

2021 OREGON LEGISLATION HIGHLIGHTS



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*Many bills passed during the 2021 session
have special effective dates. These dates are
noted in the description of each bill.*

*If a special effective date is not proscribed in a
bill, the bill takes effect on January 1, 2022.*

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FORWARD

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

This book highlights nearly 200 bills and other measures that were passed by both houses of the legislature. This book does not describe all of the enacted legislation. *Unless otherwise noted, all legislation takes effect on January 1, 2022.*

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

Each bill is identified – in the chapter outline and in the text – by its bill number and its 2021 Oregon Laws chapter number.

The legislature's website offers additional information that the reader of this book may find useful. Individual bills are hyperlinked to that bill's page in the Oregon Legislative Information System, which contains additional information on that bill. This includes measure summaries written by legislative staff, and in some cases supporting documentation submitted during committee hearings. See www.oregonlegislature.gov for more information.

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

We would also like thank the staff of the Oregon Department of Energy for their contributions to this book, and to the Office of Legislative Counsel, who have for years assisted the ongoing work of the Oregon State Bar.

2021 Oregon Legislation Highlights

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Business Law

I. BUSINESS LAW

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| 1. HB 2131 | (Ch. 212) | Liability for Certain Unpaid Taxes |
| 2. SB 169 | (Ch. 75) | Amendments to Oregon's Noncompetition Agreement Statute |
| 3. SB 220 | (Ch. 273) | Remote Attestation |
| 4. SB 765 | (Ch. 344) | Remote Online Notarization |

I. BUSINESS LAW

1. [HB 2131](#) (Ch. 212) Liability for Certain Unpaid Taxes

House Bill 2131, amends ORS 307.883, 320.325 and 403.225. Under the current version of these statutes, qualified heavy-equipment providers, transient tax lodging collectors, and providers and sellers of certain emergency telecommunications systems are deemed to hold certain taxes collected in trust for the State of Oregon and for payment to the Oregon Department of Revenue.

Under the bill, each applicable law now provides that, upon a deficiency in the payment of these taxes deemed to be held in trust, the Department of Revenue may issue a notice of liability to any officer, employee, or member of the relevant entity. The amendments set out a process, including objection to the notice of liability, request for a conference, and appeals to the tax court. The officers, employees, or members who receive the notice of liability may be held jointly and severally liable for the unpaid taxes.

House Bill 2131 also extends the laws in regard to deemed holding of certain collected taxes in trust—and the new liability provisions —to sellers of petroleum products withdrawn from a bulk facility.

Businesses affected by these amendments should inform their applicable directors, officers, employees, managers, and members of the liability associated with a deficiency in payment of the taxes deemed to be held in trust. Those individuals and the businesses they serve may wish to confirm the entity’s indemnification obligations, and the applicability of any insurance policies intended to cover director, officer, employee, manager, or member liability.

HB 2131 took effect on September 25, 2021.

2. [SB 169](#) (Ch. 75) Amendments to Oregon’s Noncompetition Agreement Statute

Senate Bill 169 amends ORS 653.295, Oregon’s statute governing employee noncompete agreements. Under the bill, employee noncompete agreements entered on or after January 1, 2022 must comply with four notable changes under the modified statute.

Unlawful noncompetition agreements are void instead of voidable

Under the current version of ORS 653.295, a noncompete agreement that fails to satisfy the requirements of the statute is voidable rather than void—meaning that an employee bears the

burden of taking some affirmative step to demonstrate their intent to void an unlawful noncompete agreement. Under the new iteration of the statute, noncompete agreements that fail to comply with all of the requirements of ORS 653.295 will be rendered void and unenforceable, regardless of what steps an employee does or does not take to void the unlawful agreement.

Revised minimum salary requirements

Currently, for a noncompete agreement to be valid, employees must earn a salary that exceeds the median income for a four-person family, as determined by the U.S. Census Bureau. Moving forward under the amended statute, an employee's annual gross salary must exceed \$100,533 at the time of the employee's termination, and this compensation amount will be adjusted annually for inflation.

Reduced limit on post-employment restriction period

The current maximum period for post-employment restrictions in a noncompete agreement is 18 months, and any restricted period that exceeds 18 months is voidable rather than void. With the amendments to the statute, the period for post-employment restrictions is limited to 12 months, and any post-employment restriction period that exceeds 12 months is rendered void and unenforceable.

"Garden leave" option for non-qualifying employees

Under the current statute, an employer can impose a noncompete agreement on an otherwise non-qualifying employee—that is, an employee who is not paid on an exempt, salary basis, or an employee who is not paid the statutory minimum compensation mentioned above—by use of the statute's "garden leave" option. Using this option, an employer may unilaterally enforce a noncompete agreement on a non-qualifying employee by paying the employee during the restricted period a minimum of 50% of the employee's gross annual salary at the time of the employee's termination, or 50% of the median income for a four-person family, as determined by the U.S. Census Bureau. The option to enforce noncompete agreements against non-qualifying employees remains available to employers under the amended statute. To exercise this option an employer will be required to confirm in writing payment to the employee that is the greater rate of either 50% of the employee's gross annual salary at the time of the employee's termination, or 50% of \$100,533, as adjusted for inflation.

What's unchanged in Oregon's statute?

Outside of the amendments, several existing limitations on noncompete agreements will remain unchanged under the new version of ORS 653.295. These continuing limitations

BUSINESS LAW

include— among others—notifying employees in writing two weeks before the first day of employment that a noncompetition agreement is required as a condition of employment, and providing the employee with a signed, written copy of the terms of the noncompetition agreement within 30 days of termination of employment. Finally, the limitations set out in ORS 653.295 do not apply to all types of restrictive employment agreements. Most notably, under the current and amended statute, the law only applies to employee noncompete agreements and does not apply to confidentiality agreements or agreements not to solicit an employer's customers or employees.

3. [SB 220](#) (Ch. 273) Remote Attestation

Senate Bill 220 permits and establishes forms of declaration for the remote attestation of documents in the “electronic presence” of another. The allowance for remote attestation of documents does not extend to notarial acts, witnessing the execution of a will, or witnessing of signatures by the circulator of a petition pursuant to certain Oregon laws.

SB 220 took effect on June 11, 2021.

4. [SB 765](#) (Ch. 344) Remote Online Notarization

Senate Bill 765 made permanent the 2020 temporary law permitting remote online notarization. The law allows commissioned notary publics to perform notarial acts remotely in certain circumstances, including registering, completing required training, and using an authorized vendor.

SB 765 took effect on June 15, 2021.

Criminal Law

I. OFFENSES

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| 2. HB 3000 | (Ch. 542) | Unlawful Production of Marijuana |
| 3. HB 3059 | (Ch. 250) | Dispersal Unlawful Assemblies |
| 4. HB 3164 | (Ch. 254) | Interfering with a Peace Officer |
| 5. SB 398 | (Ch. 276) | Intimidation By Display of a Noose |
| 6. SB 649 | (Ch. 403) | Sex Abuse in the Second Degree |
| 7. SB 704 | (Ch. 84) | “Gay Panic” Defenses |
| 8. SB 752 | (Ch. 410) | Sexual Abuse in the Second or Third Degree |
| 9. SB 755 | (Ch. 591) | Ballot Measure 110 Implementation |

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| 2. HB 2481 | (Ch. 225) | Surplus Military Equipment |
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| 7. | HB 2930 | (Ch. 541) | Law Enforcement Arbitration |
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| 10. | SB 731 | (Ch. 408) | Tribal Police Officers |

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| 2. | SB 291 | (Ch. 577) | Criminal Background Checks |
| 3. | HB 2539 | (Ch. 295) | Jurors |
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| 5. | SB 296 | (Ch. 199) | COVID Emergency |
| 6. | SB 177 | (Ch. 324) | Hearsay Statements |
| 7. | HB 2176 | (Ch. 215) | Court Imposed Financial Obligations |
| 8. | HB 3265 | (Ch. 550) | Immigration and Public Services |
| 9. | SB 48 | (Ch. 643) | Pretrial Release |

<p>Mae Lee Browning: 2014 Willamette University School of Law. Oregon State Bar member since 2014.</p>

I. OFFENSES

1. [HB 2459](#) (Ch. 357) Recording Conversations

HB 2459 modifies the definitions within ORS 165.535, the statute prohibiting many kinds of recordings, to clarify that interactions that take place over a video conferencing program are “conversations” and not “telecommunications” or “radio communications” for the purpose of the statute. This means that in most case the restrictions on recording video conferencing would be the same as recording in person conversations.

Additionally, the bill provides that the general prohibition on recording conversations if not all of the participants are informed of the recording, does not apply if a person makes the recording intending to capture alleged unlawful activity, and the person reasonably believe the recording may be used in a judicial or administrative proceeding.

HB 2459 takes effect January 1, 2021.

2. [HB 3000](#) (Ch. 542) Unlawful Production of Marijuana

HB 3000 is a large omnibus bill that makes numerous changes related to the laws governing marijuana in Oregon.

HB 3000 creates a new Class A misdemeanor of Unlawful Production of Marijuana. The crime applies if a person produces marijuana in a location or in a quantity that is not authorized by the Oregon Health Authority, Oregon Liquor Control Commission, or the State Department of Agriculture.

The bill also makes a number of changes to definitions, and directs the OLCC to map locations of registered or licensed hemp and licensed marijuana operations.

HB 3000 took effect January 19, 2021.

3. [HB 3059](#) (Ch. 250) Dispersal Unlawful Assemblies

HB 3039 modifies the authority of peace officers to disperse assertedly unlawful assemblies. The bill makes two substantive changes to the existing law.

First the bill changes the word “shall” to “may”, which has the effect of allowing peace to go among the crowd and order dispersal, but not requiring them to do so.

CRIMINAL LAW

Secondly, the bill clarifies that while officers may arrest those who do not disperse after being ordered to do so, they may only arrest them for “any unlawful activity constituting an offence.” Previously the state seemed to indicate that the failure to disperse was in and of itself cause for arrest.

HB 3059 takes effect on January 1, 2022.

4. [HB 3164](#) (Ch. 254) Interfering with a Peace Officer

HB 3164 makes several important changes to the crime of Interfering with a Peace Officer or Parole and Probation Officer.

First, the bill changes the mental state required from “intentionally” to “intentionally or knowingly” and expands the crime to include acts that interfere with a criminal investigation. Second, the bill deletes the provision that had previously defined refusing to obey a lawful order as a form of interfering with a peace officer. Finally, the bill prohibits a person from being arrested for or charged with this crime, if the person is arrested for or charged with another offense based on the same conduct.

5. [SB 398](#) (Ch. 276) Intimidation By Display of a Noose

SB 398 creates a new Class A misdemeanor of Intimidation By Display of a Noose.

Under the bill, a person commits this crime if:

- They place a noose on public property, or on private property without the written consent of the owner;
- They do so with the intent to intimidate another person, or place the person in fear of imminent bodily harm;
- The other person is intimidated or placed in such fear by the display; and
- A reasonable person would have been intimidated or placed in such fear by the display.

SB 398 takes effect on January 1, 2022.

6. [SB 649](#) (Ch. 403) Sex Abuse in the Second Degree

SB 649 expands the crime of Sex Abuse in the Second Degree to conduct by teachers, as well as conduct by coaches that was already prohibited by the statute. The bill creates a new definition of “teacher” for the purposes of the law.

7. [SB 704](#) (Ch. 84) “Gay Panic” Defenses

SB 704 addresses the use of the so-called “gay panic” defense to a criminal charge of murder in the second degree. Under existing law, a person may assert an affirmative defense to the charge if the person asserts they were under the influence of an extreme emotional disturbance, and that disturbance was objectively reasonable.

Under the bill, the discovery of a victim’s actual or perceived gender, gender identity, gender expression, or sexual orientation does not constitute a reasonable explanation for an extreme emotional disturbance.

Additionally, the bill modifies ORS 161.215 – limitations on the use of physical force in defense of a person – to provide that a person may not use physical force against another person but for the discovery of a victim’s actual or perceived gender, gender identity, gender expression, or sexual orientation.

8. [SB 752](#) (Ch. 410) Sexual Abuse in the Second or Third Degree

SB 752 creates an affirmative defense in prosecutions for Sex Abuse 2 or 3, in cases where the victim’s lack of consent is not based on incapacity of the victim to consent due to age, that the defendant reasonably believed that the victim consented to the sexual contact.

Separately, the bill creates an exception to sex offender registration requirements in cases where the defendant was convicted of sexual abuse in the second degree if:

- The defendant was less than 5 years older than the victim,
- The victim’s lack of consent was due solely to age, and
- The victim was at least 14 years old at the time of the offense.

SB 752 takes effect on January 1, 2022.

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9. [SB 755](#) (Ch. 591) Ballot Measure 110 Implementation

Ballot Measure 110, which passed in 2020, decriminalized the possession of small amounts of most controlled substances, and classified such possession as a Class E violation.

SB 755 was the legislature's major bill implementing Ballot Measure 110. The bill makes numerous corrections and clarifications to the ballot measure including setting a minimum fine amount of \$45 for a Class E violation. The bill clarifies the district attorney's authority to initiate violation proceedings and that municipal and justice courts do not have jurisdiction over Class E violations.

The bill also makes numerous changes to penalties for possession of substantial quantities of various controlled substances. Under the bill, possession of a substantial quantity of a Schedule I controlled substance is a Class B Felony and for Schedule II controlled substances it is a Class C Felony.

SB 755 took effect on July 19, 2021.

II. DUUI STATUTES

1. [HB 3140](#) (Ch. 253) Psilocybin

HB 3140 adds psilocybin to several statutes related to Driving Under the Influence of Intoxicants, in order to prohibit operating a vehicle under its influence.

Prior to the passage of Ballot Measure 109, a person could be found guilty of DUUI when operating a vehicle under the influence of psilocybin. However, the change in the definition of controlled substance in that ballot measure had the effect of removing psilocybin from the DUUI statutes. HB 3140 functionally reverses this change.

HB 3140 took effect on June 11, 2021.

2. [SB 201](#) (Ch. 480) DUI Statute Revisions

SB 201 was intended to address situations where a test to determine a driver's blood alcohol level is conducted sometime after the person is arrested on suspicion of driving under the influence.

The bill adds a new section (d) to ORS 813. 010 that provides that a person commits the offense of DUUI if within 2 hours of driving a vehicle, and without consuming alcohol in the

interim, has a BAC of 0.08 or more. Under the language of the provision, the state would have to prove the defendant did not consume alcohol between driving and the administration of the test.

Earlier version of the bill included an affirmative defense that the defendant had consumed alcohol after driving and before taking the test, but this language was removed when that requirement was made an element of the crime.

The bill also makes clarifying changes in third-time DUI law related to counting out of state convictions.

SB 201 took effect on July 14, 2021.

III. JUVENILE

1. [HB 2939](#) (Ch. 240) Juvenile Waiver Proceedings and Age of Admissions to Youth Correctional Facilities

HB 2939 clarifies the venue requirements in a juvenile proceeding to provide that if the proceeding is subject to a waiver under ORS 419C.349(1) the proceeding shall commence in the county where the alleged act occurred.

Additionally the bill provides that youth offenders who are less than 20 years old may generally be admitted to a youth correctional facility. The previous requirement was less than 19 years old.

HB 2939 took effect on June 11, 2021.

2. [HB 2940](#) (Ch. 241) Juvenile Waiver Proceedings

HB 2490 creates an exception to the normal 28-day time limit on holding a youth in custody. Under the bill the standard time limits do not apply if the state has filed a motion requesting a waiver under ORS 419C.349, the motion has not yet been resolved, and the court holds review hearings to determine if the detention should continue.

In such cases, review hearings need only be held every 30 days, rather than every 10 days. The bill permits the youth to waive personal appearance at review hearings.

HB 2940 takes effect on January 1, 2022.

CRIMINAL LAW

3. [SB 418](#) (Ch. 487) Custodial Interviews of Youth

SB 418 creates a rebuttable presumption that a statement made by a person under 18 years of age is involuntary if:

- It was made during a custodial interview by a peace officer,
- Was made in connection with an investigation into a misdemeanor or felony, or into acts that would be a misdemeanor or felony if committed by an adult, and
- The court determines that the peace officer intentionally used information known by the officer to be false to elicit the statement.

In these cases, the state has the burden of overcoming the presumption by clear and convincing evidence.

SB 418 applies to custodial interviews conducted on or after January 1, 2022.

4. [SB 562](#) (Ch. 398) Indian Child Welfare Act

SB 562 makes changes to numerous statutes to incorporate provisions of the federal Indian Child Welfare Act into Oregon laws related to youth offenders, and to laws related to adoptions.

The bill also authorizes the juvenile court to accept and approve a tribal customary adoption, as that term is defined in the bill, if the court determines that it is in the best interests of the child.

SB 562 took effect on September 25, 2021.

5. [SB 575](#) (Ch. 585) Juvenile Expunction

SB 575 makes a number of changes to the process for expunging juvenile court records. Among other changes the bill requires a juvenile department to initiate the expunction process if a person does not have an open referral, and hasn't had a case with the department that resulted in a conviction that was waived to adult court. The bill sets timelines for agencies to comply with the bill and provides liability immunity for an individual who acts in good faith to comply.

The bill also directs the Oregon Youth Authority to develop statewide model forms that can be used for notice of expunction.

SB 575 takes effect on September 25, 2021

IV. POLICING

1. [HB 2162](#) (Ch. 611) Department of Public Safety Standards and Training Certification

HB 2162 makes requires the Department of Public Safety Standards and Training to create one or more accrediting bodies for law enforcement agencies in Oregon. The bill then provides that by July 1, 2025, all law enforcement agencies with 100 or more officers must be accredited. The requirement is extended to agencies with 35 or more officers on July 1, 2026.

The bill also requires DPPST to report to the legislature by January 1, 2022 on additional instructional hours required to provide expanded equity training as part of the basic training course for police officers.

Finally the bill requires DPPST to deny, suspend or revoke certification for a police officer if that officer has been discharged from employment as a police officer for excessive use of force, for abuse of lawful authority, or for discriminatory policing.

HB 2162 took effect on September 25, 2021.

2. [HB 2481](#) (Ch. 225) Surplus Military Equipment

HB 2481 prohibits Oregon law enforcement agencies from receiving certain types of surplus equipment from the federal government. Prohibited equipment includes armored or weaponized drones, aircraft that are combat configured or combat coded, firearm silencers, grenade launchers, grenades and similar explosives.

The bill further requires that if a law enforcement agency seeks to acquire property not prohibited by this bill, the agency must request permission from the appropriate local or tribal authority, or from the director of the appropriate state agency as provided in the bill.

HB 2481 took effect on September 25, 2021

CRIMINAL LAW

3. [HB 2513](#) (Ch. 294) Person Suffering Respiratory or Cardiac Distress

HB 2513 requires police officers to have training in airway and circulatory anatomy and physiology and to be certified in CPR.

The bill then further requires that if a police officer encounters a restrained person who is suffering from respiratory or cardiac compromise, the officer must request emergency medical services if the officer has access to communications and it is tactically feasible for the officer to do so.

HB 2513 takes effect on January 1, 2022

4. [HB 2527](#) (Ch. 618) Regulation of Private Security Companies

HB 2527 requires that private security entities in Oregon be licensed by the Department of Public Safety Standards and Training. The bill sets a number of licensure requirements and requires DPPST to investigate the character, competency and reliability of applicants.

The bill makes it a Class A violation both for an entity to provide services if it is not licensed, and for an individual to retain the services of an entity that is not licensed. The bill provides for further sanctions for repeat violations.

HB 2527 took effect July 27, 2021, but the operative provisions do not go into force until January 1, 2024.

5. [HB 2928](#) (Ch. 540) Law Enforcement Tools Used for Crowd Control

HB 2928 makes number of changes regarding police use of chemical incapacitants, kinetic impact projectiles and sound devices.

The bill prohibits the use of kinetic impact projectiles, such as rubber bullets, for crowd control, and further prohibits their use in a manner that targets the head of a person, except in a situation that would have otherwise justified the use of deadly force against the person. The bill additionally prohibits the use of a sound device for crowd control for any purpose other than making announcements.

Additionally, the bill specifies that police may not use chemical incapacitants for crowd control unless two requirements are satisfied:

- First, that “the circumstances constitute a riot, as described in ORS 166.015;” and

- Second that the officer deploying chemical incapacitants reasonably believes that the use is necessary to terminate and prevent further riotous behavior.

ORS 166.015 defines the individual crime of riot, but does not specifically describe circumstances which constitute “a riot”. It is not clear from the bill if an officer’s belief that they have probable cause to arrest an individual for the crime of riot would render the larger gathering “a riot” but in any case such an arrest would not be required.

Finally, the bill creates a new prohibition on a law enforcement agency, or on a person acting on behalf of the agency, using a proxy law enforcement agency to enact measures or to engage in conduct that has been barred by either the court or by statute.

HB 2929 took effect on July 19, 2021.

6. [HB 2929](#) (Ch. 238) Duty to Report Misconduct

HB 2929 modifies the existing duty that a police officer has to report misconduct of other officers. The new statute expands the duty to include violations of the minimum standards for physical, emotional, intellectual and moral fitness for public safety personnel under ORS 181A.410.

The bill also modifies who the misconduct may be reported to and clarifies that if a person receiving such a report does not have the authority to direct an investigation, they must forward the report to a person who does within 72 hours.

HB 2929 takes effect on January 1, 2022.

7. [HB 2930](#) (Ch. 541) Law Enforcement Arbitration

HB 2930 specifies, for the purposes of arbitration proceedings addressing alleged misconduct by law enforcement officers, the burden of proof necessary for a body to show that the law enforcement officer engaged in misconduct, and to show that disciplinary action taken against the officer was done with just cause. The bill establishes the standard of review that the arbitrator is required to use in such a proceeding.

Among other changes, the bill also removes discipline guides or matrixes as mandatory subjects of collective bargaining. Instead the bill requires agencies to comply with uniform standards established by the Commission on Statewide Law Enforcement Standards of Conduct and Discipline, which is created by the bill. This requirement is operative on November 1, 2022, but not sooner than 30 days after the Commission publishes the standards.

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HB 2930 took effect on July 19, 2021. Requirements regarding burdens of proof and standards of review used in arbitration proceedings apply to collective bargaining agreements entered into on or after that date.

8. [HB 2936](#) (Ch. 299) Law Enforcement Hiring, Legislative Findings about Racism

HB 2936 makes a number of legislative findings about racism in public safety, including the effects that a law enforcement member's affiliation with hate group and racist organizations has on public trust in law enforcement. The bill then requires the Department of Public Safety Standards and Training to develop a uniform background checklist and standardized personal history questionnaire to be used in hiring applicants as public safety officers.

The bill requires law enforcement agencies to establish set standards for speech and expression by law enforcement officers outside of the course and scope of employment. Additionally the bill exempts law enforcement agencies from the existing prohibition on employers requiring employees to provide them access to personal social media accounts.

HB 2936 takes effect on January 1, 2022.

9. [HB 3355](#) (Ch. 306) Identification Requirements for Law Enforcement Officers

HB 3355 requires that law enforcement officers assigned to crowd control in a city of 60,000 or more, must display specific identifying information on the front and back of their uniforms in a clear manner. The bill additionally requires law enforcement agencies to adopt a specific policy prohibiting the intentional obscuring of this information. The Oregon State Police are exempt from this requirement.

