay the receiver any amounts due for losses or events prior to the date of the order of liquidation, subject to any setoff for premiums unpaid for periods prior to that date, and the association or the reinsurer shall pay any remaining balance due to one another. The reinsurer and the association shall make such payments within five days after the completion of the calculation of the net balance due under each reinsurance contract. Any disputes over the amounts due to the association or the reinsurer shall be resolved by arbitration according to the terms of the affected reinsurance contracts or, if the contract contains no arbitration clause, as otherwise provided by law. If the receiver has received any amounts due the association under subparagraph (B) of this paragraph, the receiver shall remit the amounts to the association as promptly as practicable.

(d) If the association, or the receiver on the association's behalf, within 60 days after the election date pays the unpaid premiums due for periods both before and after the election date that relate to policies or annuities covered, in whole or in part, by the association, the reinsurer may not terminate the reinsurance contracts for failure to pay premiums insofar as the reinsurance contracts relate to policies or annuities covered, in whole or in part, by the association, and may not set off any unpaid amounts due under other contracts, or unpaid amounts due from parties other than the association, against amounts due to the association.

(e)(A) During the period from the date of the order of liquidation until the election date or, if the election date does not occur, 180 days after the date of the order of liquidation:

(i) Neither the association nor the reinsurer shall have any rights or obligations under reinsurance contracts that the association has the right to assume under paragraph (a) of this subsection, whether for periods prior to or after the date of the order of liquidation; and

(ii) The reinsurer, the receiver and the association shall, to the extent practicable, provide to each other data and records that are reasonably requested.

(B) After the association has elected to assume a reinsurance contract, the parties' rights and obligations shall be governed by paragraph (a) of this subsection.

(f) If the association does not elect to assume a reinsurance contract by the election date under paragraph (a) of this subsection, the association shall have no rights or obligations, for periods both before and after the date of the order of liquidation, with respect to the reinsurance contract.

(g) When policies or annuities, or covered obligations related to policies or annuities, are transferred to an assuming insurer, the association may also transfer reinsurance on the policies or annuities for contracts assumed under paragraph (a) of this subsection, subject to the following:

(A) Unless the reinsurer and the assuming insurer agree otherwise, the reinsurance contract transferred may not cover any new policies of insurance or annuities in addition to those transferred;

(B) The obligations described in paragraph (a) of this subsection shall no longer apply with respect to matters arising after the effective date of the transfer; and

(C) The transferring party shall give notice in writing, return receipt requested, to the affected reinsurer not less than 30 days before the effective date of the transfer.

(h) The provisions of this subsection shall supersede any other provision of law or any affected reinsurance contract that provides for or requires any payment of reinsurance proceeds, on account of losses or events that occur in periods after the date of the order of liquidation, to the receiver or any other person. The receiver shall remain entitled to any amounts payable by the reinsurer under the reinsurance contract with respect to losses or events that occur in periods prior to the date of the order of liquidation, subject to applicable setoff provisions.

(i) Except as otherwise provided in this subsection, nothing in this section shall:

(A) Alter or modify the terms and conditions of any reinsurance contract;

(B) Abrogate or limit any rights of any reinsurer to claim that the reinsurer is entitled to rescind a reinsurance contract;

(C) Grant a policyholder, contract owner or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract;

(D) Limit or affect the association's rights as a creditor of the estate against the assets of the estate; or

(E) Apply to reinsurance agreements covering property or casualty risks.

(18) The board of directors of the association may exercise reasonable business judgment to determine the means by which the association is to provide the benefits under ORS 734.750 to 734.890 in an economical and efficient manner.

(19) If the association has arranged or offered to provide the benefits of ORS 734.750 to 734.890 to a covered person under a plan or arrangement that fulfills the association's obligations under this section, the person is not entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.

(20) Venue in a suit against the association arising under ORS 734.750 to 734.890 shall be in the Circuit Court for Marion County.