Additionally the bill requires law enforcement officers to identify themselves to a member of the public upon request, assuming that it is practically feasible to do so. The bill requires law enforcement agencies to investigate the identity of an officer upon a request by a member of the public who provides specific required information. The agency is required to provide the identity of the officer to the requester within 14 days, or to provide an explanation of why they were unable to do so.

HB 3355 became operate on September 13, 2021.

10. [SB 731](#) (Ch. 408) Tribal Police Officers

SB 731 was proposed in part to address the possible impacts of other police reform bills on

tribal police officers. Under current law, tribal police officers are generally acting under the tribe's own sovereign authority to enforce either tribal law or federal law in Indian Country.

With limited exception, the state does not regulate this activity. In addition, SB 412 (2011) provides a mechanism for tribal police officers to engage in certain law enforcement functions outside of Indian Country.

Because of the interaction between SB 412 and other proposed legislation, there is concern that some police reform bills might impact purely internal tribal law enforcement, which may be a violation of federal law.

SB 731 amends ORS 181A.685 to clarify that the provision does not regulate the activities of tribal police officers occurring within Indian country, nor outside of Indian country when within the tribe's civil or criminal jurisdiction.

Additionally the bill requires that tribal governments or law enforcement agencies provide to the state information related to the dates of hire and separation of tribal law enforcement officers, as well as requiring them to follow certain Department of Public Safety Standards and Training requirements related to age, background checks, psychological evaluations and other matters.

SB 731 will take effect January 1, 2022.

V. EVIDENCE AND PROCEDURE

1. [HB 2176](#) (Ch. 215) Court Imposed Financial Obligations

HB 2176 eliminates the \$50 minimum fee that the Oregon Judicial Department was required to assess upon an individual who wished to set up a payment plan for court imposed financial obligations. As many defendants do not have the ability to pay all fees and assessments when they are sentenced, this minimum \$50 fee has historically been imposed on a high percentage of defendants.

The bill also gives the Chief Justice additional authority to waive or suspend fees that are generally required to be added to judgments.

Additionally, the bill provides the state with more flexibility in settling outstanding debts. Prior to HB 2176, the state could propose and offer compromises to settle most outstanding debts, but was prohibited from doing so in a criminal judgment if restitution was owed. HB 2176 maintains the prohibition on compromising the restitution itself, but allows the state settle other parts of the debt on the same case.

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HB 2176 took effect on September 25, 2021.

2. [HB 2539](#) (Ch. 295) Jurors

HB 2539 simply provides that jurors may not be identified by name in any court proceeding that is open to the public. Parties to the proceeding will still have access to the names of jurors, unless the court determines that there is good cause to prohibit such access.

HB 2539 will take effect on January 1, 2022.

3. [HB 3115](#) (Ch. 370) Sitting, Lying, or Sleeping on Public Property

HB 3115 provides that a local law regulating sitting, lying, sleeping or keeping warm and dry outdoors, while on public property that is open to public, must be objectively reasonable as to time, place and manner with regards to persons experiencing homelessness. The bill allows a person experiencing homelessness to seek injunctive relief to challenge an asserted unreasonable law, and permits any person to claim an affirmative defense against a charge of violating such a law that the law was not reasonable.

The bill took effect upon passage for rulemaking purposes, but the operative sections do not go into force until July 1, 2023.

4. [HB 3265](#) (Ch. 550) Immigration and Public Services

HB 3265 creates several limitations on how law enforcement and public bodies engage with and serve individuals on the basis of federal immigration status.

This prevents a public body, including law enforcement, from denying services to a person based on that person's immigration status. Additionally, the bill prevents such entities from inquiring into an individual's immigration status unless necessary for a criminal investigation or to determine eligibility for services.

The bill prohibits law enforcement and other public bodies from disclosing information about individuals in custody to federal law enforcement agencies unless ordered by the court, or to the extent that the information is already publicly available. The bill further places numerous prohibitions on law enforcement in assisting the federal government with immigration enforcement actions.

HB 3265 took effect on July 19, 2021.

5. [SB 177](#) (Ch. 324) Hearsay Statements

SB 177 adds a new provision to ORS 40.465 (Rule 804 of the Oregon Evidence Code) related to the admissibility of certain hearsay statements when the declarant is unavailable as a witness.

Under the bill, if a proponent of a statement seeks to admit a statement under Rule 804 (3)(f) or (3)(g), the proponent of the statement is not required to issue a material witness order or seek sanctions for contempt against the declarant in order to show that the declarant is “unavailable as a witness”.

SB 177 took effect on June 15, 2021.

6. [SB 291](#) (Ch. 577) Criminal Background Checks

SB 291 limits a landlord’s ability to consider an applicant’s criminal history when screening an applicant for housing. Under the bill, it continues to be the case that the landlord may only consider convictions, or pending charges, but the bill clarifies that the landlord may not consider pending charges for which the applicant is currently in a diversion program.

Importantly, the bill also limits the crimes that the landlord may consider to those that are presently illegal in Oregon. The list of types of crimes that may be considered – including some drug crimes, person crimes, sex offences, and some fraud charges – is not changed.

SB 291 will take effect on January 1, 2022.

7. [SB 295](#) (Ch. 395) Aid and Assist Reform

SB 295 modifies the procedures and criteria for committing a defendant to the state mental hospital, or to another facility in order to gain or regain fitness to proceed. The specific criteria differ depending on whether the defendant was charged with a felony or a misdemeanor.

For felony referrals, a defendant may only be committed if the court finds that the defendant requires hospital level care due to public safety concerns or due to the acuity of symptoms of a defendant’s mental disorder, and that appropriate community restoration services are not available. In misdemeanor cases, the referral may also be made upon the recommendation of a certified evaluator and a statement from a community mental health program regarding the availability of community restoration services.

The bill makes additional changes regarding procedures for releasing a defendant from the hospital when the reason for their commitment no longer applies.

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SB 295 took effect on June 23, 2021.

8. [SB 296](#) (Ch. 199) COVID Emergency

SB 296 addressed several issues related to changes in court operations that were necessitated by the COVID state of emergency. In general, the provisions of SB 296 are only in force during “a period of statewide emergency”. Practitioners should be careful to whether such a state of emergency remains in effect on dates relevant to their cases.

During such a period of time, the bill grants the Chief Justice to extend or suspend most time requirements established by statute or rule. This includes time requirements related to filings with the court.

Of relevance to criminal law practitioners, the bill permitted that criminal citations to appear in court could be scheduled for a date that was more than 30 days after the citation was issued. Normally, all such appearances must be scheduled within 30 days.

Additionally, the bill extended the repeal date on the provisions of HB 4212 (2020) which permitted the court to hold a defendant in custody longer than would otherwise be permitted by Oregon law. Under HB 4212, relevant provisions (Section 6) were to be repealed on December 31, 2021. SB 296 extends these provisions until December 31, 2022.

9. [SB 48](#) (Ch. 643) Pretrial Release

SB 48 requires for the first time that a presiding judge establish a standing pretrial release order within their judicial district. These orders would direct the county sheriff or other appropriate entity on which persons and crimes are subject to release on their own recognizance, to release with special conditions, and which may not to be released prior to arraignment. The bill also requires the Chief Justice to establish release guidelines to provide encourage consistent release decision-making statewide.

The bill makes several other important changes to pretrial release statutes:

- The bill requires release assistance officers to make reasonable efforts to contact crime victims prior to making a release decision, when a defendant is charged with a person felony or a person Class A misdemeanor.
- The bill repeals the minimum bail amounts required for persons charged with Ballot Measure 11 crimes, and eliminates the requirement to reset bail at least \$250,000 in cases where a defendant violates a condition of release.

- The bill requires that magistrates make release decisions at arraignment or first appearance, unless good cause to postpone the decision is shown. “Good cause” in this case includes circumstances in which the district attorney plans to seek preventative detention or where there is a reasonable belief that additional evidence exists that would be relevant to the decision, but is not currently available.

SB 48 takes effect on January 1, 2022, but most provisions become operative on July 1, 2022.

Elder Law

I. ELDER LAW

- | | | |
|------------|-----------|---|
| 1. HB 2105 | (Ch. 210) | Alternatives to Protective Proceedings |
| 2. HB 2120 | (Ch. 352) | State Mortuary and Cemetery Board Death Report Fees |
| 3. HB 2498 | (Ch. 14) | Driver's Licenses and Vehicle Registration |
| 4. HB 2574 | (Ch. 296) | Disposition of Bodies |
| 5. HB 2634 | (Ch. 535) | Disabled and Senior Citizens' Property Tax Deferral Program |
| 6. HB 3071 | (Ch. 251) | Abuse Reporting |
| 7. SB 97 | (Ch. 319) | Confidentiality of complaints to the office of the Long Term Care Ombudsman |
| 8. SB 182 | (Ch. 272) | Estate Planning |
| 9. SB 190 | (Ch. 327) | Notice of Appointment of Guardian |
| 10. SB 199 | (Ch. 328) | Advance Directive Revision |
| 11. SB 220 | (Ch. 273) | Remote Attestation |
| 12. SB 221 | (Ch. 390) | Revisions to Wills |
| 13. SB 572 | (Ch. 399) | Vulnerable Youth |
| 14. SB 578 | (Ch. 400) | Appointment of Counsel in Protective Proceedings |
| 15. SB 765 | (Ch. 344) | Remote Online Notarization |

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

I. ELDER LAW

1. [HB 2105](#) (Ch. 210) Alternatives to Protective Proceedings

HB 2105 directs school districts to provide to parents of a child with a disability information regarding supported decision-making and strategies to remain engaged in child's secondary education and post-school outcomes.

Practice Notes: This creates a requirement that students and parents involved with the special education system be provided “information and training resources regarding supported decision-making as a less restrictive alternative to guardianship, and with information and resources regarding strategies to remain engaged in the child’s secondary education and post-school outcomes.” This information is supposed to be provided at every individualized education program meeting at which post-secondary education and transition services are discussed, generally meaning each meeting after the student turns 16 until they graduate or age out of special education at 21. However, it provides no definition of supported decision-making and no context or content for the information and training resources, so it is unclear what will be provided. Attorneys who work with families in establishing guardianships for young adults with disabilities should ask for a copy of any information provided by the district to help the family understand options for supporting such young adults.

HB 2105 takes effect on January 1, 2022.

2. [HB 2120](#) (Ch. 352) State Mortuary and Cemetery Board Death Report Fees

HB 2120 increases the death report fee imposed by State Mortuary and Cemetery Board.

Practice Notes: Death certificates will cost \$30 each. Attorneys working on probate matters will need to take this into account when requesting death certificates after January 1, 2022.

HB 2120 takes effect on January 1, 2022.

3. [HB 2498](#) (Ch. 14) Driver’s Licenses and Vehicle Registration

HB 2498 requires the Oregon Department of Transportation to provide an option when registering a vehicle that the registration card include information that the vehicle owner is deaf or hard of hearing. Likewise, the bill requires that ODOT include this information on a driver’s license or permit, at the request of the individual applying.

The purpose of both provisions is to allow a driver who is deaf or hard of hearing to have an official and convenient method of conveying this information to law enforcement in the event of a traffic stop.

Practice Notes: Interacting with law enforcement and other emergency services personnel can often involve life threatening communication barriers for Deaf, deaf, and hard of hearing individuals. This law is intended to provide Deaf, deaf, and hard of hearing individuals with a convenient and official way to remind law enforcement, emergency services, and other personnel who may require information provided via vehicle registration or driver's license in to provide legally required interpreting and other accommodations. Attorneys providing services to Deaf, deaf, and hard of hearing clients should ensure they are aware of this tool and use any such indication as a reminder to provide appropriate interpreting and other accommodations themselves.

HB 2498 takes effect on January 1, 2022.

4. [HB 2574](#) (Ch. 296) **Disposition of Bodies**

HB 2574 permits of human bodies to be disposed of by alternative authorized processes including alkaline hydrolysis and natural organic reduction.

Practice Notes: This bill codifies the use of alkaline hydrolysis and natural organic reduction as options for the disposition of a deceased person's remains. "Alkaline hydrolysis" or "hydrolysis" means the technical process for reducing human remains by placing the remains in a dissolution chamber that uses heat, pressure, water and base chemical agents, in a licensed hydrolysis facility, to reduce human remains to bone fragments and essential elements. "Natural organic reduction" means the contained, accelerated conversion of human remains to soil. It is important for attorneys engaged in estate planning with clients to help promote awareness of these and other alternatives to traditional burial and cremation that may better meet the needs of clients. Attorneys dealing with probate and trust administration matters also need to be aware of these options in advising clients and reviewing claims and costs related to the management of decedents' property.

Additionally, this bill changes the form for Appointment of Person to Make Decisions Concerning Disposition of Remains in ORS 97.130(8) to include reference to alternative disposition and attorneys who help clients prepare these documents will need to update their forms accordingly.

HB 2574 took effect on July 1, 2022.

5. [HB 2634](#) (Ch. 535) Disabled and Senior Citizens' Property Tax Deferral Program

HB 2634 makes several changes to the Disabled and Senior Citizens' Property Tax Deferral Program. Importantly, the bill allows a surviving spouse or a disabled heir of the individual participating in the program to continue the deferral even if they have not owned or occupied the house for five years.

Practice Notes: This bill combines a number of bills that were proposed this session relating to the senior property tax deferral program. This program is a resource that Attorneys should be sharing with clients in estate and long term care planning and a potential complication to be aware of in administering any trust or estate. The official summary captures the changes made, which add up to better protecting the target populations and decreasing the chances of a nonsensical disruption in access to the program. Importantly, the bill allows a surviving spouse or a disabled heir of the individual participating in the program to continue the deferral even if they have not owned or occupied the house for five years.

Additionally, under current law properties over various maximum real market values are ineligible for the deferral. The current maximum is a function of the average real market value of properties in the county in which the property in question is located and is scaled based on how long the applicant has occupied the property. HB 2634 maintains the existing scale but creates an alternative maximum real market value of \$250,000. This has the effect of permitting any property with a value of less than \$250,000 to be eligible for the program if the applicant is otherwise qualified.

HB 2634 took effect on September 25, 2021.

6. [HB 3071](#) (Ch. 251) Abuse Reporting

HB 3071 expands the list of individuals who are required to report child or elder abuse under Oregon's abuse reporting statutes.

Under each of the statutes, the bill replaces the current reference to a "Member of the Legislative Assembly" with "An elected official of a branch of government of this state or a state agency, board, commission or department of a branch of government of this state or of a city, county or other political subdivision in this state."

Thus, the bill expands the requirement to cover most elected officials in Oregon.

HB 3071 takes effect on January 1, 2022.

7. [SB 97](#) (Ch. 319) Confidentiality of complaints to the office of the Long Term Care Ombudsman

SB 97 prohibits Residential Facilities Ombudsman, the designee of ombudsman or any staff of ombudsman from being compelled to testify or produce documents related to complaint in any judicial or administrative proceeding.

Practice Notes: This bill tightens the confidentiality rules related to complaints and resultant information and documentation. This could end up blocking information necessary to pursuing certain protective proceedings or injury claims. Attorneys should familiarize themselves with the requirements of new ORS 443.394(3)(b)(G) for court orders to disclose such information, namely explicit findings that (i) The information is essential to litigating an ongoing criminal or civil matter; (ii) The information cannot be obtained from any other source; and (iii) Disclosure of the information will be limited or redacted in such a way as to minimize unnecessary disclosure of confidential information or information that would tend to identify a confidential complainant. Attorneys should also familiarize themselves with the remaining exceptions to the confidentiality rules laid out in new ORS 443.394(3)(b).

SB 97 takes effect on January 1, 2022.

8. [SB 182](#) (Ch. 272) Estate Planning

SB 182 addressed three separate issues. The bill terminates the authority of a spouse as an agent under certain estate planning documents upon annulment, separation or dissolution of marriage. The bill extends liability protections for property held as tenants by the entirety when property is conveyed to certain trusts. And the bill simplifies the process for attorneys to dispose of old wills.

Practice Notes: This bill came from the Oregon State Bar's Estate and Administration Planning Section to address a number of issues relevant to estate planning and elder law practice.

- The bill has added powers of attorney, appointments of health care representatives, advance directives, and declarations for mental health treatment to the list of state planning documents that are automatically altered as a result of a divorce or similar proceeding. Previously, a divorce did not alter the authority of the now-ex-spouse to make decisions under any of these documents. Now, a divorce or similar proceeding revokes all authority of each party to act for the other under any of these instruments. Additionally, the statutory restraining order triggered by a divorce filing

now restrains both parties from exercising authority under any of these documents. It is important to note that the bill restricts or terminates the authority of the parties to act for each other, it does not revoke or otherwise alter any of these documents.

- The bill also explicitly provides for termination of an agent's authority under a power of attorney when "(a) The principal dies. (b) The principal or the court revokes the power of attorney. (c) The agent dies, becomes financially incapable or incapacitated or resigns. (d) The power of attorney by its terms provides that the power of attorney terminates." The bill further codifies a court's authority to revoke a power of attorney upon appointment of a conservator.
- The bill provides that all creditor protections enjoyed by spouses who own property as tenants by the entirety continue when the property is conveyed into a joint trust or separate trusts that do include both spouses as current beneficiaries.
- Finally the bill provides updated timelines and procedures for retention and destruction of original wills by attorneys. Previously, a will had to be maintained for 40 years after execution. Now, a will can be destroyed with proper process 5 years after the known death of the testator or 20 years after execution. After the appropriate notices are given, an attorney must sign an affidavit reciting the conditions allowing the destruction of the will, create a complete digital copy of the will and any affidavit of attesting witnesses, and then maintain the digital copy for at least 20 more years. After the 20 years have elapsed, the digital copy may be destroyed without further notice.

SB 182 takes effect January 1, 2022.

9. [SB 190](#) (Ch. 327) Notice of Appointment of Guardian

SB 190 makes a number of changes regarding how a guardian must notify a protected person of the guardian's appointment.

Practice Notes: After a guardian is appointed, they are required to give notice of the appointment to the Protected Person. Previously, the notice could be, and generally was, mailed. This bill now requires in person "delivery" in "a manner reasonably calculated to be understood by the Protected Person." The delivery must also include an offer to the Protected Person to provide oral notice. The notice can be made by mail if the guardian determines that personal delivery "is unduly burdensome". If the notice is mailed, it must also include the reason why in person delivery is unduly burdensome.

The bill then expands the requirements for the proof of giving notice to include information about the in-person delivery. Additionally, if the protected person is a resident of a mental health treatment facility or a residential facility for individuals with developmental disabilities, or if the guardian intends to place the protected person in such a facility, notice must also be provided to Disability Rights Oregon and that notice must be provided electronically. This bill follows up on SB 376 from 2019, which required that a newly appointed guardian provide notice to the protected person and other interested parties.

SB 190 takes effect January 1, 2022.

10. [SB 199](#) (Ch. 328) Advance Directive Revision

SB 199 revises the statutory form for executing an advance directive in Oregon.

Practice Notes: This bill started as the result of the work of the Advance Directive Adoption Committee to submit changes to the Advance Directive form pursuant to HB 4135 from the 2018 legislative session. The new form is a substantial revision to the previous form and is intended to provide additional options and clarity for those wishing to execute an advance directive.

The bill also renames the committee as the Advance Directive Advisory Committee and provides that in the future, the committee will no longer be required to adopt a revised form but will report to the legislature on recommendations for revisions.

Attorneys who assist clients in preparing Advance Directives will need to update their forms accordingly. Samples in .docx and .pdf format can be found on the links page of the Elder Law Section's website at <https://elderlaw.osbar.org/elder-law-links/>. There is a more in-depth coverage of this subject in the Elder Law Section's October Newsletter.

SB 199 took effect September 25, 2021.

11. [SB 220](#) (Ch. 273) Remote Attestation

SB 220 provides for a process to remotely attest to a witness signature when ordinarily a signature in the presence of a witness would be required.

Practice Notes: This bill provides formalities and requirements for the remote attestation of most documents to help deal with the difficulties of in-person witnessing in an era of COVID-19 and to continue the modernization of the practice of law. The bill allows for the witnessing of the execution of a document by electronic presence which allows the witnesses and the signer to be in different locations as long as they are communicating in real time to the same extent as if they were physically together, so long as additional requirements are met:

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- The witness must have evidence of the identity of the person executing the document,
- The document must be executed while in the electronic presence of the witness, and then the person must provide the witness with an electronic copy,
- The person must be in the United States, and
- The person must complete a declaration of electronic presence and a declaration of remote attestation under penalty of perjury.

The form and content declarations that the signer and the witness(es) have to are set out in the bill.

However, notarial acts and execution of wills are excluded. Notarial acts are excluded because remote online notarization is already provided for in section 20, chapter 12, Oregon Laws 2020 (first special session), the sunset clause of which was removed by SB765, discussed below. Wills are excluded because ORS 112.238 already provides for exceptions to will execution formalities that cover remotely witnessed wills.

SB 220 took effect on June 11, 2021.

12. [SB 221](#) (Ch. 390) Revisions to Wills

SB 221 makes a small change to ORS 112.238 to clarify the process for determining if a writing was intended to be a new will, a revocation of an existing will, or an addition to an existing will.

Under prior law, if a writing was not executed in compliance with 112.235, a proponent of that writing may file it in court and argue that it was intended to be a will or an alteration to an existing will. SB 221 simply clarifies the existing language of the statute to make it clear that ORS 112.238(2) addresses the process for determining if the writing is a new will, and that ORS 112.238(3) addresses the process for determining if the writing is intended to be a revocation, addition, or alteration to an existing will.

SB 221 took effect on June 23, 2021.

13. [SB 572](#) (Ch. 399) Vulnerable Youth

SB 572 creates a new class of persons, “vulnerable youth”, who may be subject to a protected proceeding.

Practice Notes: The bill creates a definition of “vulnerable youth” as a person who is between 18 and 21 and who may be eligible for Special Immigrant Juvenile status, but who cannot be reunited with a parent due to past abuse, neglect, or abandonment. This corrects an inconsistency between immigration law and protective proceedings law that was impairing the use of the certain immigration protections.

Under the bill, the vulnerable youth must consent to the guardianship, and can later move to terminate it. The guardianship will automatically terminate when they turn 21. The bill also provides some specific limitations on the powers of the guardian in these cases, such as preventing the guardian from possessing or controlling the vulnerable youth’s identity documents.

SB 572 took effect on September 25, 2021.

14. [SB 578](#) (Ch. 400) Appointment of Counsel in Protective Proceedings

SB 578 establishes a pilot program to provide for court appointed counsel to protective proceeding cases.

Practice Notes: This bill amends 125.080 to establish a pilot program to provide for court appointed counsel to respondents and protected persons in protective proceeding cases. The bill does not require appointed counsel in all cases but permits the court to appoint by request of the protected person, upon the recommendation of a court visitor, if an objection is filed by another person, or upon the court’s own determination.

The bill requires that funds to pay attorney fees come from the estate of the protected person if funds are available. Publicly provided funds are made available if adequate funds are not available from the protected person’s estate.

The drafting of the bill also appears to have caused the unintended side effect of removing the requirement that a hearing be held on the objection of anyone other than the respondent or protected person. This is unlikely to have a practical impact because the court will still have the authority to require a hearing on any petition or motion.

The bill applies to cases in Multnomah and Lane Counties beginning January 2, 2022 and to Columbia County beginning January 2, 2023. The bill will apply to all counties beginning January 2, 2024.

15. [SB 765](#) (Ch. 344) Remote Online Notarization

Practice Notes: This bill removes the sunset provision of section 20, chapter 12, Oregon Laws 2020 (first special session), providing for remote online notarization. The bill also provides

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for tangible copies of electronic records to be authenticated.

In 2020, as the restrictions and safety concerns related to COVID-19 made face-to-face interactions much less common, HB 4212 was passed in order to provide a temporary solution for notarizing documents. The bill authorized remote online notarization, which is an expansion of the existing electronic notarization rules to allow notaries who meet certain requirements to perform notarial acts for parties in different physical locations. SB 765 made these changes permanent.

SB 765 took effect on June 15, 2021, but the provisions of HB 4212 were already in effect at that time.

Energy and Environmental Law

I. ENERGY AND TRANSPORTATION

- | | | | |
|----|---------|-----------|---|
| 1. | HB 2021 | (Ch. 508) | Clean Energy Standard |
| 2. | HB 2062 | (Ch. 108) | Energy Efficiency Standards for Consumer Products |
| 3. | HB 2109 | (Ch. 60) | Local Renewable Energy Facilities |
| 4. | HB 2165 | (Ch. 95) | Transportation Electrification Package |
| 5. | HB 2180 | (Ch. 152) | EV-Ready Building Codes |
| 6. | HB 3141 | (Ch. 547) | Public Purpose Charge Modernization |

II. ENVIRONMENTAL JUSTICE

- | | | | |
|----|---------|-----------|---|
| 1. | HB 2475 | (Ch. 90) | Energy Affordability |
| 2. | HB 2842 | (Ch. 622) | Healthy Homes Program |
| 3. | HB 2993 | (Ch. 463) | Public Participation and Equity in Rulemaking |

III. WILDFIRE RECOVERY

- | | | | |
|----|---------|-----------|----------------------------------|
| 1. | HB 2289 | (Ch. 217) | Wildfire Rebuilding Process |
| 2. | SB 762 | (Ch. 592) | Wildfire Prevention and Response |

Riley Peck: 2017 Northwestern School of Law. Oregon State Bar member since 2017.
Chisty Splitt: Oregon Department of Energy.

I. ENERGY AND TRANSPORTATION

1. [HB 2021](#) (Ch. 508) Clean Energy Standard

House Bill 2021, known as the “100% Clean Energy for All” bill, continues Oregon’s leadership introducing a broad range of targets, programs, and studies to transition Oregon to a clean, resilient, equitable electricity grid, including:

- **100% Clean Electricity Targets:** Oregon’s large investor-owned utilities (IOUs) and electricity service suppliers must reduce greenhouse gas emissions associated with electricity sold in Oregon compared to a 2010 baseline – 80% emissions reductions by 2030, 90% by 2035, and 100% by 2040 – effectively requiring emission-free electricity by 2040. The legislation provides exemptions from meeting those goals if compliance would affect system reliability or lead to excessive rate increases. The Oregon Department of Environmental Quality will track greenhouse gas emissions and progress toward targets through the existing greenhouse gas reporting program, while the Oregon Public Utility Commission will oversee electricity company clean energy planning and compliance.
- **Natural Gas Plant Restrictions:** Restricts the Oregon Energy Facility Siting Council, which is staffed by ODOE, from issuing new or amended site certificates for fossil-fueled energy facilities that emit greenhouse gases into the atmosphere.
- **Community Resilient Renewables Investment Fund:** Creates a \$50 million fund at ODOE to provide competitive grants for planning or developing community renewable energy projects less than 20 megawatts in capacity that promote energy resilience, increase renewable energy generation or storage capacity, and provide economic or other benefits to communities.
- **Study on Small Scale Renewable Energy Development:** Directs ODOE to convene a work group to develop and publish a study on the barriers, opportunities, and benefits of small-scale renewable energy projects by September 30, 2022.
- **Green Energy Tariffs:** Permits IOUs to collaborate with local governments to develop PUC-approved green electricity rates in alignment with local government renewable or clean (non-emitting) energy goals to serve retail electricity customers within the geographical boundaries of the local government.
- **Responsible Contractor Labor Standards:** Requires renewable project developers and contractors to document and meet specific labor standards when constructing

renewable energy generating or storage facilities with capacity of 10 megawatts or greater.

- **RPS Community-based Renewable Energy Project Target Changes:** Increases the RPS community based renewable energy target from 8% of aggregate electrical capacity by 2025 to 10% of aggregate electrical capacity by 2030 for Oregon's large IOUs.

Under HB 2021, the Oregon Department of Energy is responsible for developing and implementing the new Community Resilient Renewables Incentive Program, leading the small scale renewable energy study, implementing restrictions on new fossil fuel plants, storing attestations and documents around the new labor standards, and making any necessary changes to RPS rules to support implementation of HB 2021's clean energy targets.

HB 2021 took effect on September 25, 2021.

2. [HB 2062](#) (Ch. 108) Energy Efficiency Standards for Consumer Products

In 2020, as part of Executive Order 20-04 implementation, the Oregon Department of Energy adopted efficiency standards for 11 different products through administrative rule. HB 2062 conforms statute to those recently adopted rules. These standards will save Oregonians money, promote energy conservation in Oregon, reduce energy and water use, reduce greenhouse gas emissions, and align West Coast market standards. ODOE estimates that the energy efficiency standards established and increased in HB 2062 represent a greenhouse gas reduction of nearly 50,000 metric tonnes of annual CO₂ emissions in 2025 and a reduction of over 100,000 metric tonnes of CO₂ emissions in 2035 to contribute to Oregon's greenhouse gas reduction goals. They would also lead to nearly \$30 million of annual energy cost saving for Oregonians in 2025, increasing to nearly \$100 million in savings by 2035.

The measure also implements housekeeping measures to remove from statute those existing state standards that have been preempted by federal standards since originally established in Oregon. Finally, HB 2062 provides ODOE, in consultation with DCBS Building Codes Division Advisory Boards, limited authority to administratively update standards to a more recent version only for products with existing Oregon standards. Subsequent legislation would not be required if the updates maintain alignment with another state.

The standards already established by rule and to be added to statute include:

- High CRI fluorescent lamps

ENERGY AND ENVIRONMENTAL LAW

- Commercial steam cookers
- Computers and computer monitors
- Residential ventilating fans
- Faucets
- Electric storage water heaters
- Shower heads
- Commercial fryers
- Portable electric spas (update to existing standard)
- Water coolers (update to existing standard)
- Commercial dishwashers

SB 829 takes effect on January 1, 2022.

3. [HB 2109](#) (Ch. 60) Local Renewable Energy Facilities

In 2019, the Oregon Legislature passed HB 2329, which changed the definition of energy facilities by raising the jurisdictional threshold for certain renewable energy projects subject to the Energy Facility Siting Council's siting certificate requirements. An unintended consequence of HB 2329 is that it triggered a requirement for written notification to landowners by the Oregon Department of Land Conservation and Development Commission (DLCD) as required by Measure 56.

According to DLCD's website, "the measure requires cities and counties to provide affected property owners with notice when there is a change in the zoning classification for their property."

HB 2109 modifies the definition of "renewable energy facilities" within ORS 215.446 to clarify that the review criteria applies only to solar projects of a certain size located on exclusive farm lands or geothermal and wind projects that generate a specific range of power, which will alleviate the need for the notifications.

SB 2109 took effect on May 21, 2021.

4. [HB 2165](#) (Ch. 95) Transportation Electrification Package

As noted in the Oregon Global Warming Commission's 2020 Biennial Report to the Legislature, "almost 36 percent of Oregon's total GHG emissions derive from transportation, and almost 25 percent of that comes from light-duty vehicles (cars and small trucks)." In recent years, the Legislature and Governor Kate Brown have prioritized transportation electrification in both legislation and executive orders to reduce those emissions. HB 2165 is a package of policies continuing those efforts, targeting two challenges to electric vehicle (EV) adoption: charging infrastructure and consumer costs.

The bill requires Oregon's two largest investor-owned utilities, PGE and Pacific Power, to collect one quarter of a percent of total revenues collected from retail electricity consumers to go toward transportation electrification efforts. It also allows IOUs to recover costs of certain transportation electrification-related infrastructure measures from electric retail consumers.

Toward consumer costs, HB 2165 removes the expiration date for the Oregon Clean Vehicle Rebate Program. It also changes eligibility requirements for the Charge Ahead Rebate Program for low- and moderate-income households to 400 percent of federal poverty guidelines and increases the incentive from up to \$2,500 but not less than \$1,500 to up to \$5,000 but not less than \$2,500. Finally, the bill raises the purchasing cap for fuel cell vehicles from \$50,000 to \$60,000 for eligibility of receiving a rebate in the Oregon Clean Vehicle Rebate Program.

HB 2165 take effect on January 1, 2022.

5. [HB 2180](#) (Ch. 152) EV-Ready Building Codes

This measure requires the director of DCBS to adopt amendments to the state building code to require certain newly constructed buildings to provide electrical service capacity for charging electric vehicles (EVs). The bill requires provisions for electrical service capacity at no less than 20 percent of the vehicle parking spaces in the garage or parking area for the building (rounded up to nearest whole number).

The bill requires the DCBS director to make these EV-ready requirements apply only to commercial buildings under private ownership, multifamily buildings with five or more residential dwelling units, and mixed-use buildings consisting of privately owned commercial space and five or more residential dwelling units; the code requirements will not apply to townhouses.

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For these building types covered in the bill, this measure also specifies that a municipality may require that a newly constructed building exceed the minimum bill requirements and provide electrical service capacity to accommodate greater than 20 percent of spaces, as specified by the municipality, through a process concerning land use. This ability for local municipality amendments is notwithstanding ORS 455.040, which is the section of statute that provides for a statewide, uniform building code.

HB 2180 requires the director of DCBS to ensure initial amendments to the state building code as required under section 1 take effect on July 1, 2022, and apply to new construction for which a person first applies for a building permit on or after July 1, 2022.

6. [HB 3141](#) (Ch. 547) Public Purpose Charge Modernization

HB 3141 changes many elements of the Public Purpose Charge. The PPC has funded both energy efficiency and renewable energy projects in the territories served by Oregon's two largest investor-owned utilities since the passage of SB 1149 in 1999.

Among the changes, HB 3141:

- Extends the public purpose charge for 10 years, through January 1, 2036.
- Reduces the PPC from 3 percent of revenues to 1.5 percent of revenues collected from ratepayers of PGE and Pacific Power.
- Modifies but maintains PPC support for renewable energy, low-income weatherization, low-income housing, and energy-related projects in schools.
- Moves most cost-effective energy efficiency work from the Public Purpose Charge and funds those programs within the rates paid by PGE and PacifiCorp customers instead.
- Adds language in renewables section to allow PPC funds to be used for distribution system-connected technologies that support reliability, resilience, and integration of renewable energy with the distribution system, and adds this same language for self-direct large customers.
- Adds language for PUC to set rates to collect at least \$20 million a calendar year from all electric companies to go to the Oregon Housing and Community Services Low-Income Electric Bill Payment Assistance Program.

- Requires the PUC to establish equity metrics for environmental justice for PPC programs administered by nongovernmental entities.

The Oregon Department of Energy administers two programs using funds raised by the public purpose charge: the Public Purpose Charge Schools Program and the Large Electric Consumer Public Purpose Program (often called “Self-Direct”). Changes to each program are included in the bill and will require subsequent rulemaking for the Large Electric Consumer Public Purpose Program to conform with HB 3141. Each program relies on aging databases that will be upgraded to carry out the programs for another decade.

HB 3141 takes effect on September 25, 2021.

II. ENVIRONMENTAL JUSTICE

1. [HB 2475](#) (Ch. 90) Energy Affordability

Energy burden is the percentage of household income spent on energy and transportation costs. It’s used as an indication of energy affordability, and anyone paying more than 6 percent of their household income on energy is considered energy burdened. According to the 2020 Biennial Energy Report’s Energy 101: Equity and Energy Burden, about 25 percent of Oregon households are energy burdened – and that’s based on numbers from before the COVID-19 pandemic.

To help those struggling to pay their energy bills, HB 2475 gives the Oregon Public Utility Commission the ability to consider "differential energy burdens on low income customers and other economic, social equity or environmental justice factors that affect affordability for certain classes of customers" in the ratemaking processes for electric and natural gas utilities. In addition to the use of rates and bill credits, the PUC can mitigate energy burdens through bill reduction measures or programs such as demand response or weatherization.

This new law also requires retail electricity consumers purchasing electricity from electricity service suppliers (ESSs) to pay the same amount to address the mitigation of energy burdens as retail electricity consumers that are not served by ESSs (i.e. investor-owned utilities).

It also allows the PUC to provide up to \$500,000 in financial assistance, in aggregate, to organizations that represent residential utility customers that are either low-income or members of environmental justice communities in regulatory proceedings conducted by the PUC. It also directs PUC to establish a process for evaluating and approving agreements to these organizations – and requires these agreements to be in place before financial assistance is provided.

ENERGY AND ENVIRONMENTAL LAW

HB 2475 takes effect on January 1, 2022.

2. [HB 2842](#) (Ch. 622) Healthy Homes Program

HB 2842 establishes the Healthy Homes Program at the Oregon Health Authority. The program will provide grants to entities that provide financial assistance to persons in low-income households to repair and rehabilitate their residences and to landlords to repair and rehabilitate properties inhabited by low-income households. Repair and rehabilitate is defined in the bill and includes: energy efficiency, radon, lead and mold abatement, air filtration systems, and measures to improve fire and seismic resilience.

The bill also establishes the Interagency Task Force on Healthy Homes. The task force will consist of up to nine members appointed by the Governor and representatives of the Oregon Health Authority, the Housing and Community Services Department, the Department of Environmental Quality, the State Department of Energy, the Department of Land Conservation and Development, and the Department of Human Services. Together, they will consider ways to improve the health and safety of homes.

HB 2842 took effect September 25, 2021.

3. [HB 2993](#) (Ch. 463) Public Participation and Equity in Rulemaking

HB 2993 encourages agencies to appoint a rulemaking advisory committee to represent interests of persons likely to be affected by a proposed rule whenever possible. If there has not been a rulemaking advisory committee appointed and 10 or more persons likely to be affected by the rule object to the agency's fiscal impact statement, or an association with at least 10 affected members objects, agencies must appoint a fiscal impact advisory committee to make recommendations on whether the rule will have fiscal impacts and the extent of those impacts. HB 2993 requires that fiscal impact advisory committees include representation from those likely to be affected by the rule. The bill also requires a statement identifying how adoption of a rule will affect racial equity in this state.

HB 2993 takes effect on January 1, 2022.

III. WILDFIRE RECOVERY

1. [HB 2289](#) (Ch. 217) Wildfire Rebuilding Process

HB 2289 is meant to create a more affordable and streamlined rebuilding process for those

who sustained property damage during the 2020 Labor Day wildfires. If certain criteria are met, a property owner may alter, restore, or replace a nonresidential use without further application with the local government. Local and state governments are directed to approve applications and permits in most cases. The new construction must comply with applicable building codes that were in effect on the later of 1/1/2008 or the date of the former dwelling's construction.

For residences, the applicable building code will be the 2005 Oregon Residential Specialty Code. For commercial buildings, the applicable building code will be the 2007 OSSC/Energy Code. As part of HB 5006, the budget reconciliation bill, \$10 million was directed to the Oregon Department of Energy to provide energy efficiency incentives for the same structures being rebuilt or repaired as a result of the 2020 wildfires.

HB 2289 took effect June 11, 2021.

2. [SB 762](#) (Ch. 592) Wildfire Prevention and Response

SB 762 establishes several new programs and requirements relating to wildfire prevention and response. This bill implemented a number of recommendations included in the Final Report of the Governor's Council on Wildfire Response published in November 2019, provisions from proposed legislation that were not enacted during the 2020 session (SB 1536), and provisions that were included in Executive Order 20-04.

The part of the bill most directly related to energy is a requirement for electric utilities to prepare and comply with a wildfire protection plan. Each plan must:

- Identify high-risk areas in the utility's service area and transmission corridors;
- Identify preventive actions, such as inspections, vegetation management, and de-energization of power lines the utility will use to minimize and mitigate the risk of utility facilities causing a wildfire; and
- Identify community outreach efforts that the public utility will use before, during, and after a wildfire season.

Each investor-owned utility is required to submit its plan for approval by the Oregon Public Utility Commission by December 31, 2021. Each consumer-owned utility must submit a plan approved by its governing board to the PUC by June 30, 2022. The PUC commenced rulemaking to establish specific requirements for the plans in early 2020 as part of its implementation of Executive Order 20-04.

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The bill also requires the Oregon Department of Forestry, in consultation with Oregon State University, to develop and maintain a wildfire planning and risk classification mapping tool. It requires the State Fire Marshall to develop minimum defensible space requirements for wildland-urban interface zones (“defensible spaces” are buffers around homes and other buildings where vegetation and flammable materials are managed to provide a safe space for firefighting activities to occur in the event of a wildfire), and the bill requires the Land Conservation and Development Commission to identify updates to the statewide land use planning program needed to incorporate these requirements. The bill also requires the Department of Consumer and Business Services to adopt building codes to mitigate the risk of wildfire in high-risk areas.

The bill increases resources for state and local wildfire planning and response by incorporating wildfire into the Statewide Emergency Plan and establishing new programs within various state agencies to respond to the health impacts of wildfire smoke and other poor air quality events; to reduce fuel loads near communities and critical infrastructure; and enhance wildfire detection and response capacity. These new programs will receive additional support from a new Oregon Conservation Corps Program and an interagency Wildfire Programs Advisory Council.

SB 762 took effect July 19, 2021.

Family Law

I. HOUSEKEEPING

- | | | |
|-----------|-----------|---|
| 1. SB 298 | (Ch. 274) | Stalking Protective Orders, Name Changes,
Notarization |
|-----------|-----------|---|

II. DIVORCE & ESTATE PLANNING

- | | | |
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| 1. SB 182 | (Ch. 272) | Divorce and Powers of Attorney |
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III. CHILD SUPPORT

- | | | |
|-----------|-----------|--|
| 1. SB 817 | (Ch. 597) | Removes right for Oregon Youth Authority to
Receive Child Support |
| 2. SB 821 | (Ch. 500) | Presumption of Inability to Pay Support |
| 3. SB 822 | (Ch. 415) | Consolidating Unpaid Child Support |

I. HOUSEKEEPING

1. [SB 298](#) (Ch. 274) Stalking Protective Orders, Name Changes, Notarization

SB 298 was the Oregon Judicial Department’s (OJD) housekeeping bill for the 2021 session. The bill contains various minor changes to statutes intended to facilitate and streamline proceedings, many of which involve a significant percentage of self-represented litigants. This summary addresses only the parts of the bill that relate to family law.

Section 1 of the bill makes minor changes to ORS 30.866, which is the statute addressing civil Stalking Protective Orders. Under the prior version of the statute, there were a variety of terms referring to the parties involved in the matter – including “person,” “other person,” “victim,” and “plaintiff.” SB 298 changes those various terms to “petitioner” and “respondent” so that parties are referred to consistently throughout the statute. This change in statutory wording brings Stalking Protective Orders in line with the wording in other forms of protective orders (e.g., Family Abuse Prevention Act, Elderly Persons and Persons with Disabilities Abuse Prevention Act, and Sexual Abuse Protection Orders).

Practice Tip 1: Form Change

SB 298 requires that child support money awards identify whether the place of payment is through the Department of Justice (i.e., “pay to DOJ”). Practitioners should update their money awards similar to the following:

Judgment Amount:

Child Support

Father shall pay Mother \$___ per month for the support of the parties’ child beginning on _____ and continuing on the first day of each month thereafter until a child attains the age of eighteen (18) years or ceases to qualify as a “child attending school” as defined in ORS 107.108, whichever shall last occur.

Pay to Department of Justice (DOJ):

☐ Yes ☐ No

Section 3 of the bill amends ORS 33.460 which addresses applications for legal change of sex. HB 2673 (2017) enacted various changes to how courts handle legal changes of sex and

legal name changes. HB 2673 amended ORS 33.460 so that an application for change of sex may be heard and determined by any circuit court in Oregon. That is the same authority already provided in legal name changes. Courts were given the authority to determine a combined request for change of name and change of sex in the same proceeding. But the 2017 legislation did not clarify that such combined matters could be determined by any circuit court in Oregon. SB 298 makes clear that individuals seeking both a change of sex and change of name in a single proceeding may do so in any circuit court in Oregon.

Section 4 of SB 298 amends ORS 18.042, which is the statutory framework for the requirements in a civil action that includes a money award. The bill requires that the money award section of a judgment for child support states whether the judgment requires payment through the Oregon Department of Justice (DOJ) under Title IV-D of the federal Social Security Act. All money awards are already required to identify the inclusion of child support, but following SB 298 those child support money awards must identify whether the dollars are “Pay to DOJ” or not. This can be accomplished by adding a box to money award forms – if the box is selected, it’s Pay to DOJ. If the box isn’t selected, it’s not. Practitioners should update their judgment forms accordingly.

Section 5 of the bill amends ORS 107.174 to remove the requirement that a stipulation for modification of a parenting time order be notarized. Parties are now authorized to submit such stipulations with an accompanying declaration. This change is consistent with other implementations of the declaration instead of notarization and removes a potential barrier for self-represented litigants.

SB 298 took effect on September 25, 2021.

Practice Tip 2: Form Change

Although not required by statute it is best practice to include an optional application for full child support program services in any judgment that includes a child support money award that will be paid through the DOJ. Doing so eliminates the necessity for one of the parties to apply for program services following entry of the judgment and ensures the case qualifies for inclusion in the Title IV-D federal funding program. For example:

Optional: APPLICATION FOR FULL CHILD SUPPORT PROGRAM SERVICES

By signing below, I apply for child support services, including enforcement, from the Child Support Program (CSP). If you never received TANF, tribal TANF or AFDC in any state, an annual \$35 fee will apply if over \$550 is collected and distributed to the family each year.

Petitioner Signature

Date

Respondent Signature

Date

Adult Child Signature

Date

Practice Tip3: Form Change

A stipulation for modification of a parenting time order no longer need be notarized. A declaration from a party is sufficient. Practitioners should update relevant provisions in their parenting plan forms to provide:

Changes to the Parenting Schedule. The parents are encouraged to be flexible and work together to agree to changes to this plan as their children get older or family circumstances change. Agreed upon changes will be temporary and will not be enforced by the court unless the change is written down, dated, signed by both parents under penalty of perjury or made under oath or affirmation, and submitted to the court to make the stipulation a part of the court's file.

If the parties prefer to waive the requirement for the declaration, instead state that "the requirement of ORS 107.174 that the parents' signatures on the stipulate be declared under penalty of perjury or made under oath or affirmation is hereby waived.