(21) In carrying out its duties in connection with guaranteeing, assuming or reinsuring policies or contracts under this section, the association may, subject to approval of the court, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate or similar factor determined by use of an index or other external reference stated in the policy or contract for the purpose of calculating returns or changes in value by issuing an alternative policy or contract in accordance with all of the following provisions:

(a) In lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract provides for a fixed interest rate, payment of dividends with minimum guarantees, or a different method for calculating interest or changes in value.

(b) There is no requirement for evidence of insurability, waiting period or other exclusion that would not have applied under the original policy or contract.

(c) The alternative policy or contract is substantially similar to the original policy or contract in all other material terms.

NOTE: Improves word choice in (1) and (11) lead-ins.

SECTION 68. ORS 750.055, as amended by section 9, chapter 7, Oregon Laws 2018, is amended to read:

750.055. (1) The following provisions apply to health care service contractors to the extent not inconsistent with the express provisions of ORS 750.005 to 750.095:

(a) ORS 705.137, 705.138 and 705.139.

(b) ORS 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, 731.485, as provided in subsection (2) of this section, ORS 731.488, 731.504, 731.508, 731.509, 731.510, 731.511, 731.512, 731.574 to 731.620, 731.640 to 731.652, 731.730, 731.731, 731.735, 731.737, 731.750, 731.752, 731.804, 731.808 and 731.844 to 731.992.

(c) ORS 732.215, 732.220, 732.230, 732.245, 732.250, 732.320, 732.325 and 732.517 to 732.596, not including ORS 732.582.

(d) ORS 733.010 to 733.050, 733.080, 733.140 to 733.170, 733.210, 733.510 to 733.680 and 733.695 to 733.780.

(e) ORS 734.014 to 734.440.

[(f) ORS 735.600 to 735.650.]

[(g)] (f) ORS 742.001 to 742.009, 742.013, 742.016, 742.061, 742.065, 742.150 to 742.162 and 742.518 to 742.542.

[(h)] (g) ORS 743.004, 743.005, 743.007, 743.008, 743.010, 743.018, 743.019, 743.020, 743.022, 743.023, 743.028, 743.029, 743.038, 743.040, 743.044, 743.050, 743.100 to 743.109, 743.402, 743.405, 743.406, 743.417, 743.472, 743.492, 743.495, 743.498, 743.522, 743.523,

743.524, 743.526, 743.535, 743.550, 743.650 to 743.656, 743.680 to 743.689, 743.788 and 743.790.

[(i)] (h) ORS 743A.010, 743A.012, 743A.014, 743A.020, 743A.034, 743A.036, 743A.040, 743A.044, 743A.048, 743A.051, 743A.052, 743A.058, 743A.060, 743A.062, 743A.063, 743A.064, 743A.065, 743A.066, 743A.068, 743A.070, 743A.080, 743A.082, 743A.084, 743A.088, 743A.090, 743A.100, 743A.104, 743A.105, 743A.108, 743A.110, 743A.124, 743A.140, 743A.141, 743A.148, 743A.150, 743A.160, 743A.168, 743A.170, 743A.175, 743A.185, 743A.188, 743A.190, 743A.192, 743A.250, 743A.252 and 743A.260 and section 2, chapter 771, Oregon Laws 2013.

[(j)] (i) ORS 743B.001, 743B.003 to 743B.127, 743B.128, 743B.130, 743B.195 to 743B.204, 743B.220, 743B.222, 743B.225, 743B.227, 743B.250, 743B.252, 743B.253, 743B.254, 743B.255, 743B.256, 743B.257, 743B.258, 743B.280 to 743B.285, 743B.287, 743B.300, 743B.310, 743B.320, 743B.323, 743B.330, 743B.340, 743B.341, 743B.342, 743B.343 to 743B.347, 743B.400, 743B.403, 743B.407, 743B.420, 743B.423, 743B.450, 743B.451, 743B.452, 743B.453, 743B.470, 743B.475, 743B.505, 743B.550, 743B.555, 743B.601, 743B.602 and 743B.800 and section 5, chapter 7, Oregon Laws 2018.