II. DIVORCE AND ESTATE PLANNING

1. [SB 182](#) (Ch. 272) Divorce and Powers of Attorney

ORS 107.093 provides the framework for a statutory restraining order after a petition for marital annulment, separation, or dissolution is filed and upon service of summons and the petition upon the respondent.¹ The statute has historically restrained both parties from:

- Canceling, modifying, terminating, or allowing to lapse for nonpayment of premiums any insurance policies (i.e., health, homeowner, renter, or automobile) that one party maintains to provide coverage for the other party or a minor child of the parties, or any life insurance policy that names either of the parties or a minor child of the parties as a beneficiary.
- Changing beneficiaries or covered parties under any policy of insurance (i.e., health, homeowner, renter, or automobile insurance) that one party maintains to provide coverage for the other party or a minor child of the parties, or any life insurance policy.
- Transferring, encumbering, concealing, or disposing of property in which the other party has an interest without written consent of the other party or an order of the court except in the usual course of business or for necessities of life.²
- Making extraordinary expenditures without providing written notice and an accounting of the extraordinary expenditures to the other party.³

With the passage of SB 182, parties will be further restrained under the terms of ORS 107.093 from:

¹ The statutory restraining order that goes into effect in Chapter 109 proceedings (e.g., petition to establish parentage, actions to establish custody and parenting time between unmarried parents, etc.) is found in ORS 109.103.

² This provision does not apply to payment by either party of attorney fees *in the existing action*, real estate and income taxes, mental health therapy expenses for either party or a minor child of the parties, or expenses necessary to provide for the safety and welfare of a party or a minor child of the parties.

³ This provision does not apply to payment of expenses necessary to provide for the safety and welfare of a party or a minor child of the parties.

“(e) Exercising authority as an agent for the other party under a power of attorney as described in ORS 127.005 to 127.045, a health care representative for the other party under a form appointing a health care representative described in ORS 127.505 to 127.660 or an attorney-in-fact for the other party under a declaration for mental health treatment described in ORS 127.700 to 127.737, unless the power of attorney, form appointing a health care representative or declaration for mental health treatment otherwise provides.”

Practice Tip 4: Form Change

Practitioners should update their ORS 107.093 statutory restraining orders to include:

Restraining Order – Authority as Agent. Husband and Wife are restrained from exercising authority as an agent for the other party under a power of attorney, a health care representative for the other party, or an attorney-in-fact for the other party unless the legal document granting authority to act as the other party’s agent specifically provides that such authority shall continue notwithstanding the statutory order of restraint set forth in ORS 107.093.

Additionally, ORS 107.115 is amended to provide that a judgment of annulment or dissolution of a marriage ***shall***:

“Terminate the authority of an agent under a power of attorney pursuant to ORS 127.156, a health care representative pursuant to ORS 127.545 (5)(c)(B) or an attorney-in-fact pursuant to ORS 127.722.

This termination is in addition to the revocation of any will or transfer on death deed that was already required by statute. With the passage of SB 182, Oregon joins ten other states in providing a default rule that the authority of an ex-spouse granted under a power of attorney would be automatically revoked upon divorce.

Practice Tip 5: Form Change

Practitioners should update their dissolution judgments to provide:

Termination of Authority of Agent. Any authority granted to the now former spouse as an agent of the other party pursuant to a power of attorney, a health care representative, or an attorney-in-fact shall be deemed revoked. ORS 127.156, ORS 127.545 (5)(c)(B), and ORS 127.722.

Estate planning statutes are also amended by SB 182 to affirm the automatic revocation of these estate planning documents upon divorce. ORS 127.015 is specifically modified to provide that the authority of an agent to act under a power of attorney terminates upon the occurrence of any of the following: (1) the principal dies, (2) the principal or the court revokes the power of attorney, (3) the agent dies, becomes financially incapable or incapacitated, or resigns, (4) the power of attorney terminates according to its own terms, or (5) an action is filed for the dissolution or annulment of the principal's marriage or registered domestic partnership to the agent, or for the separation of the principal and agent, unless otherwise provided by terms of the power of attorney, agreement of the parties, or order of the court.

Additionally, SB 182 grants authority to the court to order that a power of attorney is revoked upon appointment by the court of a conservator for the principal.

Under the new legislation, a principal's spouse's authority as attorney-in-fact may survive the filing of a petition for dissolution or annulment if (1) the principal has legal capacity, and (2) reaffirms the appointment after the petition is filed.

SB 182 provides new rules for when attorneys may dispose of wills. While outside the scope of this update, practitioners who have custody of original wills should carefully read the provisions of the new legislation.

III. CHILD SUPPORT

1. [SB 817](#) (Ch. 597) Removes right for Oregon Youth Authority to Receive Child Support

SB 817 is a comprehensive reform bill that removes the right for the Oregon Youth Authority (OYA) to receive child support for any child in its custody. Any ongoing or past child support due OYA under existing statutes will no longer be in effect. Existing OYA contingency orders will be considered satisfied and paid in full. Any existing support orders will revert to the creditor (i.e., parent receiving support).

SB 817 took effect on September 25, 2021, but is not operative until January 1, 2022.

2. [SB 821](#) (Ch. 500) Presumption of Inability to Pay Support

In its present form, ORS 25.247 provides that an obligor who is incarcerated for a period of 180 or more consecutive days shall be rebuttably presumed unable to pay child support. Further, the statute mandates that the child support obligation will not then accrue for the

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duration of the incarceration unless the presumption is rebutted. This law went into effect following the 2017 legislative session as a result of SB 682 (2017).

ORS 25.247 does not, however, specify any sort of process for rebutting the presumption if an incarcerated parent's financial circumstances change while the order is suspended. For example, let's say the order is suspended at the outset of the obligor's (i.e., party ordered to pay support) incarceration based on an inability to pay. But then during the incarceration the obligor inherits or otherwise receives funds that would allow the obligor to resume paying support. This situation could go the other way as well. An incarcerated individual might have resources with which to pay support when first incarcerated. In that scenario the presumption might be rebutted. But after a period of years in incarceration the obligor might run out of financial resources.

SB 821 clarifies that a party objecting to the presumption may do so after the suspension and sets forth a specific framework for doing so. As currently in effect, the statute provides that a party making the objection prior to the suspension of the child support obligation must send an objection to the entity that served notice of the intent to suspend services (this will presumably be the Division of Child Support) within 30 days after the date of service of the notice. The objection must describe the resources of the obligor (i.e., party ordered to pay support) or other evidence that rebuts the presumption of inability to pay child support. The entity receiving the objection shall then cause the case to be set for hearing before either a court or an administrative law judge. The only issue at the hearing is whether the presumption has been rebutted. In other words, this is not a de facto modification action.

If a party wishes to object to the suspension after the suspension has occurred, that party must send an objection to the entity that served notice of the intent to suspend services. But in this case, the objection must describe the evidence of ability to pay that was not available at the time the order was suspended. In other words, this change in the law is not about providing an opportunity to challenge the presumption to a party who simply slept on their rights. If the objecting party could have raised the objection prior to the suspension and simply failed to do so the objection will fail in a post-suspension hearing. The court or administrative law judge in a post-suspension hearing remains limited to the issue of whether the presumption has been rebutted. But in the post-suspension hearing, the finder of fact is specifically directed to consider any evidence presented by a party of the expenses an obligor will incur reintegrating into society following their release from incarceration.

Additionally, if the finder of fact in a post-suspension proceeding finds that the presumption has been rebutted, by law the support order will be reinstated at only 50% of the previously ordered support amount on the first day of the first month following the finding by the court or administrative law judge.

Reinstatement of support after an order has been suspended pursuant to ORS 25.247 is considered a substantial change of circumstances for purposes of child support modification proceedings. The Division of Child Support will initiate a modification action within 60 days of any reinstatement to ensure the correct support amount is being paid.

Practitioners should note that once SB 821 takes effect on January 1, 2022, release from incarceration, on its own, does not rebut an inability to pay during the 120 days after release. Rather, a significant change in the obligor's financial resources must be demonstrated in order to rebut the presumption prior to an order being reinstated.

3. [SB 822](#) (Ch. 415) Consolidating Unpaid Child Support

SB 822 was a product of a request from the Division of Child Support to streamline collection services in cases involving multiple child support judgments. Parents in the Oregon Child Support Program sometimes establish child support orders through the court when a prior administrative order already exists. If there is an arrearage associated with the prior administrative order that is not included in the subsequent court order, the Division of Child Support is in a position of having to collect support in multiple cases. SB 822 amends ORS 25.095 to provide for the automatic consolidation of arrearages that accrued under multiple court cases into a single case when a judgment entered in that single case terminates and replaces all other judgments. The arrearage need not be specifically mentioned in the subsequent judgment for the Division of Child Support to consolidate it with the new judgment. The arrearage becomes enforceable in the court case in which the later-issued court judgment was entered.

Health Law

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| 2. HB 3057 | (Ch. 92) | Individual Data Related to COVID-19 |
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| 4. HB 3352 | (Ch. 554) | Cover All People |
| 5. HB 3398 | (Ch. 639) | Delay of Implementation on Family Medical Leave |
| 6. SB 110 | (Ch. 271) | Repeal of Sunset of Early Discussion and Resolution Program |
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| 3. HB 2316 | (Ch. 521) | Behavioral Health Housing Incentive Fund |
| 4. HB 2333 | (Ch. 220) | Psychotropic Medications and Foster Care |
| 5. HB 2417 | (Ch. 617) | Expansion of Crisis Stabilization Services |
| 6. HB 2469 | (Ch. 116) | CCO Coverage of Mental Health Wellness Appointments |
| 7. HB 2949 | (Ch. 677) | Mental Health Workforce Recruitment |
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| 3. HB 2108 | (Ch. 59) | Independent Residence Facilities |
| 4. HB 2139 | (Ch. 449) | Rural Veterans Healthcare Transportation Grant |
| 5. HB 2359 | (Ch. 453) | Health Care Interpreters |
| 6. HB 2397 | (Ch. 616) | Senior Emergency Medical Services Innovation Program |
| 7. HB 2591 | (Ch. 619) | Planning Grants for School-Based Health Services |
| 8. HB 2842 | (Ch. 622) | Healthy Homes Programs |

IV. HEALTH EQUITY

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| 2. SB 70 | (Ch. 645) | OHA Work with Regional Health Equity Coalitions |
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| 3. HB 2650 | (Ch. 122) | Emergency Services for Police Dogs |
| 4. HB 2910 | (Ch. 623) | Emergency Medical Transport Fee |
| 5. HB 2965 | (Ch. 243) | Public Health Modernization |
| 6. HB 3016 | (Ch. 248) | Nurse Staffing During State of Emergency |
| 7. HB 3234 | (Ch. 373) | School District Instruction on Organ and Tissue Donation |
| 8. HB 3284 | (Ch. 305) | Protecting Personal Health Data |
| 9. HB 5024 | (Ch. 668) | OHA Budget Allocation |
| 10. SB 567 | (Ch. 584) | Civil Rights Includes Provider Discrimination |
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| 2. HB 2046 | (Ch. 205) | Health Insurance Regulatory Requirements and APAC Access |
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| 4. HB 2517 | (Ch. 154) | Prior Authorization and Independent Review Requirements |
| 5. HB 2623 | (Ch. 160) | Cost Sharing Limits for Coverage of Insulin |
| 6. SB 2 | (Ch. 384) | Proton Beam Therapy Requirements |
| 7. SB 3 | (Ch. 312) | Emergency Medical Transport Requirements |
| 8. SB 65 | (Ch. 569) | Oregon Health Insurance Exchange Moved from DCBS to OHA |
| 9. SB 358 | (Ch. 650) | Delay of Sunset on Coverage for Applied Behavior |

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10. SB 428	(Ch. 579)	Task Force on Universal Health Care
11. SB 558	(Ch. 339)	Prohibition on Mail Order Rx for Insureds in Medical Assistance
12. SB 699	(Ch. 281)	Pre-Existing Condition Requirements Prohibited for Grandfathered Plans
13. SB 748	(Ch. 342)	PEBB/OEBB, Commercial Health Plans Must Cover Adult Disabled Children
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2. HB 2075	(Ch. 513)	Establishment of License and Fee for Radiation Devices and Equipment
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4. HB 2088	(Ch. 514)	Tribal Health Worker Qualification Criteria
5. HB 2113	(Ch. 94)	Geographic Diversity Requirements for Oregon Medical Board
6. HB 2117	(Ch. 211)	Psychologist Associate Licensing
7. HB 2528	(Ch. 530)	Dental Therapist Licensing
8. HB 2619	(Ch. 231)	Licensure for Genetic Counseling
9. HB 2627	(Ch. 69)	Dental Hygienist Scope of Practice
10. HB 3036	(Ch. 349)	Physician Assistant Supervision
11. SB 39	(Ch. 189)	Modifications to Oregon Nurse Practice Act
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14. SB 763	(Ch. 593)	Licensing for Pharmaceutical Sales Representatives
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3.	HB 2958	(Ch. 365)	Prescription Dispensation and Coverage of Antiretroviral Therapies
4.	SB 629	(Ch. 340)	Pharmacist Use of Telepharmacy for Remote Patients
5.	SB 711	(Ch. 407)	DCBS Study of Hormone Replacement Drug Costs
6.	SB 844	(Ch. 598)	Establishment of Prescription Drug Affordability Board

Jennifer Baker: 2007 Willamette University School of Law. Oregon State Bar member since 2007.

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

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Sarah Pettey: 2010 Willamette University School of Law. Oregon State Bar member since 2011.

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I. ACCESS TO CARE

1. [HB 3035](#) (Ch. 543) Health Access for Adults in Custody

This bill establishes the Task Force on Corrections Medical Care to address comprehensive access to health care for adults in custody. The task force will conduct a review of the way adults in Department of Corrections ("Department") custody file grievances concerning access to and the provision of medical care to determine the level of accountability and transparency the process provides to community-level medical care. The task force shall submit a report to the Legislature by September 15, 2022 and must include a recommended prioritized list of medical care, including mental and oral health, (similar to the Medicaid prioritization list) that meets community standards, and include a recommendation of meaningful access timelines for each type of care that must be equitably available to all adults in custody in all Department facilities. The task force must also review timelines and goals for the adoption of an electronic health record (EHR) system by the Department. The Task Force sunsets on 6/30, 2023.

By 12/31/21, and every six months thereafter, this bill requires the Department to report to the interim committees of the Legislative Assembly related to judiciary and health care the following information: (1) progress on adoption of EHR system; (2) the number of grievances filed by adults in custody concerning the provision of medical care; (3) the medical services available to adults in custody within Department facilities; and if applicable (4) the progress and impact of a Department program that assigns health care navigators to adults in custody. Furthermore, the Department, in consultation with the Oregon Health Authority, must report to the Legislature by 12/31/22, the health outcomes including health trends and any information the Department determines relevant to the effectiveness of the Task Force.

Effective date is July 1, 2021.

2. [HB 3057](#) (Ch. 92) Individual Data Related to COVID-19

HB 3057 authorizes the Oregon Health Authority (OHA) to disclose to certain persons individually identifiable information related to COVID-19 that is reportable under ORS 433.004 and rules adopted by OHA if disclosure is necessary for the evaluation, treatment or care coordination of individuals who have been tested for COVID-19 or who have had substantial exposure to COVID-19, or is necessary for the state's COVID-19 response and recovery efforts. Sunsets June 30, 2022.

Effective date is May 24, 2021.

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3. [HB 3159](#) (Ch. 549) REALD + SOGI Patient Data

HB 3159 expands upon existing requirements to collect race, ethnicity, language and disability (REALD) data for every COVID-19 encounter, to require collection of REALD data and sexual orientation and gender identity (SOGI) data for all patients annually. The bill requires CCOs, health care providers, and health insurers to collect from patient, client or member data on race, ethnicity, preferred spoken and written languages, disability status, sexual orientation and gender identity. The Oregon Health Authority is required to set-up an electronic data collection system prior to requiring action by all licensed providers in the state. Rulemaking is forthcoming, which will provide the final timeline for compliance.

Effective date is September 25, 2021

4. [HB 3352](#) (Ch. 554) Cover All People

HB 3352 expands eligibility for children up to age 26 and parents of children enrolled in the program who would qualify for medical assistance but for immigration status. The bill includes \$100 million to fund the program for two years and directs the Oregon Health Authority to develop an implementation plan.

Effective date is September 25, 2021.

5. [HB 3398](#) (Ch. 639) Delay of Implementation on Family Medical Leave

This bill delays implementation requirements and extends deadlines related to family and medical leave benefits created by HB 2005 (2019). HB 2005 (2019) created an insurance program administered by the Oregon Employment Department (OED) to provide employees with a portion of wages while on family, medical, or safety-related leave. HB 3398 extends deadlines for OED to adopt rules, submit reports to the Legislature, and reimburse the General Fund for start-up costs. The start date for employer and employee contributions is now 1/1/23 instead of 1/1/22. Employees will be eligible for benefit payments beginning 9/3/23 instead of 1/1/23. Employer assistance grants (ORS 657B.200) become operative on 9/3/23 instead of 1/1/23.

Effective date is September 25, 2021.

6. [SB 110](#) (Ch. 271) Repeal of Sunset of Early Discussion and Resolution Program

This bill repeals the sunset date of 12/31/23 and makes permanent the Early Discussion and Resolution (EDR) program for resolving adverse health care incidents that have resulted in

serious injury or death to a patient. SB 483 (2013) established a process for more transparency, communication and reconciliation outside of the court system. Within this process, a patient or patient's representative, or a health care facility or provider, may notify the Oregon Patient Safety Commission (OPSC) of an "adverse event," which means a negative consequence of patient care that is unanticipated, is usually preventable and results in or presents a significant risk of patient injury. ORS 742.407(1)(a). The notice is not a claim for compensation or payment. However, the parties can coordinate a discussion regarding the incident, outcomes and resolution, if any. These discussions are confidential and do not constitute an admission of liability. Parties in EDR report the outcome of the discussion to OPSC. The EDR process allows for open conversation and opportunity to learn from the adverse event, which may lead to closure, but does not prevent the option of pursuing a legal strategy.

Effective date is January 1, 2022.

7. [SB 199](#) (Ch. 328) Advance Directive Form

Oregon's advance directive form had not been updated since 1993, when it was originally established in statute. SB 199 makes important changes to the Advance Directive for Health Care form, including providing increased opportunity to outline health care instructions and a section on values and spiritual beliefs. For example, the health care instructions differentiate circumstances when an individual has a terminal condition, an advanced progressive illness or is permanently unconscious. Also, the new form allows individuals to write specific wishes and requires the appointed health care representative (and an alternate) to accept appointment.

Effective date is September 25, 2021.

II. BEHAVIORAL HEALTH

1. [HB 2086](#) (Ch. 667) Establishment of Culturally Responsive Behavioral Health Services

HB 2086 is a complex bill that codifies the recommendations of the Governor's Behavioral Health Advisory Council established by Executive Order in October 2019. It declares a state of emergency related to behavioral health treatment and provides funding to study, further understand, and attempt to remedy the state of the crisis and funding provisions. The bill requires the Oregon Health Authority to report on Medicaid rates paid for behavioral health services and asks care providers to collect data on children and adolescents with behavioral health needs. It also directs OHA to ensure payment parity.

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The bill also requires OHA to establish culturally responsive behavioral health services driven by people of color, tribal communities, and people of lived experience. Finally, the bill directs the Oregon Health Policy Board to establish a Behavioral Health Committee to establish metrics that improve the quality of behavioral health services.

HB 2086 is effective August 6, 2021.

2. [HB 2315](#) (Ch. 114) Suicide Risk Continuing Education

Oregon saw an increased rate of suicide in 2019 and now has the 9th highest rate of suicide in the country. Once HB 2315 goes into effect on September 25, 2021, licensees regulated by the Oregon Health Authority will be required to complete continuing education at specified intervals to learn about suicide risk assessment, treatment and management. The required education is two hours every two years or three hours every three years.

The effective date is September 25, 2021.

3. [HB 2316](#) (Ch. 521) Behavioral Health Housing Incentive Fund

For people facing mental health and substance use challenges, housing can be an essential part of recovery and wellness. HB 2316 establishes the Behavioral Health Housing Incentive Fund and redirects interest and funds from the Housing for Mental Health Fund, which is set to be repealed in 2022. The bill directs the Oregon Health Authority to oversee the fund. Funding will be continuously appropriated and will be used for the development of community-based housing, including licensed residential treatment centers, for individuals with mental illness and/or substance use disorders, and for supportive housing-related services.

The effective date is July 19, 2021.

4. [HB 2333](#) (Ch. 220) Psychotropic Medications and Foster Care

ORS 418.517 provides the Department of Human Services guidelines for use of psychotropic medication for children in foster care. HB 2333 directs DHS to submit a quarterly report to the legislature regarding the use of such medication by children in foster care starting April 1, 2022.

The law is effective January 1, 2022.

5. [HB 2417](#) (Ch. 617) Expansion of Crisis Stabilization Services

HB 2417 is a package of laws intended to create a system of prevention and intervention for

behavioral health crises. It provides funds for counties and cities to establish and maintain mobile crisis intervention teams across the state. The bill also provides for the creation of a crisis hotline center that will receive calls, texts and chats from the 9-8-8 suicide prevention and behavioral health crisis hotline. The hotline center is the first step toward implementing the National Suicide Hotline Designation Act in Oregon. Finally, the bill outlines requirements for crisis stabilization centers, including the requirement that such facilities accept patients brought in or referred by first responders, be able to assess physical health needs of individuals, and screen individuals for suicide risk.

The law is effective July 27, 2021.

6. [HB 2469](#) (Ch. 116) CCO Coverage of Mental Health Wellness Appointments

HB 2469 amends ORS 414.766 by adding mental health wellness appointments as a behavioral health service that coordinated care organizations are required to provide to members.

The law is effective January 1, 2022.

7. [HB 2949](#) (Ch. 677) Mental Health Workforce Recruitment

HB 2949 seeks to curb one of the leading causes of limited access to behavioral health care: workforce instability. To ensure that the workforce reflects the needs of Oregonians seeking behavioral health care, the bill directs the Oregon Health Authority to provide incentives to increase recruitment and retention including scholarships, loan repayments and grants, particularly for providers who can provide culturally responsive health services to tribal members, people of color, LGBTQ+ individuals, individuals with limited English proficiency and other underserved communities. The bill includes additional programs to address workforce shortages, and appropriates \$200 million for these programs.

The law is effective August 6, 2021.

8. [HB 3037](#) (Ch. 185) Youth Suicide Data Collection

Suicide is now the leading cause of death for Oregonians aged 10-24. HB 3037 creates requirements for cross-system communication and reporting after the suspected suicide of person 24 years of age or younger, and prescribes reporting timelines for medical examiners, medical-legal death investigators, local mental health authorities, and educational institutions.

The law is effective September 25, 2021.

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9. [HB 3045](#) (Ch. 628) OHA Reimbursement of Mental Health Drugs

In 2017, the Legislature created the Mental Health Clinical Advisory Group to implement treatment policies to standardize treatment and improve access to therapies and medications. Originally set to expire in 2022, HB 3045 extends the sunset provision until January 2, 2026, to allow the Advisory Group to finish its work and adopt an implementation plan. The bill also prohibits the Oregon Health Authority from requiring prior authorization for mental health drugs in certain conditions.

The law is effective September 25, 2026.

10. [HB 3046](#) (Ch. 629) Mental Health Reimbursement Mandate

Behavioral health parity requires payers to provide insurance coverage for mental health and substance use disorder treatment that is no less favorable than coverage for medical conditions. Parity has been part of federal law since passage of the Mental Health Parity and Addiction Equity Act in 2008 but enforcement has lagged. HB 3046 incorporates behavioral health parity into Oregon law by amending the Insurance Code (ORS chapter 731) and the Oregon Health Plan (ORS chapter 414). The bill contains many provisions that apply to health insurers, group plans, and coordinated care organizations and includes directions to OHA and DCBS regarding rulemaking and compliance.

This law is effective on January 1, 2022, with most laws operative January 1, 2023.

11. [SB 4](#) (Ch. 670) Requirements for System of Care Advisory Council

The System of Care Advisory Council was created in 2019 to improve systems of care that provide mental health services to youth. To continue the on-going development of the Council, SB 4 directs the Council to appoint an executive director and submit regular reports on expenditures and the council's budget.

The law is effective August 6, 2021.

III. COMMUNITY HEALTH

1. [HB 2077](#) (Ch. 49) OHA Lead-Based Paint Program Authority

Oregon's Lead-Based Paint Program regulates the activities of businesses, agencies, and individuals who work with lead-based paint. It is also charged with overseeing professional

training and certification and responding to concerns regarding lead exposure health effects. HB 2077 grants the Lead-Based Paint Program additional authority to address lead-based paint hazards by modifying standards related to best practices for conducting lead-based paint inspections, authorizing Oregon Health Authority (OHA) to contract with a third party to obtain a lead-based paint risk assessment or control paint hazards and by modifying the statutory process and increasing authority to impose civil penalties related to lead-based paint activities including abatement or control.

HB 2077 took effect September 25, 2021, however the bill is not operative until January 1, 2022.

2. [HB 2081](#) (Ch. 51) Health Care Cost Growth Target Program

In 2019 the Oregon Legislature passed SB 889 that established the Health Care Cost Growth Benchmark program and the Health Care Cost Growth Benchmark Implementation Committee to control the growth of health care expenditures in the state. HB 2081 renames these to the Health Care Cost Growth Target Program and Health Care Cost Growth Target Implementation Committee. It directs OHA to conduct rulemaking to adopt criteria for waiving the requirement to undertake a performance improvement, and for imposing financial penalties on providers or payers that fail to report cost growth data or fail to develop and implement performance improvement plans. It also prohibits OHA from imposing penalties on providers or payers before January 1, 2026 for performance during calendar years 2021 to 2025.

HB 2081 is effective January 1, 2022.

3. [HB 2108](#) (Ch. 59) Independent Residence Facilities

Independent residence facilities provide independent housing arrangements for certain residents between the ages of sixteen and twenty years of age. Currently all independent residence facilities with six or more occupants are required to be licensed by the Department of Human Services (DHS) as child-caring agencies. HB 2108 clarifies that DHS has discretion whether to require an independent residence facility to be licensed as a child-caring agency based applicable criteria.

HB 2108 is effective January 1, 2022.

4. [HB 2139](#) (Ch. 449) Rural Veterans Healthcare Transportation Grant

HB 2139 establishes the Rural Veterans Healthcare Transportation Grant Program within the Oregon Department of Veterans' Affairs to help veterans in eligible areas access transportation to receive services for physical, mental or behavioral health care.

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HB 2139 is effective January 1, 2022.

5. [HB 2359](#) (Ch. 453) Health Care Interpreters

Health care interpreters facilitate communication between patients with limited English proficiency (LEP) and health care providers. HB 2359 requires health care providers to work with health care interpreters (HCI) from the HCI registry administered by the Oregon Health Authority (OHA) except in specific circumstances and updates other requirements related to health care interpreter registration and use. It directs OHA to adopt rules to ensure health care providers that serve medical assistance program recipients utilize and are reimbursed for the use of HCI. It requires OHA to study the best model for online HCI platform and to report to the Legislature by July 1, 2022. HB 2359 authorizes health professional regulatory boards, OHA and the Department of Human Services (DHS) to enforce HCI requirements.

HB 2359 is effective July 14, 2021 with operative provisions effective September 1 and July 1, 2022.

6. [HB 2397](#) (Ch. 616) Senior Emergency Medical Services Innovation Program

HB 2397 establishes the Senior Emergency Medical Services Innovation Program and a corresponding advisory body, the Senior Emergency Medical Services Advisory Council in the Department of Human Services (DHS) to support pilot projects directed toward providing emergency medical services to aging residents in long term and residential care facilities. It requires DHS to submit a report to legislature regarding the pilot projects and prohibits local governing bodies from taking specified local action impacting long term or residential care facilities within their jurisdictions.

HB 2397 is effective January 1, 2022 and operative provisions sunset January 2, 2027.

7. [HB 2591](#) (Ch. 619) Planning Grants for School-Based Health Services

School-based health centers (SBHCs) provide comprehensive physical, mental and preventive health services to youth and adolescents. HB 2591 requires the Oregon Health Authority (OHA) to provide planning grants to 10 school districts or education service districts to evaluate the need for and develop plans for school-based health services. It also requires OHA to develop requirements for up to three school districts or education service districts to receive grants for planning and operation of mobile school-linked health centers and for three school districts or education service districts to receive grants to expand access to mental and physical health care services through use of telehealth. It extends the sunset on current

program for school planning grants and technical assistance from January 2, 2026 to January 2, 2028.

HB 2591 is effective July 27, 2021.

8. [HB 2842](#) (Ch. 622) Healthy Homes Programs

HB 2842 establishes the Healthy Homes Program and the Healthy Home Repair Fund within the Oregon Health Authority (OHA) to award grants to eligible entities that provide financial assistance to low-income households and communities impacted by environmental justice issues and to landlords to repair and rehabilitate residential dwelling units. It also establishes the Interagency Task Force on Healthy Homes (staffed by OHA) to propose and evaluate solutions to address health hazards present in housing and make recommendations to the Legislature. The Interagency Task Force sunsets January 2, 2023.

HB 2842 is effective September 25, 2021.

IV. HEALTH EQUITY

1. [HB 3353](#) (Ch. 467) CCO Budget to Improve Health Equity

HB 3353 requires the Oregon Health Authority (OHA) to seek federal approval of an amendment to state Medicaid demonstration projects to permit coordinated care organizations (CCOs) to use a portion of global budgets to improve health equity by addressing preventable differences experienced by socially disadvantaged populations, address social determinants of health, diversify care locations, or enhance payments to providers who advance health equity or who can demonstrate increased funding will improve health services provided to the community as a whole. The expenditures can be counted as medical expenses for purposes of required medical loss ratio in the CCO's base medical budget and in calculation of the global budget and flexible spending for a given year.

Effective date is September 25, 2021.

2. [SB 70](#) (Ch. 645) OHA Work with Regional Health Equity Coalitions

SB 70 requires the Oregon Health Authority (OHA) to work with regional health equity coalitions, which are autonomous, community-led, cross-sector groups that address health inequities experienced by priority populations, with the leading priority being communities of color. Regional health equity coalitions are independent of coordinated care organizations (CCOs) and are supported by a federally recognized Indian tribe in Oregon or a community-

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based nonprofit entity. This legislation appropriates moneys to fund additional grants for organizations seeking to build regional health equity coalitions and provides additional staff support from OHA.

Effective date is July 27, 2021.

3. [HR 6](#) (Resolution) Racism is a Public Health Crisis

HR 6 is a resolution declaring racism to be a public health crisis in Oregon. Adopted by the House on 6/25/21 and filed with the Secretary of State on 6/30/21.

V. HOSPITAL AND MEDICAL OPERATIONS

1. [HB 2362](#) (Ch. 615) Mergers, Acquisitions, Affiliations and Contracts

HB 2362 gives the Oregon Health Authority (“OHA”) authority to review and approve certain transactions such as mergers, acquisitions, affiliations, and select contracts involving health care entities. HB 2362 requires health care entities in Oregon to provide 180 days’ advance written notice of any specified “material change transaction” to OHA. Notice of certain material change transactions should be provided to the Department of Consumer and Business Services (“DCBS”).

A “material change transaction” includes many health care mergers, acquisitions, affiliations, and some contracts. HB 2362 defines this term as transactions in which one party had an average revenue of \$25 million or more in the preceding three fiscal years and the other party had an average revenue of at least \$10 million in the preceding three fiscal years, or in the case of a new entity, is projected to have an average revenue of at least \$10 million in the first full year of operation as described in more detail in the bill. A material change transaction may also involve a health care entity in this state and an out-of-state entity when certain conditions are met. The bill covers certain contracts that “eliminate or significantly reduce . . . essential services.”

HB 2362 also specifies what “material change transaction” does not include. For example, “material change transaction” does not include certain clinical affiliations for research or medical education, medical service contracts, specified affiliations, or certain management and administration agreements, and certain value-based payment arrangements.

HB 2362 does not apply to long term care facilities, FQHCs and certain other specified facilities.

Once the required notice has been provided, OHA will conduct a preliminary review to determine if the transaction should be approved, approved with conditions, or moved into a more extended comprehensive review process that must be completed within 180 days of receipt of notice unless the parties to the transaction agree to an extension of time. The more comprehensive process may involve the appointment of a review board of stakeholders and public hearings. Once that review process is complete, OHA can approve the transaction, approve the transaction with conditions, or disapprove the transaction. Certain transactions involving emergency situations are exempt from review.

If the entities involved receive approval or conditional approval, HB 2362 requires them to notify OHA upon completion of the transaction. OHA then undertakes follow-up reviews one, two, and five years after approval. The review process requires OHA to analyze the parties' compliance with any conditions imposed upon them during the approval process, the cost trends and cost growth trends of the parties, and the impact of the transaction on the health care cost growth target established under Oregon law. Violations of the conditions or other provisions of bill may result in injunctions and civil penalties of up to \$10,000 per offense.

HB 2362 also directs OHA to engage in rulemaking and to adopt by rule certain criteria approved by the Oregon Health Policy Board.

HB 2362 takes effect on January 1, 2022. Section 2 of HB 2362 becomes operative on March 1, 2022.

2. [HB 2622](#) (Ch. 362) Surgical Smoke Evacuation

HB 2622 requires hospitals and ambulatory surgery centers to policies that require use of smoke evacuation system during surgical procedures likely to generate surgical smoke.

HB 2622 takes effect on January 1, 2023.

3. [HB 2650](#) (Ch. 122) Emergency Services for Police Dogs

HB 2650 allows emergency medical services providers to provide emergency transportation for treatment to police dogs injured in line of duty, as long as the transportation does not interfere with emergency transportation of humans.

HB 2650 took effect on September 25, 2021.

4. [HB 2910](#) (Ch. 623) Emergency Medical Transport Fee

HB 2910 requires the Oregon Health Authority (OHA), upon receipt of approval by CMS, to

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assess a fee on emergency medical services providers to enhance federal financial participation in the cost of providing ground emergency medical services in Oregon. OHA may use the fee, interest, penalties assessed on providers and associated federal financial participation less any costs incurred by authority to administer program to reimburse emergency medical services providers for costs of emergency medical services transports.

HB 2910 takes effect on July 27, 2021.

5. [HB 2965](#) (Ch. 243) Public Health Modernization

HB 2965 extends the deadline set by the Oregon Health Authority pursuant to ORS 431.131 for local public health authorities to submit plans to apply the foundational capabilities necessary to protect and improve the health of the residents of this state and to achieve effective and equitable health outcomes for the residents of this state. HB 2965 extends the previous deadline of December 31, 2023, by two years, to December 31, 2025.

HB 2965 takes effect on January 1, 2022.

6. [HB 3016](#) (Ch. 248) Nurse Staffing During State of Emergency

HB 3016 allows a hospital to deviate from a hospital nurse staffing plan upon declaration of a national or state emergency. If this occurs, the hospital must report on nurse staffing needs, including developing a contingency staffing plan that includes crisis standards of care. HB 3016 also requires approval from the hospital nurse staffing committee if a deviation from the hospital nurse staffing plan is in effect for more than 90 days.

HB 3016 takes effect on January 1, 2022.

7. [HB 3234](#) (Ch. 373) School District Instruction on Organ and Tissue Donation

HB 3234 requires each school district to provide instruction on organ and tissue donation that is designed to develop a knowledge of the lifesaving potential of organ and tissue donations.

HB 3234 takes effect on January 1, 2022; the districts must provide instruction by July 1, 2025.

8. [HB 3284](#) (Ch. 305) Protecting Personal Health Data

HB 3284 requires companies engaged in contact tracing, including through the use of

mobile apps, to obtain affirmative and clear express consent before collecting, using, or disclosing information about a person's exposure to or infection by COVID-19. The law does not apply to data (1) obtained in the context of an employment relationship, (2) collected to comply with a legal obligation, or (3) that was publicly available for reasons other than COVID-19 or has been de-identified.

Contact tracing companies must also provide a way to revoke consent and must delete information 65 days after it has been collected (except for de-identified information used for statistical purposes). HB 3284 prohibits use of collected information for commercial advertising or marketing algorithms. HB 3284 also requires contact tracing companies to take reasonable measures to ensure the accuracy of the data, provide a method for correcting inaccuracies, and establish safeguards to protect the data from a data breach, and establish and implement policies that prevent the data from being used for a discriminatory purpose.

A violation of the requirements of HB 3284 constitutes a violation of the Unlawful Trade Practices Act, ORS 646.607.

HB 3284 took effect on June 15, 2021 and sunsets 180 days after the Governor terminates the declaration of emergency related to the COVID-19 pandemic.

9. [HB 5024](#) (Ch. 668) OHA Budget Allocation

HB 5024 fully funds OHA.

HB 5024 took effect on July 1, 2021.

10. [SB 567](#) (Ch. 584) Civil Rights Includes Provider Discrimination

SB 567 is an anti-discrimination law specific to healthcare. It amends ORS 659A.142 by adding a prohibition against discrimination by healthcare providers based on protected classes, and makes it an unlawful practice to deny, limit or restrict treatment to a patient based on their protected status. The law is based on the concepts of the Americans with Disabilities Act and Section 1557 of the Affordable Care Act, but may have a broader reach which will need to be developed by administrative enforcement and case law. A provider is not required to provide treatment that "is prohibited by state or federal law." Because of its inclusion in ORS chapter 659A, BOLI will have enforcement authority and there is a private right of action with attorney fee entitlement.

The law is effective July 19, 2021.

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11. [SB 703](#)

(Ch. 655)

Direct Care Worker Representative on Quality Measurement Council

SB 703 adds a direct care worker or a representative of a direct care worker who works in a residential care facility to the Residential Care Quality Measurement Council. SB 703 also requires a residential care facility to submit an updated statement to the Department of Human Services any time there is change in management or ownership, and directs the Department to conduct a study of cost of care in, sufficiency of reimbursement paid to, and average compensation paid to staff in residential care facilities.

SB 703 takes effect on January 1, 2022.

VI. INSURANCE

1. [HB 2010](#)

(Ch. 507)

Oregon Public Option Proposal

HB 2010 directs the Oregon Health Authority (OHA) to work in collaboration with the Department of Consumer and Business Services to establish an implementation plan for a public health plan made available to individuals and families seeking health insurance coverage through the Oregon Health Insurance Marketplace and to small employer groups. The agencies are required to analyze various considerations when designing the plan which include federal waivers, need for new coverage, impact on the health insurance market in Oregon, impact of the American Rescue Plan Act, role of a possible state-based exchange platform, potential adverse consequences, possible subsidies, and strategies developed by Task Force on Universal Health Coverage.

OHA and DCBS are permitted to rely upon previous studies conducted for the state by Manatt, Phelps and Phillips, stemming from passage of SB 770 (2019) and any other relevant public option studies or reports within the last five years. The agencies are permitted to contract with outside expertise, if necessary. OHA and DCBS must report to the legislature with an implementation proposal no later than January 1, 2022.

OHA is also directed to develop recommendations for a global budget health care delivery model pilot with recommendations to the Legislature due no later than July 1, 2022.

Effective date is July 19, 2021.

2. [HB 2046](#) (Ch. 205) Health Insurance Regulatory Requirements and APAC Access

The Department of Business and Consumer Services (DCBS) initiates an “ACA Reconnect” bill every two years to update health insurance regulation for Oregon consumers and to align with federal standards. This bill implements defines a short-term, limited duration (STLD) policy and requires these policies to include a notice to insureds that could be prescribed by DCBS through rulemaking. The bill requires individual health benefit plans in Oregon to establish a due date for a first premium no earlier than 15 days after the data coverage begins or 15 days after the first invoice, whichever is later. Health plans are required to offer individual health plans a minimum 30 day grace period for premium payment and a notice to members within a specified timeframe. Adverse benefit determinations must be communicated in a culturally and linguistic appropriate manner; be consistent with federal law; and include certain required information. Health plans are required to provide in their policies whether authorization is required for release of medical information for external review.

This bill allows DCBS to gain access to the OHA managed All Payer All Claims (APAC) data reporting system for use in carrying out their duties and defines personally identifiable information from APAC as confidential and not subject to public disclosure.

Effective date is January 1, 2022

3. [HB 2508](#) (Ch. 117) Telehealth Parity Mandate for Health Insurance

HB 2508 requires Coordinated Care Organizations (CCOs) and commercial health plans to reimburse providers for telemedicine visits at the same rate as in-person visits. This mandated reimbursement includes “audio only” visits but does not include the use of facsimile, electronic mail or text messaging. The bill requires health plans to ensure access to telemedicine during a public health emergency and to reimburse interpreters at the same rate as in-person visits. Specific health plan utilization management and credentialing requirements are prohibited. There is not a sunset to this requirement.

Effective date is June 1, 2021

4. [HB 2517](#) (Ch. 154) Prior Authorization and Independent Review Requirements

Health insurers implement utilization management and step therapy protocols to ensure quality care and control excessive health care costs often known as prior authorization requests. HB 2517 requires Coordinated Care Organizations (CCOs) and commercial health plans to report certain data related to prior authorization requests to providers. The bill also

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modifies grievance and appeal procedures to require an independent review organization to have at least one reviewer be a clinician in the same or similar specialty as the provider who prescribed the treatment at issue. Health insurers are required to post online their utilization requirements for treatments, drugs or devices subject to prior authorization for coverage by June 1, 2022. Insurers must provide a 60-day notice before making changes to their prior authorization requirements. The Department of Consumer and Business Services (DCBS) can engage in rulemaking to prescribe the reporting requirements for health plans and CCOs.

Effective date is January 1, 2022

5. [HB 2623](#) (Ch. 160) Cost Sharing Limits for Coverage of Insulin

HB 2623 is aimed at controlling out-of-pocket costs for Oregon consumers who require a regular prescription of insulin for the treatment of diabetes. HB 2623 prohibits commercial health benefit plans from applying cost-sharing or out-of-pocket costs in excess of \$75 for a 30-day supply or \$225 for a 90-day supply of insulin. The Department of Consumer and Business Services (DCBS) is required to annually increase the maximum out-of-pocket cost by the percentage increase in the cost of living for the previous calendar year. Health plans cannot subject insulin coverage to a policy deductible. These requirements apply to health plans issued, renewed, or extended on or after January 1, 2022.

Effective date is January 1, 2022

6. [SB 2](#) (Ch. 384) Proton Beam Therapy Requirements

SB 2 prohibits commercial health plans from implementing prior authorization or other utilization management requirements on coverage of proton beam therapy for prostate cancer that are more restrictive than prior authorization or utilization management requirements for coverage of radiation therapy.

Effective date is January 1, 2022

7. [SB 3](#) (Ch. 312) Emergency Medical Transport Requirements

SB 3 defines emergency medical service “transport” as transportation of an individual to the “nearest medical facility capable of meeting the needs of the individual.” The bill requires coverage of emergency medical service transports.

Effective date is January 1, 2022

8. [SB 65](#) (Ch. 569) Oregon Health Insurance Exchange Moved from DCBS to OHA

The Department of Consumer and Business Services (DCBS) currently administers the Oregon Health Insurance Marketplace (OHIM) or Exchange to allow Oregon consumers to purchase individual health plans designed and required by the Affordable Care Act (ACA). SB 65 moves administration of OHIM to the Oregon Health Authority (OHA) on June 30, 2021. Requires OHA to report annually on the progress of integration to the Legislature.

Effective date is September 19, 2021.

9. [SB 358](#) (Ch. 650) Delay of Sunset on Coverage for Applied Behavior Analysis

SB 358 extends the sunset requirement for health insurance coverage for applied behavior analysis services from January 2, 2022 to January 2, 2030.

Effective date is January 1, 2022.

10. [SB 428](#) (Ch. 579) Task Force on Universal Health Care

SB 428 extends the requirement for the Task Force on Universal Health Care to submit a report to the Oregon Legislature to the 2022 regular session.

Effective date is July 19, 2021.

11. [SB 558](#) (Ch. 339) Prohibition on Mail Order Rx for Insureds in Medical Assistance

When an insured individual is also enrolled in a medical assistance program, SB 558 prohibits health benefit plans and prescription drug coverage contracts from prohibiting that prescriptions be filled at a local pharmacy or from requiring prescriptions to be filled at a mail order pharmacy.

Effective date is January 1, 2022.

12. [SB 699](#) (Ch. 281) Pre-Existing Condition Requirements Prohibited for Grandfathered Plans

Grandfathered health benefit plans are plans introduced prior to passage of the federal

HEALTH LAW

Affordable Care Act (ACA) in March 2010. These insurance plans are exempt from many ACA requirements including the prohibition on imposing exclusions for treatment for pre-existing conditions. SB 699 prohibits grandfathered plans from applying pre-existing condition exclusions. This applies to grandfathered plans renewed or extended on or after the effective date of the bill.

Effective date is September 25, 2021.

13. [SB 748](#) (Ch. 342) PEBB/OEBB, Commercial Health Plans Must Cover Adult Disabled Children

SB 748 requires the Public Employees' Benefit Board (PEBB), Oregon Educators Benefit Board (OEBB), along with commercial individual and small group health benefit plans to provide health insurance coverage for adult disabled children of insureds when the disability prevents the adult child from engaging in self-sustaining employment; the adult child had insurance coverage immediately before exceeding the age requirements for eligibility; and the insured claims the disabled adult child as a dependent for tax purposes. For purposes of this legislation, a child is defined as an individual who is disabled and 26 years of age or older.

Effective date is January 1, 2022.

VII. LICENSING/ SCOPE OF PRACTICE

1. [HB 2072](#) (Ch. 447) Fee Increase for Home Health Agency License

HB 2072 amends ORS 443.035 by increasing licensing fees for home health agencies upon initial licensure, renewal and change of ownership.

HB 2072 takes effect on January 1, 2022.

2. [HB 2075](#) (Ch. 513) Establishment of License and Fee for Radiation Devices and Equipment

HB 2075 modifies registration fees for certain radiation devices and equipment and establishes vendor and annual fees for radiation devices and equipment, including tanning devices. This measure increases registration fees for tanning devices. HB 2075 requires that persons engaged in selling, leasing, installing, repairing, servicing, marketing, inspecting, calibrating or providing consultation services regarding radiation devices or equipment, including X-ray machines and tanning devices, must obtain a vendor license from OHA.