[(k)] (j) The following provisions of ORS chapter 744:

(A) ORS 744.001 to 744.009, 744.011, 744.013, 744.014, 744.018, 744.022 to 744.033, 744.037, 744.052 to 744.089, 744.091 and 744.093, relating to the regulation of insurance producers;

(B) ORS 744.605, 744.609, 744.619, 744.621, 744.626, 744.631, 744.635, 744.650, 744.655 and 744.665, relating to the regulation of insurance consultants; and

(C) ORS 744.700 to 744.740, relating to the regulation of third party administrators.

[(L)] (k) 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.

(2) The following provisions of the Insurance Code apply to health care service contractors except in the case of group practice health maintenance organizations that are federally qualified pursuant to Title XIII of the Public Health Service Act:

(a) ORS 731.485, if the group practice health maintenance organization wholly owns and operates an in-house drug outlet.

(b) ORS 743A.024, unless the patient is referred by a physician, physician assistant or nurse practitioner associated with a group practice health maintenance organization.

(3) For the purposes of this section, health care service contractors are insurers.

(4) Any for-profit health care service contractor organized under the laws of any other state that is not governed by the insurance laws of the other state is subject to all requirements of ORS chapter 732.

(5)(a) A health care service contractor is a domestic insurance company for the purpose of determining whether the health care service contractor is a debtor, as defined in 11 U.S.C. 109.

(b) A health care service contractor's classification as a domestic insurance company under paragraph (a) of this subsection does not subject the health care service contractor to ORS 734.510 to 734.710.

(6) 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 necessary for the proper administration of these provisions.

NOTE: Excises reference to repealed series in (1)(f).

SECTION 69. ORS 750.055, as amended by section 21, chapter 771, Oregon Laws 2013, section 7, chapter 25, Oregon Laws 2014, section 82, chapter 45, Oregon Laws 2014, section 9, chapter 59, Oregon Laws 2015, section 7, chapter 100, Oregon Laws 2015, section 7, chapter 224, Oregon Laws 2015, section 11, chapter 362, Oregon Laws 2015, section 10, chapter 470, Oregon Laws 2015, section 30, chapter 515, Oregon Laws 2015, section 10, chapter 206, Oregon Laws 2017, section 6, chapter 417, Oregon Laws 2017, section 22, chapter 479, Oregon Laws 2017, and section 10, chapter 7, Oregon Laws 2018, is amended to read:

750.055. (1) The following provisions apply to health care service contractors to the extent not inconsistent with the express provisions of ORS 750.005 to 750.095:

(a) ORS 705.137, 705.138 and 705.139.

(b) ORS 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, 731.485, as provided in subsection (2) of this section, ORS 731.488, 731.504, 731.508, 731.509, 731.510, 731.511, 731.512, 731.574 to 731.620, 731.640 to 731.652, 731.730, 731.731, 731.735, 731.737, 731.750, 731.752, 731.804, 731.808 and 731.844 to 731.992.

(c) ORS 732.215, 732.220, 732.230, 732.245, 732.250, 732.320, 732.325 and 732.517 to 732.596, not including ORS 732.582.

(d) ORS 733.010 to 733.050, 733.080, 733.140 to 733.170, 733.210, 733.510 to 733.680 and 733.695 to 733.780.

(e) ORS 734.014 to 734.440.

[(f) ORS 735.600 to 735.650.]

[(g)] (f) ORS 742.001 to 742.009, 742.013, 742.016, 742.061, 742.065, 742.150 to 742.162 and 742.518 to 742.542.

[(h)] (g) ORS 743.004, 743.005, 743.007, 743.008, 743.010, 743.018, 743.019, 743.020, 743.022, 743.023, 743.028, 743.029, 743.038, 743.040, 743.044, 743.050, 743.100 to 743.109, 743.402, 743.405, 743.406, 743.417, 743.472, 743.492, 743.495, 743.498, 743.522, 743.523, 743.524, 743.526, 743.535, 743.550, 743.650 to 743.656, 743.680 to 743.689, 743.788 and 743.790.