HB 2075 takes effect on January 1, 2022.

3. [HB 2078](#) (Ch. 50) Repeal of Common Credentialing Program and Other Technical Fixes

HB 2078 includes technical changes that include repeal of the Common Credentialing program; elimination of the Pain Management Commission's requirement to perform curriculum reviews; revision of requirements for licensed professionals to periodically complete a pain management education program; and amends the Public Employee Benefits Board (PEBB) statute to align with the Affordable Care Act regarding the coverage of temporary employees.

Effective date is January 1, 2022

4. [HB 2088](#) (Ch. 514) Tribal Health Worker Qualification Criteria

HB 2088 defines a "tribal traditional health worker" and adds tribal traditional health worker to the Oregon Community Health Workers Association.

HB 2088 takes effect on January 1, 2022.

5. [HB 2113](#) (Ch. 94) Geographic Diversity Requirements for Oregon Medical Board

HB 2113 expands the geographic diversity requirements for all members of the Oregon Medical Board.

HB 2113 took effect on September 25, 2021.

6. [HB 2117](#) (Ch. 211) Psychologist Associate Licensing

HB 2117 amends ORS 675.850 regarding psychologist associates due to reduced demand for psychologist associate licenses. Although the Board of Psychology will continue to regulate psychologist associates who were licensed before the operative date of this measure, HB 2117 repeals the Board of Psychology's regulatory authority over new psychologist associates.

HB 2117 took effect on September 25, 2021.

7. [HB 2528](#) (Ch. 530) Dental Therapist Licensing

HB 2528 creates dental therapy licensure through the Oregon Board of Dentistry. Dental

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therapists are required to dedicate at least 51 percent of their practice to serving underserved populations or in dental health professional shortage areas. This measure specifies the education program and examination requirements for dental therapists to become licensed. The Oregon Board of Dentistry is allowed to charge licensure fees to dental therapists. Dental therapists are only allowed to practice pursuant to a collaborative agreement with a supervising dentist. HB 2528 defines the scope of practice for dental therapists and the permitted supervision ratios for supervising dentists.

HB 2528 took effect on September 25, 2021.

8. [HB 2619](#) (Ch. 231) Licensure for Genetic Counseling

HB 2619 established licensure requirements for genetic counselors. This measure defines genetic counseling and prohibits a person from practicing genetic counseling unless licensed by the Health Licensing Office (HLO). The HLO will regulate licensure for genetic counselors. HB 2619 defines the scope and practice for genetic counselors and requires them to refer patients to qualified health care providers if they become aware of a medical condition or disease outside the scope of practice for genetic counseling.

HB 2619 took effect on September 25, 2021.

9. [HB 2627](#) (Ch. 69) Dental Hygienist Scope of Practice

HB 2627 amends ORS 680.205 by adding that an expanded practice dental hygienist may perform interim therapeutic restoration after diagnosis by a dentist. This measure defines “interim therapeutic restoration.” HB 2627 specifies the training course required before an expanded practice dental hygienist may perform these procedures, unless exempted by practicing through the OHA dental pilot project and having already completed the training to perform interim therapeutic restorations. This measure requires that interim therapeutic restorations must be added to the practice agreement between an expanded practice dental hygienist and the supervising dentist.

HB 2627 took effect on September 25, 2021.

10. [HB 3036](#) (Ch. 349) Physician Assistant Supervision

HB 3036, also known as the Physician Assistant Modernization Bill, greatly increases the autonomy of physician assistants. This measure amends ORS 677.510 to remove supervision requirements for physician assistants (PA) as part of a national movement for PAs to practice in collaboration with physicians rather than under a physician’s supervision. HB 3036 removes

required “practice agreements” between PAs and supervising physicians, and instead sets forth requirements for “collaboration agreements.”

HB 3036 provides that a PA licensed in Oregon may provide care if the PA enters into a collaboration agreement with a physician, podiatric physician or employer. A PA will be permitted to provide medical services within their scope of practice and for which the PA has obtained informed consent. The degree of autonomous judgment of the PA is determined by community standards of the PA’s primary location of practice and the PA’s education, training, and experience. The PA must engage in collaboration with the appropriate health care provider, as indicated by the condition of the patient, the standard of care and the PA’s education, experience, and competence.

This broad statutory policy directive will be implemented by the Oregon Medical Board. The amendments setting forth requirements for collaboration agreements will be operative as of July 15, 2022. Unlike practice agreements, collaboration agreements do not assign responsibility to supervising physicians. Instead, collaboration agreements describe the manner in which the PA collaborates with the physician and do not represent that the physician accepts legal responsibility for the PA. This framework aligns with changes to the practice of PAs in general, in which PAs exercise autonomous judgment.

If a practice agreement is in place, the PA has the option to enter into a collaboration agreement on or after July 15, 2022 or continue to practice pursuant to the practice agreement. If the PA continues to practice under an existing practice agreement, the PA must enter into a collaboration agreement by the date that the PA’s license is up for renewal or December 31, 2023, whichever is later.

HB 3036 took effect on June 23, 2021.

11. [SB 39](#) (Ch. 189) Modifications to Oregon Nurse Practice Act

SB 39 amends Oregon statutes relating to the Nurse Practice Act. This measure redefines the “practice of nursing” and the rules for delegation of nursing care to nursing assistants and unlicensed personnel. SB 39 clarifies controlled substances an advanced practice nurse may prescribe. This measure also clarifies timing of licensure renewal for nurses.

SB 39 took effect on September 25, 2021.

12. [SB 40](#) (Ch. 131) Clinical Requirements in Nursing Education for Licensure

SB 40 amends ORS 678.040 and requires that a nurse graduate from a nursing education

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program that includes a clinical component in its curriculum. This measure allows the Oregon State Board of Nursing to define the “clinical component” required.

SB 40 took effect on September 25, 2021.

13. [SB 438](#) (Ch. 102) Physician Assistant Authorized to Receive Test Results

SB 438 expands ORS 431A.570 by allowing a physician assistant to receive results of an inmate’s court-ordered communicable disease test.

SB 438 takes effect on January 1, 2022.

14. [SB 763](#) (Ch. 593) Licensing for Pharmaceutical Sales Representatives

SB 763 establishes required licensure of pharmaceutical representatives through the Department of Consumer and Business Services (DCBS). A person cannot engage in the business of a pharmaceutical representative without first obtaining a license unless the person engages in that business in Oregon for less than 15 days a year. This measure specifies what professional education a pharmaceutical representative must complete to obtain a license along with the licensure fees. This measure outlines what reporting and documentation a pharmaceutical representative must provide DCBS regarding education and contacts with health care providers. SB 763 prohibits a pharmaceutical representative from engaging in deceptive or misleading marketing of pharmaceutical products. This measure also prohibits a pharmaceutical representative from using a title or designation that could reasonably lead a person to believe they are a health care provider if they are not a licensed health care provider or not authorized to provide health care services. SB 763 prohibits pharmaceutical representatives from attending a patient examination without the patient’s consent. The Director of DCBS is authorized to suspend or revoke a license for violations and may impose civil penalties.

SB 763 took effect on September 25, 2021.

15. [SB 86](#) (Ch. 316) Expansion of Licensing Agency Authority

SB 86 gives authority to DHS and OHA to revoke, suspend, or impose conditions on the license of residential training facility or home if the facility or home is out of compliance, there is evidence of abuse or neglect of a resident or there is a threat to the health, safety or welfare of a resident. If the danger to a resident is imminent, the license may be suspended immediately. SB 86 adds a requirement for DHS and OHA to consider an applicant’s past

regulatory and safety compliance and operational experience in Oregon or other jurisdictions. This measure requires identification on the license of any person with 5% or more ownership interest.

SB 86 takes effect on January 1, 2022.

16. [SB 98](#) (Ch. 132) Board of Medical Imaging Disciplinary Authority

SB 98 expands ORS 688.525 by giving additional disciplinary authority to the Oregon Board of Medical Imaging (OBMI). This measure authorizes OBMI to issue a letter of reprimand or impose probation. SB 98 also clarifies acts subject to discipline.

SB 98 took effect on September 25, 2021.

17. [SB 99](#) (Ch. 133) Board of Medical Imaging Inspection Authority

SB 99 expands ORS 688.595 and adds a designee of OBMI to the list of authorized persons to perform inspections of medical imaging and X-ray machine operators.

SB 99 took effect on September 25, 2021.

VIII. MEDICAID/CCO

1. [HB 2360](#) (Ch. 96) Prohibition on Medical Assistance Screening

In Oregon, nonprofit hospitals and health systems are required to establish financial assistance policies that provide free or discounted care to patients based on their household income. HB 2360 prohibits nonprofit hospitals and health systems from requiring an individual to apply for Medicaid as part of its financial assistance eligibility screening process.

HB 2360 is effective May 26, 2021.

2. [HB 2981](#) (Ch. 462) Palliative Care Services for CCOs

HB 2981 requires the Oregon Health Authority (OHA) to administer a program to provide palliative care services to Medicaid members enrolled in coordinated care organizations (CCOs). It requires that the palliative care services be provided through an interdisciplinary team approach and directs OHA to adopt rules determining eligibility and provider qualification requirements. Residential care facilities and skilled nursing facilities are not subject to the rules

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adopted by OHA for the provision or arrangement of palliative care services for residents of the facilities.

HB 2981 is effective January 1, 2022.

IX. PHARMACY

1. [HB 2074](#) (Ch. 512) Oregon Prescription Drug Monitoring Program Fee Increase

The Oregon Prescription Drug Monitoring Program collects prescription data for all Schedule II, III, and IV controlled substances dispensed to Oregon residents. HB 2074 increases their fee for individuals licensed by the Oregon Board of Pharmacy from \$25 to \$35.

Effective date is September 25, 2021.

2. [HB 2648](#) (Ch. 297) Sale of Pseudoephedrine Allowed Without Prescription

HB 2648 allows a pharmacist or a pharmacy technician to sell a drug containing pseudoephedrine, ephedrine, or a similar drug without a prescription to an individual 18 years of age or older with a valid government-issued photo identification. The relevant drugs must be stored behind the pharmacy counter that is closed to the public. The pharmacy dispensing the drug must use an electronic tracking system. The data collected must be retained by the pharmacy for at least two years from the date of the transaction. Law enforcement are permitted to obtain information contained in the electronic system through a subpoena accepted by the State Board of Pharmacy.

Effective date is September 25, 2021, but the substantive language goes into effect on January 1, 2022.

3. [HB 2958](#) (Ch. 365) Dispensation and Coverage of Antiretroviral Therapies

HB 2958 allows a licensed pharmacist to administer preexposure and post-exposure prophylactic (PEP) and prescribe, dispense, and administer a 30-day supply of preexposure prophylactic (PrEP) antiretroviral drugs in accordance with rules codified by the State Board of Pharmacy. Pharmacists are permitted to order a human immunodeficiency virus (HIV) test and retrieve the results.

Health insurers are required to reimburse for the prescription, dispensation, and administration of preexposure and post-exposure prophylactic antiretroviral therapies, including a pharmacist patient consultation. Insurers are also prohibited from implementing prior authorization requirements during the first 60 days of treatment for medication therapy prescribed for opiate withdrawal or antiretroviral drugs. Health maintenance organizations (HMOs) are exempt from the prior authorization prohibition. Insurance requirements are effective for plans issued, renewed or extended on or after the effective date of the bill.

Effective date is September 25, 2021.

4. [SB 629](#) (Ch. 340) Pharmacist Use of Telepharmacy for Remote Patients

SB 629 defines telepharmacy as the delivery of pharmacy services by a pharmacist by use of electronic and telecommunications technologies to a patient at a remote location staffed by a pharmacy technician. The legislation allows pharmacists to use telepharmacy to dispense prescription drugs to a patient. The State Board of Pharmacy is permitted to adopt rules on supervision of pharmacy technicians and the types of permitted telepharmacy services. The substance of this bill becomes operational on January 1, 2022.

Effective date is September 25, 2021.

5. [SB 711](#) (Ch. 407) DCBS Study of Hormone Replacement Drug Costs

SB 711 requires the Department of Consumer and Business Services (DCBS), as part of the prescription drug transparency program, to conduct a study of disparities in the cost of hormone replacement drugs utilized by men to the drugs utilized by women. DCBS is required to report their findings to the legislature no later than September 15, 2022.

Effective date is September 25, 2021.

6. [SB 844](#) (Ch. 598) Establishment of Prescription Drug Affordability Board

SB 844 establishes a Prescription Drug Affordability Board in the Department of Business and Consumer Services (DCBS) to study and identify opportunities to reduce the cost of prescription drugs in Oregon. The Board will evaluate pharmaceutical spending trends, generic drugs and strategies to lower drug list prices. The Board will review prices for nine drugs and at least one insulin product that cause high out-of-pocket costs from the list of drugs reported to the Prescription Drug Price Transparency Program by drug manufacturers and health insurer.

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Effective date is January 1, 2022.

Housing and Consumer Law

I. HOUSING

- | | | |
|------------|-----------|--|
| 1. HB 2009 | (Ch. 106) | Oregon Foreclosure Moratorium |
| 2. HB 2842 | (Ch. 622) | Healthy Homes Program |
| 3. SB 829 | (Ch. 416) | Right to Possession after Judicial Foreclosure |

II. CONSUMER LAW

- | | | |
|-----------|-----------|-------------------------|
| 1. SB 181 | (Ch. 325) | Pro Bono Representation |
|-----------|-----------|-------------------------|

Tony Kullen: 2006 St John's University School of Law. Oregon State Bar member since 2009.
Joel Shapiro: 1999 Northwestern School of Law. Oregon State Bar member since 2000.
David Venables: 2007 Drake University School of Law. Oregon State Bar member since 2008.

I. HOUSING

1. [HB 2009](#) (Ch. 106) Oregon Foreclosure Moratorium

HB 2009 provided a retroactive renewal of portions of the foreclosure moratorium enacted in Oregon during the 2020 First Special Legislative Session (HB 4204) in response to the COVID-19 pandemic. HB 4204 expired by its terms on December 31, 2020, after the authorized extension by the Governor ended.

HB 2009 retroactively created a new “Emergency period” to run from 11:59 p.m. on December 31, 2020, to 11:59 p.m. on June 30, 2021, with two authorized extension period. The Governor exercised both extensions, so the bill will expire at 11:59 p.m. on December 31, 2021, unless further legislative action is taken.

The major distinctions between HB 2009 (2021) and HB 4204 (2020) are:

1. The new bill does not apply to commercial properties (it continues to cover residential properties including properties where the landlord owns not more than five properties);
2. There is no longer a requirement that certain borrowers prove financial difficulty related to COVID-19 (a notification alone, including by telephone, triggers the protections); and
3. The bill does not apply to personal property used as a domicile (RVs, mobile homes).

In addition to the ban on foreclosures, HB 2009 also provides several other notable protections for borrowers during the emergency period. First, if a borrower notifies the lender that the borrower cannot make a payment because of lost income from the COVID-19 pandemic, the lender cannot treat the borrower’s non-payment of any amount due to the lender during the period as a default. After such notification and, unless otherwise agreed by lender and borrower, the lender must defer collecting payment and must permit the borrower to pay the amount deferred during the emergency period to the loan’s maturity date. Further, once the borrower gives that notice to the lender, a lender may not:

1. Impose charges, fees, penalties, attorney fees or other amounts that the lender might have otherwise imposed or collected from a borrower for failing to make payment;
2. Impose a default rate of interest that the lender might have imposed or collected from a borrower for failing to pay an amount otherwise due during the emergency period;

3. Treat the borrower's failure pay any amount due during the period as an ineligibility for a foreclosure avoidance measure; or
4. Require or charge for an inspection, appraisal or broker opinion of value during the emergency period.

The new law also creates a private right of action for borrowers to recover damages for an ascertainable loss of money or property due to the prohibited actions of a lender or trustee and allows the borrower to recover attorney's fees and costs as well. A lender is not liable for damages for acts taken before the lender receives the lost income notice from the borrower.

HB 2009 took effect on June 1, 2021.

2. [HB 2842](#) (Ch. 622) Healthy Homes Program

HB 2842 establishes the Healthy Homes Program at the Oregon Health Authority. The program will provide grants to entities that provide financial assistance to persons in low-income households to repair and rehabilitate their residences and to landlords to repair and rehabilitate properties inhabited by low-income households. Repair and rehabilitate is defined in the bill and includes: energy efficiency, radon, lead and mold abatement, air filtration systems, and measures to improve fire and seismic resilience.

The bill also establishes the Interagency Task Force on Healthy Homes. The task force will consist of up to nine members appointed by the Governor and representatives of the Oregon Health Authority, the Housing and Community Services Department, the Department of Environmental Quality, the State Department of Energy, the Department of Land Conservation and Development, and the Department of Human Services. Together, they will consider ways to improve the health and safety of homes.

HB 2842 took effect September 25, 2021.

3. [SB 829](#) (Ch. 326) Right to Possession after Judicial Foreclosure

SB 829 provides clarifications to ORS Chapter 18 to confirm that a purchaser at a sheriff's execution sale arising from a judicial foreclosure, or a redemptioner who redeems from that purchaser or a subsequent redemptioner, is entitled to possession of the subject real property after the sale, including during the redemption period. In order to enforce that right, the bill provides that the purchaser or redemptioner may use the forcible entry and detainer ("FED") process provided for under ORS 105.105 to 105.168 to obtain possession and evict the occupants.

HOUSING AND CONSUMER LAW

The bill added clarifying language to changes originally passed in 2009 under SB 241, which provided the same cross references for FED actions after foreclosures. The bill addresses the exceptions to the usual rule that an FED action may only be used to remove a party wrongfully holding the property by force.

The bill arose due to an anomalous decision from the Oregon Court of Appeals, and to clarify the law for practitioners, parties, and the Courts.

On January 2, 2020, the Oregon Court of Appeals issued an opinion that inadvertently overlooked the provisions of ORS Chapter 105 and held that eviction actions after a foreclosure could only be maintained in non-judicial foreclosures. (*Bank of New York Mellon v. Lash*, 301 Or App 658, 457 P3d 345 (2020) (“*Lash I*”). The opinion was subsequently reviewed under a Motion for Reconsideration, withdrawn, and the court subsequently held that eviction actions could be maintained following judicial as well as non-judicial foreclosures. (*Bank of New York Mellon v. Lash*, 303 Or.App. 456 (2020) (“*Lash II*”).

In an effort to avoid similar confusion in the future, SB 829 added a cross reference in ORS 18.946 to ORS 105.105 through 105.168. The bill did not change current law regarding when a person may be evicted from property, but only clarified the law to avoid confusion like that which resulted in the original Nash decision.

Practice Note: The *Nash I* case provides practitioners with a good reminder to carefully select forms, and to exercise independent judgment when completing form pleadings. The discussion in footnote 1 of *Nash I* suggests the attorney for the purchaser might have avoided the anomalous decision if the correct boxes had been checked to more accurately describe the nature of the action, though the Court says in dicta the form would have been the incorrect choice either way.

SB 829 takes effect on January 1, 2022.

II. CONSUMER LAW

1. [SB 181](#) (Ch. 510) Pro Bono Representation

SB 181 is intended to expand the number of clients who have access to *pro bono* representation. For certain statutory claims – including many claims commonly pursued in consumer cases – the court may award reasonable attorney fees to successful parties’ lawyers. However, judges sometimes view *pro bono* representation as not meriting the same level of hourly fee award as legal work performed for a paying client, even though *pro bono* work entails the same diligence and skill.

When an attorney offers to undertake *pro bono* representation for a client who cannot afford to pay an hourly fee, or in a case with a value too small to justify a contingent fee agreement, that does not mean the attorney is agreeing to forego the opportunity to seek a reasonable hourly fee as the prevailing party in the case.

SB 181 directs the court to consider, among other factors, whether the attorney performed the services on a *pro bono* basis or whether the award of attorney fees otherwise promotes access to justice. In this way, SB 181 clarifies that the fact that a case is undertaken *pro bono* should not be deemed by the court as a basis to reduce the reasonable attorney fee that is awarded. Encouraging judges to award the full reasonable attorney fees sought in *pro bono* cases is intended to increase the incentive for lawyers to take on *pro bono* cases and thereby expand the number of low-income Oregonians who have access to legal representation.

SB 181 applies to cases in which a statement seeking attorney fees is filed on or after January 1, 2022.

Indian Law

I. INDIAN LAW

- | | | |
|------------|-----------|---------------------------|
| 1. HB 2055 | (Ch. 510) | Tribal Early Learning Hub |
| 2. SB 183 | (Ch. 326) | Tribal Court Judgments |
| 3. SB 562 | (Ch. 398) | Indian Child Welfare Act |
| 4. SB 731 | (Ch. 408) | Tribal Police Officers |

Kristen Winemiller: 1986 Northwestern School of Law. Oregon State Bar member since 1986.

I. INDIAN LAW

1. [HB 2055](#) (Ch. 510) Tribal Early Learning Hub

Oregon currently has 16 early learning hubs that work to coordinate delivery of early learning services in local regions. HB 2055 creates a Tribal Early Learning Hub that is specifically tasked with serving Oregon's nine federally recognized Indian tribes. The Tribal Early Learning Hub is required to be separate and distinct from the existing early learning hubs.

The bill also requires the Early Learning Division to establish a tribal advisory committee, made predominantly of representatives of the nine federally recognized tribes in Oregon. The advisory committee will advise the Early Learning Council on the delivery of services to tribal communities.

2. [SB 183](#) (Ch. 326) Tribal Court Judgments

SB 183 addresses two separate issues affecting tribes and tribal members in Oregon. The first is to afford broad and comprehensive recognition of judgments, decrees and orders emanating from tribal courts, essentially to place the tribal judiciary on the same footing as the courts of other jurisdictions afforded Full Faith and Credit. The second goal is specific to restraining orders and is intended to provide an effective mechanism to ensure proper recognition and enforcement of tribal protection orders for individuals when they are outside the issuing tribe's jurisdiction.

Section 1 of SB 183A utilizes the framework of ORS Chapter 24 by amending the definitional section, ORS 24.105, to include recognition of tribal judgments, decrees and orders. The intent is to afford this recognition in the same manner that Full Faith and Credit is afforded to the federal government and other states. By taking this approach, the bill incorporates an existing framework that is familiar to judges and legal practitioners.

Sections 2 through 4 of SB 183A provide a new framework for enforcing tribal restraining orders beyond the jurisdiction of the issuing court. These sections harmonize Oregon law with federal law, resolving a conflict between state and federal law that now exists, and expand the geographic reach of the protection afforded. Petitioners of tribal orders (included in Oregon's definition of "foreign restraining") often encounter barriers to proper enforcement of orders when violated outside of the tribal jurisdiction. Gaps in the requirements of the system and varied interpretations of the existing statute have resulted in inadequate and improper recognition and enforcement of these foreign restraining orders. SB 183A identifies clear steps for the courts and sheriffs' offices to take when there is a voluntary request to have an order registered and entered into the court and law enforcement databases. SB 183A also clarifies

the requirements related to law enforcement responding to a report of a violation of a foreign restraining order, to assure that petitioners of tribal orders are afforded the same protections as petitioners of state orders.

SB 183 takes effect on January 1, 2022.

3. [SB 562](#) (Ch. 398) Indian Child Welfare Act

SB 562 makes changes to numerous statutes to incorporate provisions of the federal Indian Child Welfare Act into Oregon laws related to youth offenders, and to laws related to adoptions.

The bill also authorizes the juvenile court to accept and approve a tribal customary adoption, as that term is defined in the bill, if the court determines that it is in the best interests of the child.

SB 562 took effect on September 25, 2021.

4. [SB 731](#) (Ch. 408) Tribal Police Officers

SB 731 was proposed in part to address the possible impacts of other police reform bills on tribal police officers. Under current law, tribal police officers are generally acting under the tribe's own sovereign authority to enforce either tribal law or federal law in Indian Country. With limited exception, the state does not regulate this activity. In addition, SB 412 (2011) provides a mechanism for tribal police officers to engage in certain law enforcement functions outside of Indian Country.

Because of the interaction between SB 412 and other proposed legislation, there is concern that some police reform bills might impact purely internal tribal law enforcement, which may be a violation of federal law.

SB 731 amends ORS 181A.685 to clarify that the provision does not regulate the activities of tribal police officers occurring within Indian country, nor outside of Indian country when within the tribe's civil or criminal jurisdiction.

Additionally the bill requires that tribal governments or law enforcement agencies provide to the state information related to the dates of hire and separation of tribal law enforcement officers, as well as requiring them to follow certain Department of Public Safety Standards and Training requirements related to age, background checks, psychological evaluations and other matters.

INDIAN LAW

SB 731 will take effect January 1, 2022.

Judicial Administration

I. JUDICIAL ADMINISTRATION

- | | | | |
|----|---------|-----------|---|
| 1. | HB 3011 | (Ch. 678) | Program Changes Bill |
| 2. | SB 5505 | (Ch. 658) | Bonding Limits and Courthouse Construction |
| 3. | SB 5506 | (Ch. 659) | Courthouse Construction Expenditure Limitations |
| 4. | SB 5533 | (Ch. 661) | Lottery Allocation |
| 5. | HB 5006 | (Ch. 669) | Budget Reconciliation |
| 6. | HB 5012 | (Ch. 557) | Oregon Judicial Department |

II. OREGON STATE BAR BILLS

- | | | | |
|----|---------|-----------|----------------------|
| 1. | SB 180 | (Ch. 140) | Payee Notification |
| 2. | SB 768 | (Ch. 497) | Oregon State Bar Act |
| 3. | HB 2128 | (Ch. 353) | Tax Security Breach |

I. JUDICIAL ADMINISTRATION

1. [HB 3011](#) (Ch. 678) Program Changes Bill

HB 3011 implements statutory changes necessary to support the 2021 - 2023 biennial budget. Statutory changes affecting the Oregon Judicial Department and the Department of Justice among others were made in the bill. For additional information on these issues, [see XX and XX.](#)

Public Defense Services Commission

Section 7a and 7b of the bill makes technical changes to ORS 151.225 and addresses the Public Defense Services Account with an effective date of January 1, 2022.

Note that Section 7 of the bill would have amended ORS 151.225 if Senate Bill 817 did not pass. Since SB 817 passed, Section 7 will not go into effect.

New Judgeships

Section 8 adds two new statutory judgeships and additional position authority. The judgeships will be located in Deschutes County, increasing the total number of judges in the county to nine. Funding for the positions is included in HB 5006, the budget reconciliation bill.

Litigation

Section 15 requires the Oregon Department of Justice to submit an annual report on litigation involving the state to the standing or interim Joint Committee on Ways and Means.

Effective date August 6, 2021.

2. [SB 5505](#) (Ch. 658) Bonding Limits and Courthouse Construction

Senate Bill 5505 establishes bonding limitations for state agencies, including the Oregon Judicial Department. The bill addresses a number of projects, including:

- **Benton County Courthouse.** Section 1(m)(A) approves approximately \$21 million for the construction of a new facility to replace the Benton County Courthouse.
- **Clackamas County Courthouse.** Section 1(m)(B) approves approximately \$95 million for the construction of a new facility to replace the Clackamas County Courthouse.

- **Crook County Courthouse.** Section 1(m)(C) approved almost \$12 million to construct a new facility to replace the Crook County Courthouse.
- **Linn County Courthouse.** Section 1(m)(D) approved just over \$16 million to construct a new facility to replace the existing Linn County Courthouse.
- **Oregon Supreme Court Building Renovation.** Section 1(m)(E) approved almost \$22 million to renovate the Oregon Supreme Court building, including seismic updates, energy efficiency improvements, and various systems and safety upgrades.

Effective date July 27, 2021

3. [SB 5506](#) (Ch. 659) Courthouse Construction Expenditure Limitations

SB 5506 establishes the expenditure limitations for the next six years. The bill addresses a number of projects, including the Oregon Supreme Court. The bill provides approval for \$21,700,000 for the Oregon Supreme Court Building Renovation.

Effective date July 27, 2021.

4. [SB 5533](#) (Ch. 661) Lottery Allocation

SB 5533 makes and adjusts a number of allocations of the net proceeds of the Oregon State Lottery, the Criminal Fines Account, and the Oregon Marijuana Account.

Ballot Measure 110 Implementation

This biennium, with the passage of Ballot Measure 110 in November of 2020, approximately \$321 million from the Oregon Marijuana Fund will be directed to the new Drug Treatment and Recovery Fund. For additional information on Ballot Measure 110 implementation, please review SB 755 found in the Criminal Law Section.

Security and Emergency Preparedness for State and County Courts

Section 20 allocates just over \$4 million from the Criminal Fines Account for state court security and emergency preparedness. This is a 9.6% increase from the 2019-2021 Legislatively Approved Budget. In addition, the legislature allocated approximately \$3 million to county court facilities security, a 4.3% increase.

JUDICIAL ADMINISTRATION LAW

State Court Technology Fund

In Section 21, \$3,887,500 was allocated from the Criminal Fine Account to the State Court Technology Fund. This maintains the state funding level from the 2019-2021 legislatively approved budget.

Effective date July 27, 2021

5. HB 5006 (Ch. 669) Budget Reconciliation

HB 5006 is the omnibus General Fund budget reconciliation bill for the 2021 legislative session. Funding for projects and programs within the Oregon Judicial Department, the Oregon Department of Justice, and the Public Defense Services Commission were appropriated in this bill.

In addition, this bill contains the American Rescue Plan Act (ARPA) funding distributed throughout Oregon. A full list of ARPA fund projects, as well as other appropriations by bill section, can be found here:

(<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/CommitteeMeetingDocument/246325>).

Judgeships

Sections 26 and 27 allocates approximately \$1.6 million for two new statutory circuit court judgeships (1.5 FTE) in the eleventh Judicial District and Deschutes County as well as six permanent full-time support staff. Statutory modifications for the new judgeships can be found in HB 3011.

Family Treatment Courts

Section 34 allocates \$10 million to state agencies for family treatment court programs. In addition, a Budget Note attached to SB 5006 directs the Oregon Judicial Department, as well as other stakeholders to convene a statewide Family Treatment Court Conference with a focus on best practices.

Pretrial release

Section 35 allocates \$2.5 million to the Oregon Judicial Department for the implementation of pretrial release modifications authorized under SB 48 (2021). See the Criminal Law Section for a discussion of SB 48.

Expungements

Section 164 allocates \$1.2 million for limited duration positions for the expungement of criminal records for marijuana infractions.

Oregon Law Center

Section 84 provides a one-time allocation of \$1,000,000 for disbursement to Oregon Law Center to provide legal help related to housing issues.

Effective date August 6, 2021

6. [HB 5012](#) (Ch. 557) Oregon Judicial Department

HB 5012 is the budget bill for the Oregon Judicial Department (OJD). The 2021 - 2023 total funds budget for OJD is \$636,811,376. This is a 3.6% increase from the 2019-2021, notwithstanding the one-time funds for capital construction projects.

Effective date July 19, 2021

II. OREGON STATE BAR BILLS

1. [SB 180](#) (Ch. 140) Payee Notification

Senate Bill 180A establishes a process for insurance companies to notify claimants when a payment is made to an attorney for settlement of a case. The measure requires the claimant's attorney to provide contact information for the client. SB 180A makes explicit that an insurer's attorney is permitted to communicate directly with the attorney's client for the sole purpose of providing the notice, either by (1) having the insurance company copy the client on the settlement letter to the attorney or (2) forwarding specific information to the client. The language clarifies that nothing in the bill affects the validity of any settlement, nor does it create new causes of action or a defense.

Effective Date is January 1, 2022.

2. [SB 768](#) (Ch. 497) Oregon State Bar Act

SB 768A addresses several issues regarding the organization and governance of the Oregon State Bar:

JUDICIAL ADMINISTRATION LAW

- Section 2 clarifies that Client Security Fund staff and committee member immunity applies not only to pending claims but also to any awards to victims of lawyer theft that may result from a claim to Fund.
- Section 3 - 10 allows the court when it needs to take jurisdiction over a law practice and appoint a custodian to appoint either the Oregon State Bar to act as a custodian or another attorney. Further, the bill allows either the Oregon State Bar or an attorney to petition the court to appoint a custodian. Additionally, if the Bar declines the appointment as custodian, the court may appoint another attorney to act as the custodian instead.
- Section 11 clarifies that courthouse staff and court volunteers, under the supervision of a providing judge or a program authorized by the presiding court, who provide guidance on court forms, basic assistance and general legal information to court users are not engaged in the unlawful practice of law.
- Section 12 allows the Oregon State Bar House of Delegates to vote via electronic ballot, so long as the vote of each member is recorded and published after the meeting.
- Section 13 provides a mechanism for the Oregon Supreme Court to adopt rules to permit the admission of associate members of the bar without the requirement of a bar exam.
- Section 14 provides an additional mechanism for the Oregon State Bar Board of Governors (BOG) to remove a member from the board. Currently, the statute allows for removal of a bar member by a vote of the region. This adds an additional mechanism for BOG member removal.
- Section 15 exempts the Oregon State Bar from the requirement in HB 4212 (First Session of 2020) to record all meetings.
- Section 16 adds a cross reference to clarify the Professional Liability Fund is not subject to the Oregon Insurance Code.

Effective date July 14, 2021.

3. [HB 2128](#) (Ch. 353) Tax Security Breach

Establishes reporting requirements of tax professionals to the Department of Revenue (DOR) in the event of a breach of security that compromises taxpayer information. Requires

that the notification to DOR occur within 5 days and include the name, address, and tax identification number of consumer(s) whose information was compromised during the breach. Effective date September 25, 2021. Applies to tax years beginning on or after January 1, 2022.

Labor and Employment Law

I. LABOR AND EMPLOYMENT LAW

- | | | |
|------------|-----------|--|
| 1. HB 2168 | (Ch. 201) | Juneteenth |
| 2. HB 2420 | (Ch. 293) | Updated Statute of Limitations for Workplace Safety Claims |
| 3. HB 2474 | (Ch. 182) | OFLA Expansion |
| 4. HB 2818 | (Ch. 363) | Pay Equity Clarification |
| 5. HB 2935 | (Ch. 239) | Discrimination Based on Protective Hairstyles |
| 6. HB 3041 | (Ch. 367) | Gender Identity Definition |
| 7. HB 3398 | (Ch. 693) | Delayed Implementation of Oregon's Paid Family Medical Leave |
| 8. SB 169 | (Ch. 75) | The Continued Reining in of Restrictive Covenants |
| 9. SB 483 | (Ch. 483) | Workplace Safety Report Rebuttable Presumption |
| 10. SB 569 | (Ch. 279) | Unlawful Employment Action Related to Driver's License |

Stephen Scott: 2013 Willamette University School of Law. Oregon State Bar member since 2013.

LABOR AND EMPLOYMENT LAW

I. LABOR AND EMPLOYMENT LAW

1. [HB 2168](#) (Ch. 201) Juneteenth

Establishes Juneteenth as legal state holiday.

This bill is effective as of September 25, 2021.

2. [HB 2420](#) (Ch. 293) Updated Statute of Limitations for Workplace Safety Claims

This bill extends timeline for filing complaint with the Oregon of Bureau of Labor and Industries alleging retaliation or discrimination for reporting of workplace safety complaints. This bill amended the prior statute of limitations to better align with the statute of limitations of other claims.

3. [HB 2474](#) (Ch. 182) OFLA Expansion

This bill makes several changes to the Oregon Family Leave Act (OFLA) which provides unpaid protected leave for employees employed by employers with 25 or more employees.

OFLA and Reemployed Employees: Employees reemployed or returning within 180 days who were eligible for OFLA leave at the time of their separation from employment or the beginning of their temporary cessation of work will be eligible to take OFLA leave immediately upon reemployment or return. Conversely, employees reemployed or returning within 180 days who were not yet eligible for OFLA leave at the time of their separation from employment or the beginning of their temporary cessation of work will receive credit for time worked for the employer prior to the break in employment for the purpose of establishing eligibility. Any OFLA leave taken by an employee who has been reemployed or who has returned to work within any one-year period will continue to count toward the employee's OFLA leave entitlement.

This new provision is permanent.

Pregnant Employees: This bill also allows pregnant employees, regardless of gender identity, to use pregnancy leave.

This new provision is permanent.

OFLA Eligibility During Periods of Public Health Emergency: For purposes of OFLA leave, "public health emergency" means a public health emergency declared under Oregon Revised

Statute (ORS) 433.441, or an emergency declared under ORS 401.165, if related to a public health emergency as defined in ORS 433.442. During this time, OFLA leave may be taken for any qualifying reason (including but not limited to allowing leave to be used when an employee's child's childcare or school is closed due to a public health emergency), and the eligibility requirements are expanded as follows:

- the employer has employed them for at least 30 days (reduced from 180 days standard) immediately before the leave begins; and
- they worked an average of at least 25 hours per week during the 30 days immediately preceding the leave.

This new provision is only triggered during periods of Public Health Emergency.

This bill is effective January 1, 2022.

4. [HB 2818](#) (Ch. 363) Pay Equity Clarification

While the primary focus of this bill was to allow BOLI access to the Wage Security Fund, the bill provided additional clarification related to pay equity. First, it exempts vaccine incentives during a public health emergency from the definition of compensation under the Pay Equity law. This exemption applies to claims filed on or after April 29, 2021. Second, it temporarily exempts hiring and/or retention bonuses from the definition of compensation under the Pay Equity law.

This exemption is effective May 25, 2021 through March 1, 2022.

5. [HB 2935](#) (Ch. 239) Discrimination Based on Protective Hairstyles

This new bill makes changes related to discrimination based on race and clarifies that discrimination based on certain hair types, styles, or textures violates the prohibition of discrimination on the basis of race. Employers should be aware of the new protected definitions which are as follows: "'Protective hairstyle' means a hairstyle, hair color or manner of wearing hair that includes, but is not limited to, braids, regardless of whether the braids are created with extensions or styled with adornments, locs and twists"; and "'Race' includes physical characteristics that are historically associated with race, including but not limited to natural hair, hair texture, hair type and protective hairstyles."

This bill is effective January 1, 2022.

LABOR AND EMPLOYMENT LAW

6. [HB 3041](#) (Ch. 367) Gender Identity Definition

Separates "gender identity" from the definition of "sexual orientation" within the definitions chapter of the Oregon Revised Statutes. The statute defines gender identity as "an individual's gender-related identity, appearance, expression or behavior, regardless of whether the identity, appearance, expression or behavior differs from that associated with the gender assigned to the individual at birth." The statute further adds the term "gender identity" to all statutes that previously included sexual orientation, including but not limited to ORS 659A *et seq.*

This bill was effective as of June 23, 2021.

7. [HB 3398](#) (Ch. 693) Delayed Implementation of Oregon's Paid Family Medical Leave

This bill delays the implementation requirements for paid family and medical leave program. It also extends the deadlines required for administrative rules related to this leave. Under the bill, contributions will begin Jan. 1, 2023 and employees will be eligible to use benefits on or after Sept. 3, 2023. The intent of the bill was to ensure that proper systems were in place before employers are required to submit contributions from employers and employees.

The effective date of this bill is September 25, 2021.

8. [SB 169](#) (Ch. 75) The Continued Reining in of Restrictive Covenants

This bill modifies the requirements for an enforceable noncompetition agreement as follows:

- The "voidable and may not be enforced by a court of this state" language in ORS 653.295 is replaced by the more restrictive "void and unenforceable";
- The maximum length of a restricted period is reduced from 18 months to 12 months; and
- With limited exceptions, an employee subject to the agreement must earn at least \$100,533 (which will be adjusted annually for inflation) instead of using the Census Bureau's data as an income basis;
- The new law also tightens the definition of a noncompete agreement. The statute used to define a noncompete as an agreement that is "written or oral, express or

implied.” However, the definition is now limited to written agreements, as the “oral, express or implied” language has been eliminated from the statute.

This bill is effective January 1, 2022. The bill is not retroactive.

9. [SB 483](#) (Ch. 336) Workplace Safety Report Rebuttable Presumption

Creates rebuttable presumption that person violated prohibition against retaliation or discrimination if Company takes certain action against employee or prospective employee within 60 days after employee or prospective employee has engaged in any of the following protected activities:

- (a) Opposed any practice forbidden by ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780;
- (b) Made any complaint, or instituted or caused to be instituted, any proceeding under or related to ORS 654.001 to 654.295, 654.412 to 654.423, and 654.750 to 654.780, or has testified or is about to testify in any such proceeding;
- (c) Exercised on behalf of the employee, prospective employee, or others, any right afforded by ORS 654.001 to 654.295, 654.412 to 654.423, and 654.750 to 654.780; or
- (d) In good faith, reported an assault that occurred on the premises of a health care employer as defined in ORS 654.412 or in the home of a patient receiving home health care services.

To rebut that presumption, an employer must prove by a preponderance of the evidence that the adverse action was unrelated to the protected activity. Moreover, if a specified action is taken beyond the 60-day window, that action does not create the aforementioned presumption.

This bill was effective on passage.

10. [SB 569](#) (Ch. 279) Unlawful Employment Action Related to Driver’s License

This new bill prohibits employers from requiring employees to have a driver’s license unless driving is an essential job duty or related to a legitimate business purpose. While employers are not prohibited from accepting a voluntarily-offered driver’s license, employers

LABOR AND EMPLOYMENT LAW

must also accept other valid identification documents deemed acceptable for purposes of the federal I-9 verification form.

This bill is effective January 1, 2022.

Tax Law

- I. CORPORATE ACTIVITY TAX (CAT)
 - 1. SB 164 (Ch. 572) Full Fiscal Year Filing Option
- II. CORPORATE INCOME TAX
 - 1. HB 2457 (Ch. 456) Reconnect
 - 2. SB 136 (Ch. 74) Sales Factor Requirements for Broadcasters
- III. PERSONAL INCOME TAX
 - 1. HB 2129 (Ch. 8) Charitable Checkoff Program
 - 2. HB 2130 (Ch. 9) Emancipation Day
 - 3. SB 139 (Ch. 570) Pass Through Income
 - 4. SB 727 (Ch. 589) SALT Cap
- IV. TAX CREDITS/INCENTIVES
 - 1. HB 2433 (Ch. 525) Tax Credit Extensions
 - 2. SB 119 (Ch. 36) Donations of Art
- V. PROPERTY TAX
 - 1. HB 2247 (Ch. 452) Delinquent Property Taxes
 - 2. HB 2331 (Ch. 421) Television and Radio Stations
 - 3. HB 2341 (Ch. 356) Property Damaged by Fire or Act of God
 - 4. HB 2438 (Ch. 527) Newly Constructed Dwellings
 - 5. HB 2446 (Ch. 455) Low Income Housing
 - 6. HB 2634 (Ch. 535) Homestead Deferral
 - 7. HB 3275 (Ch. 466) Affordable Housing
 - 8. SB 464 (Ch. 580) September 2020 Wildfires
- VI. PRACTICE AND PROCEDURE
 - 1. HB 2128 (Ch. 353) Security Breach of Taxpayer Information
 - 2. HB 2178 (Ch. 451) Tax Court Filing Fees

TAX LAW

VII. OTHER LEGISLATION

- | | | | |
|----|---------|-----------|---------------------------------|
| 1. | HB 2131 | (Ch. 212) | Miscellaneous Business Taxes |
| 2. | HB 2434 | (Ch. 526) | Jet Fuel Tax |
| 3. | HB 2456 | (Ch. 528) | Corrections and Update |
| 4. | HB 2521 | (Ch. 156) | Transient Lodging Taxes |
| 5. | HB 3373 | (Ch. 555) | Office of the Taxpayer Advocate |

Nikki Dobay: 2003 University of Oregon School of Law. Oregon State Bar member since 2007.

I. CORPORATE ACTIVITY TAX (CAT)

1. [SB 164](#) (Ch. 572) Full Fiscal Year Filing Option

SB 164 provides for a full fiscal year filing option for fiscal year filers starting January 1, 2022. For 2021, fiscal year filers will be required to file a short year return from January 1, 2021 through the end of the taxpayer's fiscal year. SB 164 also clarifies that foreign and alien insurers that are subject to Oregon's retaliatory tax (ORS §§ 731.854 and 731.859) are exempt entities for purposes of the CAT; exempts from commercial activity groceries sold on consignment; modifies the exclusion from commercial activity for transfers of new vehicles; changes the filing deadline for business closure or sales; and amends the penalty provisions.

SB 164 is effective on September 25, 2021 and applies to tax years beginning on or after January 1, 2021.

II. CORPORATE INCOME TAX

1. [HB 2457](#) (Ch. 456) Reconnect

HB 2457 updates the connection date to the Internal Revenue Code (IRC) from December 31, 2018 to April 1, 2021.

HB 2457 is effective on September 25, 2021.

2. [SB 136](#) (Ch. 74) Sales Factor Requirements for Broadcasters

SB 136 amends the sales factor requirements for broadcasters. SB 136 requires broadcasters to use third party ratings or books and records to determine the numerator of the sales factor, and, where such information is not available, Oregon population may be used. For licenses of subscription services or advertising on subscription services, SB 136 provides that the numerator of the sales factor is equal to 0.6% multiplied by the taxpayer's receipts from licensing to subscription services and advertising on subscription services where sufficient information on the location of the taxpayer's audience is not available. SB 136 also provides broadcasters with an option to elect to apply their apportionment ratio to their total gross receipts as opposed to sales from broadcasting services only.

SB 136 repeals ORS §§ 314.680, 314.682, 314.684, 314.686, 314.688 and 314.690.

SB 136 is effective on September 25, 2021 and applies to tax years beginning on January 1, 2020.

III. PERSONAL INCOME TAX

1. [HB 2129](#) (Ch. 8) Charitable Checkoff Program

HB 2129 makes various changes to the Charitable Checkoff Program. Specifically, HB 2129 designates that the vice chairperson is responsible for certain duties if the chairperson is unable to perform duties on a temporary basis. Additionally, the bill provides that a qualified charity will remain on the list of charities for six years and may only be removed after the six year period.