[(i)] (h) ORS 743A.010, 743A.012, 743A.014, 743A.020, 743A.034, 743A.036, 743A.040, 743A.044, 743A.048, 743A.051, 743A.052, 743A.058, 743A.060, 743A.062, 743A.063, 743A.064, 743A.065, 743A.066, 743A.068, 743A.070, 743A.080, 743A.082, 743A.084,

743A.088, 743A.090, 743A.100, 743A.104, 743A.105, 743A.108, 743A.110, 743A.124, 743A.140, 743A.141, 743A.148, 743A.150, 743A.160, 743A.168, 743A.170, 743A.175, 743A.185, 743A.188, 743A.190, 743A.192, 743A.250, 743A.252 and 743A.260.

[(j)] (i) ORS 743B.001, 743B.003 to 743B.127, 743B.128, 743B.130, 743B.195 to 743B.204, 743B.220, 743B.222, 743B.225, 743B.227, 743B.250, 743B.252, 743B.253, 743B.254, 743B.255, 743B.256, 743B.257, 743B.258, 743B.280 to 743B.285, 743B.287, 743B.300, 743B.310, 743B.320, 743B.323, 743B.330, 743B.340, 743B.341, 743B.342, 743B.343 to 743B.347, 743B.400, 743B.403, 743B.407, 743B.420, 743B.423, 743B.450, 743B.451, 743B.452, 743B.453, 743B.470, 743B.475, 743B.505, 743B.550, 743B.555, 743B.601, 743B.602 and 743B.800 and section 5, chapter 7, Oregon Laws 2018.

[(k)] (j) The following provisions of ORS chapter 744:

(A) ORS 744.001 to 744.009, 744.011, 744.013, 744.014, 744.018, 744.022 to 744.033, 744.037, 744.052 to 744.089, 744.091 and 744.093, relating to the regulation of insurance producers;

(B) ORS 744.605, 744.609, 744.619, 744.621, 744.626, 744.631, 744.635, 744.650, 744.655 and 744.665, relating to the regulation of insurance consultants; and

(C) ORS 744.700 to 744.740, relating to the regulation of third party administrators.

[(L)] (k) 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.

(2) The following provisions of the Insurance Code apply to health care service contractors except in the case of group practice health maintenance organizations that are federally qualified pursuant to Title XIII of the Public Health Service Act:

(a) ORS 731.485, if the group practice health maintenance organization wholly owns and operates an in-house drug outlet.

(b) ORS 743A.024, unless the patient is referred by a physician, physician assistant or nurse practitioner associated with a group practice health maintenance organization.

(3) For the purposes of this section, health care service contractors are insurers.

(4) Any for-profit health care service contractor organized under the laws of any other state that is not governed by the insurance laws of the other state is subject to all requirements of ORS chapter 732.

(5)(a) A health care service contractor is a domestic insurance company for the purpose of determining whether the health care service contractor is a debtor, as defined in 11 U.S.C. 109.

(b) A health care service contractor's classification as a domestic insurance company under paragraph (a) of this subsection does not subject the health care service contractor to ORS 734.510 to 734.710.

(6) 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 necessary for the proper administration of these provisions.

NOTE: Excises reference to repealed series in (1)(f).

SECTION 70. ORS 822.235 is amended to read:

822.235. (1) If a tower recovers a vehicle after a theft, the vehicle is totaled and the vehicle has no applicable insurance coverage, the person who is the owner of the vehicle may transfer the person's interest in the vehicle to the tower in payment or partial payment of the tower's fees for recovery and storage of the vehicle.

(2) A tower that accepts a transfer of interest in a vehicle from a person under this section may not assess fees against the person for storage of the totaled vehicle that occurs on and after the date of the transfer of interest.

(3) Notwithstanding the provisions for liens under ORS 98.812 and [98.835] **98.830**, if a person transfers their interest in a vehicle under this section to a tower within 14 days of the date the person receives notice under ORS 98.857, the tower may not bring an action against the person for, or otherwise take any affirmative steps to collect or permit an agency or assignee to collect, any amount as compensation for towing, caring for or storing the totaled vehicle.

(4) A tower that receives title under this section is responsible for any fees imposed by the Department of Transportation for transferring title.

NOTE: Substitutes equivalent citation for repealed statute in (3).

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