Among other changes, the bill:

- Provides that charities applying for re-approval do not need to collect signatures;
- Allows charities that have obtained at least 10,000 electoral signatures to be eligible for the program;
- Clarifies when initial applications for consideration are due;
- Clarifies the timing for other reporting requirements;
- Adds a statutory list of eligible charities;
- Requires the Oregon Charitable Checkoff Commission to examine charities included on the list every two years;
- Specifies where donation funds are held; and,
- Updates connection date to the Internal Revenue Code.

HB 2129 repeals ORS §§ 305.705, 305.710, 305.723, 305.727, 305.729, 305.735, 305.751, 305.799, 316.490, 316.491, 316.493 and 496.380.

HB 2129 is effective on September 25, 2021, and the amendments and sections repealed apply to tax years beginning on or after January 1, 2021.

2. [HB 2130](#) (Ch. 9) Emancipation Day

HB 2130 extends the filing due date for estimated tax payments where the due date falls on Emancipation Day (April 16th).

HB 2130 is effective on September 25, 2021 and applies to tax years beginning on or after January 1, 2022.

3. [SB 139](#) (Ch. 570) Pass Through Income

SB 139 amends the reduced pass through rates enacted in 2013. SB 139 reduces the tax rate for pass-through income of \$250,000 to \$500,000 from 7.2 percent to 7.0 percent and the tax rate for pass-through income of \$500,001 to \$1 million from 7.6 percent to 7.5 percent. Other reduced rates for qualifying entities were not amended. SB 139 limits the reduced rates for pass-through income to S corporations and partnerships with ordinary business income not in excess of \$5 million.

SB 139 is effective on September 25, 2021 and applies to tax years beginning on or after January 1, 2022.

4. [SB 727](#) (Ch. 589) SALT Cap

SB 727 creates a state and local tax cap (SALT Cap) workaround similar to (but not exactly the same as) those provided in other states. Specifically, SB 727 creates a new, voluntary entity-level income tax on “qualified pass-through entities.” Qualifying entities are pass-through entities whose owners are individuals subject to the Personal Income Tax or other pass-through entities whose owners are subject to the Personal Income Tax.

For those pass-through entities that qualify for and make the election, the first \$250,000 of income is taxed at a 9 percent rate while income above \$250,000 is taxed at 9.9 percent. The tax is elective and, where the election is made and the pass-through entity pays the tax, the pass-through entity owners are allowed an offsetting dollar for dollar tax credit to claim on their Oregon Personal Income Tax returns. Each owner would be allowed a tax credit for their pro rata share of the entity tax. Whether another state recognizes this credit as tax paid to another state will be based on the law of that state and is not dictated by SB 727.

SB 727 is effective September 25, 2021 and applies to tax years 2022 and 2023. SB 727 provides that the tax and corresponding credit will be repealed if Congress were to repeal the SALT cap.

IV. TAX CREDITS/INCENTIVES

1. [HB 2433](#) (Ch. 525) Tax Credit Extensions

HB 2433 extends the sunsets of several tax credits by six years, including the:

- Child with a disability credit,
- Severe disability credit,
- University Venture Development Fund contributions credit,
- Oregon Life and Health Insurance Guaranty Association credit,
- Oregon Veterans' Home physician credit, and
- Greenlight Oregon film production labor rebate subtraction.

The bill also extends sunsets and modifies several tax expenditures, including the:

- Rural medical providers credit,
- Working family household and dependent care credit,
- Individual development account contribution credit, and
- Film production and development contributions credit.

HB 2130 is effective on September 25, 2021 and applies to tax years beginning on or after January 1, 2022 and before January 1, 2026.

2. [SB 119](#) (Ch. 36) Donations of Art

SB 119 requires taxpayer-creator to obtain an appraisal report to substantiate the fair market value of an art object for purposes of a subtraction allowed for donation of an art object.

SB 119 is effective on September 25, 2021 and applies to tax years beginning on or after January 1, 2022.

V. PROPERTY TAX

1. [HB 2247](#) (Ch. 452) Delinquent Property Taxes

HB 2247 authorizes Oregon counties to adopt an ordinance or resolution authorizing the waiver of interest ordinarily charged for failure to pay taxes when due. HB 2247 applies only to interest on taxes imposed on real property used in taxpayer's business for the 2020-2021 property tax year for, provided no uncontested delinquent property taxes were outstanding on such property as of February 15, 2020, and to delinquencies substantially due to effects of COVID-19 pandemic or 2020 Oregon fire season. HB 2247 provides criteria for making this determination.

HB 2247 is effective on September 25, 2021, applies only to the 2020-2021 property tax year, and sunsets on January 2, 2023.

2. [HB 2331](#) (Ch. 421) Television and Radio Stations

HB 2331 excludes from the meaning of "communication," for purposes of central assessment for property taxation, television and radio stations licensed by the FCC that use primarily earth based-transmitters to broadcast programing via radio waves to television or radio receivers that use indoor or outdoor antennas for reception.

HB 2331 is effective on September 25, 2021 and applies to property tax years beginning on or after July 1, 2021.

3. [HB 2341](#) (Ch. 356) Property Damaged by Fire or Act of God

HB 2341 authorizes tax collectors in counties covered by a state of emergency, who know or have reason to believe property has been destroyed or damaged by fire or an act of god, to prorate imposed property taxes. HB 2341 aligns the methodology for proration of taxes on property destroyed and property damaged by fire or act of god, changes the property tax proration to include month of disaster rather than commencing month after disaster, and provides a new computation for proration of taxes for property other than specially assessed property.

HB 2341 is effective on September 25, 2021 and applies to property tax years beginning on or after July 1, 2021.

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4. [HB 2438](#) (Ch. 527) Newly Constructed Dwellings

HB 2438 authorizes counties with a population of less than 15,000 to adopt an ordinance or resolution that provide a property tax exemption for newly constructed single-family dwellings built and occupied as primary residences by individuals with annual taxable income of not more than \$75,000 if filing separately or not more than \$150,000 if filing jointly.

HB 2341 is effective on September 25, 2021 and is repealed January 2, 2032.

5. [HB 2446](#) (Ch. 455) Low Income Housing

HB 2446 extends to July 1, 2028 the sunset for the property tax exemption for property of nonprofit corporation offered, occupied or used as low-income housing.

HB 2446 is effective on September 25, 2021.

6. [HB 2634](#) (Ch. 535) Homestead Deferral

HB 2634 allows a surviving spouse or disabled heir of an individual whose homestead was granted deferral under homestead property tax deferral program to continue deferral without having owned or occupied the homestead for five years. HB 2534 also sets an alternative maximum allowable real market value of \$250,000 on participating property for program eligibility and adjusts allowable income cap by the All Urban Western Consumer Price Index.

HB 2634 is effective on September 25, 2021.

7. [HB 3275](#) (Ch. 466) Affordable Housing

HB 3275 exempts land owned by certain holders of land subject to permanent affordable housing covenants if improvements on land constitute owner-occupied housing. HB 3257 also provides an exemption for 27 percent of assessed value of an owner-occupied condominium unit burdened by affordable housing covenant.

HB 3275 is effective on September 25, 2021 and generally applies to property tax years beginning on or after July 1, 2022.

8. [SB 464](#) (Ch. 580) September 2020 Wildfires

SB 464 authorizes counties covered by a state of emergency declared in response to September 2020 wildfires to adopt an ordinance or resolution directing tax collector to prorate and cancel property taxes imposed on taxable property that the tax collector knows suffered

loss in real market value as result of wildfires. This may be done without an application from property owner.

SB 464 is effective on September 25, 2021 and applies to the property tax year beginning on July 1, 2020 and will sunset January 2, 2023.

VI. PRACTICE AND PROCEDURE

1. [HB 2128](#) (Ch. 353) Security Breach of Taxpayer Information

HB 2128 requires tax professionals within five days of discovery to report an actual or believed breach of security regarding taxpayer information. HB 2128 provides a “tax professional” will include tax preparers or consultants licensed and certified pursuant to ORS §§ 673.605 to 673.740, attorneys, CPAs, enrolled agents or any other licensed professionals.

HB 2128 is effective on September 25, 2021 and applies to breaches of security occurring on or after January 1, 2022.

2. [HB 2178](#) (Ch. 451) Tax Court Filing Fees

HB 2178 modifies the tax court filing fees. Specifically, HB 2178 reduces the filing fee for complaints or petitions filed in the Magistrate Division of the Oregon Tax Court from \$281 to \$50, but maintains the filing fee of \$281 for complaints or petitions filed in the Regular Division of the Oregon Tax Court. HB 2178 also clarifies the date for the filing of a complaint or petition if the tax court grants a fee waiver or deferral, or the plaintiff/petitioner pays the filing fee within 14 days from the date of the court’s denial of a fee waiver or deferral.

HB 2178 applies to complaints and petitions filed in the Oregon Tax Court on or after January 1, 2022.

VII. OTHER LEGISLATION

1. [HB 2131](#) (Ch. 212) Miscellaneous Business Taxes

HB 2131 applies to heavy equipment rental taxes, state lodging taxes, emergency communication system taxes, and petroleum load fees. Specifically, HB 2131 specifies the timing of notices of liability, assessment payments, and appeals in cases of tax assessments and/or failure to file, and provides owners, officers, employees, or members an entity may be held personally liable where entity had unpaid amounts of tax or fees collected by the entity and held in trust.

TAX LAW

HB 2131 is effective on September 25, 2021 and applies to amounts due on or after January 1, 2022.

2. [HB 2434](#) (Ch. 526) Jet Fuel Tax

HB 2434 removes the sunset on the tax rate increase of jet fuel and aviation gasoline that was set to occur on January, 1, 2022.

HB 2434 is effective on September 25, 2021.

3. [HB 2456](#) (Ch. 528) Corrections and Update

HB 2456 makes technical corrections and updates various tax provisions. In addition to updating certain corporate excise tax statutory references to the Internal Revenue Code (and although not an exhaustive list), HB 2456:

- Updates the ABLE account connection date to the Internal Revenue Code, from December 31, 2017 to April 1, 2021;
- Makes various changes to low-income rental and nonprofit low-income rental property tax exemptions;
- Allows Oregon Film and Video Office and Higher Education Coordinating Commission to issue tax credit certifications for the current or immediately preceding tax year if a taxpayer has not filed an associated tax return, applicable to tax years 2021 through 2023;
- Allows Department of Revenue to share information with Department of Motor Vehicles for purposes of the vehicle privilege tax; and,
- Amends the definition of “authorized agency” to allow a municipal tax collection agency to request federal background checks.

HB 2456 repeals ORS §§ 315.601 and 315.606 and is effective on September 25, 2021.

4. [HB 2521](#) (Ch. 156) Transient Lodging Taxes

HB 2521 requires a transient lodging tax collector to provide an invoice, receipt or other similar document that clearly sets forth sum of all transient lodging taxes charged for occupancy of transient lodging.

HB 2521 is effective on September 25, 2021.

5. [HB 3373](#) (Ch. 555) Office of the Taxpayer Advocate

HB 3373 establishes the Office of the Taxpayers Advocate in the Oregon Department of Revenue. Driven by the Oregon Department of Revenue, HB 3373:

- Establishes functions, powers and duties of the office;
- Authorizes the Taxpayer Advocate to issue orders directing action by the department if a taxpayer experiences significant hardship due to administration of tax laws by department;
- Requires Taxpayer Advocate to report biennially on operation of office to committee of Legislative Assembly related to revenue.

HB 3373 also requires the magistrate division of Oregon Tax Court to order attorney fees if the opposing party disobeys a court order or makes an assertion without an objectively reasonable basis.

HB 3373 is effective September 25, 2021 and the provisions related to attorney's fees apply to judgments entered into after that date. The provisions related to the Office of the Taxpayers Advocate are operative January 1, 2022.

Civil Procedure

I. CHANGES TO THE OREGON RULES OF CIVIL PROCEDURE

1. ORCP 15 Time for Filing Pleadings or Motions
2. ORCP 21 Defenses and Objections
3. ORCP 27 Minor or Incapacitated Parties
4. ORCP 31 Interpleader
5. ORCP 55 Subpoena

Hon. Mark Peterson: 1976 University of Toledo Law School. Oregon State Bar member since 1982.

I. ORCP CHANGES

1. ORCP 15 Time for Filing Pleadings or Motions

Rule 15 was amended in the 2017-2019 biennium, partly at the request of the Oregon State Bar's Procedure and Practice Committee, to clarify that the rule applied to all pleadings subsequent to the complaint and to better specify the timing for filing responsive pleadings. A concern that was not then resolved was the phrasing of section D that appeared to allow the court to extend the time for the filing of all pleadings and motions. The only hint that section D did not authorize extensions of the time in responding to all pleadings and motions was the phrasing, "after the time limited by the procedural rules" Some deadlines are substantive, and a court is without authority to allow an extension, e.g., a motion for judgment notwithstanding the verdict pursuant to Rule 63 or a motion for new trial pursuant to Rule 64. In some instances, the deadline imposed by a rule is made subject to the court's discretion to modify that deadline, e.g., Rule 15 B, Rule 43 B(2), and many others. Compiling a list of deadlines that can, or cannot, be modified was considered unwieldy for inclusion in Rule 15. Further, whether a deadline can be modified may not be clear in a given case. To alert readers that section D will not allow for an extension in all cases, the first sentence now begins, "[e]xcept as otherwise prohibited by law . . ." as a "red flag" to warn readers that it would be wise to research whether a particular request for an extension is available.

The lead line in section D was amended in keeping with the title of Rule 15 and the other sections. The rule covers the time for filing pleadings and motions. The "or do other acts" phrase in the lead line, long present in earlier formulations of the rule, was deleted; the rule governs the timing of the filing of pleadings and motions. The unintentional limitation of section D's applicability to answers and replies was amended to make clear that the section applies to all pleadings (subsequent to the complaint), and to motion practice. Although UTCR 5.030 provides the timing for motion practice, section D authorizes the court to modify the time for responses and replies. Rather than an expansion of the court's authority, the amendment is in keeping with how the courts, and the parties, handle modifications of the schedule for filing pleadings and for motion practice.

2. ORCP 21 Defenses and Objections

It is not uncommon for a party, usually a plaintiff, to amend the party's pleading shortly prior to trial, once discovery is completed and the issues have sometimes narrowed and come into clearer focus. Such amendments often update the amount of damages sought. It is then incumbent on the opposing party to respond to the amended pleading. A concern was raised that the amending party can be at a disadvantage when the response to the amended pleading does not simply respond as necessary to the new or modified allegations in the amended

pleading but, instead, raises defenses that were not previously raised, sometimes even denying liability for the first time. Either the trial must be postponed, or the amending party is proceeding to trial on new issues. There may be a request to re-open discovery and expert witnesses may need to be rescheduled. As provided in Rule 21, the amending party is required to obtain consent from the opposing party or from the court to file the amended pleading; the opposing party is entitled to file a responsive pleading and may do so without the need for obtaining consent from the amending party or the court.

The amendment adding subsection E(3), is intended to give the court authority to strike any part of the response to the amended pleading that raises new issues that will unfairly prejudice the amending party or that will delay the trial. The new language in section E allowing motions to strike “any response to an amended pleading, or part thereof, that raises new issues, when justice so requires . . .” incorporates the factors to be considered in allowing amendments expressed in *Ramsey v. Thompson*, 162 Or App 139 (1999), rev den, 329 Or 589 (2000). The right to amend “shall be freely given when justice so requires.” ORCP 23 A. The same should be true for a response to an amendment. However, if the response to an amendment raises new issues, the most significant factor in determining whether the response should be stricken will generally be the amount of time from the filing of the new pleading until the scheduled start of the trial.

The more visible change to Rule 21 is a reorganization of section A, which was previously one long block of text that included quasi-subsections (1) through (9) that were inconsistent with the manner in which the rules are organized. That monolith is now broken into two subsections, and those subsections are further broken into correctly formatted paragraphs, enabling improved citation to that part of the section that is relevant. Lead lines are added to read in a more logical sequence. The amendments to section A are not meant to affect the meaning or operation of the section.

Section C was amended to make the references to the defenses in section A correspond with the new organization of section A. Also, the word “shall” was replaced with “must” in keeping with modern drafting standards. The word “application” was replaced with “motion,” as a request for relief from the court is a motion.

Changes in section D include moving a comma and adding three commas to improve readability. The word “upon” is replaced with “on” three times to improve language usage. The word “charge” is replaced with “claim,” as we have claims (see Rule 18), not charges in civil litigation. Finally, the use of the word “such” in the last sentence is avoided, as that word is overused in stilted legal prose and is often imprecise.

Section E also contained quasi-subsections that were not formatted in a manner consistent with the rules. The subsections are now formatted consistently and, of course, the new basis

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for a motion to strike, as discussed in the opening two paragraphs of this comment, is added. Also, the word “upon” is replaced four times with the more standard usage term “on.”

Section F Includes a grammar-influenced substitution of the word “that” for “which,” as well as a substitution of “cannot” for “shall not” in keeping with modern drafting conventions.

Section G again contained quasi-subsections not formatted in a manner consistent with the rules, and reformatting the subsections required deleting the sentence prohibiting raising the enumerated defenses by amendment. Instead, the bar to raising these defenses by amendment is included in a sentence preceding the subsections. The word “shall” is replaced by “will” on two occasions and by the word “must” on one occasion in keeping with modern drafting conventions. The word “upon” is replaced with the more standard word, “on.” The word “such” is replaced with a more precise “the” and two commas are added and the disjunctive “or” is deleted to improve readability.

The amendments, other than the addition of subsection E(3), are technical changes in part to improve clarity and consistency within the rules and are not meant to affect the meaning or the operation of Rule 21.

3. ORCP 27

Minor or Incapacitated Parties

The primary change to Rule 27, in section A, is to clarify, for non-lawyers attempting to use the rules, the purpose and role of a guardian ad litem and to distinguish a guardian ad litem who acts for a minor or incapacitated party in a particular legal action from a guardian appointed under ORS 125.300-125.330 to act generally for a ward.

The other changes are found in the title of the rule, the lead line for section B, and the first sentence of section B where the word “unemancipated” is added as an adjective modifying the word “minor,” as an emancipated minor would not require appointment of a guardian ad litem. Also, the word “mandatory” is added to the lead line in section B. Appointment of a guardian ad litem is mandatory for unemancipated minors, incapacitated persons, and financially incapable persons. This is in contrast to a discretionary appointment of a guardian ad litem for a litigant who is disabled but who is not an unemancipated minor or an incapacitated or financially incapable person.

4. ORCP 31

Interpleader

Issues with Rule 31 were raised as to whether interpleader may be used by defendants in litigation as well as by a plaintiff seeking to resolve potentially conflicting claims that may be brought by multiple defendants. The rule does allow a complaint, a counterclaim, or a crossclaim to be filed in interpleader. However, section C appeared to authorize an award of

attorney fees only to plaintiffs filing the suit or action in interpleader. Section C was completely rewritten and amended to make clear that a plaintiff, a counterclaimant, or a cross-claimant would be eligible for an award of attorney fees. However, an automatic award of attorney fees to a litigant filing a claim in interpleader appeared misplaced. In some cases, the party utilizing the interpleader device may be an innocent stakeholder. In other cases, the party filing an interpleader claim may be far from disinterested and far from blameless in the dispute. Since the award of attorney fees is paid from the property or funds ordered interpled, there is incentive for the competing parties to resolve their claims as expeditiously as possible. But, if the party filing an interpleader claim is responsible for the dispute, it is unclear why that party should profit from filing the claim while depleting the corpus available for distribution to the rightful owners. Therefore, the court is given discretion to utilize the ORS 20.075 factors as well as three additional factors noted in the literature of interpleader in determining whether to deny a claim for attorney fees in whole or in part. Those factors, identified in paragraphs C(1)(a) through C(1)(c), require to the court to inquire into issues of exposure, fault, and equity in determining whether fees should be awarded and the amount of fees to be awarded.

In section A the words “a” and “are” added as well as two commas to improve readability. A superfluous use of the word “such” is deleted. The amendments to section A are to improve clarity and consistency within the rules and are not meant to affect the meaning or operation of section A.

5. ORCP 55

Subpoena

A complete re-write of Rule 55 was undertaken in the 2017-2019 biennium. In order to explain the Rule 55 amendments promulgated this biennium, some recent history from the 2017-2019 biennium is helpful. Rule 55 was overly long, and a series of amendments over time had resulted in a rule that had little organizational flow and contained redundancies. In an attempt to successfully replace the former rule, a conscious effort was made to maintain all of the elements of that prior rule and to avoid changing what parties and their attorneys relied on in Rule 55, even if they could not readily locate that portion of the rule that authorized their reliance on it. Certain opportunities for improving practice under Rule 55 were noted and deferred until the re-written rule successfully made it through the promulgation process and became effective.

This biennium two small but noteworthy improvements were approved. One issue was addressed with an amendment concerning witness fees and mileage that is found in a new subparagraph A(1)(a)(v). A subpoenaed witness is not required to obey the subpoena and appear to testify or to produce documents unless a witness fee and mileage are tendered when the subpoena is served. The witness may be an occurrence witness having no interest in the litigation, and with no lawyer with whom to consult. Such a witness would likely be unaware that compliance with the subpoena is contingent on the tender of a witness fee and mileage.

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There have been examples of self-represented litigants arguably abusing the use of subpoenas to seemingly compel attendance of witnesses without the tender of fees. Subparagraph A(1)(a)(v) requires the form of the subpoena to alert the person served that attendance is contingent on payment of those fees.

The other improvement, found in subsection B(5), relates to serving an opposing party with a subpoena. If a party has already appeared in a case (clearly the plaintiff, but also a defendant who has already been served with summons or who has entered an appearance), Rule 7-type service and the tender of the witness fee and mileage are no longer required. Efficiency and economy are served by eliminating the need to locate a party to effect service of a subpoena and to tender the witness fee and mileage when that party is already subject to the jurisdiction of the court. Service of such witnesses can be effected as provided in Rule 9. The amendment is based in part on Illinois Supreme Court Rule 237(b) and Washington State Superior Court Civil Rule 43.

Various technical amendments were also made. In subsection A(7), a redundancy from the previous re-write is addressed by deleting the words "as provided." The lead line for section B is amended to add "parties" to account for the new procedure to subpoena parties as provided in the new subsection B(5). The word "nonparty" is added to the lead line for subsection B(2) for the same reason. Also, in subsection B(2), "required" is replaced with "specified in the subpoena" for clarity in referring to the location of the deposition. In subparagraph B(2)(c)(iii), "the" is replaced with "than" to correct a drafting error from the previous amendment. In paragraph B(2)(d), a potential inconsistency was remedied by making clear that subpoenas directed to nonparty organizations must be accompanied with the appropriate witness fee and mileage. In subsections B(3)(a) and B(3)(b), the statement of fees and mileage is modified to be consistent throughout the rule and to eliminate any concern that a different meaning should be attributed between the various provisions of the rule because of minor differences in the phrasing of the requirement to tender fees and mileage. In part B(3)(b)(ii)(8), "identified" is replaced with "specified," as in subsection B(2). In subsection C(3), "do" is replaced with "comply with" for clarity. The foregoing technical amendments are not meant to affect the meaning or operation of the rule.